
In The
Supreme Court of the United States

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MOHAMMAD MUNAF, ET AL.,

Petitioners,

v.

PETE GEREN, ET AL.,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit**

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REPLY BRIEF
—◆—

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REPLY BRIEF

Retreating from its position below, the government now agrees with Mr. Munaf that the power of a U.S. court to inquire into the lawfulness of his detention cannot depend on the happenstance of a foreign conviction. *Cf.* Pet. for Cert. at 14-16, *Geran v. Omar* (No. 07-394). The parties therefore agree that the process which took place before the Iraqi courts, whatever relevance it may have to the merits, “has nothing to do with the existence of jurisdiction.” *Id.* at 13-14.

The parties also agree that the threshold *jurisdictional* question is the same in *Munaf* and *Omar*.¹ The government, however, believes *Omar* presents a “superior vehicle” for resolution of this shared issue, and therefore urges the Court to grant *Omar* and hold *Munaf*. Alternatively, it asks the Court to grant

¹ The government is incorrect to state that it argued the merits questions that Judge Randolph reached in his separate opinion. *See* Br. for Resp’ts at 17. Judge Randolph concluded the “the district court had jurisdiction over Munaf’s habeas corpus petition.” *Munaf v. Geran*, 482 F.3d 582, 585 (D.C. Cir. 2007) (Randolph, J., concurring). Hence, he rejected the “jurisdictional and justiciability concerns” that the government raised in its brief. Br. for Resp’ts at 17; *see also* Br. for Appellees at 11-16, *Munaf v. Geran*, 482 F.3d 582, 585 (D.C. Cir. 2007) (No. 06-1455) (framing issue solely in terms of jurisdiction and justiciability, and not the merits question of whether the government has the power to detain or transfer Mr. Munaf). Thus, as in *Omar*, the government has improperly attempted to import a merits question into a jurisdictional appeal – despite the fact that the parties did not brief, and the lower court did not address, the merits.

and consolidate both cases. *Id.* at 26; *see also* Br. for Resp'ts at 19-20. Here, the parties part company.

As demonstrated at length in Mr. Omar's response to the government's petition for certiorari, the government's reading of *Hirota v. MacArthur* is plainly incorrect: the government simply lacks the power to seize and hold its citizens without judicial oversight, and nothing in *Hirota* is to the contrary. *See generally* Br. for the Resp'ts, *Geran v. Omar* (dkt no. 07-394). For that reason, the government's petition in *Omar* should be denied. The proper resolution of *Munaf* follows logically from that result: The Court should grant the petition in *Munaf*, vacate the decision below in light of the position now asserted by the government, and remand for proceedings on the merits of Mr. Munaf's petition for a writ of habeas corpus. If, however, the Court grants the petition in *Omar*, then Mr. Munaf agrees with the government that his petition should be held pending the outcome in that case.²

² The government identifies Mr. Munaf as a dual-citizen, as though it were somehow significant that he was not born in this country. *See, e.g.*, Br. for Resp'ts at 15. "Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency," *Luria v. United States*, 231 U.S. 9, 13 (1913), and the Supreme Court has long understood the importance to the country of a rigorous insistence on this principle. *See, e.g.*, *Baumgartner v. United States*, 322 U.S. 665 (1944).

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