Syllabus

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 Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MUNAF ET AL. *v.* GEREN, SECRETARY OF THE ARMY, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06–1666. Argued March 25, 2008—Decided June 12, 2008*

The Multinational Force–Iraq (MNF–I) is an international coalition force composed of 26 nations, including the United States. It operates in Iraq under the unified command of U. S. military officers, at the Iraqi Government's request, and in accordance with United Nations Security Council Resolutions. Pursuant to the U. N. mandate, MNF–I forces detain individuals alleged to have committed hostile or warlike acts in Iraq, pending investigation and prosecution in Iraqi courts under Iraqi law.

Shawqi Omar and Mohammad Munaf (hereinafter petitioners) are American citizens who voluntarily traveled to Iraq and allegedly committed crimes there. They were each captured by military forces operating as part of the MNF–I; given hearings before MNF–I Tribunals composed of American officers, who concluded that petitioners posed threats to Iraq's security; and placed in the custody of the U. S. military operating as part of the MNF-I. Family members filed next-friend habeas corpus petitions on behalf of both petitioners in the United States District Court for the District of Columbia.

In Omar's case, after the Department of Justice informed Omar that the MNF–I had decided to refer him to the Central Criminal Court of Iraq for criminal proceedings, his attorney sought and obtained a preliminary injunction from the District Court barring Omar's removal from United States or MNF-I custody. Affirming, the D. C. Circuit first upheld the District Court's exercise of habeas jurisdiction, finding that *Hirota* v. *MacArthur*, 338 U. S. 197, did not

---

*Together with No. 07–394, *Geren, Secretary of the Army, et al.* v. *Omar et al.,* also on certiorari to the same court.

preclude review because Omar, unlike the habeas petitioners in *Hirota*, had yet to be convicted by a foreign tribunal.

Meanwhile, the District Court in Munaf's case dismissed his habeas petition for lack of jurisdiction. The court concluded that *Hirota* controlled and required that the petition be dismissed for lack of jurisdiction because the American forces holding Munaf were operating as part of an international force—the MNF-I. The D. C. Circuit agreed and affirmed. It distinguished its prior decision in *Omar*, which upheld jurisdiction over Omar's habeas petition, on the grounds that Munaf had been convicted by a foreign tribunal while Omar had not.

Held:

1. The habeas statute extends to American citizens held overseas by American forces operating subject to an American chain of command. The Government's argument that the federal courts lack jurisdiction over the detainees' habeas petitions in such circumstances because the American forces holding Omar and Munaf operate as part of a multinational force is rejected. The habeas statute, 28 U. S. C. §2241(c)(1), applies to persons held "in custody under or by color of the authority of the United States." The disjunctive "or" in §2241(c)(1) makes clear that actual Government custody suffices for jurisdiction, even if that custody could be viewed as "under . . . color of" another authority, such as the MNF–I.

The Court also rejects the Government's contention that the District Court lacks jurisdiction in these cases because the multinational character of the MNF–I, like the multinational character of the tribunal at issue in *Hirota*, means that the MNF-I is not a United States entity subject to habeas. The present cases differ from *Hirota* in several respects. The Court in *Hirota* may have found it significant, in considering the nature of the tribunal established by General MacArthur, that in that case the Government argued that General MacArthur was not subject to United States authority, that his duty was to obey the Far Eastern Commission and not the U. S. War Department, and that no process this Court could issue would have any effect on his action. Here, in contrast, the Government acknowledges that U. S. military commanders answer to the President. These cases also differ from *Hirota* in that they concern American citizens, and the Court has indicated that habeas jurisdiction can depend on citizenship. See *e.g., Johnson* v. *Eisentrager*, 339 U. S. 763, 781. Pp. 7–11.

2. Federal district courts, however, may not exercise their habeas jurisdiction to enjoin the United States from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that sovereign for criminal prosecution. Be-

cause petitioners state no claim in their habeas petitions for which relief can be granted, their habeas petitions should have been promptly dismissed, and no injunction should have been entered. Pp. 11–28.

(a) The District Court abused its discretion in granting Omar a preliminary injunction, which the D. C. Circuit interpreted as prohibiting the Government from (1) transferring Omar to Iraqi custody, (2) sharing with the Iraqi Government details concerning any decision to release him, and (3) presenting him to the Iraqi courts for investigation and prosecution, without even considering the merits of the habeas petition. A preliminary injunction is an "extraordinary and drastic remedy." It should never be awarded as of right, *Yakus* v. *United States*, 321 U. S. 414, 440, and requires a demonstration of, *inter alia,* "a likelihood of success on the merits," *Gonzales* v. *O Centro Espírita Beneficente União do Vegetal*, 546 U. S. 418, 428. But neither the District Court nor the D. C. Circuit considered the likelihood of success as to the merits of Omar's habeas petition. Instead, the lower courts concluded that the "jurisdictional issues" implicated by Omar's petition presented difficult and substantial questions. A difficult question as to jurisdiction is, of course, no reason to grant a preliminary injunction.

The foregoing analysis would require reversal and remand in each of these cases: The lower courts in Munaf erred in dismissing for want of jurisdiction, and the lower courts in Omar erred in issuing and upholding the preliminary injunction. Our review of a preliminary injunction, however, "is not confined to the act of granting the injunctio[n]." *City and County of Denver* v. *New York Trust Co.*, 229 U. S. 123, 136. Rather, a reviewing court has the power on appeal from an interlocutory order "to examine the merits of the case . . . and upon deciding them in favor of the defendant to dismiss the bill." *North Carolina R. Co.* v. *Story*, 268 U. S. 288, 292. In short, there are occasions when it is appropriate for a court reviewing a preliminary injunction to proceed to the merits; given that the present cases implicate sensitive foreign policy issues in the context of ongoing military operations, this is one of them. Pp. 11–14.

