

Statistics on Federal Habeas Corpus

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In a judicial scheme of things that usually emphasizes individuality and difference—meticulously distinguishing precedents and carefully deciding each controversy upon its particular merits—judicial statistics explore another dimension. They emphasize likeness, disclosing how many of the same or similar types of controversies arise, where they arise, and how they are disposed. On a judicial sea in which every wave is different, judicial statistics sound the broadly common depths. The tables which follow attempt as complete a statistical picture of habeas corpus in the federal courts as is possible with available information and may shed some light on the question of whether the writ is being abused.

Tables 1, 2, and 3 show the extent and distribution of habeas corpus cases in the federal district courts, the courts of appeals, and the Supreme Court, respectively. Habeas corpus cases in the district courts fall naturally in two main categories, one of which is in turn divisible again. They are brought either against a federal officer or the United States government itself (U.S. Defendant jurisdiction) or against some non-federal custodian on the ground that the confinement is in violation of some federal right (Federal Question jurisdiction). U.S. Defendant habeas corpus cases are in turn divisible into the small special category of Deportation Cases, where the writ of habeas corpus has been the only means of reviewing the legality of deportation orders, and Other U.S. Defendant habeas corpus cases which are brought against federal custodians, usually the wardens of federal prisons but sometimes military authorities and others.

The Deportation cases, the smallest category, are usually brought in seaboard districts on the east and west coasts, reached a numerical peak just after the war, and may soon largely disappear if the more convenient court review of deportation under the Administrative Procedure Act becomes established.¹ The Other U. S. Defendant habeas corpus cases are mostly brought by federal prisoners and are therefore usually filed in court districts containing federal penal institutions. (See Tables 4 and 5.) Federal Question habeas corpus cases have increased greatly in number in the last ten years as the United States Supreme Court has set stricter standards of due process of law to govern the trial and

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confinement of all prisoners. But the increase has again been confined to a few districts chiefly in Illinois and to a much lesser extent in a few other states which have declined to provide a remedy for federal due process rights in their local courts. The court of appeals cases follow the patterns set in the district courts showing the larger totals and the greater increases in circuits containing federal penal institutions or states which do not provide a remedy for federal rights in their local courts.

Habeas corpus cases may reach the United States Supreme Court by any of the avenues listed in the stub of Table 3, but the principal avenues are the petitions for original writs (almost never granted) or the discretionary certiorari. Most of the habeas corpus cases in both categories are brought in *forma pauperis*, and in recent years more than half have been brought by prisoners in Illinois. In the last two years scores of original writs have also been filed by German war crimes prisoners, and petitions by these prisoners account for the jump in the number of original applications last year.

Tables 4, 5, and 6 shed some light upon the alleged abuse of the writ of habeas corpus to overburden the federal courts with frivolous and repetitive petitions. Table 4 shows that habeas corpus cases and trials in certain districts represent a substantial part of the courts' work. In this connection, however, it should be noted that studies of the time spent by judges in disposing of various types of cases tend to show that habeas corpus cases take less time to dispose of than many other classes of cases. Time studies of cases tried disclosed that judges spent an average of only 3.8 hours in disposing of U. S. Defendant habeas corpus cases and 4.8 hours in disposing of Federal Question habeas corpus cases, as compared with 3.2 hours on government OPA cases, 8.5 hours on Federal Employees Liability Act cases, 6.2 hours on Fair Labor Standards Act cases, 7.4 hours on motor vehicle personal injury cases, 2.5 hours on contract cases, and 5.4 hours on criminal cases. Table 5 shows that at the most only a very small fraction of federal prisoners, except those in Alcatraz, file writs of habeas corpus each year. The comparison is made on the assumption that all U. S. Defendant (other than Deportation) habeas corpus cases filed in these districts are filed by prisoners from these institutions. This assumption is largely true in these districts and in any event is one that overstates the proportion of prisoners filing writs, particularly in the Northern District of California where there have been several writs each year from military prisoners. Table 6 shows that repeater petitions have contributed substantially to the number of writs in several districts.² Not all repeater petitions are frivolous: one District of Columbia inmate of a mental institution was discharged on his

twenty-second petition; expiration of sentence is a frequent ground for discharge (see Table 10) and may arise after dismissal of earlier petitions; and even grounds previously alleged may in new dress find new favor.³

A judicial remedy which evokes a flood of largely frivolous and often repetitive petitions requires a judicial procedure designed, even more particularly than most, to separate the meritorious from the worthless with certainty and with the minimum expenditures of time and labor. Table 7 shows the modes of disposition in the categories of uncontested judgments, contested judgments before trial, and contested judgments after trial. Prisoners, usually unrepresented by counsel, prove more tenacious in insisting on a contested outcome than do deportees, usually represented by counsel; and prisoners in state confinement have in the last five years seen a larger proportion of their petitions disposed by judgment of court before trial than previously. Table 8 for the years 1941-2 shows the great variety in practice among these five courts in issuing the writ: Georgia always issued the writ and usually held hearings; Washington almost never issued the writ and usually disposed of the case on show cause order.

Despite an increase in the number of writs filed by federal prisoners and an enormous increase in the number filed by state prisoners the number of releases tabulated in Tables 9A and 9B has remained almost constant, and for state prisoners the proportion of releases to writs filed has declined. The grounds for releases as reported by clerks in Table 10 have shown little change except for the increase in the category of denial of assistance of counsel.

