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 ("Trans-border 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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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).
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-

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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.
ments signed the U.S.-Mexican Extradition Treaty\textsuperscript{13} ("Treaty") in 1978, the Mexican government has not, as a matter of general policy, extradited its citizens to the United States upon request.\textsuperscript{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.\textsuperscript{15} Significantly, the Treaty does not require either state to extradite its citizens.\textsuperscript{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.\textsuperscript{17} The urgent need to curtail international drug trafficking\textsuperscript{18} and growing frustration with Mexico's extradition procedures prompted the U.S. government to use self-help measures in apprehending foreign suspects.\textsuperscript{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-

\begin{itemize}
  \item \textsuperscript{14} See Zagaris & Peralta, supra note 12, at 584 (describing U.S.-Mexican Extradition Treaty ("Treaty") as obstacle to securing extradition of Mexican nationals).
  \item \textsuperscript{16} See Treaty, supra note 13, art. 9(1), at 5059 (giving both states option to prosecute citizens as alternative to extradition).
  \item \textsuperscript{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. \textit{Id.} Narcotics traffickers operated with impunity simply by bribing Mexican police and corrupt politicians. \textit{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. \textit{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).
  \item \textsuperscript{18} See Aceves, supra note 8, at 104-05 (describing significant increase in drug trafficking operations by Mexican cartels).
  \item \textsuperscript{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).
\end{itemize}
national crime.\textsuperscript{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 \textit{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 Agreement\textsuperscript{21} ("NAFTA") and the Treaty to Prohibit Transborder Abductions ("Transborder Abduction Treaty")\textsuperscript{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 \textit{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.

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 reciprocity\(^{26}\) and comity\(^{27}\) govern extradition.\(^{28}\)

Irregular rendition is another method of overseas arrest.\(^{29}\)

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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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{32} Consistent with this Treaty, Mexico developed a rigid policy against extraditing Mexican citizens to the United States.\textsuperscript{33} Faced with this obstacle, U.S. law enforcement agents relied on Court precedent recognizing the legality of state-sponsored abductions.\textsuperscript{34}

A. Exterritorial Rendition of Fugitive Suspects

Respect for state sovereignty is a fundamental tenet of inter-
national law. Under the principal of extraterritoriality, states have the right to control what goes on within their borders. International law does not condone states resorting to unilateral arrests of criminal offenders beyond their jurisdiction. Nevertheless, the international community recognizes that there may be some circumstances that justify such acts.

1. Male Captus Bene Detentus

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

2. U.S.-Mexican Extradition Treaty

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

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 Brigette 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 treatymaking). 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).


50. Id. art. 13, at 5069.
state to extradite its own citizens. Article 9(2) specifically grants both states discretion whether to extradite criminal defendants. 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.

The option to extradite citizens under the Treaty created a rift in U.S.-Mexican extradition policies. 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. 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.

Mexico’s policy against extradition impeded combined efforts by Mexico and the United States to combat international drug trafficking. 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. Reports of inefficiency and pervasive

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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*).


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

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

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. 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.

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, Governacion (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 Manual 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).


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. 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. The Court reaffirmed Ker in Frisbie v. Collins. In so doing, it extended the application of Ker to cases involving inter-state abductions. 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.

Ker and Frisbie established the Ker-Frisbie doctrine, the principal that an illegal arrest does not deprive federal courts of power to prosecute fugitives. 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. Courts almost unanimously follow Ker-Frisbie.

2. The Toscanino Exception

The Second Circuit Court of Appeals created an exception to the Ker-Frisbie doctrine in United States v. Toscanino. 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. In crafting the exception, the court relied on post-Frisbie Court decisions that expanded the due process guarantee to pre-trial conduct of law enforcement agents toward criminal defendants.

U.S. courts have yet to encounter a case where the govern-
ment's conduct is so egregious as to trigger the exception's "shock the conscience" requirement. 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. Some courts have rejected the exception altogether. Federal jurisdictions have yet to apply the exception.

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

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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).


