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I ordered the attachment yesterday upon decision upon the face of the return the detention of the prisoner was unlawful upon two grounds.

1. The President under the Constitution & Laws of the United States cannot suspend the privilege of the writ of Habeas Corpus - nor authorize any military officer to do so

2. A military officer has no right to arrest & detain a person not subject to the rules and articles of War - for an offence against the laws of the United States - except in aid of the judicial authority & subject to its control - and if the party is arrested by the military - it is the duty of the officer to deliver him over immediately to the civil authority to be dealt with according to law

It is therefore very clear that John Murphy the Petitioner is entitled to be set at liberty and discharged immediately from his imprisonment

Dated 28 Aug 1861

I forbore yesterday to state orally the provisions of the Constitution of the United States which make those principles the fundamental law of the Union — because an oral statement might be misunderstood in some portions of it: and I shall therefore put my opinion in writing & file it in the office of the Clerk of the ~~Supreme~~ Circuit Court in the case of this week.

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Dico 28 28 mar 1861