Among the changes made in habeas corpus procedure by the revised judicial code was the requirement of a motion to vacate sentence as a prerequisite for the issuance of the writ of habeas corpus.⁴ Table 11, parts A and B, summarize the results of a questionnaire to clerks on most of the motions filed during the first ten months of operation of this provision. Surprisingly, far fewer motions were filed than the volume of habeas corpus cases would require, and thus judges, attorneys, and prisoners appear not to have become immediately aware of this provision or perhaps to have doubted its constitutionality. The figures on pleadings and hearings show the variety in modes of handling, and those on number of prisoners produced in court and number represented by counsel point up the plight of prisoners using this motion or the writ of habeas corpus in establishing a case. The vague and often legally unfounded grounds alleged illustrate the material through which judges must search to find the issues and discover the facts. The only result of all these motions this year has been one modified sentence.

These statistics show the enormous expansion in recent years in the use of the writ of habeas corpus to give prisoners a judicial hearing in federal courts on claims that confinement violates their legal or constitutional rights. This judicial scrutiny of imprisonments has thus far resulted more in a reassurance of the legality of the incarceration than in any large-scale opening of prison doors. But even the small number of releases shows the importance of this writ in protecting liberty.

¹ United States *ex rel.* Trinler v. Carusi, 166 F. 2d 457 (3d Cir. 1948), followed in United States *ex rel.* Cammarata v. Miller, 79 F. Supp. 643 (S.D. N.Y. 1948).

² See also the figures on Alcatraz repeaters in Goodman, *Use and Abuse of Habeas Corpus*, 7 FED. R. D. 313, 315 (1947).

³ *E.g.*, McDonald v. Swope, 79 F. Supp. 30 (Cal. 1948).

⁴ 28 U.S.C. §2255.

TABLE 1.—HABEAS CORPUS CASES COMMENCED IN UNITED STATES DISTRICT COURTS 1940-49*

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
Total 84 districts..	598	568	841	1204	1083	1291	1136	1240	1278
Deportation	153	88	99	75	72	420	258	191	218
Other U.S.defend.	318	350	473	524	475	379	393	506	477
Federal question.	127	130	269	605	536	492	485	543	583
<i>First Circuit</i>									
Deportation	20	2	13	1	6	5	5	1	2
Other U.S.defend.	3	1	4	4	2	4	4		
Federal question.	4	2	4	4	2	8	1	2	5
Maine									
Deportation									
Other U.S.defend.				1		1	1		
Federal question.	1								
Massachusetts									
Deportation	20	2	13	1	6	5	5	1	2
Other U.S.defend.	3		4	2	2	3	3		
Federal question.	2	2	2	2		5	1	2	3
New Hampshire									
Deportation									
Other U.S.defend.									
Federal question.	1		2	2	2	3			2
Rhode Island									
Deportation									
Other U.S.defend.		1		1					
Federal question.									
<i>Second Circuit</i>									
Deportation	69	38	52	55	45	336	202	129	167
Other U.S.defend.	27	26	43	42	35	16	32	35	30
Federal question.	20	11	9	12	18	15	21	30	33
Connecticut									
Deportation	1	1				3	1		
Other U.S.defend.		3	2	9		4	5	2	9
Federal question.			2		1	1	2	1	7
New York, N.									
Deportation					1	1	2		
Other U.S.defend.		2	2	1		1	1		
Federal question.		1	1	1	2	6	10	13	12
New York, E.									
Deportation		3					1		
Other U.S.defend.	13	13	16	15	5	1	4	12	3
Federal question.	4		1		1				
New York, S.									
Deportation	67	33	50	55	42	329	198	128	167
Other U.S.defend.	14	8	19	11	29	10	21	18	16
Federal question.	3	2		1	1	4	5	6	5
New York, W.									
Deportation	1	1	2		2	3		1	
Other U.S.defend.			4	6			1	3	2
Federal question.	13	6	5	10	13	4	4	10	9
Vermont									
Deportation									
Other U.S.defend.					1				
Federal question.		2							
<i>Third Circuit</i>									
Deportation	7	15	1	6	2	9	14	10	6
Other U.S.defend.	14	25	28	43	23	8	15	22	21
Federal question.	4	7	4	3	11	19	27	23	31

TABLE 1.—Continued

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
Delaware									
Deportation									
Other U.S.defend.	1								1
Federal question.							2		
New Jersey									
Deportation	6	1	1	1	1	2			
Other U.S.defend.	6	12	3	6	8		2		2
Federal question.			1		6	4	3	6	9
Pennsylvania, E.									
Deportation	1			5		2	12	8	6
Other U.S.defend.	2	2	6	4	2	3	3	2	3
Federal question.	3	5	3	3	5	12	16	12	13
Pennsylvania, M.									
Deportation					1	1			
Other U.S.defend.	4	10	19	33	12	5	10	20	12
Federal question.	1	2						2	
Pennsylvania, W.									
Deportation		14				4	2	2	
Other U.S.defend.	1	1			1				3
Federal question.						3	6	3	9
<i>Fourth Circuit</i>									
Deportation	7	10	7		2		2	2	6
Other U.S.defend.	11	7	18	31	23	13	12	6	7
Federal question.	4	14	15	22	46	43	19	28	31
Maryland									
Deportation	1	8	7		2				2
Other U.S.defend.		3	4	5	6	4	3	1	
Federal question.	3	7	12	13	20	7	9	11	11
North Carolina, E.									
Deportation									
Other U.S.defend.				1		1			
Federal question.									
North Carolina, M.									
Deportation									
Other U.S.defend.					2	1			
Federal question.									
North Carolina, W.									
Deportation									
Other U.S.defend.									2
Federal question.									
South Carolina, E.									
Deportation									
Other U.S.defend.			1	2					1
Federal question.				2			1		
South Carolina, W.									
Deportation									
Other U.S.defend.				2	1				
Federal question.									
Virginia, E.									
Deportation	6	2					2	2	4
Other U.S.defend.	11	3	6	18	10	6	7	3	4
Federal question.	1	6	3	6	24	34	8	17	19
Virginia, W.									
Deportation									
Other U.S.defend.		1		1	2				
Federal question.				1		1			
West Virginia, N.									
Deportation			2						
Other U.S.defend.									
Federal question.		1			2	1	1		1

