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QUESTION #3

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Congress has the constitutional power under Article I to declare war. Their declaration of War is valid.

1. WHAT CONSTITUTIONAL DEFENSES CAN OFFICER LEZLIE (L) RAISE AT TRIAL, OR ON APPEAL?

Congress Could Not Tresspass on the Powers of the States - 10th Amendment

L could argue that Congress lacked authority to legislate that R could rely on state officials in furthering the nation's war aims. She could argue that the 10th Amendment precludes the federal government from hijacking the governments of the States to implement federal policy. The counter argument would be that Congress only said the President could rely on the States - it didn't obligate the States to oblige the President, so no hijacking took place. Further, there is an argument that in time of war Congress would have very broad powers under the necessary and proper clause to provide for the general welfare of the populace, hence they might get to order the States to implement federal policy despite the Tenth Amendment's limits on federal power. However, these facts don't indicate how taking over the states provides for the general welfare, although the counter to that would be that spies were found in the US. In any case, the legislation says the President can rely, not that the States must oblige - the 10A was not violated.

Combatant Status and JX

The rule is that a citizen non-combatant is **not subject to military jurisdiction** while the Article III courts are open and operating. The military courts have no jurisdiction over Suzie b/c (I assume) she is a citizen, and further the facts do not indicate she was a combatant. Suzie should immediately challenge the military court's jurisdiction, and if they refuse to release to an Article III court, she should apply for a writ of habeas corpus - the ancient right to "liberate the body" where one is being held in violation of law.

But Will an Article III Court hear the case?

The Supreme Court has original jurisdiction over all cases involving dignitaries and States. It has appellate jurisdiction over all cases in which a constitutional right, privilege or immunity is claimed, as well as over cases involving federal questions or diversity. Here, the issue is what constitutional defenses L can raise. This invokes rights and privileges under the Constitution. The Supreme Court could hear this case as a matter of jurisdiction.

However, a variety of constitutional and prudential concerns result in the rule that the Supreme Court will not hear a case unless it is justiciable. A case is not justiciable if it poses a political question, asks an advisory opinion, is moot, unripe, or the plaintiff lacks standing. Here, L is charged with impeding the war effort, a federal crime. A case poses a political question if there is

a textual commitment of the issue to a coordinate branch or there is a dearth of judicially manageable standards for review. Neither is the case here. The Article III courts have JX over federal issues, and there is a great body of law re the standards for habeas relief and other constitutional defenses. A case asks an advisory opinion if it poses a hypothetical or abstract question - obviously not the case here. A case is moot if the plaintiff no longer has a stake in the controversy, and is unripe if he has yet to have a stake in the controversy. Neither is the case here because L is currently on trial and her rights are currently in danger of infringement. Lastly, to have standing, the plaintiff must have suffered an injury (or imminently will suffer an injury) due to defendant's conduct that is redressable by the relief sought. That is the case here because L will suffer imprisonment (imminent injury) because the defendant (the government) will imprison her and the relief sought (release) will remedy that issue. The Supreme Court will hear the case.

Tenth Amendmtn

Lezlie could raise the tenth amendment. Though the text reads that those powers not expressly given to the federal government are reserved to the states, it has been read in the context of the necessary and property clause to have little practical effect because, pursuant to that clause, the federal government has broad power, to the extent "necessary and proper," to effect its enumerated powers. This results in the rule that the 10A largely stands for the fact that *the federal government may not comander the government of the states to effect federal policy*, for the states are still sovereign entities.

L could argue that is exactly what has happened here. R, the president(!) appointed S to administer federal policy in CA and act as liason w/local officials. L could argue that this constitutes a hijacking of CA's government to effect the **federal government's wartime policies**. This is exactly the sort of thing the tenth amendment prohibits. L should win on this claim.

An interesting side issue is whether L has standing, or third party standing, invoke the 10A on behalf of CA.

Bill of Rights

L could invoke her rights under the Bill of Rights to, under the 7A, be indicted by a grand jury, under the 8A, be free from excessive fines and bails, under the 1A, to freedom of speech, expression and association, her 4A right to be free from unreasonable searches and seizures, and her 5A rights to due process of law, a speedy public jury trial, the right to call W's on her behalf and examine those against her, to notice of the criminal allegations against her, and her right to counsel. Although the 7A and 8A are not incorporated she could urge incorporation because they would apply to her here and, in the words of Justice Cardozo, they relate to those rights so firmly rooted in the traditions and conscience of our people as to be ranked fundamental.

Civil Suit:

L can sue S because her acts were unlawful because they fell outside her immunity from civil suit

for official acts because the acts were not official and S should have known that. She should sue for false imprisonment, battery and assault. Maybe go for emotional damages too.

