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U.S.-Mexican Extradition Policy: Were the Predictions Right about Alvarez?

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Abstract

This Comment analyzes the effect of such predictions on current U.S.-Mexican extradition policy. Part I examines the events leading up to the Court's controversial ruling in Alvarez in the context of established principles and legal precedent on extradition and foreign abductions. Part II describes how controversial the Court's decision was on a domestic and global scale. Specifically, Part II explores opposition from the international community, including responses from the Mexican government and other Latin American countries. Part II also examines domestic reactions to the decision among commentators and scholars, executive leaders, federal courts, and members of the U.S. Congress ("Congress"). Part II suggests that the recent trend in U.S.-Mexican extradition policy indicates more cooperation, not less. It suggests that the signing of the North American Free Trade Agreement²¹ ("NAFTA") and the Treaty to Prohibit Transborder Abductions ("Transborder Abduction Treaty")²² evidence a determination to forge better relations between both governments. Part II examines the Clinton Administration's decision to re-certify Mexico for state aid in the joint fight against drug trafficking, and how this act prompted Congress to re-examine U.S.-Mexican extradition policy since Alvarez. It also describes how recent efforts by the Mexican government to alter its reluctant policy on extradition led to the surrender of several suspects upon request of the U.S. government. Part III argues that improvement in U.S. Mexican relations influenced renewed efforts to establish a more cooperative extradition policy between the two countries. Unfortunately, drug trafficking and corruption continue to plague the Mexican justice system and to impede an effective system of extradition. This Comment concludes that until the U.S. government adopts a more aggressive policy on extradition with Mexico addressing these problems, it will continue to favor international abductions in lieu of extradition.

COMMENT

U.S.-MEXICAN EXTRADITION POLICY: WERE THE PREDICTIONS RIGHT ABOUT *ALVAREZ*?

*Argiro Kosmetatos**

Society is the ultimate loser when, in order to convict the guilty, it uses methods that lead to decreased respect for the law.¹

INTRODUCTION

In recent years, the U.S. government provoked considerable controversy by asserting the power to seize drug traffickers, terrorists, and other fugitives abroad for the purpose of prosecuting them under the U.S. justice system.² As a long-standing practice, U.S. law enforcement agents occasionally engaged in state-sponsored abductions³ in lieu of extradition⁴ as a more expedient means of arresting fugitive offenders in foreign jurisdictions.⁵

Over a century ago, the U.S. Supreme Court (the "Court") established that state-sponsored abductions of foreign criminal

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1. *United States v. Toscanino*, 500 F.2d 267, 274 (2d Cir. 1970).

2. *See, e.g.*, James Vicini, *High Court Upholds U.S. Kidnapping of Suspects Abroad*, REUTERS N. AM. WIRE, June 15, 1992 (describing U.S. Justice Department opinion suggesting that U.S. government agents may arrest suspects abroad without prior approval of state where arrest occurs).

3. *See* M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 219 (3d ed. 1996) [hereinafter INTERNATIONAL EXTRADITION] (defining state-sponsored abduction as unilateral act by which one state acting under color of law seizes suspect in jurisdiction of foreign state without securing latter state's consent). The abductors are usually government agents. *Id.* The U.N. Security Council and General Assembly view abductions as unilateral acts of aggression in violation of international law and the U.N. Charter. *See, e.g.*, Oscar Schachter, *United Nations Law*, 88 AM. J. INT'L L. 1, 11 (1994) (noting that U.N. Charter gives priority to peaceful settlement of disputes rather than coercive enforcement of law).

4. *See* INTERNATIONAL EXTRADITION, *supra* note 3, at 5 (defining extradition as surrender of criminal suspect by one state to foreign state upon proper formal request).

5. *See* *Ker v. Illinois*, 119 U.S. 436 (1886) (establishing traditional rule sanctioning abduction of foreign suspects).

defendants did not deprive federal courts of jurisdiction to prosecute and to convict these individuals.⁶ Six years ago, the Court reaffirmed this precedent in *United States v. Alvarez-Machain*.⁷ The Court's decision in *Alvarez* generated much controversy and criticism.⁸ Many scholars and commentators argued that the decision was a clear violation of international law and national sovereignty.⁹ Some, however, praised the Court for erring on the side of law enforcement, pointing to increased drug trafficking and to the prevalent corruption in the Mexican government.¹⁰ Supporters of the decision argued that foreign suspects often eluded capture by U.S. law enforcement agents simply by fleeing to countries like Mexico that have well-known policies against extradition.¹¹

Strained relations between the U.S. and Mexican governments, and the Mexican government's failure to arrest some of the most notorious leaders of Mexican drug cartels, cast doubt on the utility of extradition as an effective and expedient method of apprehension.¹² Since the U.S. and Mexican govern-

6. See *id.* (describing futility of making formal request for extradition of suspect from foreign state experiencing civil war).

7. 504 U.S. 655 (1992). The U.S. Supreme Court ("Court") determined that the defendant, a Mexican citizen, could not challenge a federal court's jurisdiction to prosecute him based on the unlawfulness of his arrest. *Id.*

8. See, e.g., William J. Aceves, *The Legality of Transborder Abductions: A Study of United States v. Alvarez-Machain*, 3 SW. J.L. & TRADE AM. 101, 103 (1996) (describing domestic and foreign responses to impact of *Alvarez* ruling on territorial sovereignty).

9. *Id.*; see Hernan de J. Ruiz-Bravo, *Monstrous Decision: Kidnapping Is Legal*, 20 HASTINGS CONST. L.Q. 833 (1993) (urging Congress to adopt legislation expressly prohibiting international kidnappings and similar violations of international law); Fernando R. Teson, *International Abductions, Low-Intensity Conflicts and State Sovereignty: A Moral Inquiry*, 31 COLUM. J. TRANSNAT'L L. 551 (1994) (applying moral inquiry when analyzing international abductions).

10. See, e.g., Malvina Halberstam, *International Kidnapping: In Defense of the Supreme Court Decision in Alvarez-Machain*, 86 AM. J. INT'L L. 736 (1992) (suggesting that holding of *Alvarez* is consistent with long line of cases granting broad powers to executive in conduct of foreign affairs); Jimmy Gurulé, *Terrorism, Territorial Sovereignty, and the Forcible Apprehension of International Criminals Abroad*, 17 HASTINGS INT'L & COMP. L. REV. 457 (1994) (opining that decision did not, contrary to claim by critics, grant federal law enforcement officers license to kidnap fugitives abroad).

11. See Mitchell J. Matorin, Note, *Unchaining the Law: The Legality of Extraterritorial Abduction in Lieu of Extradition*, 41 DUKE L.J. 907 (1992) (noting that exigencies of international law enforcement justify availability of irregular means of securing custody over criminal defendants in certain limited cases).

12. See Bruce Zagaris & Julia Padierna Peralta, *Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers—150 Years and Beyond the Rio Grande's Winding Courses*, 12 AM. U. J. INT'L L. & POL'Y 519, 584 (1997) (describing Mexican

ments signed the U.S.-Mexican Extradition Treaty¹³ ("Treaty") in 1978, the Mexican government has not, as a matter of general policy, extradited its citizens to the United States upon request.¹⁴ In fact, it was not until 1996 that Mexico surrendered four of its citizens to the United States for prosecution, two of them for drug trafficking.¹⁵ Significantly, the Treaty does not require either state to extradite its citizens.¹⁶

Increased reports of corruption among high-ranking Mexican law enforcement agents and influential leaders of the Mexican regime did little to instill U.S. faith in Mexico's justice system.¹⁷ The urgent need to curtail international drug trafficking¹⁸ and growing frustration with Mexico's extradition procedures prompted the U.S. government to use self-help measures in apprehending foreign suspects.¹⁹ Many warned that the U.S. government's unilateral abduction of Dr. Humberto Alvarez-Machain would have serious repercussions on already strained relations between Mexico and the United States, particularly with regard to joint efforts by both states to combat inter-

government's policy against extradition of Mexican citizens wanted for drug-related crimes).

13. Extradition Treaty Between the United States of America and the United Mexican States, May 4, 1978, U.S.-Mex., 31 U.S.T. 5059 [hereinafter Treaty].

14. See Zagaris & Peralta, *supra* note 12, at 584 (describing U.S.-Mexican Extradition Treaty ("Treaty") as obstacle to securing extradition of Mexican nationals).

15. See Richard Parker & Mike Gallagher, *The Seeds of Narco-Democracy*, ALBUQUERQUE J., Mar. 2, 1997, at A1 (considering impact of drug trafficking and corruption on emerging political growth in Mexico).

16. See Treaty, *supra* note 13, art. 9(1), at 5059 (giving both states option to prosecute citizens as alternative to extradition).

17. See Symposium, *Kidnapping Foreign Criminal Suspects*, 15 WHITTIER L. REV. 419, 427 (1994) (illustrating how circumstances preceding and following abduction of U.S. law enforcement agent evidence extensive corruption within Mexican government). Corruption plagued Guadalajara and many other Mexican regions in the mid-1980s. *Id.* Narcotics traffickers operated with impunity simply by bribing Mexican police and corrupt politicians. *Id.* Mexican law enforcement officials allegedly did little to assist their U.S. counterparts in their search for the abductors and killers of a U.S. drug enforcement agent. *Id.* Reports of corruption continue to this day. See, e.g., 143 CONG. REC. S2581, S2583 (daily ed. Mar. 20, 1997) (statement of Sen. Coverdell) (noting that corruption remains *modus operandi* for Mexican Federal Judicial Police).

18. See Aceves, *supra* note 8, at 104-05 (describing significant increase in drug trafficking operations by Mexican cartels).

19. See, e.g., 139 CONG. REC. H6964 (daily ed. Sept. 23, 1993) (statement of Rep. Brown) (suggesting that breakdown in U.S.-Mexican extradition policy directly resulted from consistent refusal of Mexican government to extradite Mexican nationals suspected of committing crimes under U.S. law to stand trial, even in cases involving murder, assault, rape, or statutory rape).

national crime.²⁰

This Comment analyzes the effect of such predictions on current U.S.-Mexican extradition policy. Part I examines the events leading up to the Court's controversial ruling in *Alvarez* in the context of established principles and legal precedent on extradition and foreign abductions. Part II describes how controversial the Court's decision was on a domestic and global scale. Specifically, Part II explores opposition from the international community, including responses from the Mexican government and other Latin American countries. Part II also examines domestic reactions to the decision among commentators and scholars, executive leaders, federal courts, and members of the U.S. Congress ("Congress"). Part II suggests that the recent trend in U.S.-Mexican extradition policy indicates more cooperation, not less. It suggests that the signing of the North American Free Trade Agreement²¹ ("NAFTA") and the Treaty to Prohibit Transborder Abductions ("Transborder Abduction Treaty")²² evidence a determination to forge better relations between both governments. Part II examines the Clinton Administration's decision to re-certify Mexico for state aid in the joint fight against drug trafficking, and how this act prompted Congress to re-examine U.S.-Mexican extradition policy since *Alvarez*. It also describes how recent efforts by the Mexican government to alter its reluctant policy on extradition led to the surrender of several suspects upon request of the U.S. government. Part III argues that improvement in U.S. Mexican relations influenced renewed efforts to establish a more cooperative extradition policy between the two countries. Unfortunately, drug trafficking and

20. See generally Marjorie Miller, *Mexico Attacks Ruling: Halts Drug War Role*, L.A. TIMES, June 16, 1992, at A1; Ruth Marcus, *Kidnapping Outside U.S. Is Upheld; Supreme Court Rules Government Can Seize Foreigners for Trial*, WASH. POST, June 16, 1992, at A1; Philip Shenon, *Mexico Says Doctor's Capture Imperils Aid to U.S. on Drugs*, N.Y. TIMES, Apr. 20, 1990, at A1.

21. North American Free Trade Agreement, Sept. 6, 1993, 32 I.L.M. 289 [hereinafter NAFTA]. The United States, Mexico, and Canada signed the North American Free Trade Agreement ("NAFTA") in September 1993. *Id.* The U.S. House of Representatives approved NAFTA on November 17, 1993. *Id.* NAFTA is an economic agreement designed to create an expanded and secure market for the flow of goods and services produced in the United States, Mexico, and Canada. *Id.* at 297.

22. Treaty to Prohibit Transborder Abductions, Nov. 23, 1994, U.S.-Mex., 31 U.S.T. 5059, reprinted in Michael Abbell & Bruno A. Ristau, 4 INTERNATIONAL JUDICIAL ASSISTANCE: CRIMINAL § 13-4-1, at A-676.3 (Supp. 1995) [hereinafter Transborder Abduction Treaty].

corruption continue to plague the Mexican justice system and to impede an effective system of extradition. This Comment concludes that until the U.S. government adopts a more aggressive policy on extradition with Mexico addressing these problems, it will continue to favor international abductions in lieu of extradition.

I. EXTRADITION AND FOREIGN ABDUCTION

Extradition is a formal process through which a state diplomatically surrenders criminal suspects to foreign governments requesting transfer of such persons.²³ Extradition is premised upon fundamental principals of international law.²⁴ States typically cooperate in establishing specific procedures for extradition under a treaty agreement.²⁵ Where no treaty exists, the principles of reciprocity²⁶ and comity²⁷ govern extradition.²⁸

Irregular rendition is another method of overseas arrest.²⁹

23. See INTERNATIONAL EXTRADITION, *supra* note 3, at 2-3 (discussing origin of extradition as good will practice of transferring fugitives between sovereign states).

24. See John G. Kester, *Some Myths of United States Extradition Law*, 76 GEO. L.J. 1441, 1454 (1988) (suggesting that principles of international law prescribe boundaries for arrest of suspects in foreign jurisdictions). Respect for territorial sovereignty is an important principle of international law. *Id.*

25. See INTERNATIONAL EXTRADITION, *supra* note 3, at 49 (describing content and purpose of extradition agreements). Extradition treaties are bilateral or multilateral agreements designed to promote cooperation between states with respect to the transfer of fugitive criminal offenders. *Id.* Most current extradition agreements are bilateral. *Id.* Typically, they provide that a state must either deliver the accused to the government requesting jurisdiction or prosecute him under its own laws. See M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 6-7 (1974) [hereinafter WORLD PUBLIC ORDER] (referring to doctrine of *aut dedere aut judicare*).

26. See INTERNATIONAL EXTRADITION, *supra* note 3, at 17 (explaining that reciprocity reflects customary practice of sovereign states regarding surrender of criminal defendants). Under the principle of reciprocity, the government of a state usually grants an extradition request only in exchange for the extradition or promise of future extradition of an individual that such government seeks from its counterpart. *Id.* Reciprocity could become binding under international law if a state's practice in surrendering wanted offenders to the custody of a requesting government is so consistent that it becomes a custom of that state. *Id.*

27. See *id.* (defining comity as act of courtesy and goodwill cooperation between states).

28. See *id.* (describing reciprocity and comity as international principals of friendly cooperation among states).

29. See Abraham Abramovsky, *Extraterritorial Abductions: America's "Catch and Snatch" Policy Run Amok*, 31 VA. J. INT'L L. 151, 155 (1991) (defining irregular rendition as informal arrangement between state officials for surrender of criminal defendant); see also WORLD PUBLIC ORDER, *supra* note 25, at 127-28 (suggesting that informal ar-

Overseas abduction is one example of irregular rendition.³⁰

The U.S. government employed overseas abduction several years ago when it captured three Mexican citizens implicated in the murder of a law enforcement agent.³¹ Part of the problem is the extradition agreement between Mexico and the United States, which does not require either state to surrender its citizens.³² Consistent with this Treaty, Mexico developed a rigid policy against extraditing Mexican citizens to the United States.³³ Faced with this obstacle, U.S. law enforcement agents relied on Court precedent recognizing the legality of state-sponsored abductions.³⁴

A. *Exterritorial Rendition of Fugitive Suspects*

Respect for state sovereignty is a fundamental tenet of inter-

agement between state agents for surrender of criminal suspect does not violate territorial sovereignty of asylum state). An informal agreement of this nature may in fact authorize the abduction of a wanted offender from the jurisdiction of the asylum state, provided that the asylum state agrees to this tactic. *Id.* at 127-28.