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"). 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. When these agreements failed, the U.S. government authorized the abduction of three suspects from Mexico. 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).
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. The Ninth Circuit Court of Appeals applied a narrow reading of the Ker-Frisbie doctrine in United States v. Verdugo. The court declined to extend Ker-Frisbie to cases involving abduction of non-U.S. citizens from foreign jurisdictions protesting such acts. 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. The court instead relied on existing Court precedent in United States v. Rauscher, 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.

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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. 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. The DEA initially engaged in informal negotiations with Mexican leaders for the extradition of Machain from Mexico. When these efforts failed, the DEA ordered Machain's abduction. Despite Mexican opposition and demands for the defendant's return to his home state, the case reached the Court in 1992.

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

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.\textsuperscript{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.\textsuperscript{101} The Ninth Circuit Court of Appeals unanimously affirmed the decision of the district court.\textsuperscript{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.\textsuperscript{103} The Court focused specifically on whether the abduction violated the provisions of the Treaty between Mexico and the United States.\textsuperscript{104} It concluded that the Treaty did not expressly prohibit overseas kidnappings by government agents beyond its terms.\textsuperscript{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.\textsuperscript{106} The

\begin{itemize}
  \item \textsuperscript{100} Id. The district court emphasized the significance of extradition treaties as mutual agreements intended to preserve state sovereignty by restricting impermissible state conduct. \textit{Id}.
  \item \textsuperscript{101} \textit{Id.} at 610. The district court noted that the intent of extradition treaties was to preserve territorial sovereignty by restricting impermissible state conduct. \textit{Id.} The court relied on the principle enunciated in \textit{Rauscher}, that the specific enumeration of certain provisions in treaties implies the exclusion of all others. \textit{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. \textit{Id}.
  \item \textsuperscript{102} United States v. Alvarez-Machain, 946 F.2d 1466 (9th Cir. 1991), rev'd, 504 U.S. 655 (1992).
  \item \textsuperscript{103} \textit{Alvarez}, 504 U.S. at 657.
  \item \textsuperscript{104} \textit{Id.} at 668-69. The U.S. Supreme Court focused on the language of the Treaty. \textit{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. \textit{Id.} at 664. Article 9 gives the U.S. government the right to request the extradition of Mexican citizens. \textit{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. \textit{Id}.
  \item \textsuperscript{105} \textit{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." \textit{Id.} at 663.
  \item \textsuperscript{106} \textit{Id.} at 669. The Court opined that the negotiating history of the Treaty did not evidence an intent to prohibit abductions under the Treaty. \textit{Id.} Nor did abductions not within the scope of the Treaty violate its terms. \textit{Id.} at 665. The Court acknowledged that the abduction was shocking and that it even violated general principles of international law. \textit{Id}. The abduction, however, was not illegal. \textit{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*. 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.

The dissent argued that the decision constituted a direct violation of international law, and that the stated goals of the Treaty clearly prohibit acts of transgression in foreign jurisdictions. Furthermore, the Treaty's detailed provisions with regard to extraditable offenses and procedures for extradition clearly suggest that both parties intended to provide comprehen-
sive and exclusive rules regarding the transfer of foreign citizens.\textsuperscript{111} The dissent concluded that the Treaty prohibited unilateral abductions.\textsuperscript{112} It also declined to apply the \textit{Ker-Frisbie} doctrine and warned that the Court's opinion set a bad precedent to courts around the world.\textsuperscript{113}

3. The Abduction of Juan Ramon Matta-Ballasteros

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.\textsuperscript{114} The Ninth Circuit Court of Appeals relied on \textit{Alvarez} in upholding the defendant's conviction in \textit{Matta-Ballasteros}.

\textsuperscript{111} \textit{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. \textit{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. \textit{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 \textit{entire subject} of extradition." \textit{Id.} at 673-73 (emphasis added).

\textsuperscript{112} \textit{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. \textit{Id.}

\textsuperscript{113} \textit{Id.} at 670. The dissent distinguished \textit{Alvarez} from \textit{Ker} and \textit{Frisbie}. \textit{Id.} In \textit{Ker}, there was no treaty violation because bounty hunters kidnapped the defendant. \textit{Id.} In \textit{Alvarez}, however, the U.S. government breached its obligations under the Treaty because it authorized the abduction. \textit{Id.} Additionally, this case was not analogous to \textit{Frisbie}, which dealt with interstate abductions. \textit{Id.} Quoting Justice Brandeis from \textit{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.