**2. WHAT CONSTITUTIONAL DEFENSES CAN FRITO (F) RAISE TO PREVENT
REVOCAION OF HIS CITIZENSHIP AND DEPORTATION?**

Jurisdiction and the Bill of Rights

The rule is that a citizen non-combatant is subject to the jurisdiction of Article III courts while they are open, not military courts. F cannot be tried in military court. Further, F's citizenship, while at issue in this case, remains vested in him, which means he can invoke the Bill of Rights. He can invoke his 7A right to indictment by a grand jury, even though its not incorporated, because he's in a federal Article III court now. He could invoke his 1A right to free speech and expression, his 4A right to freedom from unreasonable searches and seizures, and his 5A right to due process of law, a speedy public jury trial, fair criminal process, access to witnesses, and representation by counsel.

If F were held to be a citizen combatant, he would still be subject to Article III jurisdiction because the US has plenary power over CA, but he would be subject to military jurisdiction if operating outside the rules of war he be subject to military jurisdiction and have *no rights at all*.

Revocation

The rule is that a person who was born and naturalized in the United States is a citizen of the United States. Citizenship cannot be revoked, only waived. However, Congress can revoke the citizenship of a person who was *not born and naturalized in the United States*, in other words, a person whose citizenship was granted *by Congress*. Unfortunately F falls into this category. His citizenship can be revoked - but *only by Congress!* Since S was appointed by R, she is an agent of the executive branch, not the Legislative branch. S cannot revoke F's citizenship because that would appropriate a power which is vested in Congress by the Constitution, and the doctrine of Separation of Powers prevents her from doing this. F gets to keep his citizenship, subject to the whim of Congress.

Deportation

Just like citizenship, deportation is not within the province of the executive branch, it is a legislative power. S lacks the constitutional authority to deport F. He gets to stay but, like his citizenship, it is subject to the whim of Congress.

3. WHAT CONSTITUTIONAL DEFENSES/CLAIMS DOES THE OWNER OF THE GARDEN APARTMENTS (O) HAVE AGAINST THE GOVERNMENT?

The 3d Amendment

The third amendment to the US Constitution (3A), housed in the Bill of Rights, prevents quartering of soldiers in private homes. Though the 3A has not be selectively incorporated by the due process clause of the 14A, and hence it does not apply to the states, O can argue that the quartering of soldiers in his apartments is a *federal act* by L, an agent of President R, hence the 3A applies to make the soldier's presence in his apartment's unlawful. The counter argument would be that the quartering is of state malitia and it is at the order of a state official, S. O could retort that federal martials are also being quartered in his apartments, and that S is acting at the behest of R, hence S's actions in quartering soldiers in his apartments are federal actions. This argument should prevail.

However, should it not, and the court find that the action is a state action, O can still argue that the 3A *should be incorporated*. He would argue this as (1) if the 3A were incorporated, it would apply to him the present case and (2) the 3A is related to principles, in the words of Justice Cardozo, so rooted in the traditions and conscience of our people as to be ranked fundamental. If O were to prevail on the argument, the 3A would be incorporated and the quartering of soldiers could not be take place in his apartments. O should win on this argument, as it is surely rooted in the traditions of modern American's that they will not be forced to house soldiers at the behest of the government.

Takings

The 5A to the US Constitution, as incorporated selectively through the 14A, provides that the government may not take private property for public use without just compensation. A taking may be permanent or temporary. A *physical invasion* was held to be a *per se* taking in Loretto, and a deprivation of nearly all economically beneficial use was also held to be a *per se* taking under Pennsylvania Coal. Here, the State has placed soldiers in O's apartments. This must be a physical invasion - although the counter argument would be that it is not permanent like the TV cable in Loretto - and the counter argument to that would be that even temporary invasions are takings. Further, the quartering of soldiers in O's apartments may be depriving him of a lot of rent he would otherwise be making from tenants. Depending on how the facts played out, the quartering of soldiers *could* be denying O *nearly all economically beneficial use* of his apartments. This would also be a taking, were the facts to support this. In any case, it would appear that the state has "take" O's property w/just compensation. He is entitled to the market rate for the use of his apartments, plus possibly any damages the quartering of those soldiers caused him.

Tenth Amendment

The tenth amendment, though the text reads that those powers not expressly given to the federal government are reserved to the states, has been read in the context of the necessary and property clause to have little practical effect because, pursuant to that clause, the federal government has

broad power, to the extent "necessary and proper," to effect its enumerated powers. This results in the rule that the 10A largely stands for the fact that the federal government may not commandeer the government of the states to effect federal policy, for the states are still sovereign entities.

I'm not sure O could raise the 10A as a defense to the actions of S in quartering soldiers in his apartments. I would think he lacks standing. He might have 3d party standing though, although that is real stretch.