30. See Kristin Berdan Weisman, *Extraterritorial Abduction: The Endangerment of Future Peace*, 27 U.C. DAVIS L. REV. 459, 486 (1994) (noting that unauthorized abduction violates state sovereignty whereas irregular rendition does not).

31. See, e.g., *United States v. Alvarez-Machain*, 504 U.S. 655 (1992); *United States v. Matta-Ballesteros*, 71 F.3d 754 (9th Cir. 1995); *United States v. Verdugo-Urquidez*, 939 F.2d 1341 (9th Cir. 1991).

32. Treaty, *supra* note 13, art. 9(1), at 5065. Article 9(1) provides that: Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.

Id.

33. See Zagaris & Peralta, *supra* note 12, at 533-50 (describing Mexican law and extradition procedures). As a general matter, Mexico's law on international extradition limits the delivery of Mexican nationals to a foreign state except in "exceptional circumstances" and at the discretion of the Executive. "Ley de extradición internacional," D.O., 29 de diciembre de 1975 (entered into force Dec. 30, 1975), art. 14. The Mexican constitution also provides, as do many other Latin American constitutions, that a fair trial should take place under Mexican law in a Mexican court. CONST. art. 15 (Mex.).

34. See, e.g., *Ker v. Illinois*, 119 U.S. 436, 440 (1886) (holding that forcible abduction of criminal suspect did not impair power of court to prosecute him); *Frisbie v. Collins*, 342 U.S. 519 (1952) (reaffirming *Ker*). From these cases arose the *Ker-Frisbie* doctrine, the principle that jurisdiction over a defendant remains unaffected by the unconventional manner of his arrest. See Keith Highet et al., *International Decisions, Criminal Jurisdiction-Extradition Treaties-U.S. Government-Sponsored Abduction of Mexican Citizen: United States v. Alvarez-Machain*, 112 S. Ct. 2188, U.S. Supreme Court, June 15, 1992, 86 AM. J. INT'L L. 811 (1992) (suggesting that trial court may still prosecute criminal defendant regardless of whether government agents arranged his abduction).

national law.³⁵ Under the principal of extraterritoriality,³⁶ states have the right to control what goes on within their borders.³⁷ International law does not condone states resorting to unilateral arrests of criminal offenders beyond their jurisdiction.³⁸ Nevertheless, the international community recognizes that there may be some circumstances that justify such acts.³⁹

1. Male Caputs Bene Detentus

Extraterritorial arrests are based on the principle of *male captus bene detentus*.⁴⁰ Under this doctrine, federal courts may assert jurisdiction over defendants regardless of the manner of arrest.⁴¹ One method consistent with the principal of *male captus bene detentus* is irregular rendition.⁴² Another alternative is over-

35. See Kester, *supra* note 24, at 1454 (noting that international law limits states from conducting unilateral arrests in foreign jurisdictions without consent).

36. See INTERNATIONAL EXTRADITION, *supra* note 3, at 165 (describing extraterritoriality as right of sovereign government to control activities within state borders).

37. See Kester, *supra* note 24, at 1454 (arguing that respect for territorial sovereignty is fundamental tenet of international law).

38. See Jianming Shen, *Responsibilities and Jurisdiction Subsequent to Extraterritorial Apprehension*, 23 DENV. J. INT'L L. & POL'Y 43 (1994) (characterizing state's exercise of police power in foreign jurisdiction as violation of territorial sovereignty).

39. See, e.g., Patrick M. Haggan, *Government Sponsored Extraterritorial Abductions in the New World Order: The Unclear Role of International Law in United States Courts and Foreign Policy*, 17 SUFFOLK TRANSNAT'L L. REV. 438, 442 (1994) (discussing abduction of former Nazi Adolf Eichmann from Argentina by Israeli law enforcement agents). Members of the international community did not object when Israeli abductors seized Eichmann from Argentina. *Id.* The U.N. Charter prohibits the use of force in foreign territory unless the state perpetrating such acts has a valid claim of self-defense. U.N. CHARTER art. 2, ¶ 4. According to the U.N. Security Council, this rule applies even where the victim of the kidnapping is a notorious war criminal. See U.N. SCOR, 15th Sess., 868th mtg., at 4, U.N. Doc. S/4349 (1960) (noting that resolution did not condone odious crimes for which Eichmann was accused of perpetrating). The Security Council ordered Israel to make reparations to Argentina for abducting Eichmann from Buenos Aires in 1960. U.N. SCOR, 15th Sess., 868th mtg., at 1, U.N. Doc. S/PV.868 (1960).

40. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 432 n.2 (1987). Loosely translated, the maxim suggests that a person improperly seized may nevertheless properly be detained. *Id.*

41. *Id.*

42. See Abraham Abramovsky & Steven Eagle, *U.S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition?*, 57 OR. L. REV. 51, 52 (1977) (describing appeal of irregular rendition as one alternative to extradition). Irregular renditions are secret agreements between law enforcement agents allowing states to deliver fugitives quietly without invoking formal extradition procedures or the approval of state executive authorities. *Id.*

seas abduction.⁴³ Few states favor this method.⁴⁴

2. U.S.-Mexican Extradition Treaty

The Treaty is one of many extradition agreements that the U.S. government has signed with foreign countries.⁴⁵ The Treaty lists thirty-one extraditable offenses punishable under the federal laws of both states.⁴⁶ It provides for certain exceptions to extradition, such as the "specialty"⁴⁷ and "political offense"⁴⁸ provisions. The Treaty also details specific procedures that the state requesting extradition must follow.⁴⁹ Moreover, it provides that the legislation of the requested state will govern the processing of that request.⁵⁰

As a caveat, Article 9 of the Treaty does not require either

43. *See id.* (defining state-sponsored abductions as unilateral acts carried out under color of law without consent of asylum state).

44. *See* Brigitte Belton Homrig, *Abduction as an Alternative to Extradition—A Dangerous Method to Obtain Jurisdiction over Criminal Defendants*, 28 WAKE FOREST L. REV. 671, 677 (1993) (explaining that international law prohibits overseas abduction as viable method of arrest).

45. *See* Abramovsky, *supra* note 29, at 154 (explaining that U.S. government is currently party to 104 extradition treaties and multilateral agreements regarding extradition for specific offenses). The majority of these agreements are bilateral. *See* INTERNATIONAL EXTRADITION, *supra* note 3, at 49 (noting that U.S. government's almost exclusive reliance on bilateral extradition treaties caused it to develop burdensome practice of treaty-making). Each treaty contains specific provisions for extraditable offenses, procedural methods of transferring suspects, and evidentiary requirements for extradition. *Id.* at 52.

46. Treaty, *supra* note 13, art. 2(3) & app., at 5062, 5076-78.

Even if the specific crime is not listed in the appendix, a treaty state must extradite or prosecute if the crime involves a willful act that is punishable under the laws of both countries by a deprivation of liberty for no less than one year. Zagaris & Peralta, *supra* note 12, at 579.

47. *Id.* art. 17, at 5072-73. The doctrine of specialty stands for the proposition that the requesting state, which secures the surrender of a person, may prosecute that person only for the offense for which the requested state surrendered that person. *See* WORLD PUBLIC ORDER, *supra* note 25, at 352-53 (noting rationale that requested state could have refused extradition if it knew that requesting state would prosecute or punish defendant for offense other than one for which it granted extradition).

48. Treaty, *supra* note 13, art. 5, 31 at 5063-64. The Treaty leaves it up to the Executive of the state from which extradition is requested to determine what constitutes a political offense. *Id.* The political offense exception prohibits each state from surrendering a suspect for "political" crimes. *See* WORLD PUBLIC ORDER, *supra* note 25, at 382-83 (defining political offense as conduct that manifests exercise in freedom of thought, expression, and belief, freedom of association, and religious practice in violation of law designed to prohibit such conduct).

49. Treaty, *supra* note 13, art. 10, at 5066-67.

50. *Id.* art. 13, at 5069.

state to extradite its own citizens.⁵¹ Article 9(2) specifically grants both states discretion whether to extradite criminal defendants.⁵² If the requested state chooses not to surrender a suspect, however, then it must prosecute that individual under its own laws, provided that the state requesting the transfer has jurisdiction over the offense.⁵³

The option to extradite citizens under the Treaty created a rift in U.S.-Mexican extradition policies.⁵⁴ Invoking the terms of the Treaty, the Mexican regime opted against the surrender of its citizens, preferring instead to prosecute them under its own system of justice.⁵⁵ U.S. officials, however, made it a practice to deliver criminal offenders to the Mexican government upon request, provided that the terms of the Treaty allowed such a transfer.⁵⁶

Mexico's policy against extradition impeded combined efforts by Mexico and the United States to combat international drug trafficking.⁵⁷ The Mexican government's repeated denials of U.S. extradition requests frustrated U.S. law enforcement attempts to apprehend suspects who fled to Mexico to avoid prosecution in U.S. courts.⁵⁸ Reports of inefficiency and pervasive

51. *Id.* art. 9, at 5065. Article 9 gives both states the option to extradite their own nationals, or in the alternative, to prosecute such persons under their own laws. *Id.*

52. *Id.* art. 9(2), at 5065. Article 9(2) specifically provides that: "[i]f extradition is not granted pursuant to paragraph 1 of this Article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense." *Id.*

53. *Id.*

54. See Zagaris & Peralta, *supra* note 12, at 581 (concluding that provision granting either state option to prosecute defendant as alternative to extradition encouraged Mexican government's practice against extradition of Mexican citizens).

55. See Brief for the United States on Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit at 21 n.17, *United States v. Alvarez-Machain*, 946 F.2d 1466 (9th Cir. 1991) (No. 91-712), *rev'd*, 504 U.S. 655 (1992) [hereinafter U.S. Brief] (explaining that Mexican government had not extradited one citizen when U.S. Supreme Court decided *Alvarez*).

56. See Zagaris & Peralta, *supra* note 12, at 531-33 (describing backlog of U.S. extradition requests and Mexican government's reluctance to surrender suspects to U.S. government).

57. See Abramovsky, *supra* note 29, at 207 (describing U.S. government's disappointment with Mexican law and perceived ineptness of Mexican justice system).

58. See Reply Brief for the United States on Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit at 3, *United States v. Alvarez-Machain*, 946 F.2d 1466 (9th Cir. 1991) (No. 91-712), *rev'd*, 504 U.S. 655 (1992) [hereinafter Government's Reply Brief] (explaining right of U.S. government to vindicate sovereign interest in enforcing state laws). The U.S. government argued that its interest in enforcing its criminal laws

corruption among high-ranking members of the Mexican regime reaffirmed the U.S. government's mistrust of Mexico's justice system.⁵⁹ These problems led to the controversial abduction of Dr. Alvarez-Machain.⁶⁰

B. Federal Courts and State-Sponsored Abductions

U.S. federal courts have long held that forcible abduction of a criminal defendant does not vitiate the government's right to prosecute him under the laws of the United States.⁶¹ A judicially-sanctioned policy of extraterritorial abduction thus encouraged the U.S. government to engage in abductions to secure custody of foreign offenders.⁶² An exception to this policy relieves courts of jurisdiction only in cases where government agents exhibit conduct so extreme and outrageous as to shock the conscience.⁶³

is manifest where a case involves the deliberate kidnapping, torture, and murder of a U.S. law enforcement agent who was killed because of his official actions. *Id.* at 5.

59. See Juan M. Vasquez, *U.S. Bitterness Lingers in Drug Agent's Killing*, L.A. TIMES, Mar. 17, 1985, at 1 (alluding to claims by U.S. officials of evidence that high-ranking Mexican police officials deliberately bungled Camarena investigation). In 1987, the U.S. Drug Enforcement Agency ("DEA") implicated several prominent Mexican leaders for their connection with one of Mexico's most notorious drug cartels led by kingpin Rafael Caro-Quintero. See Jim Schachter, *Widespread Camarena Case Bribery Alleged*, L.A. TIMES, May 28, 1987, at 1 (describing multiple arrests of Mexican law enforcement officials). Among those charged were members of the Mexican Federal Judicial Police, as well as members of the Mexican equivalent of the U.S. Secret Service and the FBI, Gobernacion (integral security agency), state police agencies, Mexican customs, and the Mexican military. *Id.* At the trial of Dr. Alvarez-Machain, one witness testified that among those politicians present during the torture of Agent Camarena were Mexican Defense Minister Juan Arevalo Gardoqui, Interior Minister Manuel Bartlett Diaz, Governor Enrique Alvarez del Castillo, Mexican Federal Judicial Police Director Manuel Ibarra Herrera, and Mexican Interpol Director Miguel Aldana Ibarra. See Jim Newton, *Camarena's Abduction and Torture Described*, L.A. TIMES, Dec. 10, 1992, at B1 (recounting trial testimony of defendant implicated in murder of U.S. government agent).

60. *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

61. See, e.g., *Ker v. Illinois*, 119 U.S. 436, 444 (1886) (holding that extradition treaty does not guarantee fugitive protection in foreign state); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (noting that abduction by government agents does not deprive court of power to try defendant).

62. See Abramovsky, *supra* note 29, at 160 (explaining that during five-year investigation of Camarena murder, DEA and U.S. Department of Justice concluded that they could not secure arrest of numerous perpetrators through traditional process of extradition because of Mexico's long-standing hostility to extradition and implicated drug leader's demonstrated ability to avoid arrest by Mexican authorities).

63. *United States v. Toscanino*, 500 F.2d 267, 275 (2d Cir. 1974).

1. The *Ker-Frisbie* Doctrine

The Court recognized the legality of government-sponsored abductions as early as 1886 in *Ker v. Illinois*.⁶⁴ This case stands for the general principal that a defendant who is forcibly brought before a court cannot challenge his indictment or conviction after a fair trial by asserting the impropriety of his arrest.⁶⁵ The Court reaffirmed *Ker* in *Frisbie v. Collins*.⁶⁶ In so doing, it extended the application of *Ker* to cases involving interstate abductions.⁶⁷ As in *Ker*, the *Frisbie* Court held that the U.S. Constitution does not require a court to permit a convicted criminal to escape justice merely because of the unconventional manner of his arrest.⁶⁸

Ker and *Frisbie* established the *Ker-Frisbie* doctrine, the principal that an illegal arrest does not deprive federal courts of power to prosecute fugitives.⁶⁹ Federal courts relied on this doctrine in

64. 119 U.S. at 436. In *Ker*, an Illinois state court indicted a U.S. citizen for larceny and embezzlement, but the defendant fled to Peru in order to escape punishment. *Id.* at 437. Upon request from the Governor of Illinois, the U.S. government issued a warrant for the defendant's arrest and sent an agent to Peru to retrieve him under the terms of the extradition agreement between the United States and Peru. *Id.* When the agent arrived in Peru, however, he was unable to serve the warrant because Chilean forces had ousted the Peruvian government from power. *Id.* at 438-39. Because the agent could not invoke the treaty, he kidnapped the defendant and returned him to the United States. *Id.* The Illinois state court tried and convicted the defendant of larceny. *Id.* The U.S. Supreme Court affirmed his conviction and held that his abduction did not violate the terms of the extradition treaty between the United States and Peru. *Id.* at 440. The Court also rejected the defendant's claim that he had a right of asylum in Peru. *Id.*

65. *Id.* The U.S. Supreme Court added that "there are authorities of the highest respectability which hold that such a forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense, and presents no valid objection." *Id.* at 444.