\textit{Id.} at 686 n.38.

\textsuperscript{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. \textit{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. \textit{Id.} at 762.
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. 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.

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. Critics accused the Court of sanctioning a lawless policy. Mexican leaders strongly protested the decision, calling it a violation of international law.

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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.


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[ed] 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.\textsuperscript{121} Federal courts challenged the Court's construction of the Treaty in post-\textit{Alvarez} decisions.\textsuperscript{122} The legislature held hearings and considered new law in response to the decision.\textsuperscript{123} The end result was the negotiation and signing of a new extradition agreement to prohibit transborder abductions.

\textbf{A. International Response to \textit{Alvarez}}

The international community strongly opposed the \textit{Alvarez} decision.\textsuperscript{124} Mexican leaders threatened to terminate U.S.-Mexican law enforcement cooperation programs.\textsuperscript{125} As a result, the international law. Mexican leaders unsuccessfully petitioned for defendant's repatriation to his home country. \textit{Id.}

\textsuperscript{121} See, e.g., Halberstam, \textit{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, \textit{Court OK's Seizing Suspects Abroad; Mexico Cuts Anti-Drug Cooperation in Protest}, \textit{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, \textit{Supreme Court Rightly Passes the Ball}, \textit{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, \textit{Court Decision Was Right, But U.S. Policy May Not Be}, \textit{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., \textit{A Victory for Lawlessness}, \textit{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); \textit{Breaking Treaties: High Court Gives the Green Light to Border Raids}, \textit{Seattle Times}, June 16, 1992, at A10 (urging that sovereign states should rely on treaties instead of force to settle disputes); Herman Schwartz, \textit{The Supreme Court's Insult to Law-Abiding Countries}, \textit{L.A. Times}, June 21, 1992, at M1 (noting absurdity of detailed extradition treaty leaving open question of permissibility of state-sponsored abductions).


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

\textsuperscript{124} See Phelps, \textit{supra} note 121, at 4 (describing massive protest of decision abroad).

\textsuperscript{125} See generally Miller, \textit{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).
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. Mexican leaders temporarily banned all DEA activities in Mexico, and demanded a re-negotiation of its Treaty with the United States. 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.

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. Narcotics traffickers freely engaged in their trade by bribing corrupt Mexican police and politicians. 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).
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.\textsuperscript{138} Official corruption is a prevalent problem in Mexico and other Latin American countries.\textsuperscript{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")\textsuperscript{140} addressing governmental corruption in Latin America.\textsuperscript{141}

2. The International Community’s Response

Foreign governments strongly protested the Court’s ruling in \textit{Alvarez}.\textsuperscript{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.\textsuperscript{143} Latin American governments, in particular, ex-

\textsuperscript{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 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 Newton, \textit{supra} note 59, at B1 (describing witness testimony at trial of Mexican doctor).

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

\textsuperscript{140} Id.

\textsuperscript{141} See generally Lewis, \textit{supra} note 134, at A8 (reporting protests against U.S. Supreme Court ruling by Mexico, Canada, and Argentina); \textit{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. \textit{Id.}

\textsuperscript{142} See Shocking Ruling from U.S. Court, \textit{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. \textit{Id.}

\textsuperscript{143} See, e.g., \textit{Kidnapping Suspects Abroad}, \textit{supra} note 123, at 112 (prepared statement of Alan J. Kreceko, Deputy Legal Adviser, U.S. Department of State) (describing Colombian government’s suggestion that although \textit{Alvarez} addressed treaty between United States and Mexico, it really threatened legal stability of all public treaties); \textit{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, \textit{Costa Rica Throws Out U.S. Extradition Treaty}, \textit{Miami Herald}, Jan. 16, 1993, at A24 (describing Costa Rican Supreme Court’s invalidation of U.S.-Costa Rica Extradition Treaty); \textit{Up to 20 Years in Jail Proposed for Hondurans who Aid DEA
pressed their opposition by refusing to cooperate with U.S. extradition requests.\textsuperscript{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.\textsuperscript{145}

The U.S. government also received formal protests from China, Columbia, Costa Rica, Cuba, Denmark, Ecuador, Guatemala, Honduras, Jamaica, Malaysia, and Venezuela.\textsuperscript{146} In November 1992, participants at the Ibero-American Summit Conference,\textsuperscript{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 Justice\textsuperscript{148} ("ICJ") for an advisory opinion.