(b) Petitioners argue that they are entitled to habeas relief because they have a legally enforceable right not to be transferred to Iraqi authorities for criminal proceedings and because they are innocent civilians unlawfully detained by the Government. With respect to the transfer claim, they request an injunction prohibiting the Government from transferring them to Iraqi custody. With respect to the unlawful detention claim, they seek release but only to the extent it would not result in unlawful transfer to Iraqi custody. Because both requests would interfere with Iraq's sovereign right to "punish of-

fenses against its laws committed within its borders," *Wilson* v. *Girard*, 354 U. S. 524, 529, petitioners' claims do not state grounds upon which habeas relief may be granted. Their habeas petitions should have been promptly dismissed and no injunction should have been entered. Pp. 14–28.

(1) Habeas is governed by equitable principles. Thus, prudential concerns may "require a federal court to forgo the exercise of its habeas . . . power." *Francis* v. *Henderson*, 425 U. S. 536, 539. Here, the unusual nature of the relief sought by petitioners suggests that habeas is not appropriate. Habeas is at its core a remedy for unlawful executive detention. *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 536. The typical remedy is, of course, release. See, *e.g.*, *Preiser* v. *Rodriguez*, 411 U. S. 475, 484. But the habeas petitioners in these cases do not want simple release; that would expose them to apprehension by Iraqi authorities for criminal prosecution—precisely what they went to federal court to avoid.

The habeas petitioners do not dispute that they voluntarily traveled to Iraq, that they remain detained within the sovereign territory of Iraq today, or that they are alleged to have committed serious crimes in Iraq. Indeed, Omar and Munaf both concede that, if they were not in MNF–I custody, Iraq would be free to arrest and prosecute them under Iraqi law. Further, Munaf is the subject of ongoing Iraqi criminal proceedings and Omar would be but for the present injunction. Given these facts, Iraq has a sovereign right to prosecute them for crimes committed on its soil, even if its criminal process does not come with all the rights guaranteed by the Constitution, see *Neely* v. *Henkel*, 180 U. S. 109, 123. As Chief Justice Marshall explained nearly two centuries ago, "[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute." *Schooner Exchange* v. *McFaddon*, 7 Cranch 116, 136.

This Court has twice applied that principle in rejecting claims that the Constitution precludes the Executive from transferring a prisoner to a foreign country for prosecution in an allegedly unconstitutional trial. *Wilson, supra,* at 529–530; *Neely*, *supra*, at 112–113, 122. Omar and Munaf concede that Iraq has a sovereign right to prosecute them for alleged violations of its law. Yet they went to federal court seeking an order that would allow them to defeat precisely that sovereign authority. But habeas corpus does not bar the United States from transferring a prisoner to the sovereign authority he concedes has a right to prosecute him. Petitioners' "release" claim adds nothing to their "transfer" claim and fails for the same reasons, given that the release they seek is release that would avoid transfer.

There is of course even more at issue here: *Neely* involved a charge of embezzlement and *Wilson* the peacetime actions of a serviceman.

The present cases concern individuals captured and detained within an ally's territory during ongoing hostilities involving our troops. It would be very odd to hold that the Executive can transfer individuals such as those in the *Neely* and *Wilson* cases, but cannot transfer to an ally detainees captured by our Armed Forces for engaging in serious hostile acts against that ally in what the Government refers to as "an active theater of combat." Pp. 15–23.

(2) Petitioners' allegations that their transfer to Iraqi custody is likely to result in torture are a matter of serious concern but those allegations generally must be addressed by the political branches, not the judiciary. The recognition that it is for the democratically elected branches to assess practices in foreign countries and to determine national policy in light of those assessments is nothing new. As Chief Justice Marshall explained in the *Schooner Exchange*, "exemptions from territorial jurisdiction . . . must be derived from the consent of the sovereign of the territory" and are "rather questions of policy than of law, . . . they are for diplomatic, rather than legal discussion." 7 Cranch, at 143, 146. In the present cases, the Government explains that it is the policy of the United States not to transfer an individual in circumstances where torture is likely to result and that the State Department has determined that the Justice Ministry—the department which has authority over Munaf and Omar—as well as its prison and detention facilities, have generally met internationally accepted standards for basic prisoner needs. The judiciary is not suited to second-guess such determinations. Pp. 23–26.

(3) Petitioners' argument that, under *Valentine* v. *United States ex rel. Neidecker*, 299 U. S. 5, the Executive lacks discretion to transfer a citizen to Iraqi custody unless "legal authority" to do so "is given by act of Congress or by the terms of a treaty," *id.*, at 9, is rejected. *Valentine* was an extradition case; the present cases involve the transfer to a sovereign's authority of an individual captured and already detained in that sovereign's territory. *Wilson, supra,* also forecloses petitioners' contention. A Status of Forces Agreement there seemed to give the habeas petitioner a right to trial by an American military tribunal, rather than a Japanese court, 354 U. S., at 529, but this Court found no "constitutional or statutory" impediment to the Government's waiver of its jurisdiction in light of Japan's sovereign interest in prosecuting crimes committed within its borders, *id.,* at 530. Pp. 26–28.

No. 06–1666, 482 F. 3d 582; No. 07–394, 479 F. 3d 1, vacated and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court. SOUTER, J., filed a concurring opinion, in which GINSBURG and BREYER, JJ., joined.