66. *Frisbie v. Collins*, 342 U.S. at 522. In *Frisbie*, a state prisoner seeking habeas corpus in federal court alleged that his abduction from Chicago by state agents who delivered him to a Michigan state court to stand trial violated the Due Process Clause of the U.S. Constitution and the Federal Kidnapping Act. *Id.* at 520. The U.S. Supreme Court unanimously rejected this claim. *Id.* In so doing, the Court extended the rule of law in *Ker*, which dealt with international abductions, to interstate kidnappings. *Id.* at 522.

67. *Id.*

68. *Id.* The Court concluded that abduction of a suspect from one U.S. state in order for that the suspect to stand trial in another state did not violate the Due Process Clause of the Fourteenth Amendment. *Id.* The Court reasoned that due process is satisfied once law enforcement agents apprise the accused of the charges against him, afford him a fair trial in accordance with his rights under the Constitution, and subsequently convict him of a criminal offense. *Id.*

69. See INTERNATIONAL EXTRADITION, *supra* note 3, at 228 (describing origin of judi-

upholding the legality of state-sponsored abductions in later decisions.⁷⁰ Courts almost unanimously follow *Ker-Frisbie*.⁷¹

2. The *Toscanino* Exception

The Second Circuit Court of Appeals created an exception to the *Ker-Frisbie* doctrine in *United States v. Toscanino*.⁷² The *Toscanino* exception requires that a court divest itself of jurisdiction where the government secures custody of a defendant through acts that shock the conscience.⁷³ In crafting the exception, the court relied on post-*Frisbie* Court decisions⁷⁴ that expanded the due process guarantee to pre-trial conduct of law enforcement agents toward criminal defendants.⁷⁵

U.S. courts have yet to encounter a case where the govern-

cial precedent retaining jurisdiction over criminal defendant regardless of unconventional manner of arrest).

70. See, e.g., *Gerstein v. Pugh*, 420 U.S. 103 (1975) (upholding rule that illegal arrest does not violate subsequent conviction); *United States ex rel. Lujan v. Gengler*, 510 F.2d 62 (2d Cir. 1975) (emphasizing that despite holding in *United States v. Toscanino*, Second Circuit continues to follow *Ker-Frisbie* line of cases unless defendant posits strong showing of grossly cruel and unusual barbarities inflicted upon him by U.S. agents); *United States v. Lovato*, 520 F.2d 1290 (9th Cir. 1975) (concluding that defendant's allegations were nothing more than routine expulsion by Mexican officers for violations of U.S. law); *United States v. Lira*, 515 F.2d 68 (2d Cir.), cert. denied, 423 U.S. 847 (1975) (holding that absent direct evidence of misconduct by U.S. government, forcible abduction of defendant following torture by Chilean police did not impair court's power to bring defendant to trial on criminal charges); *United States ex rel. Calhoun v. Twomey*, 454 F.2d 326 (7th Cir. 1971) (concluding that where court has jurisdiction to prosecute defendant and holds him under valid process, it need not and will not inquire into circumstances surrounding defendant's arrest).

71. See *Abramovsky*, *supra* note 29, at 205 (discussing background of judicial precedent acknowledging state-sponsored abductions).

72. 500 F.2d 267, 275 (2d Cir. 1974). In *Toscanino*, Uruguayan police working for the U.S. government kidnapped the defendant, an Italian citizen, from his home in Montevideo, Uruguay, and delivered him to Brazilian authorities. *Id.* at 269. The defendant claimed that Brazilian police tortured and interrogated him for seventeen days before delivering him to the United States. *Id.* The defendant also alleged that U.S. government agents were aware of these acts. *Id.*

73. *Id.* at 272-75. The court noted the impropriety of jurisdiction to prosecute a suspect where law enforcement agents obtain custody over such person by employing methods that constitute a "deliberate, unnecessary, and unreasonable invasion" of his constitutional rights. *Id.* at 275.

74. See, e.g., *Miranda v. Arizona*, 384 U.S. 436 (1966) (prohibiting use of defendant statements elicited without advising defendant of his constitutional rights); *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding that evidence obtained without warrant constituted illegal search and seizure); *Rochin v. California*, 342 U.S. 165 (1952) (expanding due process to include pre-trial unlawful conduct of law enforcement agents).

75. See generally *Rochin*, 342 U.S. at 165.

ment's conduct is so egregious as to trigger the exception's "shock the conscience" requirement.⁷⁶ Indeed, U.S. courts have strictly limited the exception to the most flagrant and intolerable conduct of law enforcement agents towards fugitive suspects in their custody.⁷⁷ Some courts have rejected the exception altogether.⁷⁸ Federal jurisdictions have yet to apply the exception.⁷⁹

The *Ker-Frisbie* doctrine is still good law in most federal jurisdictions.⁸⁰ Nevertheless, many diplomats and U.S. government officials publicly oppose policies sanctioning state-sponsored abductions as violating customary international law.⁸¹ Foreign tribunals, however, have upheld personal jurisdiction over defendants seized from other states.⁸²

76. See, e.g., *United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 66 (2d Cir. 1975) (finding lack of complex shocking governmental conduct sufficient to violate due process rights); *United States v. Lira*, 515 F.2d 68 (2d Cir.), cert. denied, 423 U.S. 847 (1975) (noting insufficient evidence to show that DEA agents were aware of unacceptable harm to defendant); *United States v. Cordero*, 668 F.2d 32 (1st Cir. 1981) (upholding federal court jurisdiction over defendant despite treatment of defendant under custody of government agents); *United States v. Reed*, 639 F.2d 896 (2d Cir. 1981) (upholding jurisdiction to prosecute defendant absent evidence of severe mistreatment).

77. See, e.g., *Cordero*, 668 F.2d at 32 (ruling that harsh treatment of cocaine smuggler by DEA agents did not deprive court of jurisdiction to try him following informal extradition through Venezuela); *United States v. Marzano*, 537 F.2d 257 (7th Cir. 1976) (declining to inquire into circumstances leading up to arrest of defendant where facts failed to indicate shocking and outrageous conduct).

78. See INTERNATIONAL EXTRADITION, *supra* note 3, at 230 (describing limited application of exception by federal courts).

79. See, e.g., *Lira*, 515 F.2d at 68 (finding insufficient evidence to show that DEA agents knew of unacceptable harm to defendant where Chilean police tortured and interrogated defendant); *Reed*, 639 F.2d at 896 (upholding jurisdiction over fugitive suspects regardless of illegality of arrest).

80. See, e.g., *United States v. Alvarez-Machain*, 504 U.S. 655 (1992); *Cordero*, 668 F.2d at 32; *Reed*, 639 F.2d at 896; *United States v. Noriega*, 117 F.3d 1206 (11th Cir. 1997); *United States v. Chapa-Garza*, 62 F.3d 118 (5th Cir. 1995); *United States v. Matta-Ballesteros*, 71 F.3d 754 (9th Cir. 1995).

81. See, e.g., *FBI Authority to Seize Suspects Abroad: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 101st Cong. 37 (1989) (statement of Abraham D. Sofaer, former State Department Legal Advisor) [hereinafter *FBI Authority*] (insisting that U.S. government supports policy suggesting that unconsented arrests in foreign states violate principal of territorial integrity).

82. See, e.g., *Re Argoud*, 45 I.L.R. 90, 98 (Cass. crim. 1964) (Fr.) (denying prosecutorial immunity for defendant abducted from Germany); *Attorney General of Israel v. Eichmann*, 36 I.L.R. 5, 6567 (D.C. 1961) (Isr.), *aff'd* 36 I.L.R. 277, 342 (S. Ct. 1962) (premising personal jurisdiction to prosecute abducted defendant on U.S. case law).

C. *The Alvarez Decision*

The abduction of Dr. Humberto Alvarez-Machain ("Machain") from Mexico eight years ago was the culmination of an intensive manhunt following the kidnapping and murder of Enrique Camarena, an undercover agent working for the U.S. Drug Enforcement Administration ("DEA").⁸³ The U.S. government sought several suspects implicated in this case and made deals with the Mexican police to bring these defendants to the United States to stand trial.⁸⁴ When these agreements failed, the U.S. government authorized the abduction of three suspects from Mexico.⁸⁵ These arrests led to the Court's controversial

83. *Alvarez*, 504 U.S. at 657. Shortly before his death, Agent Camarena succeeded in infiltrating one of the largest drug cartels in Mexico, led by kingpin Rafael Caro-Quintero. See Abramovsky, *supra* note 29, at 160 (describing arrest of kingpin believed to be responsible for murder of agent). DEA officials demanded Quintero's extradition from Mexico. *Id.* Instead, Quintero escaped to Costa Rica, where police officials eventually arrested and deported him to Mexico to stand trial on a host of criminal charges. *Id.* at 161-62. Authorities found the mutilated bodies of Agent Camarena and his pilot in a Mexican field approximately one month after their abduction by drug cartel leaders on February 7, 1985. See *United States v. Caro-Quintero*, 745 F. Supp. 599, 602 (C.D. Cal. 1990) (describing how pilot assisted agent in locating and marijuana plantations). Authorities believed that Quintero and his accomplices kidnapped, tortured, and murdered the agent and his pilot in retaliation for a devastating raid on the cartel ordered by the DEA at Camarena's request. See Michael Hedges, *Camarena Trial Begins; Mexico Reopens Its Probe*, WASH. TIMES, May 16, 1990, at A5 (explaining testimony of three men at Quintero trial in 1988 describing torture, interrogation, and murder of agent).

84. Abramovsky, *supra* note 29, at 161-62.

85. See, e.g., *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (depicting seizure of defendant at gunpoint from Mexico); *United States v. Matta-Ballesteros*, 71 F.3d 754 (9th Cir. 1995) (concerning abduction of defendant from Honduras); *United States v. Verdugo-Urquidez*, 939 F.2d 1341 (9th Cir. 1991) (describing irregular rendition of defendant from Costa Rica). The U.S. government did not request the extradition of these men from Mexico. See Abramovsky, *supra* note 29, at 161 (suggesting that U.S. law enforcement agents favored abduction because of Mexico's set policy against extradition of Mexican citizens). Moreover, one suspect had previously eluded arrest by bribing Mexican police in Guadalajara. See Zagaris & Peralta, *supra* note 12, at 584 (describing how Rafael Caro-Quintero bribed Mexican police and fled to Costa Rica to escape prosecution). Authorities eventually seized Quintero in Costa Rica and deported him to Mexico to stand trial. Abramovsky, *supra* note 29, at 162. Four years after the arrest, a Mexican court convicted Quintero and twenty-three others, many of whom were Mexican law enforcement agents of various criminal offenses, including the murder of Agent Camarena and his pilot. See JAMES MILLS, *THE UNDERGROUND EMPIRE: WHERE CRIMES AND GOVERNMENTS EMBRACE* 1155 (1986) (describing scandalous arrest of Mexican government officials). A court in Mexico reportedly sentenced Quintero and other drug traffickers to 40 years in prison for the murder of Agent Camarena, and an additional 76 years for their conviction on kidnapping and drug trafficking charges. See Zagaris & Peralta, *supra* note 12, at 585-86 (describing punishment as harshest sentences permitted under Mexican law).

ruling in *Alvarez*.⁸⁶

1. The Abduction of Rene Martin Verdugo-Urquidez

Under the alleged authority of the U.S. government, Mexican police seized Rene Martin Verdugo-Urquidez shortly after Rafael Caro-Quintero's arrest.⁸⁷ The Ninth Circuit Court of Appeals applied a narrow reading of the *Ker-Frisbie* doctrine in *United States v. Verdugo*.⁸⁸ The court declined to extend *Ker-Frisbie* to cases involving abduction of non-U.S. citizens from foreign jurisdictions protesting such acts.⁸⁹ In so doing, the court gave the defendant derivative standing to assert a violation of the extradition treaty only if the Mexican government protested his abduction.⁹⁰ The court instead relied on existing Court precedent in *United States v. Rauscher*,⁹¹ which held that a defendant may raise an objection to personal jurisdiction if the government prosecutes him for an offense other than that which secured his extradition.⁹²

86. 504 U.S. at 657.

87. See Abramovsky, *supra* note 29, at 162 (explaining that government of Mexico could not prosecute Verdugo's abductors on kidnapping charges because U.S. law enforcement agents had already placed them in Federal Witness Protection Program).

88. 939 F.2d at 1345-49.

89. *Id.* In so doing, the court distinguished *Ker* from *Verdugo*. *Id.* at 1346. *Ker* was a U.S. citizen, whereas Verdugo was a citizen of Mexico. *Id.* *Ker's* abductor seized him without obtaining prior authorization from the U.S. government, whereas Verdugo's captors arrested him at the behest of the U.S. government. *Id.* Accordingly, the Ninth Circuit concluded that *Ker* stood only for the proposition that an abduction carried out by private citizens did not violate the U.S.-Peru Extradition Treaty, and that *Ker* did not address the question of state-sponsored abductions. *Id.* The court reasoned that even if *Ker* did apply to state-sponsored abductions, *Ker* was still not dispositive because the Peruvian government did not protest the defendant's abduction, unlike the Mexican government in *Verdugo*. *Id.* The court also declined to extend *Frisbie* to *Verdugo*, noting that *Frisbie* concerned a violation of the Due Process Clause and rights protected under federal statute, whereas *Verdugo* addressed the question of an alleged violation of an extradition treaty. *Id.* at 1347.

90. *United States v. Verdugo-Urquidez*, 939 F.2d at 1341, 1356-58 (9th Cir. 1991). Conversely, the Ninth Circuit noted that, even though the Treaty generally prohibits state-sponsored abductions, the asylum state implicitly sanctions abductions if it fails to protest such acts formally. *Id.* at 1352. The court added that should a Treaty violation occur, the appropriate remedy is repatriation of defendant to Mexico. *Id.* at 1359-60. The court remanded the case to the district court for an evidentiary hearing on whether Mexico voluntarily surrendered the defendant to the United States. *Id.*

91. 119 U.S. 407 (1886).

92. *Id.* at 424. *United States v. Rauscher* limited the *Ker-Frisbie* doctrine because the manner of defendant's arrest was a central issue determining the validity of jurisdiction. *Id.*

2. The Abduction of Dr. Humberto Alvarez-Machain

Further investigation of the Camarena murder implicated Machain, a Mexican physician.⁹³ The U.S. government accused Machain of injecting the agent with drugs to revive him so that his captors could further interrogate and torture him about the DEA's knowledge of the cartel's activities in Mexico.⁹⁴ The DEA initially engaged in informal negotiations with Mexican leaders for the extradition of Machain from Mexico.⁹⁵ When these efforts failed, the DEA ordered Machain's abduction.⁹⁶ Despite Mexican opposition and demands for the defendant's return to his home state, the case reached the Court in 1992.⁹⁷

The Court ultimately reversed the decisions of the trial court and appellate court favoring the defendant.⁹⁸ The district court had determined that the DEA's abduction of Machain violated the Treaty and ordered the defendant's return to his country.⁹⁹ The court refused to apply *Ker-Frisbie* to violations of treaty

93. *United States v. Alvarez-Machain*, 504 U.S. 655, 657 (1992).