\footnotesize{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).

\textsuperscript{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. \textit{Id.} One of the major objectives of the OAS is to solve common legal problems. \textit{Id.} Another purpose includes the promotion of member states' economic, social, and cultural development. \textit{See generally} O. Carlos Stoetzer, \textit{The Organization of American States} 1, 33 (2d ed. 1993).

\textsuperscript{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 judicial order would be irreversibly damaged by any state that attributes to itself the power to violate with impunity the territorial sovereignty of another state." \textit{Id.} at 397. The Committee recommended that the U.S. government return Dr. Machain to Mexico. \textit{Id.}

\textsuperscript{146} See Aceves, \textit{supra} note 8, at 120 (describing international opposition to scope of \textit{Alvarez} decision).

\textsuperscript{147} \textit{Id.} Representatives from 19 Latin American countries, as well as Portugal and Spain, attended the conference, which took place in Madrid. \textit{Id.}

\textsuperscript{148} \textit{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 \textit{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{152} The extent of domestic opposition to the decision prompted executive leaders to temper their initial reaction to the ruling in their favor.\textsuperscript{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.\textsuperscript{154}

\begin{itemize}
\item \textsuperscript{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. \textit{Id.}
\item \textsuperscript{150} See Virginia Morris & M. Christiane Vrailas Bourloyannis, \textit{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. \textit{Id.}
\item \textsuperscript{151} See Aceves, \textit{supra} note 8, at 102 (describing domestic and international responses to \textit{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. \textit{Id.}
\item \textsuperscript{152} \textit{Id.}
\item \textsuperscript{153} \textit{Id.} at 127.
\item \textsuperscript{154} \textit{Id.} \end{itemize}
1. The Legal Community's Response to the Decision

Many legal scholars strongly criticized the Court’s ruling and generally denounced international abductions.\footnote{155. See, e.g., Bush, supra note 119, at 971 (positing that real significance of \textit{Alvarez} lies not in its impact on international policing, but in its support of aggressive executive power); Michael J. Glennon, \textit{State-Sponsored Abduction: A Comment on United States v. Alvarez-Machain}, 86 Am. J. Int’l L. 746, 748 (1992) (suggesting that effect of \textit{Alvarez} was to shield executive branch from compliance with fundamental international norms); Ethan A. Nadelmann, \textit{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 (1995) (noting that developed legal methods of facilitating surrender of foreign criminal defendants between states evidence less need for resort to unilateral abductions).} They warned that the decision would undermine U.S.-Mexican extradition policy.\footnote{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. \textit{Kidnapping Suspects Abroad}, supra note 123, at 13, 45, 62, 153, 171.} A central purpose of the Treaty between Mexico and the United States was to preclude unilateral abductions in foreign territory.\footnote{157. \textit{Id.}} Permitting state-sponsored abductions in certain circumstances ultimately undermines the spirit, purpose, and validity of extradition agreements.\footnote{158. \textit{Id.}} Other commentators warned that the decision invited retaliation on U.S. citizens by other countries.\footnote{159. See, e.g., Liotti, supra note 119, col. 3; Phelps, supra note 121, at 4.}

Critics also accused the Court of sanctioning an impermissible violation of international law.\footnote{160. \textit{Id.}} Customary international law,\footnote{161. See 1 Oppenheim’s \textit{International Law: Peace} 388-89 (9th ed. 1992) (defining customary international law as established practice of cooperation and comity between states).} independent of treaties or other agreements, prohibits forcible abductions.\footnote{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).} In these circumstances, critics urged that the appropriate remedy was for the U.S. government to order...
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.


\(^{165}\) 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’ly 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).


> 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. Our 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.  

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

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?


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, New 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. To Congressional leaders, President Bush's promise to refrain from future abductions was not enough. Consequently, the House Judiciary Subcommittee on Civil and Constitutional Rights held hearings on international abductions.