TABLE 1.—Continued

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
West Virginia, S.									
Deportation									
Other U.S.defend.			5	2	2	1	2	2	
Federal question.									
<i>Fifth Circuit</i>									
Deportation	10	6	8	1	1	7	3	6	6
Other U.S.defend.	84	91	139	132	143	79	66	105	146
Federal question.	10	12	9	14	10	9	16	25	36
Alabama, N.									
Deportation									
Other U.S.defend.							1		1
Federal question.			1					1	
Alabama, M.									
Deportation					2				
Other U.S.defend.				1		2		2	1
Federal question.		1							
Alabama, S.									
Deportation									
Other U.S.defend.		1		1					1
Federal question.									
Florida, N.									
Deportation									
Other U.S.defend.	7	1		1	1		2	3	4
Federal question.						1	1	1	
Florida, S.									
Deportation	3	2				1	1	4	4
Other U.S.defend.	2	3	3	1	5	1	1	2	3
Federal question.	4		3	1	6	2	7	5	22
Georgia, N.									
Deportation	5	2	1			1			
Other U.S.defend.	55	71	123	115	124	64	53	80	117
Federal question.	2	5	3	3	1	2	1	2	
Georgia, M.									
Deportation									
Other U.S.defend.		1			1	1		1	
Federal question.			1	2					
Georgia, S.									
Deportation	1								1
Other U.S.defend.		1						4	1
Federal question.	2	1	1	2		1	5	3	3
Louisiana, E.									
Deportation									
Other U.S.defend.	3	1	6	3		1			1
Federal question.	2	1		2					2
Louisiana, W.									
Deportation									
Other U.S.defend.									
Federal question.		1							
Mississippi, N.									
Deportation									
Other U.S.defend.									
Federal question.									
Mississippi, S.									
Deportation									
Other U.S.defend.			1	1	2	1			
Federal question.		1			1				
Texas, N.									
Deportation		1		1	1		1		
Other U.S.defend.	11	9	3	4	4	2	3	10	9
Federal question.		1						2	2

TABLE 1.—Continued

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
Texas, E.									
Deportation		1							
Other U.S.defend.		1	2	2	1	1	2		5
Federal question.									
Texas, S.									
Deportation	1		6			5	1	2	
Other U.S.defend.	3	1	1	1	1	1	1	3	2
Federal question.				3	2	1	1	7	6
Texas, W.									
Deportation			1						1
Other U.S.defend.	3	1		3	2	7	3	2	2
Federal question.		1					1	2	
<i>Sixth Circuit</i>									
Deportation	3	1	11	1	7	9	8	4	2
Other U.S.defend.	12	14	14	18	38	36	16	30	31
Federal question.	9	10	14	15	35	45	22	41	78
Kentucky, E.									
Deportation									
Other U.S.defend.	3	7	6	5	12	7	4	15	15
Federal question.									
Kentucky, W.									
Deportation									
Other U.S.defend.				3		1	1		
Federal question.	3	1	3		4	1		5	1
Michigan, E.									
Deportation	2	1	2		3	3	6	4	1
Other U.S.defend.	5	3	1	3	19	24	8	11	10
Federal question.	3	4	6	6	13	32	17	29	56
Michigan, W.									
Deportation				1					
Other U.S.defend.	2	1	2		2	1			
Federal question.		2	2	2	14	8	5	6	7
Ohio, N.									
Deportation			9		4	6	1		1
Other U.S.defend.	1	2	3	2		1		1	3
Federal question.			1	1					4
Ohio, S.									
Deportation							1		
Other U.S.defend.	1			5	3	2	3	3	2
Federal question.	1	3	1	5	4	3		1	9
Tennessee, E.									
Deportation									
Other U.S.defend.		1	2		2				1
Federal question.			1	1					1
Tennessee, M.									
Deportation	1								
Other U.S.defend.									
Federal question.	2								
Tennessee, W.									
Deportation									
Other U.S.defend.									
Federal question.						1			
<i>Seventh Circuit</i>									
Deportation	1		2	1	4	8	9	10	3
Other U.S.defend.	7	8	15	20	19	16	14	20	20
Federal question.	12	20	142	469	353	285	293	283	269
Illinois, N.									
Deportation			1	1	3	5	7	8	3
Other U.S.defend.			3	5	11	9	11	4	9
Federal question.			125	342	231	204	238	200	189

TABLE 1.—Continued

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
Illinois, E.									
Deportation					2	3	1		1
Other U.S.defend.	1	1		71	51	44	27	45	35
Federal question.		1							
Illinois, S.									
Deportation			1						
Other U.S.defend.									
Federal question.	2	1	1	35	29	11	2	3	2
Indiana, N.									
Deportation	1				1	2	1	2	
Other U.S.defend.			2		1			1	
Federal question.	4	17	13	17	40	20	24	33	41
Indiana, S.									
Deportation									
Other U.S.defend.	6	7	8	14	5	3	2	14	9
Federal question.	5		1	2			1	1	2
Wisconsin, E.									
Deportation						1	1		
Other U.S.defend.			2			1		1	
Federal question.	1	1	2		2	6	1	1	
Wisconsin, W.									
Deportation									
Other U.S.defend.				1					1
Federal question.				2					
<i>Eighth Circuit</i>									
Deportation	3	1		3	1	2	3	2	1
Other U.S.defend.	34	39	64	76	47	56	86	63	26
Federal question.	11	25	25	38	22	26	18	27	20
Arkansas, E.									
Deportation	1								
Other U.S.defend.			2	1	1	2			
Federal question.		1							
Arkansas, W.									
Deportation									
Other U.S.defend.	9				1				
Federal question.		2	1						1
Iowa, N.									
Deportation									
Other U.S.defend.									
Federal question.							1		
Iowa, S.									
Deportation									
Other U.S.defend.							1	1	
Federal question.		1	5	11	10	3		4	1
Minnesota									
Deportation		1					1		
Other U.S.defend.	4	5	2	3	2	8	7	3	1
Federal question.				1	1	8	1	2	1
Missouri, E.									
Deportation							1	1	1
Other U.S.defend.	1	2					1	1	
Federal question.		1					1	2	
Missouri, W.									
Deportation							1		
Other U.S.defend.	19	27	54	70	41	37	77	57	24
Federal question.	5	11	10	21	6	3	10	13	10
Nebraska									
Deportation	2					1		1	
Other U.S.defend.		1	4		2			1	1
Federal question.	3	8	8	4	5	10	5	6	6