94. *Id.*

95. *See United States v. Caro-Quintero*, 745 F. Supp. 602 (C.D. Cal. 1990) (describing meetings between DEA and Mexican agents proposing possible exchange of suspects). In an initial meeting between DEA Special Agent Hector Berrellez, head of the Camarena murder investigation, DEA Special Agent Bill Waters, Mexican Federal Judicial Police ("MFJP") Commandante Jorge Castillo del Rey, and an unidentified MFJP official, Mexican leaders agreed to deliver the defendant to the United States in exchange for the DEA's deportation of a wanted Mexican citizen believed to have been residing in the United States. *Id.*

96. *See id.* at 603 (describing abduction of defendant at gunpoint and transfer to custody of U.S. law enforcement agents in Texas). In December 1989, MFJP Commandante Jorge Castillo del Rey contacted DEA informant Antonio Garate-Bustamente to arrange a meeting with DEA officials to discuss the possible exchange of Machain for Isaac Naredo, wanted by Mexican police for stealing large sums of money from Mexican politicians. *Id.* at 602. In a meeting between DEA Special Agent Berrellez, DEA Special Agent Waters, MFJP Commandante Castillo del Rey, and an unidentified agent of the MFJP, Mexican officials agreed to deliver the defendant to the U.S. government in exchange for its promise to deport Naredo to Mexico. *Id.* Castillo del Rey assured the DEA agents that the Mexican Attorney General had authorized this meeting and suggested that the arrangement to exchange suspects be kept secret. *Id.* Informal negotiations unraveled after Mexican officials demanded US\$50,000 payment in advance to cover the cost of transporting Machain to the United States. *Id.* When the DEA refused to pay any money in advance for the operations, Mexican agents refused to deliver the defendant as promised. *Id.*

97. *See Alvarez*, 504 U.S. at 657 (reversing decisions of district court and Court of Appeals in favor of defendant).

98. *Id.*

99. *See Caro-Quintero*, 745 F. Supp. at 609 (criticizing U.S. government's assertion

law.¹⁰⁰ In so doing, the court reasoned that because the Treaty specifically provided for the extradition of foreign suspects, it implicitly proscribed forcible abductions of such persons.¹⁰¹ The Ninth Circuit Court of Appeals unanimously affirmed the decision of the district court.¹⁰²

In a six to three opinion, the Court ruled that unilateral abduction of the defendant from Mexico at the direction of U.S. agents did not deprive the district court of jurisdiction to prosecute the defendant for his alleged crimes.¹⁰³ The Court focused specifically on whether the abduction violated the provisions of the Treaty between Mexico and the United States.¹⁰⁴ It concluded that the Treaty did not expressly prohibit overseas kidnappings by government agents beyond its terms.¹⁰⁵

The Court also held that general principles of international law provided no basis for interpreting the treaty to include an implied term that precluded international abductions.¹⁰⁶ The

that procedures outlined in Treaty are not exclusive means of arrest of foreign defendants).

100. *Id.* The district court emphasized the significance of extradition treaties as mutual agreements intended to preserve state sovereignty by restricting impermissible state conduct. *Id.*

101. *Id.* at 610. The district court noted that the intent of extradition treaties was to preserve territorial sovereignty by restricting impermissible state conduct. *Id.* The court relied on the principle enunciated in *Rauscher*, that the specific enumeration of certain provisions in treaties implies the exclusion of all others. *Id.* at 614. The court concluded that the U.S. government violated the Treaty and ordered the defendant's subsequent release and return to Mexico. *Id.*

102. *United States v. Alvarez-Machain*, 946 F.2d 1466 (9th Cir. 1991), *rev'd*, 504 U.S. 655 (1992).

103. *Alvarez*, 504 U.S. at 657.

104. *Id.* at 668-69. The U.S. Supreme Court focused on the language of the Treaty. *Id.* at 655. It noted that Article 9 of the Treaty did not purport to specify extradition as the only way by which a state could secure custody of a citizen of another state for purposes of prosecution under U.S. law. *Id.* at 664. Article 9 gives the U.S. government the right to request the extradition of Mexican citizens. Treaty, *supra* note 13, art. 9(1), at 5065. It also gives Mexico the option either to extradite citizens or to prosecute them under its own laws. *Id.*

105. *Alvarez*, 504 U.S. at 664. The Court concluded that the Treaty said nothing "about the obligations of the United States and Mexico to refrain from forcible abductions of people from the territory of the other nation, or of the consequences under the treaty if an abduction occurs." *Id.* at 663.

106. *Id.* at 669. The Court opined that the negotiating history of the Treaty did not evidence an intent to prohibit abductions under the Treaty. *Id.* Nor did abductions not within the scope of the Treaty violate its terms. *Id.* at 665. The Court acknowledged that the abduction was shocking and that it even violated general principles of international law. *Id.* The abduction, however, was not illegal. *Id.* The Court explained that the U.S. government had informed Mexico, as early as 1906, of estab-

majority opinion thus reaffirmed the *Ker-Frisbie* doctrine of *male captus bene detentus*.¹⁰⁷ Under these principles, the defendant's abduction did not deprive the trial court of jurisdiction to prosecute him for his crimes because his abduction did not violate the Treaty.¹⁰⁸

The dissent argued that the decision constituted a direct violation of international law,¹⁰⁹ and that the stated goals of the Treaty clearly prohibit acts of transgression in foreign jurisdictions.¹¹⁰ Furthermore, the Treaty's detailed provisions with regard to extraditable offenses and procedures for extradition clearly suggest that both parties intended to provide comprehen-

lished precedent in *Ker* and of the U.S. government's position that this doctrine applied to forcible abductions conducted outside the terms of the Treaty. *Id.* The Court further noted that legal scholars drafted language explicitly forbidding abductions, but that no such language appears in the text of the agreement. *Id.*

107. *Id.* at 657. The majority opinion accepted the U.S. government's claim that *Ker* governed this case, and that *Rauscher* applied only where the defendant's arrest violates the Treaty. *Id.* In *Rauscher*, the Court held that a court may prosecute a defendant only for those crimes that secured his extradition. 119 U.S. 407, 430 (1886). The Court opined that the Treaty did not apply to *Alvarez* because the defendant's abduction was not a proceeding under an extradition agreement. *Alvarez*, 504 U.S. at 657. A defendant could successfully challenge jurisdiction only if the Court found that the government did violate the terms of the Treaty. See Paul Michell, *English Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain*, 29 CORNELL INT'L L.J. 383, 405 (1996) (noting that majority's stated purpose was to determine whether abduction violated Treaty provisions). Because there was no Treaty violation, the rule in *Ker* prevailed, and a court need not inquire as to how the defendant came before it. *Id.* The majority therefore assumed that *Ker* and *Frisbie* remained good law, thus avoiding consideration of due process issues. *Id.*

108. *Alvarez*, 504 U.S. at 670. On remand, the district court acquitted the defendant because the government lacked sufficient evidence to prove the defendant's involvement in the kidnapping, torture, and murder of Agent Camarena and his pilot. See Zagaris & Peralta, *supra* note 12, at 687 (explaining that acquittal of defendant precluded further trial or detainment of defendant).

109. *Alvarez*, 504 U.S. at 670 (Stevens, J., dissenting). Justice John Paul Stevens, joined by Justices Harry Blackmun and Sandra Day O'Connor, criticized the decision for sending a bad example to countries around the world. *Id.* Justice Stevens conceded that there is no express promise by either party to refrain from seizing suspects from foreign jurisdictions. *Id.* He warned, however, that viewing extradition treaties as providing merely optional methods of arresting alleged offenders creates a dangerous precedent. *Id.* For example, "[i]f the United States . . . thought it more expedient to torture or simply to execute a person rather than to attempt extradition, these options would be equally available because they, too, were not explicitly prohibited by the treaty." *Id.* On its face, the agreement "appears to have been intended to set forth comprehensive and exclusive rules concerning the subject of extradition." *Id.*

110. Treaty, *supra* note 13, pmb1, at 5061. The Treaty was designed to further the cooperation of both states in the fight against crime and to render better assistance in matters of extradition mutually. *Id.*

sive and exclusive rules regarding the transfer of foreign citizens.¹¹¹ The dissent concluded that the Treaty prohibited unilateral abductions.¹¹² It also declined to apply the *Ker-Frisbie* doctrine and warned that the Court's opinion set a bad precedent to courts around the world.¹¹³

3. The Abduction of Juan Ramon Matta-Ballesteros

In April 1988, U.S. Marshals seized Matta-Ballesteros from Honduras and brought him to the United States where a California court convicted him of kidnapping and conspiracy in the Camarena murder.¹¹⁴ The Ninth Circuit Court of Appeals relied on *Alvarez* in upholding the defendant's conviction in *Matta-Bal-*

111. *Alvarez*, 504 U.S. at 672-73 (Stevens, J., dissenting). The dissent opined that if the state requesting custody over a suspect could simply kidnap that person, all of the provisions established in the Treaty would be utterly useless. *Id.* at 674. The Treaty is a comprehensive document with twenty-three articles and an appendix detailing specific offenses that are extraditable under its terms. *Id.* at 672-73. Justice Stevens suggested that "[f]rom the preamble, through the description of the parties' obligations with respect to offenses committed within as well as beyond the territory of a requesting party, the delineation of the procedures and evidentiary requirements for extradition, the special provisions for political offenses and capital punishment and other details, the Treaty appears to have been designed to cover the *entire subject* of extradition." *Id.* at 673-73 (emphasis added).

112. *Id.* at 672 n.4. The dissent reasoned that the Treaty could not further its goal of fostering cooperation if it permitted state-sponsored abductions. *Id.*

113. *Id.* at 670. The dissent distinguished *Alvarez* from *Ker* and *Frisbie*. *Id.* In *Ker*, there was no treaty violation because bounty hunters kidnapped the defendant. *Id.* In *Alvarez*, however, the U.S. government breached its obligations under the Treaty because it authorized the abduction. *Id.* Additionally, this case was not analogous to *Frisbie*, which dealt with interstate abductions. *Id.* Quoting Justice Brandeis from *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (dissenting opinion), Justice Stevens warned that:

In a government of laws, existence of the government will be "imperilled" [sic] if it fails to observe the law scrupulously. Our Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

Id. at 686 n.33.

114. *United States v. Matta-Ballesteros*, 71 F.3d 754, 761-62 (9th Cir. 1995). The defendant Matta-Ballesteros was a member of the drug cartel believed to have been responsible for the murder of Agent Camarena. *Id.* On appeal, Matta-Ballesteros challenged the district court's jurisdiction to prosecute him on the grounds that his abduction violated the U.S.-Honduras Extradition Treaty. *Id.* at 762.

lesteros.¹¹⁵ In so doing, the court departed from its previous stance in *Verdugo* where it had refused to apply *Ker-Frisbie* to cases involving state-sponsored abduction of non-U.S. citizens.¹¹⁶ Citing *Alvarez* as authority, the Ninth Circuit concluded that the terms of the U.S.-Honduras Extradition Treaty did not limit the arrest of foreign citizens to extradition for purposes of prosecution.¹¹⁷

II. U.S. EXTRADITION POLICY: REACTIONS TO ALVAREZ

The repercussions of the Court's decision in *Alvarez* prompted considerable debate and widespread criticism from the international community.¹¹⁸ Critics accused the Court of sanctioning a lawless policy.¹¹⁹ Mexican leaders strongly protested the decision, calling it a violation of international law.¹²⁰

115. *Id.* at 762. The Ninth Circuit, however, was troubled by the fact that U.S. marshals seized the defendant from foreign territory. *Id.* at 762-63.

116. See *United States v. Verdugo-Urquidez*, 939 F.2d 1341, 1345-49 (9th Cir. 1991) (distinguishing *Ker* from *Verdugo* and declining to apply *Ker* to cases where foreign government formally protests defendant's abduction).

117. *Ballesteros*, 71 F.3d at 763. The Ninth Circuit also declined to invoke its supervisory powers to dismiss the conviction because the defendant failed to demonstrate shocking and outrageous governmental misconduct sufficient to warrant dismissal of the conviction under the *Toscanino* exception. *Id.* at 764.

118. See, e.g., Neville Botha, *Extradition v. Kidnapping: One Giant Leap Backwards—United States v. Alvarez-Machain*, 19 S. AFR. Y.B. OF INT'L L. 219, 222 (1994) (noting that Machain's alleged participation in brutal murder of U.S. agent does not provide justification for court to disregard duty to uphold rule of law); Betsy Baker & Volker R oben, *To Abduct or To Extradite: Does a Treaty Beg the Question?*, 53 ZEITSCHRIFT F UR AUSL ANDISCHES  OFFENTLICHES RECHT UND V OLKERRECHT 657, 658 (1993) (Germany) (suggesting that by ignoring well-established and continued integration of international law into U.S. law, U.S. Supreme Court failed to address decisive question of whether U.S. courts should exercise jurisdiction over defendant forcibly abducted by government agents).

119. See, e.g., Thomas F. Liotti, *Alvarez-Machain Was a Vote for Anarchy*, NAT'L L.J., Aug. 24, 1992, col. 3 (cautioning that by condoning kidnapping of Mexican citizen, U.S. Supreme Court has declared open season on U.S. residents and citizens by foreign countries); Jonathan Bush, *How Did We Get Here? Foreign Abduction After Alvarez-Machain*, 45 STAN. L. REV. 939, 941-44 (1993) (warning that effect of *Alvarez* is creation of imperial presidency with unbridled power to act in deciding matters of foreign policy). One scholar opined that the overall reaction to *Alvarez* from all over the world has "signal[led] a decline in tolerance for covert coercive activities across sovereign borders generally and not just a particular low-point in U.S.-Mexico bilateral relations." See generally W. Michael Reisman, *Covert Action*, 20 YALE J. INT'L L. 419, 422 (1994).

120. See Brief for the United Mexican States as Amicus Curiae in Support of Affirmance, *United States v. Alvarez-Machain*, 112 S. Ct. 2188 (1992) (No. 91-712) (LEXIS, Genfed Library, Brief file) [hereinafter Brief for Mexico] (describing Mexican government's request that U.S. counterpart provide relief in accordance with principles of

In the United States, reaction to the decision was mixed.¹²¹ Federal courts challenged the Court's construction of the Treaty in post-*Alvarez* decisions.¹²² The legislature held hearings and considered new law in response to the decision.¹²³ The end result was the negotiation and signing of a new extradition agreement to prohibit transborder abductions.

A. *International Response to Alvarez*

The international community strongly opposed the *Alvarez* decision.¹²⁴ Mexican leaders threatened to terminate U.S.-Mexican law enforcement cooperation programs.¹²⁵ As a result, the

international law). Mexican leaders unsuccessfully petitioned for defendant's repatriation to his home country. *Id.*

121. *See, e.g.*, Halberstam, *supra* note 10, at 745 (suggesting that decision regarding conduct of foreign affairs properly falls upon executive and legislature as opposed to judiciary); Timothy M. Phelps, *Court OK's Seizing Suspects Abroad; Mexico Cuts Anti-Drug Cooperation in Protest*, *NEWSDAY*, June 16, 1992, at 4 (describing domestic and overseas speculation regarding application of ruling to Libyan terrorists). Some commentators and scholars praised the decision. *See, e.g.*, Terry Eastland, *Supreme Court Rightly Passes the Ball*, *L.A. TIMES*, June 18, 1992, at B7 (arguing that U.S. Supreme Court did not approve abductions, kidnapping, or seizing of foreigners for trial as many claim; court only approved power of executive to authorize such acts); Linda Jacobson, *Court Decision Was Right, But U.S. Policy May Not Be*, *ATLANTA J. & CONST.*, June 17, 1992, at A18 (stating that executive branch is best suited to decide matters of foreign policy, not courts). Others argued that the decision violated international law. *See, e.g.*, *A Victory for Lawlessness*, *ST. LOUIS POST-DISPATCH*, June 17, 1992, at 2B (warning of potential for terrorism by U.S. authorities abroad as implication of disregard for international law); *Breaking Treaties: High Court Gives the Green Light to Border Raids*, *SEATTLE TIMES*, June 16, 1992, at A10 (urging that sovereign states should rely on treaties instead of force to settle disputes); Herman Schwartz, *The Supreme Court's Insult to Law-Abiding Countries*, *L.A. TIMES*, June 21, 1992, at M1 (noting absurdity of detailed extradition treaty leaving open question of permissibility of state-sponsored abductions).