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. Congressional leaders proposed legislation to prohibit trans-border abductions. One representative introduced a bill that would deprive courts of jurisdiction to prosecute defendants ab-
ducted from states that have extradition treaties with the U.S. government. 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.

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

179. 138 CONG. REC. H61019 (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.


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.\textsuperscript{181} The proposed legislation sought to amend Section 481(c) of the Foreign Assistance Act.\textsuperscript{182}


Some courts declined to extend \textit{Alvarez} to other cases raising similar questions of extradition.\textsuperscript{183} In \textit{Sneed v. State of Tennes-}

\textsuperscript{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. \textit{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. \textit{Id.} Significantly, Senator Moynihan, who was highly critical of the Mexican judiciary in the past, strongly opposed the Court’s decision in \textit{Alvarez}. 138 CONG. REC. S14123 (daily ed. Sept. 18, 1992) (statement of Sen. Moynihan).

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

\textbf{Section 2. Amendment to Section 481(c) of the Foreign Assistance Act.}

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

\begin{itemize}
  \item [(1)] \textbf{Prohibition on Direct Arrest and Abduction.—}
    \begin{itemize}
      \item [(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
      \item [(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.
    \end{itemize}

\textbf{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:

\item [(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.

\textbf{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:

\item [(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.

\textit{Id.}

\textsuperscript{183} See, \textit{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-
the Tennessee Court of Criminal Appeals characterized state-sponsored abductions as conduct so outrageous as to shock the conscience of the court. Similarly, the district court in Xiao v. Reno 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.

For the most part, appellate courts adopted the ruling of Alvarez. In United States v. Chapa-Garza, 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. The court cited Alvarez as controlling authority for the proposition that the extradition treaty did not govern the legality of the defendant’s abduction. More recently, the Eleventh Circuit Court of Appeals ruled in United States v. Noriega that the de-
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.\textsuperscript{193}

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

In 1993, one year after the Court issued its ruling in \textit{Alvarez}, the U.S., Canadian, and Mexican governments signed NAFTA, virtually eliminating economic barriers between the three countries.\textsuperscript{194} The debate over NAFTA prompted Congress to review U.S.-Mexican extradition policies since \textit{Alvarez} and the impact of NAFTA on the transfer of criminal defendants between the two countries.\textsuperscript{195} On November 23, 1994, U.S. and Mexican leaders signed the Transborder Abduction Treaty.\textsuperscript{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.\textsuperscript{197}

1. Transborder Abduction Treaty

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

\textsuperscript{193} Id. The Eleventh Circuit noted that in order to prevail on an extradition treaty violation claim under \textit{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.

\textsuperscript{194} NAFTA, supra note 21, pmbl. 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.

\textsuperscript{195} See Laurie L. Levinson, \textit{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.

\textsuperscript{196} Transborder Abduction Treaty, supra note 22.


\textsuperscript{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. 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. If the inquiry reveals that such an act occurred, then the requested state must promptly return the abducted defendant to the petitioning state. Upon the return of the abducted defendant to that state, the state that surrendered him may then formally demand his extradition. 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.

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

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. 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. Frustrated efforts by U.S. law enforcement agents to secure jurisdiction over criminal

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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.


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.\textsuperscript{214} Evidence at Congressional hearings and debates considering the matter revealed increased drug trafficking and political corruption in Mexico.\textsuperscript{215}

\begin{enumerate}
\item[a. Certification of State-Aid to Mexico]

Section 490(b) of the Foreign Assistance Act\textsuperscript{216} 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.\textsuperscript{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.\textsuperscript{218} Increased drug trafficking and extensive corruption among prominent law enforcement and political leaders continues to obstruct anti-drug measures, including extradition.\textsuperscript{219}

\item[b. The Problem of Corruption]

Corruption among high-ranking leaders of the Mexican

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{217}] Id.
\item[\textsuperscript{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.
\item[\textsuperscript{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.
\end{enumerate}
\end{footnotesize}
government is a significant problem affecting Mexico's law enforcement policy.\textsuperscript{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.\textsuperscript{221} In 1996, the Mexican Attorney General dismissed more than 1,200 Mexican federal law enforcement officers on charges of corruption.\textsuperscript{222} Mexican drug cartels continue to engage in trade with minimal interference from Mexican authorities.\textsuperscript{223}