TABLE 1.—Continued

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
North Dakota									
Deportation				3	1	1			
Other U.S.defend.	1	1	2			9			
Federal question.	1								1
South Dakota									
Deportation				2					
Other U.S.defend.		3		1					
Federal question.	2	1	1	1		1			
<i>Ninth Circuit</i>									
Deportation	33	15	5	7	4	43	12	26	24
Other U.S.defend.	59	87	81	98	98	97	77	66	59
Federal question.	25	21	38	27	33	36	47	54	49
Arizona									
Deportation						1			
Other U.S.defend.	3	1	3	2	3		1	2	1
Federal question.			1		2	1			1
California, N.									
Deportation	24	10	1	1	2	19	1	17	13
Other U.S.defend.	28	35	35	44	42	53	38	28	28
Federal question.	9	3	2	10	10	2	11	34	18
California, S.									
Deportation		5		2	1	16	7	4	5
Other U.S.defend.		4	15	10	16	10	6	5	2
Federal question.		1	1	1	1	2	6	4	6
Idaho									
Deportation									
Other U.S.defend.	1	5	3						
Federal question.								1	
Montana									
Deportation									
Other U.S.defend.		2		1	5	1			
Federal question.									
Nevada									
Deportation	1				1				
Other U.S.defend.		1	1	1	2		1		
Federal question.	1		1		1	1	2	3	
Oregon									
Deportation	1			2		2			1
Other U.S.defend.	1	1	3	3	3	1		1	
Federal question.		1		1	1	1			1
Washington, E.									
Deportation				2	1	1	2		1
Other U.S.defend.				15	16	29	27	12	20
Federal question.	14	16	33						
Washington, W.									
Deportation	7		4	2		5	4	5	4
Other U.S.defend.	26	38	21	35	26	31	29	30	28
Federal question.	1				2		1		3
<i>Tenth Circuit</i>									
Deportation						1		1	1
Other U.S.defend.	67	52	67	60	47	54	71	159	137
Federal question.	28	8	9	1	6	6	21	30	31
Colorado									
Deportation						1		1	
Other U.S.defend.		1		4	3	1			5
Federal question.					1				1
Kansas									
Deportation									1
Other U.S.defend.	66	47	64	50	41	50	66	157	128
Federal question.	28	3	3		1	1	17	17	23

TABLE 1.—Continued

DISTRICT	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9
New Mexico									
Deportation					1				
Other U.S.defend.					1				
Federal question.			1		1				
Oklahoma, N.									
Deportation	1								
Other U.S.defend.								1	1
Federal question.		1							
Oklahoma, E.									
Deportation					1			2	
Other U.S.defend.			2	2	3	1	1	10	4
Federal question.		2	2	1	1				
Oklahoma, W.									
Deportation					1	2	3		3
Other U.S.defend.		4	1	2	1	2	2	2	2
Federal question.		1	3						
Utah									
Deportation									
Other U.S.defend.				2		1	2		1
Federal question.						4			
Wyoming									
Deportation									
Other U.S.defend.									
Federal question.		1					1		
Dist. of Columbia†									
Deportation		1				1	1		1
Other U.S.defend.	59	86	98	168	87	87	106	101	80
Territories†									
Deportation	3	2					1	2	6
Other U.S.defend.	5	10	8	14	5	5	2	3	6

* The figures are for fiscal years, July 1st to June 30th.

† Local jurisdiction habeas corpus cases not tabulated.

Source: Tables C-3, Annual Reports of the Director of the Administrative Office of the United States Courts and other information on file in the office.

TABLE 2.—HABEAS CORPUS CASES IN UNITED STATES COURTS OF APPEALS 1942-49*

	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8	1948-9†
All Courts of Appeals—							
Total	124	151	157	150	201	173	262
U.S. defendant	106	124	124	81	146	130	188
Federal question	18	27	33	69	55	43	74
District of Columbia...	23	12	10	2	10	9	11
First Circuit—Total...	4	1	3	3	7		
U.S. defendant.....	4	1	2	2	6		
Federal question			1	1	1		
Second Circuit—Total...	13	19	14	18	50	40	41
U.S. defendant.....	12	18	13	17	48	38	35
Federal question	1	1	1	1	2	2	6
Third Circuit—Total..	6	8	14	5	9	12	15
U.S. defendant.....	6	8	12	5	7	7	9
Federal question			2		2	5	6
Fourth Circuit—Total .	7	5	3	8	9	8	13
U.S. defendant.....	3	5	3	2	2	4	11
Federal question	4			6	7	4	2
Fifth Circuit—Total...	13	15	36	16	20	24	57
U.S. defendant.....	10	14	33	14	15	21	47
Federal question	3	1	3	2	5	3	10
Sixth Circuit—Total...	5	8	7	10	4	5	20
U.S. defendant.....	4	4	4	2	2	4	13
Federal question	1	4	3	8	2	1	7
Seventh Circuit—Total	12	16	23	50	36	21	40
U.S. defendant.....	6	1	2	4	9	1	9
Federal question	6	15	21	46	27	20	31
Eighth Circuit—Total.	11	23	9	5	12	12	14
U.S. defendant.....	10	18	8	5	9	8	12
Federal question	1	5	1		3	4	2
Ninth Circuit—Total..	23	28	24	26	25	10	27
U.S. defendant.....	22	27	23	22	19	7	20
Federal question	1	1	1	4	6	3	7
Tenth Circuit—Total..	7	16	14	7	19	32	24
U.S. defendant.....	6	16	14	6	19	31	21
Federal question	1			1		1	3

* The figures are for fiscal years, July 1st to June 30th.