122. *See, e.g.*, *United States v. Matta-Ballesteros*, 71 F.3d 754, 771-72 (9th Cir. 1995) (distinguishing case from *Ker*, *Frisbie*, and *Alvarez*); *United States v. Matos*, Crim. No. 95-395, 1996 WL 104264, at *2-4 (D.P.R., Feb. 28, 1996) (holding that Dominican extradition treaty did not apply to defendant's violation of speedy trial claim based on failure to request return to Puerto Rico); *Sneed v. Tennessee*, 872 S.W.2d 930, 935 (Tenn. Crim. App. 1993) (concluding that law-of-land provision in state constitution prohibited state from acquiring jurisdiction over criminal defendant by conduct of government authorities so outrageous so as to shock conscience of court); *Xiao v. Reno*, 837 F. Supp. 1506, 1547 (N.D. Cal. 1993) (noting that political questions doctrine did not deprive district court of jurisdiction to prosecute alien defendant).

123. *See, e.g.*, *Kidnapping Suspects Abroad, 1992: Hearings Before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary*, 102nd Cong. 267 (1992) [hereinafter *Kidnapping Suspects Abroad*].

124. *See Phelps, supra* note 121, at 4 (describing massive protest of decision abroad).

125. *See generally* Miller, *supra* note 20, at A1.

United States and Mexico agreed to negotiate a new extradition agreement prohibiting international abductions.¹²⁶ Other countries threatened criminal prosecution of any persons who engaged or participated in international abductions in their jurisdiction.¹²⁷

1. Mexican Opposition

The *Alvarez* decision placed a serious strain on U.S.-Mexican relations.¹²⁸ The Mexican government temporarily suspended government cooperation with DEA agents in Mexico.¹²⁹ U.S. leaders accused Mexican officials of corruption.¹³⁰ The Mexican government denied allegations of corruption and protested the decision as a transgression of basic principles of international law.¹³¹ Mexican officials demanded a re-negotiation of the Treaty and vowed to prosecute any individuals participating in law enforcement activities on Mexican soil without prior authori-

126. See generally Aceves, *supra* note 8, at 101.

127. *Id.*

128. See Vicini, *supra* note 2 (describing protests from Mexican leaders); Stephen J. Hedges et al., *Kidnapping Drug Lords: The U.S. Has Done It for Decades, But It Rarely Causes Trouble*, U.S. NEWS & WORLD REP., May 14, 1990 (describing diplomatic dispute between Mexican and U.S. governments). Prior to *Alvarez*, Mexico and the United States were close to signing NAFTA. See Paul Iredale, *U.S. Supreme Court Ruling Chills Relations with Mexico*, REUTERS N. AM. WIRE, June 16, 1992 (explaining that relations between Mexican and U.S. governments had improved with negotiation of NAFTA).

129. See Tim Golden, *After Court Ruling, Mexico Tells U.S. Agents to Halt Activity*, N.Y. TIMES, June 16, 1992, at A19 (describing program of joint cooperation between Mexican and U.S. governments in fight against drug trafficking). The U.S. and Mexican governments had entered into several agreements designed to improve efforts to combat drug trafficking. See, e.g., Agreement on Cooperation in Combating Narcotics Trafficking and Dependency, Feb. 23, 1989, U.S.-Mex., T.I.A.S. No. 11,604 [hereinafter *Narcotics Treaty*]; Treaty on Cooperation for Mutual Legal Assistance, Dec. 9, 1987, U.S.-Mex., 27 I.L.M. 443, 447 [hereinafter *Mutual Legal Assistance Treaty*].

130. See Gabriela D. Lemus, *U.S.-Mexican Border Drug Control Operation Alliance as a Case Study*, in DRUG TRAFFICKING IN THE AMERICAS 61 (Bruce M. Bagley & William O. Walker, III eds., 1994) [hereinafter *DRUG TRAFFICKING*] (suggesting validity of allegations of official corruption). Official corruption is such a prevalent problem in Latin American countries that twenty-one countries, including Mexico and the United States, signed a protocol organized by the Organization of American States concerning governmental corruption in Latin America. See *World Politics and Current Affairs*, ECONOMIST, Apr. 6, 1996, at 41.

131. See, e.g., Tim Golden, *Mexicans Mollified over Drug Ruling*, N.Y. TIMES, June 18, 1992, at A3; David Clark Scott, *U.S. Court Ruling Provokes Heated Mexican Retort*, CHRISTIAN SCI. MONITOR, June 17, 1992, at 1. Mexican leaders demanded the arrest and extradition of persons involved in the abduction. See Tod Robertson, *Mexico Seeks DEA Agents on Charges of Kidnapping*, WASH. POST, Dec. 16, 1992, at A10 (describing Mexican demands for extradition of persons who orchestrated abduction of defendant).

zation.¹³²

a. Suspension of Cooperation in the War Against Drugs

Perhaps a more serious problem evidencing the impact of the ruling on U.S.-Mexican relations was the Mexican Government's suspension of cooperative efforts with the United States to control illegal drug trafficking.¹³³ Mexican leaders temporarily banned all DEA activities in Mexico, and demanded a re-negotiation of its Treaty with the United States.¹³⁴ Mexican leaders later revoked the ban on DEA activity in Mexico after U.S. officials agreed to consider amending the agreement to prohibit further abductions in Mexico.¹³⁵

b. Reports of Corruption Among Mexican Leaders

In the midst of the Camarena investigation, reports of pervasive corruption among high-ranking leaders of the Mexican regime impeded U.S.-Mexican efforts to curtail drug trafficking in Mexico.¹³⁶ Narcotics traffickers freely engaged in their trade by bribing corrupt Mexican police and politicians.¹³⁷ Reports of arrests of prominent Mexican leaders further evidenced the diffi-

132. See Golden, *supra* note 131, at A3 (describing Mexican government's demands for extradition of defendant's abductions).

133. See Sharon LaFraniere, *Baker Offers Reassurances After Court Kidnap Ruling*, WASH. POST, June 17, 1992, at A2 (describing Mexican government's temporary suspension of cooperation with U.S. efforts to combat international crime).

134. Neil A. Lewis, *U.S. Tries to Quiet Storm Abroad over High Court's Right to Kidnap*, N.Y. TIMES, June 17, 1992, at A8.

135. LaFraniere, *supra* note 133, at A2.

136. See Symposium, *supra* note 17, at 427-28 (describing attempts by Mexican law enforcement agents to obstruct DEA investigation of Camarena murder). At the trial of Dr. Machain, the U.S. government alleged that prior to the abduction of Agent Camarena, there were a series of meetings at which Mexican officials planned the agent's abduction. *Id.* at 428. The U.S. government further claimed that Mexican officials assigned many of the same participants in these meetings to investigate the agent's disappearance. *Id.* One suspect, for example, eluded arrest by bribing Mexican police in Guadalajara. Zagaris & Peralta, *supra* note 12, at 585. Mexican police arrested drug cartel leader Rafael Caro-Quintero two days after police discovered the bodies of Agent Camarena and his pilot, but Quintero escaped to Costa Rica. *Id.* The authority in charge of arresting Quintero later admitted to accepting a US\$275,000 bribe in exchange for allowing Quintero to escape from an airport in Guadalajara. *Id.* Authorities in Costa Rica subsequently arrested Quintero and deported him to Mexico. Abramovsky, *supra* note 39, at 162.

137. See Lemus, *supra*, note 130, at 426 (suggesting that allegations of official corruption may be grounded because U.S. investigations have been subverted by officials who delayed procedures, giving defendant under arrest opportunity to escape).

culties that U.S. law enforcement officials encountered with extradition requests and attempts to secure custody over criminal defendants from Mexico.¹³⁸ Official corruption is a prevalent problem in Mexico and other Latin American countries.¹³⁹ In 1992, twenty-one countries, including Mexico and the United States, signed a protocol at the direction of the Organization of American States ("OAS")¹⁴⁰ addressing governmental corruption in Latin America.¹⁴¹

2. The International Community's Response

Foreign governments strongly protested the Court's ruling in *Alvarez*.¹⁴² Canadian leaders questioned the status of the U.S.-Canada extradition treaty and threatened criminal prosecution for individuals participating in transborder abductions from Canadian soil.¹⁴³ Latin American governments, in particular, ex-

138. See 139 Cong. Rec. H6964 (daily ed. Sept. 23, 1993) (statement of Sen. Brown) (questioning whether U.S. government would ever contemplate abducting fugitives if Mexican law enforcement agents were willing to cooperate in arrest of criminal defendants). At the trial of Dr. Machain, one witness testified that among those politicians present during the torture of Agent Camarena were Mexican Defense Minister Juan Arevalo Cardoqui, Interior Minister Manuel Bartlett Diaz, Governor Enrique Alvarez del Castillo, Mexican Federal Judicial Police Director Manuel Ibarra Herrera, and Mexican Interpol Director Miguel Aldana Ibarra. See Newton, *supra* note 59, at B1 (describing witness testimony at trial of Mexican doctor).

139. See *World Politics and Current Affairs*, *supra* note 130, at 41 (discussing impact of drug trade on effectiveness of Mexican law enforcement structures).

140. *Id.*

141. See generally Lewis, *supra* note 134, at A8 (reporting protests against U.S. Supreme Court ruling by Mexico, Canada, and Argentina); *The Alvarez-Machain Decision*, 3 U.S. DEP'T OF STATE DISPATCH 614, 615 (1992) [hereinafter U.S. DEP'T OF STATE] (noting that U.S. Department of State was inundated with protests from Colombia, Canada, Bolivia, Paraguay, Uruguay, Brazil, Argentina, Chile, Jamaica, and Spain). Foreign governments warned that they would challenge the lawfulness of such abductions in international forums. *Id.*

142. See *Shocking Ruling from U.S. Court*, TORONTO STAR, June 17, 1992, at A20. Canada filed an amicus curiae brief with the U.S. Supreme Court arguing for the release of Dr. Machain. *Id.*

143. See, e.g., *Kidnapping Suspects Abroad*, *supra* note 123, at 112 (prepared statement of Alan J. Kreczko, Deputy Legal Adviser, U.S. Department of State) (describing Colombian government's suggestion that although *Alvarez* addressed treaty between United States and Mexico, it really threatened legal stability of all public treaties); *Reaction to U.S. Supreme Court Decision Endorsing Right to Kidnap Foreigners for Prosecution in U.S.*, NORTH-SOUTH AM. & CARIBBEAN POL. AFF., June 30, 1992, WL 2410586, at *1 (noting Argentina justice minister's description of decision as historic regression in criminal law); John McPhaul, *Costa Rica Throws Out U.S. Extradition Treaty*, MIAMI HERALD, Jan. 16, 1993, at A24 (describing Costa Rican Supreme Court's invalidation of U.S.-Costa Rica Extradition Treaty); *Up to 20 Years in Jail Proposed for Hondurans who Aid DEA*

pressed their opposition by refusing to cooperate with U.S. extradition requests.¹⁴⁴ Upon request from the presidents of Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay, the Inter-American Juridical Committee of the OAS issued an opinion that characterized the abduction as a serious violation of public international law and impermissible transgression of Mexico's territorial sovereignty.¹⁴⁵

The U.S. government also received formal protests from China, Columbia, Costa Rica, Cuba, Denmark, Ecuador, Guatemala, Honduras, Jamaica, Malaysia, and Venezuela.¹⁴⁶ In November 1992, participants at the Ibero-American Summit Conference,¹⁴⁷ which took place in Madrid in July 1992, formally requested that the U.N. General Assembly submit the issue to the International Court of Justice¹⁴⁸ ("ICJ") for an advisory opinion

Kidnappings, NOTIMEX, Aug. 2, 1992 (explaining Honduran legislature's enactment of mandatory jail sentences on Honduran citizens participating in DEA abductions); Hernan De J. Ruiz-Bravo, *Monstrous Decision: Kidnapping is Legal*, 20 HASTINGS CONST. L.Q. 833, 836 (1993) (referring to Bolivian vice president's characterization of decision as illogical and unilateral measure in violation of international law).

144. See Bruce Zagaris & Constantine Papavizas, *Using the Organization of American States to Control International Narcotics Trafficking and Money Laundering*, 57 REV. INT'L DE DROIT PENAL 119, 120 (1986) (describing Organization of American States ("OAS") as regional organization of states from North America, South America, Central America, and Caribbean). Members of the OAS include nearly every country in the Western Hemisphere. *Id.* One of the major objectives of the OAS is to solve common legal problems. *Id.* Another purpose includes the promotion of member states' economic, social, and cultural development. See generally O. CARLOS STOETZER, *THE ORGANIZATION OF AMERICAN STATES* 1, 33 (2d ed. 1993).

145. See *Legal Opinion of the Inter-American Juridical Committee on the Decision of the U.S. Supreme Court in the Alvarez-Machain Case*, reprinted in 13 HUM. RTS. L.J. 395 (1992) (separate opinion of Jorge Reinaldo Vanossi). The Inter-American Juridical Committee ("Committee") noted that "if the principles involved in the decision in question were taken to their logical consequences, international juridical order would be irreversibly damaged by any state that attributes to itself the power to violate with impunity the territorial sovereignty of another state." *Id.* at 397. The Committee recommended that the U.S. government return Dr. Machain to Mexico. *Id.*

146. See Aceves, *supra* note 8, at 120 (describing international opposition to scope of *Alvarez* decision).

147. *Id.* Representatives from 19 Latin American countries, as well as Portugal and Spain, attended the conference, which took place in Madrid. *Id.*

148. *Id.* at 178 (citing Statute of the International Court of Justice, June 26, 1945, arts. 65, 59 Stat. 1055, 1063). The U.N. Charter established the International Court of Justice ("ICJ") as the principal judicial organ of the United Nations. U.N. CHARTER art. 7(1). Article 65 of the Statute of the International Court of Justice authorizes the ICJ to give an advisory opinion on any legal question at the request of whatever body may be authorized in accordance with the U.N. Charter to make such request. Statute of Inter-

regarding the legality of international abductions.¹⁴⁹ The U.N. General Assembly considered this issue but did not address the international legal consequences that should apply to states that engage in international abductions.¹⁵⁰

B. *Domestic Opposition*

In the United States, critics accused the Court of compromising the integrity of the law and inviting anarchy in the conduct of international relations.¹⁵¹ They warned of the repercussions of the decision on U.S.-Mexican efforts to promote international cooperation to deter international crime, such as terrorism and drug trafficking.¹⁵² The extent of domestic opposition to the decision prompted executive leaders to temper their initial reaction to the ruling in their favor.¹⁵³ Congress held hearings on the issue of transborder abduction policy in the United States and considered legislation to prohibit U.S. government agents from participating in such acts.¹⁵⁴

national Court of Justice, June 26, 1945, art. 65, 59 Stat. 1055, T.S. No. 993, 3 Bevans 1179, 1191 (1945).

149. U.N. Doc. A/47/249 (1992). A memorandum accompanying the request urged that unilateral measures in which the U.S. government applied its own rule of law to foreign jurisdictions was an exercise of coercive power that violated fundamental principles of international law. *Id.*

150. See Virginia Morris & M. Christiane Vrailas Bourloyannis, *The Work of the Sixth Committee at the Forty-Eighth Session of the U.N. General Assembly*, 89 AM. J. INT'L L. 607, 620 (1995) (describing adoption of draft decision that promised continued consideration of international abduction issues at later sessions). At the Forty-eighth Session of the U.N. General Assembly, there was a general consensus on three issues: (1) international law prohibits a state from exercising its criminal jurisdiction in foreign territory unless the other state has consented to such act; (2) the use of unilateral measures, such as the abduction of a suspected criminal from another state for trial before the national courts of the abducting state, undermines existing mechanisms for international cooperation in the apprehension and prosecution of criminal offenders, as well as treaty obligations to prosecute or to extradite such offenders; and (3) the General Assembly should request that the ICJ render all advisory opinion to confirm and to expound upon the rule prohibiting the extraterritorial exercise of criminal jurisdiction, particularly through the use of unilateral measures of coercion such as abductions. *Id.*

151. See Aceves, *supra* note 8, at 102 (describing domestic and international responses to *Alvarez*). Many questioned what the U.S. government's response would be if foreign law enforcement agents abducted U.S. citizens in violation of U.S. territorial sovereignty. *Id.*

152. *Id.*

153. *Id.* at 127.

