

06-1666 MUNAF V. GEREN

DECISION BELOW: 482 F3d 582

LOWER COURT CASE NUMBER: 06-5324

QUESTION PRESENTED:

1. When an American citizen is detained under the exclusive control of American military authorities abroad, is the jurisdiction of a federal court to entertain his petition for a writ of habeas corpus defeated by the fact that those American military authorities purport to act as a part of a multi-national force and that they propose — with no valid legal authority — to deliver the citizen to a foreign nation for execution of a death sentence imposed by a court of that nation?
2. Does the decision of the Court of Appeals, holding that *Hirota v. MacArthur* deprives the federal courts of jurisdiction under these circumstances, extend the 1948 per curiam opinion in *Hirota* into conflict with this Court's post-1948 jurisprudence culminating in *Rasul v. Bush* and *Hamdi v. Rumsfeld*, and should that conflict be resolved either by restricting *Hirota* to its proper sphere or by overruling it?
3. Did the Court of Appeals err in holding that the jurisdiction of the federal courts over a habeas corpus petition filed by an American citizen detained under the exclusive control of American military authorities abroad turns on whether those authorities propose to deliver him to a foreign nation for prosecution in its courts (in which case the Court of Appeals has held that habeas jurisdiction exists) or for execution of sentence after conviction by the foreign court (in which case the Court of Appeals here holds that jurisdiction ceases to exist)? If this distinction is valid, can the military authorities defeat federal habeas corpus jurisdiction ex post by doing what they did in this case — arranging the conviction and sentencing of their detainee by a foreign court after his habeas petition has been filed?

CONSOLIDATED WITH 07-394 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 12/7/2007