† Preliminary figures.

Source: Tables B-5, Annual Reports of the Director of the Administrative Office of the United States Courts.

TABLE 3.—HABEAS CORPUS CASES IN THE UNITED STATES
SUPREME COURT 1939-48

	OCTOBER TERMS									
	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948
Opinions written in h.c. cases		4	3	5	4	8	5	6	14	7
Original jurisdiction— motions for leave to file h.c. denied ¹	37	48	55	79	89	84	68	77	102	172
Federal Courts.....	26	26	40	31	47	60	39	45	67	57
Certiorari	26	26	40	31	46	59	39	45	67	57
Denied ²	23	22	36	31	43	55	36 ³	39	60	49
Granted	3	4	4		3	4	3 ⁴	6	7	9 ⁵
Reversed	1	4	4		3	4	1	5	4	3
Aff'd or dism'd....	2						2 ⁴	1	3	2
Appeals dismissed ¹ ..					1					
Certified question....						1				
State Courts.....	13	22	44	38	107	175	237	328	221	252
Certiorari	13	19	41	35	105	173	234	328	220	250
Denied ²	12	17	38	34	103	168	231	324	211	242
Granted	1	2	3	1	2	5	3	4	9	8 ⁶
Reversed or vacated	1	2	2	1	2	3		3	5	7
Aff'd or dism'd....			1			2	3	1	4	
Appeals dismissed ...		3	3	3	2	1	3		1	2
Appeals allowed.....						1				

¹ None granted.² Including a very few dismissed or withdrawn.³ Including two from the Philippines.⁴ Including one from the Philippines.⁵ Four are pending.⁶ One is pending.

Source: The Reports and Files of the Supreme Court. Since time was not available to check every case against the files, it was assumed (as proved true in every case checked) that cases entitled an individual against another individual denominated "Warden" were habeas corpus cases. All cases against an individual denominated "Superintendent," "Attorney General," etc., and all cases entitled an individual against a state were checked in the report below or in the files.

As a result, the figures on opinions written and original jurisdiction should be correct because the reports indicate expressly whether a habeas corpus case is involved, except that many "applications" which might loosely be regarded as habeas corpus were not treated as such. The figures from federal courts are substantially correct because the nomenclature and remedies are uniform. The figures from state courts are probably only approximate because of the variety in state nomenclatures and remedies.

TABLE 4.—NUMBER AND PROPORTION OF HABEAS CORPUS CASES AND TRIALS IN SELECTED DISTRICTS 1944-48*

	1944-5	1945-6	1946-7	1947-8
All Courts				
Total habeas corpus cases commenced	1176	1383	1246	1346
Proportion of all cases commenced	1.2%	1.4%	1.3%	1.7%
Total habeas corpus trials.	256	270	203	311
Proportion of all trials....	2.6%	3.0%	2.3%	3.5%
New York, S.				
Habeas corpus cases.....	72	443	224	152
Proportion of all cases....	.9%	5.7%	2.6%	2.2%
Habeas corpus trials.....		53	12	
Proportion of all trials....		12.8%	3.2%	
Pennsylvania, M.				
Habeas corpus cases.....	13	6	10	22
Proportion of all cases....	1.5%	.9%	2.2%	6.7%
Habeas corpus trials.....	2		3	16
Proportion of all trials....	4.5%		6.1%	25.4%
Georgia, N.				
Habeas corpus cases.....	125	67	54	82
Proportion of all cases....	15.6%	9.1%	6.3%	9.3%
Habeas corpus trials.....	110	52	32	52
Proportion of all trials....	38.1%	25.9%	20.0%	26.4%
Illinois, N.				
Habeas corpus cases.....	245	218	256	212
Proportion of all cases....	8.4%	6.4%	9.6%	8.6%
Habeas corpus trials.....	1	13	22	16
Proportion of all trials....	.3%	3.9%	7.2%	6.0%
Indiana, N.				
Habeas corpus cases.....	42	22	25	36
Proportion of all cases....	8.2%	4.5%	6.0%	8.1%
Habeas corpus trials.....		4	2	8
Proportion of all trials....		13.8%	4.2%	17.0%
Missouri, W.				
Habeas corpus cases.....	46	40	88	70
Proportion of all cases....	2.0%	2.2%	7.3%	6.0%
Habeas corpus trials.....	4	4	17	8
Proportion of all trials....	4.6%	3.1%	15.9%	7.8%
California, N.				
Habeas corpus cases.....	54	74	50	79
Proportion of all cases....	1.6%	2.5%	2.0%	4.5%
Habeas corpus trials.....	14	9	7	7
Proportion of all trials....	4.3%	2.6%	2.3%	2.3%
Washington, W.				
Habeas corpus cases.....	28	36	34	35
Proportion of all cases....	2.9%	3.5%	3.7%	4.1%
Habeas corpus trials.....	11	19	11	18
Proportion of all trials....	9.5%	15.4%	9.2%	14.5%
Kansas				
Habeas corpus cases.....	42	51	83	174
Proportion of all cases....	3.5%	3.4%	10.0%	26.8%
Habeas corpus trials.....	27	27	44	122
Proportion of all trials....	19.3%	23.7%	41.1%	65.2%

* The figures are for fiscal years, July 1st to June 30th.