154. *Id.*

1. The Legal Community's Response to the Decision

Many legal scholars strongly criticized the Court's ruling and generally denounced international abductions.¹⁵⁵ They warned that the decision would undermine U.S.-Mexican extradition policy.¹⁵⁶ A central purpose of the Treaty between Mexico and the United States was to preclude unilateral abductions in foreign territory.¹⁵⁷ Permitting state-sponsored abductions in certain circumstances ultimately undermines the spirit, purpose, and validity of extradition agreements.¹⁵⁸ Other commentators warned that the decision invited retaliation on U.S. citizens by other countries.¹⁵⁹

Critics also accused the Court of sanctioning an impermissible violation of international law.¹⁶⁰ Customary international law,¹⁶¹ independent of treaties or other agreements, prohibits forcible abductions.¹⁶² In these circumstances, critics urged that the appropriate remedy was for the U.S. government to order

155. *See, e.g.*, Bush, *supra* note 119, at 971 (positing that real significance of *Alvarez* lies not in its impact on international policing, but in its support of aggressive executive power); Michael J. Glennon, *State-Sponsored Abduction: A Comment on United States v. Alvarez-Machain*, 86 AM. J. INT'L L. 746, 748 (1992) (suggesting that effect of *Alvarez* was to shield executive branch from compliance with fundamental international norms); Ethan A. Nadelmann, *The Evolution of United States Involvement in the International Rendition of Fugitive Criminals*, 25 N.Y.U. J. INT'L L. & POL. 813, 882-85 (1993) (noting that developed legal methods of facilitating surrender of foreign criminal defendants between states evidence less need for resort to unilateral abductions).

156. *See generally* Bush, *supra* note 119, at 939. The following scholars testified before U.S. Congress at hearings held in response to the decision: Michael Abbell, Michael Glennon, Andreas Lowenfeld, Steven Schneebaum, and Ralph Steinhardt. *Kidnapping Suspects Abroad*, *supra* note 123, at 13, 45, 62, 153, 171.

157. *See* Aceves, *supra* note 8, at 129 (describing critics' assertion that international abductions contravene spirit and purpose of extradition agreements).

158. *Id.*

159. *See, e.g.*, Liotti, *supra* note 119, col. 3; Phelps, *supra* note 121, at 4.

160. *See* Michell, *supra* note 107, at 412 (criticizing majority for failing to take into account customary international law prohibiting forcible abductions). Another critic warned that the decision gave U.S. agents unrestricted power to seize suspects from foreign soil. *See* Janelle M. Diller, *Kidnapping Foreign Citizens*, CHRISTIAN SCI. MONITOR, June 26, 1992, at 18 (suggesting that court vested executive branch with unforeseen new powers).

161. *See* 1 OPPENHEIM'S INTERNATIONAL LAW: PEACE 388-89 (9th ed. 1992) (defining customary international law as established practice of cooperation and comity between states).

162. *See* Michell, *supra* note 107, at 436 (suggesting that appropriate remedy for violation of territorial sovereignty is dependent upon whether injured state protests and requests return of fugitive).

the repatriation of Machain to Mexico.¹⁶³

Some scholars supported the *Alvarez* decision.¹⁶⁴ They pointed to the prevalence in drug trafficking and corruption among high-ranking leaders of the Mexican regime.¹⁶⁵ These problems made extradition from Mexico a cumbersome and inefficient process for the surrender of criminal defendants.¹⁶⁶

2. The U.S. Government's Response

Executive leaders initially supported the decision in their favor.¹⁶⁷ They argued that the acts attributed to Machain were of sufficient magnitude so as to compel his abduction and subsequent prosecution under the U.S. justice system.¹⁶⁸ They also

163. Aceves, *supra* note 8, at 129.

164. See generally Halberstam, *supra* note 10, at 76; Gurulé, *supra* note 10, at 457; Matorin, *supra* note 11, at 907; Michael J. Weiner, *The Importance of a Clear Rule for Judicial Deference to Executive Interpretations of Treaties: A Defense of United States v. Alvarez-Machain*, 12 WISC. INT'L L.J. 125 (1993).

165. See Lemus, *supra* note 130, at 426 (discussing corruption and bribery of Mexican law enforcement authorities).

166. See Dea Abramschmitt, *Neighboring Countries, Unneighborly Acts: A Look at the Extradition Relationships Among the United States, Mexico and Canada*, 4 J. TRANSNAT'L L. & POL'Y 121, 128 (1995) (arguing that rise in irregular apprehension over past twenty years is attributable to such factors as increase in terrorist acts and drug trafficking, as well as domestic elements that retard or impede extradition).

167. See *Public Affairs, U.S. Dep't of Justice, Statement of the Attorney General on Alvarez-Machain Ruling*, U.S. NEWswire, June 15, 1992, available in LEXIS, News Library, Wires File (describing initial positive response to decision by executive leaders of U.S. government). Soon after the U.S. Supreme Court announced its decision, Attorney General William Barr released the following statement:

We are gratified by the Supreme Court's favorable decision in the Alvarez-Machain case. The court's ruling vindicates the position we have taken from the outset in this case. The decision represents an important victory in our ongoing efforts against terrorism and narcotraffickers who operate against the United States from overseas. We are anxious to proceed with the trial of this individual for his role in the torture and murder of DEA Agent Camarena. [O]ur general policy remains cooperation where possible with foreign governments on law enforcement matters. In that regard, we are pleased to note that the mutual cooperation between the governments of Mexico and the United States in fighting the scourge of illegal drugs has been excellent in recent years, and we believe it will continue to improve.

Id.

168. *Kidnapping Suspects Abroad*, *supra* note 123, at 104-05. In his testimony before the House Judiciary Subcommittee on Civil and Constitutional Rights, Abraham Sofaer, former Legal Advisor to the State Department, opined that international abductions may be appropriate under limited circumstances, such as self-defense or to protect against gross violations of human rights. *Id.* The magnitude of the alleged acts in *Alvarez* justified the U.S. government's response. *Id.* At a 1985 congressional hearing, however, Sofaer was more critical of transborder abductions. *Id.* He stated:

suggested that the seriousness of the crime and that the U.S. government's need to respond overrode any violation of territorial sovereignty in this case.¹⁶⁹

Prior to *Alvarez*, the Bush Administration asserted sweeping legal powers to circumvent formal extradition agreements in conducting overseas arrests of fugitives.¹⁷⁰ The U.S. government increased U.S. drug-combat forces abroad and expanded the rules of permissible conduct that applied to such agents.¹⁷¹ The extent of domestic opposition to *Alvarez*, however, prompted the U.S. government to temper its initial enthusiasm about the decision.¹⁷²

Can you imagine us going into Paris and seizing some person we regard as a terrorist . . . ? [H]ow would we feel if some foreign nation—let us take the United Kingdom—came over here and seized some terrorist suspect in New York City, or Boston, or Philadelphia . . . because we refused through the normal channels of international, legal communications, to extradite that individual?

See generally Bills to Authorize Prosecution of Terrorists and Others who Attack U.S. Government Employees and Citizens Abroad: Hearing Before the Subcomm. on Security and Terrorism of the Comm. on the Judiciary, 99th Cong. 62-63 (1985).

169. *See generally Kidnapping Suspects Abroad*, *supra* note 123, at 104-05. Alan Kreczko, Legal Advisor in the State Department, assured Congress that the decision did not signal a fundamental change in U.S. policy. *Id.* Rather, it merely reaffirmed the judicial principle that U.S. courts maintain jurisdiction over criminal defendants regardless of how such defendants came before the court. *Id.* He noted that the U.S. government would not categorically rule out transborder abductions in the future. *Id.* Extreme cases, such as the harboring of terrorists, may compel such action. *Id.* Kreczko suggested that the government follow some type of strict interagency procedure before authorizing any abductions. *Id.* at 105. These procedures would force the leaders to consider issues of international law, sovereignty, and foreign policy carefully before taking such action. *Id.*

170. *See* Jeremy Campbell, *Now Lockerbie Suspects Face Kidnap by U.S.*, ASSOCIATED NEWSPAPERS LTD., June 16, 1992, at 18 (describing sentiments by former U.S. Attorney General that ruling cleared legal obstacles that might have prevented U.S. agents from seizing suspects implicated in Pan Am Flight 103 disaster in Lockerbie, Scotland). The Bush Administration justified the legality of international abductions in extraordinary cases, citing the right of self-defense, the President's inherent powers to conduct foreign affairs, and the need to combat terrorism and international narcotics trafficking. *See FBI Authority*, *supra* note 81, at 68 (statement of William P. Barr, Assistant Attorney General).

171. *See* Hedges et al., *supra* note 128 (suggesting that U.S. government generally favored overseas abductions because such acts avoided lengthy delays of extradition proceedings and dealings with corrupt foreign law enforcement leaders).

172. *See* Marjorie Miller & Douglas Jehl, *U.S., Mexico Ease Tensions on Court Ruling*, L.A. TIMES, June 17, 1992, at A1. Hours after Barr's announcement, White House Press Secretary Marlin Fitzwater released a statement that sought to minimize the impact of the Court's ruling. *Id.*; *see Statement by Press Secretary Fitzwater on the Supreme Court Decision on the Alvarez-Machain Case*, 28 WKLY. COMP. PRESIDENTIAL DOCUMENTS 1063 (June 15,

In response to heightened criticism, the Bush Administration promised to refrain from future overseas abductions and promoted a policy of international cooperation.¹⁷³ To Congressional leaders, President Bush's promise to refrain from future abductions was not enough.¹⁷⁴ Consequently, the House Judiciary Subcommittee on Civil and Constitutional Rights held hearings on international abductions.¹⁷⁵

One Senator warned that the U.S. government's preference for unilateral abductions would alienate U.S. allies and thereby endanger international efforts to control criminal activity.¹⁷⁶ Congressional leaders proposed legislation to prohibit trans-border abductions.¹⁷⁷ One representative introduced a bill that would deprive courts of jurisdiction to prosecute defendants ab-

1992) [hereinafter *Fitzwater Statement*] (emphasizing U.S. policy of international cooperation). The statement suggested in part that:

[t]he United States believes in fostering respect for international rules of law, including in particular the principles of respect for territorial integrity and sovereign equality of states Neither the arrest of Alvarez-Machain nor the recent U.S. Supreme Court decision reflects any change in this policy [T]he United States has informed Mexico that following the arrest of Alvarez-Machain, the United States has taken additional steps to ensure that U.S. law enforcement activities overseas fully take into account foreign relations and international law.

Id. at 1063.

173. See *Fitzwater Statement*, *supra* note 172, at 1063 (promising U.S. government's commitment to international law and future interagency review of unilateral acts by law enforcement agents abroad). Former President George Bush pledged to Mexican President Salinas that the U.S. government would neither conduct, encourage, nor condone abductions from Mexico. 138 CONG. REC. S14123 (daily ed. Sept. 18, 1992) (statement of Sen. Moynihan).

174. See, e.g., *U.S. Lawmaker Calls for Barring Forcible Abductions Overseas*, CENT. NEWS AGENCY, July 10, 1992 [hereinafter *U.S. Lawmaker*] (describing attempts by one U.S. Senator to persuade Congress to adopt legislation prohibiting U.S. government from engaging in overseas abductions).

175. See *Kidnapping Suspects Abroad*, *supra* note 123 (describing proposed legislation prohibiting overseas abductions).

176. 138 CONG. REC. S14123 (daily ed. Sept. 18, 1992) (statement of Sen. Moynihan). Citing a noted expert on extradition law, Senator Moynihan remarked:

Not only is the position of the administration and of the Supreme Court legally and morally wrong, but, ironically, it is also antithetical to the long-term law enforcement interest of the United States. . . . [T]he decision to embrace kidnapping is harmful to law enforcement, not helpful. It will not assist the United States in combating crime. On the contrary, it will diminish the very international cooperation against crime which is essential to success against drug traffickers and other criminals.

Id.

177. See Symposium, *supra* note 17, at 422 (discussing various proposals barring U.S. agents from engaging in overseas abductions).

ducted from states that have extradition treaties with the U.S. government.¹⁷⁸ Sen. Daniel Patrick Moynihan proposed a similar resolution that provided that the United States should pursue law enforcement activities only within the existing international legal framework, including extradition treaties.¹⁷⁹

Some legislators warned that the legalization of international abductions would destroy the objectives of U.S. international narcotics control efforts in Mexico.¹⁸⁰ Senator Moynihan

178. See *U.S. Lawmaker*, *supra* note 174 (describing proposal by California Congressman, Leon E. Panetta). The proposed bill provided:

Section 1. SHORT TITLE. This Act may be cited as the 'International Kidnapping and Extradition Treaty Enforcement Act of 1992.'

Section 2. PROHIBITION ON PROSECUTION OF UNLAWFULLY ABDUCTED PERSONS.

(a) IN GENERAL.—A person who is forcibly abducted from a foreign place which has in effect an extradition treaty with the United States—

- (1) by the agents of a governmental authority in the United States for the purposes of criminal prosecution; and
- (2) in violation of the norms of international law; shall not be subject to prosecution by any governmental authority in the United States.

(b) FOREIGN GOVERNMENT CONSENT.—An abduction is not, for purposes of this section, a violation of the norms of international law if the government of the foreign place consents to that abduction, but such consent may not be implied by the absence of a prohibition on such abductions in a treaty regarding extradition.

138 CONG. REC. H6019 (daily ed. July 7, 1992) (statement of Rep. Panetta). The bill sought to restore respect for state sovereignty and to promote the view that extradition treaties are intended to provide states with formal procedures for the arrest of fugitive suspects. *Id.*

179. 138 CONG. REC. S14123 (daily ed. Sept. 18, 1992) (statement of Sen. Moynihan). The resolution noted that the Supreme Court's ruling in *Alvarez* recognized the legality of transborder abductions. *Id.* It added, however, that the U.S. government also has an interest in strengthening respect for the rule of law and the system of extradition treaties. *Id.* The legislation observed that the Iranian Parliament approved legislation authorizing Iranian officials to seize U.S. citizens anywhere in the world if they are alleged to have violated Iranian law. *Id.* The bill provided that anyone who attempts to kidnap a U.S. citizen for alleged violations of foreign law will be deemed to have committed a crime in the United States and be dealt with accordingly. *Id.*

180. 138 CONG. REC. S11505 (daily ed. Aug. 4, 1992) (statement of Sen. Simon). One representative opined that the decision was a major setback to newly strengthened cooperative efforts between the U.S. and Mexican governments in combating illegal narcotics activity. 138 CONG. REC. H2698 (daily ed. June 16, 1992) (statement of Rep. Kolbe). He noted that:

Mexico is helping us win the war on drugs. Our two nations have signed numerous counter-narcotics agreements, our law enforcement agencies share intelligence and cooperate like never before, and even our respective military organizations are working together on combating illegal drugs. We cannot allow this newfound anti-narcotics relationship to evaporate as a result of the Supreme Court's decision.

Id.

introduced a bill in the Senate specifically addressing this problem.¹⁸¹ The proposed legislation sought to amend Section 481(c) of the Foreign Assistance Act.¹⁸²

3. U.S. Federal Courts

Some courts declined to extend *Alvarez* to other cases raising similar questions of extradition.¹⁸³ In *Sneed v. State of Tennessee*

181. S. 3250, 102d Cong. (1992). Section 1 of the proposed legislation noted that close cooperation between the United States and other states is essential to combat international crime. *Id.* It recognized, however, that the abduction of Dr. Machain at the direction of the DEA and the Supreme Court's subsequent ruling cast doubt on the validity of over one hundred extradition agreements to which the United States is a party. *Id.* Significantly, Senator Moynihan, who was highly critical of the Mexican judiciary in the past, strongly opposed the Court's decision in *Alvarez*. 138 CONG. REC. S14123 (daily ed. Sept. 18, 1992) (statement of Sen. Moynihan).