4. Mexico's Extradition Policy

As of 1996, the U.S. government had over 165 pending extradition requests with Mexico.\textsuperscript{224} Until that time, the Mexican government consistently denied U.S. extradition requests for Mexican citizens wanted for various crimes.\textsuperscript{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.\textsuperscript{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.\textsuperscript{227} The government of Mexico refuses to extradite suspects who could potentially face the death penalty in the United States.\textsuperscript{228}

\begin{itemize}
  \item \textsuperscript{220} See \textit{143 Cong. Rec.} S2582 (describing problem of corruption in Mexican law enforcement and military ranks).
  \item \textsuperscript{221} \textit{Id.}
  \item \textsuperscript{222} \textit{Id.} at S2582.
  \item \textsuperscript{223} \textit{Id.} at 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." \textit{Id.}
  \item \textsuperscript{224} See Miller, \textit{supra} note 219 (describing legislation prohibiting extension of aid to Mexico, including re-certification for anti-drug campaign).
  \item \textsuperscript{225} See Zagaris & Peralta, \textit{supra} note 12, at 530-31 (describing historical context of Mexican policy disfavoring extradition of Mexican nationals).
  \item \textsuperscript{226} \textit{Const.} art. 4 (Mex.).
  \item \textsuperscript{227} See "\textit{Ley de extradicion internacional}," D.O., 29 de deciembre de 1975 (entered into force Dec. 30, 1975), art. 10(v) (stating preference for severe incarceration as substitution for death penalty, when feasible); \textit{see also}, Treaty, \textit{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).
  \item \textsuperscript{228} See, e.g., Adolfo Garza, "\textit{Spooky}" Killer Won't Be Sent Back to U.S., \textit{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. On April 26, 1996, Mexican President Ernesto Zedillo broke established precedent by authorizing the extradition of two Mexican nationals to the United States. 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. Since these two cases, Mexican authorities have agreed to extradite six more defendants in 1997, including several on drug-related offenses.

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

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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).


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. The signing of the Transborder Abduction Treaty, the ratification of NAFTA, and the Mexican government’s recent willingness to extradite its nationals under the exceptional circumstances doctrine 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. 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. 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. Legislators feared that the U.S. government’s occasional resort to unilateral abductions would

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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.\textsuperscript{240} Proposed legislation would have deprived courts of jurisdiction to prosecute criminal defendants abducted from other states.\textsuperscript{241} Hence, \textit{Alvarez} had the positive effect of encouraging Congress to reassess its policy on extradition with Mexico.\textsuperscript{242} Unfortunately, proposed legislation prohibiting state-sponsored abductions abroad failed to target the cause of the problem in \textit{Alvarez} that arose from the option to extradite a state’s citizens under Article 9(1) of the Treaty.\textsuperscript{243}

\textbf{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.\textsuperscript{244} The Treaty contemplates good faith and mutual cooperation in the exchange of criminal offenders.\textsuperscript{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-

\textsuperscript{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).

\textsuperscript{241} \textit{Id.}

\textsuperscript{242} \textit{Id.}

\textsuperscript{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).

\textsuperscript{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).

\textsuperscript{245} \textit{Id.}
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

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).
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{253} NAFTA created a new opportunity for cooperation and change in many of the economic and law enforcement policies between both states.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{257} Corruption is perhaps

\textsuperscript{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).

\textsuperscript{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).

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

\textsuperscript{254} Id.

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

\textsuperscript{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).

\textsuperscript{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.\textsuperscript{258} In 1996, for example, the Mexican Attorney General dismissed more than 1,200 Mexican federal law enforcement officers on charges of corruption.\textsuperscript{259}

Despite these problems, the Mexican government is making some strides in legal reform.\textsuperscript{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.\textsuperscript{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.\textsuperscript{262}

\textbf{CONCLUSION}

Predictions about the ramifications of \textit{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, \textit{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.

\textsuperscript{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).

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

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

\textsuperscript{261} See id. (discussing changes in money laundering laws).

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