A trial is defined as a contested proceeding (other than a hearing on a motion) before either court or jury in which evidence is introduced and a final judgment is sought.

Source: Tables C-1, C-2, C-3, C-7, and D-1, Annual Reports of the Director of the Administrative Office of the United States Courts.

TABLE 5.—RELATION OF HABEAS CORPUS CASES COMMENCED
TO PRISON POPULATIONS

This table gives the number of U.S. defendant habeas corpus cases commenced (excluding deportation cases) as a percentage of prison populations for the named prisons and district courts.

	1940-1 %	1941-2 %	1942-3 %	1943-4 %	1944-5 %	1945-6 %	1946-7 %	1947-8 %
All federal prisoners vs. all 84 dist. h.c. cases... (1948 prison pop. 20,755*)	1.3	1.5	2.2	2.5	2.1	1.7	1.8	2.4
Alcatraz, Calif. N..... (1948 prison pop. 246*)	9.7	11.9	13.6	13.7	17.1	18.8	14.6	11.4
Atlanta, Ga. N..... (1948 prison pop. 2,030*)	1.9	2.8	5.6	6.4	6.1	2.9	2.5	3.9
Leavenworth, Kans..... (1948 prison pop. 2,323*)	2.4	2.2	3.3	2.5	2.0	2.2	2.8	6.8
Lewisburg, Pa. M..... (1948 prison pop. 1,325*)	.3	.8	1.7	2.9	.9	.4	.8	1.5
McNeil Island, Wash. W.. (1948 prison pop. 1,016*)	2.7	3.9	2.1	4.0	2.8	3.2	3.1	2.9
Springfield Medical Center, Mo. W..... (1948 prison pop. 867*)	2.0	2.5	5.2	6.8	4.6	4.3	8.7	6.5
Terre Haute, Ind. S..... (1948 prison pop. 1,110*)	1.9	1.1	1.3	2.2	.6	.3	.2	1.3

* The 1943 prison populations of these institutions are given to show the comparative magnitudes involved but the percentages are figured on the prison populations for each year.
Sources: Habeas corpus cases commenced from information on file with the Administrative Office of the United States Courts. Prison populations from the annual reports of the Federal Bureau of Prisons.

TABLE 6.—PETITIONERS FILING MORE THAN ONE PETITION FOR HABEAS CORPUS IN THE UNITED STATES DISTRICT COURTS FOR THE FISCAL YEARS 1943, 1944, 1945

Districts where Repeaters* were found	Total No. of Petitions	Total No. of Petitioners	NUMBER OF PETITIONERS FILING TWO or MORE PETITIONS											Total No. of Repeater Petitions Filed by Repeaters	Total No. of Repeaters	Average No. of Petitions per Repeater	No. of Repeater Petitions	Percentage Repeater Petitions			
			NUMBER OF PETITIONERS FILING TWO or MORE PETITIONS																		
			2	3	4	5	6	7	8	9	10	11									
<i>Petitioners Serving Federal Court Sentences</i>																					
California, N.....	108	65	10	6	2	3											64	21	3	43	39.8
Georgia, N.....	357	272	36	14	7												142	57	2.5	85	23.8
Indiana, S.....	25	23	2														4	2	2	2	8.0
Kansas.....	164	141	11	3						1							38	15	2.5	23	14.0
Kentucky, E.....	23	20	1	1													5	2	2.5	3	13.0
Michigan, E.....	12	9	3														6	3	2	3	26.0
Missouri, W.....	151	94	14	7	5	1											85	28	3	57	37.7
New York, S.....	15	14	1														2	1	2	1	6.7
Pennsylvania, M.....	57	56	1	1													2	1	2	1	1.8
Virginia, E.....	54	40	2	2	1								1				19	5	3.8	14	25.9
Washington, W.....	68	58	5	1													17	7	2.4	10	14.7
<i>Petitioners Serving State Court Sentences</i>																					
Arizona.....	3	2	1														2	1	2	1	33.3
California, N.....	24	21	1	1													5	2	2.5	3	12.5
Connecticut.....	5	3															3	1	3	2	40.0
Georgia, N.....	8	7	1														2	1	2	1	12.5
Illinois, N.....	691	562	47	25	9	1											211	82	2.6	129	18.7
Illinois, E.....	121	111	8	1													19	9	2.1	10	8.3
Illinois, S.....	65	61	4	1													8	4	2	4	6.2
Indiana, N.....	72	67	3	1													9	4	2.3	5	6.9
Iowa, S.....	25	17	3	1	1												13	5	2.6	8	32.0
Maryland.....	47	41	4	1													11	5	2.2	6	12.8
Massachusetts.....	5	4	1														2	1	2	1	20.0
Michigan, E.....	25	24	1														2	1	2	1	4.0
Missouri, W.....	42	33	3	1	1	1											14	5	2.8	9	21.4

TABLE 6.—Continued

Districts where Repeaters* were found	Total No. of Petitions	Total No. of Petitioners	NUMBER OF PETITIONERS FILING TWO OR MORE PETITIONS											Total No. of Repeaters	Total No. of Repeaters Filed by Repeaters	Average No. of Petitions per Repeater	No. of Repeater Petitions	Percentage Repeater Petitions
			2	3	4	5	6	7	8	9	10	11						
Nebraska	15	10	3	1										9	4	2.3	5	33.3
New Hampshire	4	2	2											4	2	2	2	50.0
New Jersey	6	5	1											2	1	2	1	16.7
New York, W.	27	22	5											10	5	2	5	18.5
Oklahoma, E.	8	7	1											2	1	2	1	12.5
Pennsylvania, E.	9	7	1											3	1	3	2	22.2
South Dakota	2	1	1											2	1	2	1	50.0
Texas, S.	4	3	1											2	1	2	1	25.0
Washington, E.	62	42	11	2			1							34	14	2.4	20	32.3

*The term "repeater" is applied to a petitioner filing more than one petition in the same U.S. district court during the years indicated. Source: Study by the Administrative Office of the United States Courts.