182. S. 3250, 102d Cong. (1992). The bill provided in pertinent part:

SECTION 2. AMENDMENT TO SECTION 481(C) OF THE FOREIGN ASSISTANCE ACT.

Section 481(c) shall of the Foreign Assistance Act is amended to read as follows:

(1) PROHIBITION ON DIRECT ARREST AND ABDUCTION.—

- (A) Notwithstanding any other provision of law, no officer, agent or employee of the United States may effect an arrest in any foreign country as part of any foreign police action; and
- (B) Notwithstanding any other provision of law, no officer, agent or employee of the United States Government may authorize, carry out or assist, directly or indirectly, the abduction of any person within the territory of any foreign state exercising effective sovereignty over such territory without the express consent of the state.

SECTION 3. EXCEPTION FOR VIOLATIONS OF THE LAWS OF WAR.

Section 481 (c) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new provision:

- (7) This subsection does not prohibit the seizure of any official, agent, or employee of a state during armed hostilities for purpose of bringing such person to trial for violations of internationally recognized laws of war.

SECTION 4. SANCTION FOR VIOLATION.

Section 481(c) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new provision:

- (8) A person brought to the United States in violation of subsection (1)(b) hereof shall not be prosecuted by the United States Government if the state in which such abduction occurred objects and in the event of such objection such person shall be promptly returned to the state in which the abduction occurred.

Id.

183. See, e.g., *United States v. Matos*, Crim. No. 95-395, 1996 WL 104264, at *4 (D.P.R., Feb. 28, 1996) (declining to apply extradition treaty to failure to request return to home state); *Sneed v. Tennessee*, 872 S.W.2d 930, 935 (Tenn. Crim. App. 1993) (holding that state constitution prohibited state from securing custody of criminal defendant by governmental conduct so outrageous as to shock conscience of court); *Xiao v. Reno*, 837 F. Supp. 1056, 1057 (N.D. Cal. 1993) (ruling that political questions doc-

see,¹⁸⁴ the Tennessee Court of Criminal Appeals characterized state-sponsored abductions as conduct so outrageous as to shock the conscience of the court.¹⁸⁵ Similarly, the district court in *Xiao v. Reno*¹⁸⁶ rejected the U.S. government's assertion that allegations of shocking conduct involving foreign states are political questions under the ruling of *Alvarez*, thereby depriving the court of jurisdiction to hear defendant's claims for relief.¹⁸⁷

For the most part, appellate courts adopted the ruling of *Alvarez*.¹⁸⁸ In *United States v. Chapa-Garza*,¹⁸⁹ the Fifth Circuit Court of Appeals held that formal extradition proceedings initiated against the defendant did not invalidate his arrest or the district court's power to prosecute him for his crimes.¹⁹⁰ The court cited *Alvarez* as controlling authority for the proposition that the extradition treaty did not govern the legality of the defendant's abduction.¹⁹¹ More recently, the Eleventh Circuit Court of Appeals ruled in *United States v. Noriega*¹⁹² that the de-

trine did not deprive district court of power to hear claims of alien who was paroled into United States to testify at heroin conspiracy trial).

184. 872 S.W.2d at 933.

185. *Id.*

186. 837 F. Supp. at 1546.

187. *Id.* The difference between *Xiao* and *Alvarez* was that the latter dealt with a narrow question of treaty construction, not with whether governmental actions motivated by political agendas deprive the court of jurisdiction to prosecute defendants. *Id.*

188. See, e.g., *Kreimerman v. Casa Veerkamp*, 22 F.3d 634, 643 (5th Cir. 1994) (applying *Alvarez* treaty interpretation in holding that Inter-American Convention on Letters Rogatory did not preempt all other conceivable means for serving defendants residing in Mexico); *United States v. Chapa-Garza*, 62 F.3d 118, 120 (5th Cir. 1995) (holding that extradition treaty did not govern legality of forced abductions and that abduction did not deprive district court of jurisdiction to prosecute defendant); *United States v. Noriega*, 117 F.3d 1206, 1213 (11th Cir. 1997) (refusing to reverse convictions on ground that U.S. Government seized defendant in violation of extradition treaty); *United States v. Puentes*, 50 F.3d 1567 (11th Cir. 1995) (reading *Alvarez* as holding that extradited defendant has standing under doctrine of specialty to raise any objections that requested state may claim and that defendant's ability to raise claim under doctrine of specialty does not depend on requested state objecting to jurisdiction); *United States v. Trujillo*, 871 F. Supp. 215, 220 (D. Del. 1994) (holding that arrest of defendant did not amount to "de facto" extradition).

189. 62 F.3d at 120.

190. *Id.* at 120-21.

191. *Id.* The Court in *Alvarez* noted that the Treaty with Mexico did not prohibit abductions outside of its terms. *Id.* The Treaty only precluded such acts if the asylum state raised a formal objection. *Id.* In *Chapa-Garza*, because Mexico did not protest the defendant's abduction, the defendant lacked standing to assert a violation of the Treaty. *Id.* at 121.

192. 117 F.3d at 1213. U.S. law enforcement agents seized Noriega in a military invasion of Panama. *Id.*

defendant failed to demonstrate that the U.S. government affirmatively agreed not to seize fugitives from Panama, either expressly through its extradition treaty with Panama or by established practice under that instrument.¹⁹³

C. U.S.-Mexican Extradition Policy Since Alvarez

In 1993, one year after the Court issued its ruling in *Alvarez*, the U.S., Canadian, and Mexican governments signed NAFTA, virtually eliminating economic barriers between the three countries.¹⁹⁴ The debate over NAFTA prompted Congress to review U.S.-Mexican extradition policies since *Alvarez* and the impact of NAFTA on the transfer of criminal defendants between the two countries.¹⁹⁵ On November 23, 1994, U.S. and Mexican leaders signed the Transborder Abduction Treaty.¹⁹⁶ In 1997, the Clinton Administration approved certification of Mexico for state aid despite evidence of political corruption by drug traffickers among influential and prominent leaders of the Mexican government.¹⁹⁷

1. Transborder Abduction Treaty

Bilateral negotiations between U.S. and Mexican leaders in response to *Alvarez* resulted in the signing of the Transborder Abduction Treaty.¹⁹⁸ Under this agreement, either state may

193. *Id.* The Eleventh Circuit noted that in order to prevail on an extradition treaty violation claim under *Alvarez*, the defendant must show by reference to the express language of the treaty or established practice thereunder, that the U.S. government affirmatively agreed not to seize fugitives from the territory of its treaty partner. *Id.* Noriega failed to meet this burden. *Id.*

194. NAFTA, *supra* note 21, pmb1. NAFTA proposed to liberalize trade in goods and services, to expand investment opportunities in the United States, Canada, and Mexico, and ultimately to strengthen cooperation between the three countries. *Id.*

195. See Laurie L. Levinson, *NAFTA: A Criminal Justice Impact Report*, 27 U.C. DAVIS L. REV. 843 (1994) (describing congressional debate over criminal effects of NAFTA). While the stated purpose of NAFTA is to ensure the prosperity of the U.S., Canadian, and Mexican economies, its effects flow beyond economic consequences. *Id.*

196. Transborder Abduction Treaty, *supra* note 22.

197. See Steven Erlanger, *Risking Dissent, U.S. Is Expected to Waive Drug Sanctions Against Colombia*, N.Y. TIMES, Feb. 26, 1998, at A6 (suggesting that Mexico's special status as U.S. government's close partner in NAFTA aided in formation of close relationship between Mexican and U.S. leaders purporting to expand extradition of drug traffickers).

198. See 139 CONG. REC. H6964, H6965 (daily ed. Sept. 23, 1993) (describing negotiations between U.S. and Mexican leaders on more effective extradition practices). In return for an end to state-sponsored abductions, the U.S. government asked that Mexi-

prosecute or request the extradition of any persons responsible for engaging in transborder abductions in its jurisdiction.¹⁹⁹ If a party has reason to believe that the other state authorized a transborder abduction within its boundaries, then it may trigger a fact-finding inquiry into the matter.²⁰⁰ If the inquiry reveals that such an act occurred, then the requested state must promptly return the abducted defendant to the petitioning state.²⁰¹ Upon the return of the abducted defendant to that state, the state that surrendered him may then formally demand his extradition.²⁰² The requested state must either extradite this person under the Treaty or submit the case to its proper authorities for prosecution under its own laws.²⁰³

The signing of the Transborder Abduction Treaty signifies a renewed effort by both governments toward improvement of extradition policies.²⁰⁴ The agreement, however, is not legally binding on either state.²⁰⁵ To date, the Clinton Administration has yet to submit the agreement to the U.S. Senate for ratification.²⁰⁶

2. NAFTA: Above and Beyond Economic Trade

With the reduction of economic barriers between the United States and Mexico, extradition has become a critical issue.²⁰⁷ The potential for increased criminal activity on the economic scale as a result of NAFTA suggested the need to develop a more aggressive policy on extradition.²⁰⁸ Frustrated efforts by U.S. law enforcement agents to secure jurisdiction over criminal

can officials consider extraditing their citizens to U.S. law enforcement agents upon request. *Id.*

199. Transborder Abduction Treaty, *supra* note 22, art. 6, at A-676.5. The Transborder Abduction Treaty protects the rights and obligations of the U.S. and Mexican governments. *Id.* art. 7. Private individuals do not have standing to assert violations under this agreement. *Id.*

200. *Id.* art. 4, at A-676.4.

201. *Id.* art. 5, at A-676.4-676.5.

202. *Id.* art. 5(3), at A-676.5.

203. *Id.*

204. Zagaris & Peralta, *supra* note 12, at 592.

205. *See id.* (explaining that Clinton Administration deliberately withheld submission of agreement for ratification).

206. *Id.*

207. *See* Rita Patel, *One More Effect of NAFTA—A Multilateral Extradition Treaty?*, 14 *DICK. J. INT'L L.* 153, 154 (1995) (explaining importance of extradition now that three governments share common borders).

208. *Id.*

defendants in Mexico was a source of discord that threatened the ratification of NAFTA in the U.S. legislature.²⁰⁹

Discussions between U.S. and Mexican leaders over NAFTA gave the U.S. government an opportunity to encourage a change in Mexican extradition policy.²¹⁰ The Mexican government's policy against extradition of Mexican citizens to the United States and the United States' dissatisfaction with Mexico's justice system was a source of contention that Congress addressed in the context of commercial trade considerations.²¹¹ Hearings on the ratification of NAFTA focused primarily on two cases demonstrating the Mexican government's unwillingness to extradite Mexican suspects or, in the alternative, to apprehend such persons in a timely and expedient fashion.²¹²

3. Drug Trafficking, Corruption, and State-Aid

In 1997, the Clinton Administration opted to re-certify Mexico for state aid in the joint campaign by Mexico and the United States to fight drug trafficking.²¹³ This decision prompted Con-

209. See *Congressional Hearing on NAFTA Brings into Focus Mexico-U.S. Extradition Relations*, 9 INT'L ENFORCEMENT L. REP. 476-77 (Dec. 1993) [hereinafter *NAFTA Hearing*] (suggesting that ability of felons to elude capture by Mexican authorities evidenced inability of Mexican justice system to deal adequately with potential for increase in criminal activity resulting from proposed trade agreement between U.S. and Mexican governments).

210. 139 CONG. REC. H6964 (daily ed. Sept. 23, 1993). One Senator urged that at the very least, U.S. negotiators should secure binding guarantees from Mexican leaders ensuring the vigorous pursuit, arrest, and prosecution of suspected felons who flee to Mexico in order to avoid prosecution in the United States. *Id.*

211. *Id.* The general view suggested that seeking better cooperation from the Mexican government would encourage other states seeking preferential ties with the U.S. government to expect more cooperation in law enforcement and criminal justice matters. *Id.*

212. See *NAFTA Hearing*, *supra* note 209, at 476-81 (discussing testimony of agent supervisor from California Department of Justice, Mexican Liaison Program before House of Representatives Committee on Government Operations). In the first case, police in California requested the extradition of Serapio Zuniga Rios, a Mexican citizen, on charges of child molestation, including rape and sodomy, burglary, assault with a deadly weapon, and other sex crimes. *Id.* at 479. It was only after the U.S. Secretary of State brought this case to the attention of Mexican President Salinas in light of U.S. debates over the ratification of NAFTA that the Mexican government finally arrested the defendant on December 17, 1993. *Id.* at 480. In the second case, Juan Navaro Lerma fled to Mexico after he killed a woman in a California parking lot on February 14, 1993. *Id.* at 481. To date, Mexican authorities have yet to apprehend the defendant. *Id.*

213. See Parker & Gallagher, *supra* note 15, at A1 (describing Mexico as prime destination for money laundering, drug-related street crime, and pervasive corruption).

gress to re-assess extradition policies between the two governments.²¹⁴ Evidence at Congressional hearings and debates considering the matter revealed increased drug trafficking and political corruption in Mexico.²¹⁵

a. Certification of State-Aid to Mexico

Section 490(b) of the Foreign Assistance Act²¹⁶ requires the U.S. President to certify that Mexico has fully cooperated with the U.S. government or taken adequate steps on its own to combat drug trafficking.²¹⁷ In support of the President's decision to grant recertification to Mexico, the U.S. State Department claimed that Mexico's 1996 counter-drug measures yielded encouraging results and notable progress in bilateral cooperation.²¹⁸ Increased drug trafficking and extensive corruption among prominent law enforcement and political leaders continues to obstruct anti-drug measures, including extradition.²¹⁹

b. The Problem of Corruption

Corruption among high-ranking leaders of the Mexican

214. See 143 Cong. Rec. S2581 (daily ed. Mar. 20, 1997) (statement of Sen. Coverdell) (describing proposed legislation addressing impact of drug cartels in cities spanning Western Hemisphere).

215. See, e.g., 143 CONG. REC. H954 (daily ed. Mar. 13, 1997) (statement of Sen. Brady).

216. Foreign Assistance Act, 22 U.S.C. § 2291 (1994 & Supp. 1997).

217. *Id.*

218. 143 CONG. REC. at S2581. Technically, the U.S. Department of State's claim that drug seizures and arrests increased in 1996 is true. *Id.* There was a slight increase in drug seizures and arrests of drug traffickers in 1996 compared to seizures and arrests in 1995. *Id.* An examination of Mexican drug seizures from 1992, however, suggests otherwise. *Id.* Mexico's recent seizure of 23.6 metric tons of cocaine was slightly higher than the 1995 figure, but was just half of the 46.2 metric tons of cocaine that Mexican law enforcement agents seized in 1993. *Id.* Drug arrests also decreased by more than fifty percent since 1992 even though they increased by a modest five or ten percent in 1996 over 1995. *Id.*

219. See Parker & Gallagher, *supra* note 15, at A1 (suggesting that Mexican officials acknowledge pervasive corruption). The DEA estimates that seventy-five percent of all cocaine, up to eighty percent of all foreign-grown marijuana, and ninety-percent of the chemicals used to make the drug "speed" flows through Mexico before entering the United States. See George Miller, *Miller Introduces Bills to Force Mexico to Take Strong Anti-Drug Trafficking Steps*, GOV'T PRESS RELEASES, Feb. 2, 1996 (urging legislature to enact proposed bill prohibiting certification of Mexico for state-aid unless it can show efforts to eradicate drug smuggling, money laundering, and government corruption). In 1997, Mexican officials fired more than seven hundred Mexican federal police officers because of corruption. *Id.*

government is a significant problem affecting Mexico's law enforcement policy.²²⁰ The arrest in February 1997 of General Jesus Gutierrez Rebollo, head of the Mexican drug law enforcement agency, for accepting bribes from leaders of Mexican drug cartels is one example of this problem.²²¹ In 1996, the Mexican Attorney General dismissed more than 1,200 Mexican federal law enforcement officers on charges of corruption.²²² Mexican drug cartels continue to engage in trade with minimal interference from Mexican authorities.²²³

4. Mexico's Extradition Policy

As of 1996, the U.S. government had over 165 pending extradition requests with Mexico.²²⁴ Until that time, the Mexican government consistently denied U.S. extradition requests for Mexican citizens wanted for various crimes.²²⁵ Mexico's policy on extradition stems in large part from Article IV of the Mexican Constitution, which prohibits the government of Mexico from extraditing its own nationals.²²⁶ The existence of the death penalty in the United States is also an important factor contributing to Mexico's reluctance to extradite its citizens.²²⁷ The government of Mexico refuses to extradite suspects who could potentially face the death penalty in the United States.²²⁸

220. See 143 CONG. REC. S2582 (describing problem of corruption in Mexican law enforcement and military ranks).

221. *Id.*

222. *Id.* at S2582.

