NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* ALVAREZ-MACHAIN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91–712. Argued April 1, 1992—Decided June 15, 1992

Respondent, a citizen and resident of Mexico, was forcibly kidnapped from his home and flown by private plane to Texas, where he was arrested for his participation in the kidnapping and murder of a Drug Enforcement Administration (DEA) agent and the agent's pilot. After concluding that DEA agents were responsible for the abduction, the District Court dismissed the indictment on the ground that it violated the Extradition Treaty between the United States and Mexico (Extradition Treaty or Treaty), and ordered respondent's repatriation. The Court of Appeals affirmed. Based on one of its prior decisions, the court found that, since the United States had authorized the abduction and since the Mexican government had protested the Treaty violation, jurisdiction was improper.

Held: The fact of respondent's forcible abduction does not prohibit his trial in a United States court for violations of this country's criminal laws. Pp.3–15.

(a)A defendant may not be prosecuted in violation of the terms of an extradition treaty. *United States* v. *Rauscher,* 119 U.S. 407. However, when a treaty has not been invoked, a court may properly exercise jurisdiction even though the defendant's presence is procured by means of a forcible abduction. *Ker* v. *Illinois,* 119 U.S. 436. Thus, if the Extradition Treaty does not prohibit respondent's abduction, the rule of *Ker* applies and jurisdiction was proper. Pp.3–7.

(b)Neither the Treaty's language nor the history of negotiations and practice under it supports the proposition that it prohibits abductions outside of its terms. The Treaty says nothing about either country refraining from forcibly abducting people from the other's territory or the consequences if an abduction occurs. In addition, although the Mexican government was made aware of the *Ker* doctrine as early as

1906, and language to curtail *Ker* was drafted as early as 1935, the Treaty's current version contains no such clause. Pp.7–11.

UNITED STATES *v.* ALVAREZ-MACHAIN

Syllabus

(c)General principles of international law provide no basis for interpreting the Treaty to include an implied term prohibiting international abductions. It would go beyond established precedent and practice to draw such an inference from the Treaty based on respondent's argument that abductions are so clearly prohibited in international law that there was no reason to include the prohibition in the Treaty itself. It was the practice of nations with regard to extradition treaties that formed the basis for this Court's decision in *Rauscher, supra,* to imply a term in the extradition treaty between the United States and England. Respondent's argument, however, would require a much larger inferential leap with only the most general of international law principles to support it. While respondent may be correct that his abduction was ``shocking'' and in violation of general international law principles, the decision whether he should be returned to Mexico, as a matter outside the Treaty, is a matter for the Executive Branch. Pp.11–15.

946 F.2d 1466, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN and O'CONNOR, JJ., joined.