TABLE 7.—MODES OF DISPOSITION OF HABEAS CORPUS CASES IN UNITED STATES DISTRICT COURTS 1939-48

	1939-40	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8
<i>U.S. Defendant</i>									
Habeas corpus, deportation.....	157	143	*	*	82	59	245	359	220
Judgment without contest or by consent..	102*	56*			42	28	118	152	127
	65.0%	39.2%			51.2%	47.5%	48.2%	42.3%	57.7%
					2	6		30	28
Dismissed for want of prosecution.....									
Default judgment.....					1		2		1
Consent judgment.....									
Before trial.....									
During or after trial.....					38	22	113	122	102
Consent dismissal.....					1		3		1
Before trial.....									
During or after trial.....									
Contested judgment.....									
Judgment by decision of court before trial									
Judgment after court trial.....	21	60			35	28	99	162	77
	13.4%	42.0%			42.7%	47.5%	40.4%	45.1%	35.0%
	19	25			4	3	28	45	12
	12.1%	17.5%			4.9%	5.1%	11.4%	12.5%	5.5%
	15	2			1				4
Other.....	337	294	450*	567*	541	485	393	372	472
Habeas corpus, other than deportation.....	62*	46*	85	133	68	37	47	95	81
Judgment without contest or by consent..	18.4%	15.6%	18.9%	23.5%	12.6%	7.6%	12.0%	25.5%	17.2%
Dismissed for want of prosecution.....					15	11	7	8	2
Default judgment.....									
Consent judgment.....									
Before trial.....									
During or after trial.....									
Consent dismissal.....									
Before trial.....									
During or after trial.....									
Contested judgment.....									
Judgment by decision of court before trial									
Judgment after court trial.....	119	148	207	219	257	269	225	159	200
	35.3%	48.6%	46.0%	38.6%	47.5%	55.5%	57.3%	42.7%	42.4%
	130	98	188	215	214	179	119	118	187
	38.6%	33.3%	35.1%	37.9%	39.6%	36.9%	30.3%	31.7%	39.6%
Other.....	26	7			2		2		4

* See note.

TABLE 7.—Continued

	1939-40	1940-1	1941-2	1942-3	1943-4	1944-5	1945-6	1946-7	1947-8
<i>Federal Question</i>									
Habeas Corpus Petitions.....	89	134	134	265	551	469	505	481	487
Judgment without contest or by consent..	48	36	15	105	81	63	51	60	86
Dismissed for want of prosecution.....	53.9%	26.9%	11.2%	39.6%	14.7%	13.4%	10.1%	12.5%	17.7%
Default judgment.....					1	1		4	3
Consent judgment.....						1		56	1
Before trial.....									
During or after trial.....									
Consent dismissal.....					80	60	51		82
Before trial.....									
During or after trial.....									
Contested judgment.....	25	76	86	136	454	382	421	369	344
Judgment by decision of court before trial	28.1%	56.7%	64.2%	51.3%	82.4%	81.4%	83.4%	76.7%	70.6%
Judgment after court trial.....	13	16	33	24	16	20	33	50	55
Other.....	14.6%	11.9%	24.6%	9.1%	2.9%	4.3%	6.5%	10.4%	11.3%
Other.....	3	6				4		2	2

NOTE: Information for the earlier years is not sufficient to break down the judgments without contest or by consent into the categories shown for 1943-48. For the years 1941-2 and 1942-3 the United States Defendant habeas corpus cases were not broken into "deportation" and "other" so that for these two years the category of "habeas corpus, other" includes deportation cases.
 Source: Tables C-4, Annual Reports of the Director of the Administrative Office of the United States Courts.

TABLE 8.—COURT HANDLING OF HABEAS CORPUS CASES IN FIVE DISTRICTS DURING YEAR 1941-42

Cases	DISTRICTS					Total
	Ga., N.	Mo., W.	Kans.,	Calif., N.	Wash., W.	
Total Cases.....	60	26	61	49	37	233
Cases Where Writ Was Issued						
(Subtotal)	60	15	24	9	2	110
Return Made.....	60	15	22	9	1	107
Show Cause Order Issued.....		12	2	9	1	24
Show Cause Order Returned...		12	5	9	1	27
Show Cause Order Traversed...		2	1	6		9
No Hearing.....						
Hearing on Law Only.....	6	1		1		8
One Hearing on Facts Only.....	41	14	12		1	68
Two Hearings on Facts Only....	13		2	1		16
Separate Hearings on Facts and Law.....			10	7	1	18
Number of Prisoners Released..	3	2	1			6
Cases Where Writ was Not Issued						
(Subtotal)		11	37	40	35	123
Show Cause Order Issued.....			27	20	21	68
Show Cause Order Returned...			31	19	18	68
Show Cause Order Traversed...				8	3	11
No Hearing.....			4	26	14	44
Hearing on Law Only.....		10	32	14	7	63
One Hearing on Facts Only.....		1	1		8	10
Two Hearings on Facts Only....					3	3
Separate Hearings on Facts and Law.....					3	3
Number of Prisoners Released..		1		1	1	3
Hearing						
Hearings or Trials.....	60	26	57	23	23	189
No Hearings or Trials.....			4	26	14	44
Prisoners Released						
Number	3	3	1	1	1	9
Percentage of Total Cases.....	5.0	11.5	1.6	2.0	2.7	3.9

Source: Study by the Administrative Office of the United States Courts.