223. See 143 CONG. REC. S2037 (describing influence of drug cartels on Mexican government agents). In an hour-long interview, drug cartel leader Quintero told the Washington Post: "I go to the banks, offices, just like any Mexican. Every day I pass by roadblocks, police, soldiers, and there are no problems. I'm in the streets all the time. How can they not find me? Because they're not looking for me." *Id.*

224. See Miller, *supra* note 219 (describing legislation prohibiting extension of aid to Mexico, including re-certification for anti-drug campaign).

225. See Zagaris & Peralta, *supra* note 12, at 530-31 (describing historical context of Mexican policy disfavoring extradition of Mexican nationals).

226. CONST. art. 4 (Mex.).

227. See "Ley de extradicion internacional," D.O., 29 de diciembre de 1975 (entered into force Dec. 30, 1975), art. 10(v) (stating preference for severe incarceration as substitution for death penalty, when feasible); see also, Treaty, *supra* note 13, art. 8, at 5065 (prohibiting extradition of criminal defendant where capital punishment is effective in requesting State and laws of requested State do not permit capital punishment for any offense).

228. See, e.g., Adolfo Garza, "Spooky" Killer Won't Be Sent Back to U.S., THE NEWS, Oct. 2, 1997 (discussing Mexican government's refusal to extradite citizen charged with four counts of murder on grounds that defendant could face death penalty if prosecuted in

As a step toward changing this policy, the government of Mexico began by expelling Juan Chapa Garcia, a Mexican citizen, to the United States in 1995 on charges of drug trafficking.²²⁹ On April 26, 1996, Mexican President Ernesto Zedillo broke established precedent by authorizing the extradition of two Mexican nationals to the United States.²³⁰ This incident was the first time that the government of Mexico invoked the "exceptional circumstances" provision in Mexico's International Extradition Law to justify the extradition of its own nationals.²³¹ Since these two cases, Mexican authorities have agreed to extradite six more defendants in 1997, including several on drug-related offenses.²³²

*III. ALTHOUGH IMPROVED RELATIONS BETWEEN THE
U.S. AND MEXICAN GOVERNMENTS ILLUSTRATE A TREND
TOWARD MORE COOPERATION IN LAW ENFORCEMENT,
THE U.S. GOVERNMENT SHOULD ADOPT A MORE
AGGRESSIVE STANCE TOWARD MEXICAN EXTRADITION
PRACTICE AND POLICY*

Predictions about the negative impact of *Alvarez* on U.S.-Mexican extradition relations were premature and have not been unrealized. The *Alvarez* decision encouraged U.S. legislators to question and to scrutinize the utility of extradition as an

U.S. courts). Mexican officials did offer to extradite David "Spooky" Alvarez if U.S. authorities promised to revoke death penalty if he was found guilty. *Id.*

229. See Zagaris & Peralta, *supra* note 12, at 612 (noting that U.S. district court indicted Garcia of participation in organized crime activities involving illicit narcotics trafficking).

230. See Bruce Zagaris, *Mexico Extradites Two Nationals to the United States*, 12 INT'L ENFORCEMENT L. REP. 220 (1996) (describing extradition of Francisco Gamez Garcia on charges of child molestation and Aaron Morel LeBaron on murder accusations).

231. See 143 CONG. REC. S2035, S2040 (daily ed. Mar. 10, 1997) (statement of Sen. Feinstein) (explaining that Mexico has never extradited Mexican nationals to U.S. government on drug charges under exceptional circumstances provision). Mexico's International Extradition Law restricts the Mexican government from delivering Mexican nationals to a foreign country except in exceptional circumstances and at the discretion of the executive. See generally "Ley de extradicion internacional," art. 14. Article 9(1) of the Treaty reaffirmed this doctrine by giving both states discretion to extradite their citizens. Treaty, *supra* note 13, art. 9(1), at 5065. The Mexican government relied on this provision to justify its historical reluctance to extradite its own nationals. See Zagaris & Peralta, *supra* note 12, at 536 (discussing structure and mechanics of Mexican extradition law).

232. See 143 CONG. REC. at S2040 (urging U.S. leaders to adopt more aggressive stance on drug aid to Mexico).

effective mechanism for overseas arrest of foreign criminal defendants.²³³ The signing of the Transborder Abduction Treaty,²³⁴ the ratification of NAFTA,²³⁵ and the Mexican government's recent willingness to extradite its nationals under the exceptional circumstances doctrine²³⁶ evidences a trend toward more cooperation between both governments. Significantly, the Clinton Administration's recent decision to re-certify Mexico in a joint effort to combat narcotics trafficking prompted Congress once again to evaluate the merits of current extradition relations between both countries.²³⁷ Legislative debates over the re-certification issue revealed some impediments to extradition created by the drug trafficking problem and pervasive corruption among high-ranking leaders in the government of Mexico.²³⁸ In all of these circumstances, the U.S. government was in a unique position to use its bargaining power to change Mexican extradition policy, but failed to do so.

A. Legislative Proposals Prohibiting the U.S. Government from Engaging in Overseas Abductions Were Ineffective Because the Real Problem Lies in the Discretion to Extradite Under the Treaty

The failure to agree on an acceptable course of action suggests that legislators overlooked the real underlying problem in *Alvarez*. Mexico did not have any incentive to extradite its own citizens to the United States.²³⁹ Legislators feared that the U.S. government's occasional resort to unilateral abductions would

233. See *supra* notes 172-84 and accompanying text (discussing legislative proposals proscribing further U.S.-sponsored unilateral abductions in Mexico).

234. See *supra* notes 198-206 and accompanying text (explaining that Treaty provides each state with remedy of requesting extradition of persons responsible for engaging in unilateral abduction in their jurisdiction).

235. See *supra* notes 207-12 (describing how debate over ratification of NAFTA prompted U.S. Congress to re-examine utility of extradition as viable mechanism for dealing with problems that might potentially arise from increase in criminal activity resulting from elimination of trade barriers).

236. See *supra* notes 230-31 and accompanying text (discussing recent extradition of two Mexican nationals under rarely invoked doctrine in Mexico's Extradition Law).

237. See *supra* notes 214-15 and accompanying text (explaining concerns of U.S. legislative officials toward increased drug trafficking and corruption in Mexico).

238. See *supra* notes 219-23 (discussing examples of Mexican law enforcement officials arrested on charges of bribery and corruption in connection with influence of Mexican drug cartels).

239. See *supra* notes 51-60 (discussing both effect of provision in Treaty giving both states discretion on extradition and Mexican government's preference for alternative to extradition).

alienate U.S. allies and thereby jeopardize efforts to forge better cooperation with Mexico in the fight against international crime.²⁴⁰ Proposed legislation would have deprived courts of jurisdiction to prosecute criminal defendants abducted from other states.²⁴¹ Hence, *Alvarez* had the positive effect of encouraging Congress to reassess its policy on extradition with Mexico.²⁴² Unfortunately, proposed legislation prohibiting state-sponsored abductions abroad failed to target the cause of the problem in *Alvarez* that arose from the option to extradite a state's citizens under Article 9(1) of the Treaty.²⁴³

B. *The Transborder Abduction Treaty Fails to Address the Option to Extradite Under the Treaty*

Like the Treaty, the underlying problem with the Transborder Abduction Treaty is that it does not give Mexico any incentive to extradite its own nationals to the United States upon request. Additionally, the Transborder Abduction Treaty punishes the party whose laws were violated in the first place by allowing criminal offenders to escape punishment under the laws of that country.

The U.S. government should renegotiate the Treaty to require extradition where all of the applicable grounds and procedures under the agreement apply in the particular circumstance. The intent of the Treaty was to ensure that prosecutors could recover criminals who flee the laws of either state.²⁴⁴ The Treaty contemplates good faith and mutual cooperation in the exchange of criminal offenders.²⁴⁵ Mexico's policy against the extradition of its nationals demonstrated a lack of good faith and willingness to cooperate with the U.S. government in these mat-

240. *See supra* notes 174-82 and accompanying text (illuminating concerns that decision by U.S. Supreme Court was antithetical to long-term law enforcement interests of U.S. government with Mexican counterpart).

241. *Id.*

242. *Id.*

243. *See supra* notes 51-60 and accompanying text (suggesting that problem lies in Treaty giving both states option to extradite and not obligating either state to deliver fugitive where fugitive is citizen of that state).

244. *See supra* notes 25-26 and accompanying text (explaining intent of Treaty and principles of international law in promotion of comity and cooperation in exchange of criminal suspects).

245. *Id.*

ters.²⁴⁶

C. *While the U.S. Government Cannot Force Mexico to Change Its Laws, It Can and Should Use Its Influence to Pressure Mexico into Changing Its Policy on Extradition*

If the U.S. government can assert the power to enter into a foreign country and seize a person from the territory of that state, it can alternatively influence Mexico to adopt a change of policy. The Treaty governs extradition procedures in Mexico.²⁴⁷ Mexico's Law on International Extradition governs in the absence of an extradition treaty.²⁴⁸ Revising the Treaty is one alternative. Influencing a change in Mexican law prohibiting the extradition of Mexican nationals to the United States because of the death penalty is another. The government of Mexico has reluctantly demonstrated its willingness to alter its policy on extradition by invoking the "exceptional circumstances" doctrine in its laws.²⁴⁹ The U.S. government should seize this opportunity to establish a new policy on extradition with Mexico by exploring the scope of this doctrine.

D. *Congress Should Have Used NAFTA as a Bargaining Chip to Pressure Mexico to Change its Policy Against Extradition of Mexican Nationals*

Negotiations on NAFTA presented a unique opportunity for the U.S. government to solicit some concessions from Mexico on law enforcement issues, including extradition. The U.S. government's inability to reach Mexican criminal defendants overseas was a vital issue that threatened the ratification of NAFTA in Congress.²⁵⁰ At the very least, U.S. leaders were in a position to secure binding guarantees from their Mexican counterparts that they would vigorously pursue, arrest, and prosecute any suspected felons who fled to Mexico to avoid prosecution under

246. See *supra* notes 167-69 (explaining sentiments by U.S. executive leaders that Alvarez decision reflected seriousness of murder of U.S. government agent).

247. See *supra* notes 35-54 and accompanying text (outlining provisions of Treaty).

248. See *supra* note 33 and accompanying text (suggesting that consistent with Treaty, Mexican government developed rigid policy against extradition of Mexican nationals).

249. See *supra* notes 229-32 and accompanying text (describing extradition of two Mexican citizens in 1996).

250. See *supra* notes 207-12 (exploring role of extradition in elimination of trade barriers between U.S., Mexican, and Canadian states).

U.S. laws.²⁵¹ They could have used the proposed trade agreement as leverage to pressure Mexican authorities into changing their policy on extradition, but they failed to do so.²⁵²

Hearings on the ratification of NAFTA focused specifically on two high profile cases illustrating the potential influence that negotiations over NAFTA had on the Mexican government's willingness to pursue a policy of effective law enforcement.²⁵³ NAFTA created a new opportunity for cooperation and change in many of the economic and law enforcement policies between both states.²⁵⁴ The elimination of trade barriers raises genuine concerns about the increased potential for economic criminal activity and flow of drugs from Mexico into U.S. cities.²⁵⁵ Bilateral consultations between U.S. and Mexican officials can effect substantive changes instead of one-sided concessions by the U.S. government to refrain from engaging in overseas abductions.²⁵⁶ NAFTA remains a promising venue open to the U.S. government to seek a change in Mexican policy on extradition.

E. The Key to Improving U.S.-Mexican Extradition Relations Lies in the Fight Against Drug Trafficking and Corruption in Mexico

The U.S. government should use its bargaining position with Mexico in the fight against international drug trafficking by conditioning certification of Mexico on marked improvement in extradition procedures. The U.S. government's recent re-certification of Mexico demonstrates the extent to which increased narcotics trafficking and prevalent corruption among high-ranking leaders of the Mexican government continue to obstruct extradition between the two countries.²⁵⁷ Corruption is perhaps

251. *See supra* notes 210-11 (suggesting that NAFTA gave U.S. leaders incentive to impress upon Mexican government primacy of rule of law in addition to commercial trade considerations).

252. *See supra* note 212 (describing frustration of U.S. leaders with Mexican regime's consistent refusal to honor U.S. extradition requests and failure to punish criminal defendants effectively under applicable Mexican law).

253. *See id.* (discussing Mexican law enforcement attempts to placate U.S. concerns about perceived unwillingness to act on part of Mexican law enforcement).

254. *Id.*

255. *See id.* (raising concerns that elimination of customs barriers would facilitate flow of drugs across U.S. borders).

256. *See id.* (suggesting that U.S. government should have secured change in Mexican government's policy of nonextradition in return for promise not to engage in overseas abductions).

257. *See supra* notes 213-23 and accompanying text (discussing evidence of significant corruption in Mexican regime, including police and military ranks).

the most serious and most pervasive obstacle to progress in the fight against drug trafficking in Mexico.²⁵⁸ In 1996, for example, the Mexican Attorney General dismissed more than 1,200 Mexican federal law enforcement officers on charges of corruption.²⁵⁹

Despite these problems, the Mexican government is making some strides in legal reform.²⁶⁰ Under the Zedillo Administration, Mexico has made substantial progress in re-orienting its domestic priorities, policies, and institutions to enhance cooperation with the United States against drug trafficking.²⁶¹ Additionally, the Mexican government's pronounced willingness to extradite its nationals under the exceptional circumstances doctrine indicates potential for a more effective extradition policy. The fact remains, however, that the Mexican government has yet to extradite a Mexican defendant for drug-related charges.²⁶²

CONCLUSION

Predictions about the ramifications of *Alvarez* were wrong. To date, the United States is still party to over 100 extradition treaties. The decision did not compromise U.S.-Mexican relations as many warned it would. Neither has it invited Mexico nor any other state to invade U.S. jurisdiction and to violate the rights of U.S. citizens. To the contrary, *Alvarez* led to renewed efforts to strengthen strained relations between the states through the signing of the Transborder Abduction Treaty, the ratification of NAFTA, the Clinton Administration's decision to re-certify Mexico for state aid in the fight against narcotics trafficking, and the Mexican government's pronounced willingness to extradite its nationals under an exceptional circumstances clause. While problems with drug trafficking and corruption continue to plague U.S.-Mexican relations, these events are steps in the right direction.

258. *See id.* (describing arrest of General Jesus Gutierrez Rebollo, head of Mexico's drug law enforcement agency, in February 1997, for accepting bribes from Mexican drug cartels arrests).

259. *See id.* (noting that some of these people were rehired and that none were successfully prosecuted for corruption).

260. *See supra* note 215 and accompanying text (discussing recent implementation of organized crime and money laundering laws in Mexico).

261. *See id.* (discussing changes in money laundering laws).

262. *See supra* note 231 and accompanying text (noting that there are fifty-two outstanding extradition requests for Mexican nationals wanted on drug charges).