

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART VI - PARTICULAR PROCEEDINGS
CHAPTER 153 - HABEAS CORPUS

§ 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

(June 25, 1948, ch. 646, 62 Stat. 965.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§ 455, 456, 457, 458, 459, 460, and 461 (R.S. §§ 755–761).

Section consolidates sections 455–461 of title 28, U.S.C., 1940 ed.

The requirement for return within 3 days “unless for good cause additional time, not exceeding 20 days is allowed” in the second paragraph, was substituted for the provision of such section 455 which allowed 3 days for return if within 20 miles, 10 days if more than 20 but not more than 100 miles, and 20 days if more than 100 miles distant.

Words “unless for good cause additional time is allowed” in the fourth paragraph, were substituted for words “unless the party petitioning requests a longer time” in section 459 of title 28, U.S.C., 1940 ed.

The fifth paragraph providing for production of the body of the detained person at the hearing is in conformity with *Walker v. Johnston*, 1941, 61 S.Ct. 574, 312 U.S. 275, 85 L.Ed. 830.

Changes were made in phraseology.