TABLE 9.—PRISONERS RELEASED BY FEDERAL WRITS
OF HABEAS CORPUS

PART A					
	1936-7	1937-8	1943-4	1944-5	1945-6
Number of petitions filed by federal prisoners	197	205	370	419	365
Number of prisoners released.	21	14	23	14	21
Proportion of petitioners released	10.7%	6.8%	6.2%	3.3%	5.8%
Number of petitions filed by State prisoners	52	159	449	499	411
Number of petitioners released.	5	4	8	7	4
Proportion of petitioners released	9.6%	2.5%	1.8%	1.4%	1.0%
PART B					
	1945-6	1946-7	1947-8		
Number of U.S. defendant (excluding deportation) habeas corpus cases disposed by district courts	385	372	265		
Number in which petitioners were successful....	26	18	32		
Proportion in which petitioners were successful..	6.8%	4.8%	12.1%		
Number of federal question habeas corpus cases disposed by district courts.....	503	481	487		
Number in which petitioners were successful....	14	13	11		
Proportion in which petitioners were successful..	2.8%	2.7%	2.3%		

Source: Part A, replies by clerks to a questionnaire in connection with a special study by the Administrative Office of the United States Courts. Part B, routine case termination cards filed with the Administrative Office of the United States Courts. The information contained in Parts A and B is not strictly comparable; for example, a prisoner may be successful in having his sentence vacated on a writ of habeas corpus (Part B) and be remanded for resentence or new trial without being released (Part A). Both types of information are used because the same information is not available for all the years, and both types of information are given in 1945-6 for purposes of comparison.

TABLE 10.—GROUNDS ASSIGNED FOR RELEASE BY FEDERAL COURTS
OF PETITIONERS FOR WRITS OF HABEAS CORPUS SERVING
SENTENCES PRONOUNCED BY FEDERAL AND
STATE COURTS

GROUNDS (as listed by clerks of district courts)	Petitions Filed	
	1936, 1937	1943, 1944, 1945
Total Released	43	76
Sentence, or legal portion thereof, fully served	15	21
Denied Assistance of Counsel.....	1	18
Sentence Illegal	6	11
Imprisonment Illegal	5	2
Double Jeopardy	1	3
Defendant Insane or Incompetent.....		4
Indictment Invalid		3
Convicted by Perjured Testimony.....	1	
Lack of Jurisdiction.....	2	3
Lack of Due Process.....	2	4
Application not Opposed.....		1
Miscellaneous		1
No Information	10	5

Source: Special study by the Administrative Office of the United States Courts.

TABLE 11.—USE OF MOTIONS TO VACATE SENTENCE (18 U.S.C. §2255) 1948-9

PART A

Disposition (76 motions tabulated out of 102 filed during 1948-9)

Pleading
 Disposed on motion alone..... 50
 Disposed on motion and response..... 26

Hearing
 Briefs or argument on law..... 12
 Hearing on facts..... 24
 Both briefs or argument and hearing on facts..... 1
 Neither briefs or argument nor hearing..... 39

Prisoner produced in court..... 12
 Prisoner not produced in court..... 64
 Prisoner represented by counsel..... 29
 Prisoner not represented by counsel..... 47

Outcome
 Prisoner released..... 0
 Sentence modified..... 1
 Sentence confirmed..... 74
 Motion withdrawn..... 1

Appeal taken..... 27
 No appeal taken..... 49

PART B

Grounds Alleged (88 motions tabulated out of 102 filed during 1948-9)

Errors in Preliminary Proceedings
 Arrest without warrant..... 3
 Not promptly brought before committing magistrate..... 5
 Illegal search and seizure..... 1
 Not advised of constitutional rights..... 1

Errors in indictment or information
 Indictment insufficient..... 11
 No grand jury indictment..... 8
 Dismissal of certain counts also carried away other counts..... 1
 Original charge filed through error..... 1

Pleas
 Plea of guilty coerced..... 5
 Fraudulent solicitation or false promises induced plea..... 5
 Failure to understand effect of plea..... 3
 Plea not entered personally..... 1
 Defendant insane when he pleaded..... 1
 No opportunity to make statement..... 1
 Not legally arraigned..... 1
 Error in accepting plea of guilty..... 1
 Convicted of different offense than pleaded to..... 1

Representation by counsel
 Not represented by counsel..... 7
 Representation by counsel inadequate..... 8
 No waiver of representation by counsel..... 5
 Not represented by counsel at arraignment..... 1

Trial
 No jurisdiction in court..... 19
 Because defendant was on probation from state court..... 1
 Because defendant was under sentence from state court..... 1
 Denial of right to or failure to call witnesses..... 3
 Inadmissible evidence..... 1
 False testimony..... 1
 Compelled to testify against himself..... 1
 Prejudice..... 3
 Incompetent jury..... 1

TABLE 11.—Continued

Judgment and sentence	
Illegal sentence.....	12
Excessive sentence.....	4
Promise of shorter sentence.....	2
Sentence did not consider custody prior to trial.....	2
No right to designate place of imprisonment.....	1
No right to run state and federal sentences concurrently.....	1
No presentence investigation.....	1
Intent to incarcerate only for duration of war.....	1
Failure to restore "good time".....	1
Interpretation of judgment and sentence.....	2
Cruel and unusual punishment.....	1
General allegations	
Denials of guilt.....	5
Allegation prisoner now cured of dope habit.....	1
Conviction without due process of law.....	6
Conviction in violation of constitutional rights.....	3
Conviction without fair trial.....	1
Conviction in violation of Sixth Amendment.....	2
Error.....	2
Prior conviction and double jeopardy.....	3

Source: Questionnaire sent to clerks on motions reported for first eleven months of fiscal year 1949. Classification of the grounds alleged for the motion is difficult because the information does not always disclose whether the general, often vague, ground listed is the prisoner's own statement or the clerk's summary of the prisoner's statement. Most of the grounds listed, however, are believed to be as the uncounseled prisoners stated them.

