

The United States found itself involved in a foreign conflict. Congress enacted a statute that established a military court in a foreign country to determine if individuals captured in an active combat zone should be classified as enemy combatants and detained until the cessation of hostilities. The statute provides that the military court may hear evidence presented by the captured individual at its discretion.

A man, a U.S. citizen, was captured in an active combat zone and tried by the military court. After the government presented its evidence, the court determined that the man was an enemy combatant and ordered that he be detained until the end of hostilities. The man was not permitted to provide a defense.

The man seeks to overturn his detention in a habeas corpus proceeding in a federal district court, claiming that the statute is unconstitutional as applied to him.

How is the federal court likely to rule in this action?

- A. It will set aside the military court's ruling, because Congress has no enumerated power to establish military courts.
- B. It will set aside the military court's ruling, because the man was entitled to a fair opportunity to rebut the government's factual assertions before a neutral decision-maker.
- C. It will uphold the military court's ruling, because an individual in a foreign country does not possess constitutional rights.
- D. It will uphold the military court's ruling, because federal courts do not have jurisdiction to review decisions issued by military courts.

Explanation:

The necessary and proper clause allows Congress to take actions that are reasonably necessary to carry out its enumerated [Article I powers](#). Congress may therefore establish **military courts and tribunals** to carry out its enumerated powers to regulate the military and make rules regarding captures on land and sea **(Choice A)**. Congress may grant military courts jurisdiction over enemy combatants, enemy civilians, and current members of the U.S. military.*

However, Congress must afford procedural due process to **U.S. citizens** classified and detained as **enemy combatants**. Procedural due process requires that U.S. citizens be given:

- **notice** of the factual basis for the citizen's classification as an enemy combatant *and*
- a **fair opportunity to rebut** the government's factual assertions **before a neutral decision-maker**.

A U.S. citizen detained as an enemy combatant who does not receive these protections may file a petition for a writ of habeas corpus in a federal court unless Congress has explicitly suspended the writ (not seen here). The federal court has jurisdiction to then set aside an unlawful detention **(Choice D)**.

Here, the man was captured in an active combat zone and classified as an enemy combatant by the military court. The statute gives the military court the *discretion* whether to allow a captured individual to provide evidence in his/her defense. However, the man is *entitled* to rebut the government's factual assertions because he is a U.S. citizen. Since the military court did not provide the man that opportunity, the statute is unconstitutional [as applied](#) to him. Therefore, the federal court will likely set aside the military court's ruling.

*Military courts and tribunals do not have jurisdiction over U.S. civilians who are not classified as enemy combatants unless hostilities have forced state and federal civilian courts to close.

(Choice C) U.S. citizens, including citizens in foreign countries, always possess constitutional rights.

Educational objective:

Congress may establish military courts and tribunals but must afford U.S. citizens classified as enemy combatants procedural due process. This requires (1) notice of the factual basis for the citizen's classification and (2) a fair opportunity to rebut those facts before a neutral decision-maker.

References

- U.S. Const. art. I, § 8, cl. 14 (power to make rules regarding capture).

- *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (O'Connor, J., plurality) (holding that detained U.S. citizens seeking to challenge enemy combatant status are entitled to procedural due process).

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