

United States v. Alvarez-Machain: The Implications of International Abductions by the United States

I. INTRODUCTION

As Chief Justice Rehnquist stated, "The issue in this case is whether a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, thereby acquires a defense to the jurisdiction of this country's courts."¹ Respondent, Humberto Alvarez-Machain, was indicted for his involvement in the murder of a United States Drug Enforcement Administration ("DEA") agent.² Respondent moved to dismiss the indictment, claiming first that his abduction constituted outrageous governmental conduct, and second, that he was abducted in violation of the Extradition Treaty between the United States and Mexico ("Treaty").³ The district court, after rejecting the outrageous conduct claim, nonetheless held that it lacked jurisdiction to try respondent because his abduction violated the Treaty.⁴

Relying on its earlier decision in *United States v. Verdugo-Urquidez*,⁵ the court of appeals affirmed the dismissal of the indictment.⁶ Because the United States had authorized the abduction, and Mexico had officially protested the conduct, the intermediate court held that the purpose of the Treaty—to facilitate cooperative extraditions—had been violated.⁷

The Supreme Court granted certiorari and reversed the lower court's decision.⁸ In the absence of express language prohibiting forcible abductions between the two nations, the actions taken by the United States

1. *United States v. Alvarez-Machain*, 112 S. Ct. 2188, 2190 (1992).

2. 112 S. Ct. at 2190.

3. *Id.* For the full text of the Treaty, see Extradition Treaty, May 4, 1978, United States-United Mexican States, 31 U.S.T. 5059.

4. *United States v. Caro-Quintero*, 745 F. Supp. 599, 614 (C.D. Cal. 1990).

5. 939 F.2d 1341 (9th Cir. 1991), *petition for cert. granted*, 112 S. Ct. 2986 (1992). In *Verdugo-Urquidez* the court of appeals held that when the forcible abduction was with authorization of the United States, when the offended nation formally protested to the abduction, and when the extradition treaty did not expressly prohibit such abductions, the "purpose" of the treaty would be violated and jurisdiction would be defeated. 939 F.2d at 1362.

6. *United States v. Alvarez-Machain*, 946 F.2d 1466, 1467 (9th Cir. 1991).

7. *Id.*

8. 112 S. Ct. at 2191.

were not in violation of the Extradition Treaty.⁹ In a 6-3 decision, the Court held that the fact of respondent's forcible abduction does not prohibit his trial in a United States court for violations of the criminal laws of this country.¹⁰ The Supreme Court reversed and remanded.¹¹

II. FACTUAL STATEMENT

Respondent, a medical doctor, was a citizen and resident of Mexico. On April 2, 1990, DEA officials forcibly kidnapped him from his office in Guadalajara, Mexico, flew him by private plane to El Paso, Texas, and arrested him. A grand jury indicted Alvarez-Machain for participating in the kidnap and murder of United States DEA special agent Enrique Camarena-Salazar and a Mexican pilot working with Camarena. The DEA contended that respondent was involved in the murder by prolonging agent Camarena's life so that others could further torture and interrogate him.¹²

Apparently, DEA officials had first attempted to gain respondent's presence in the United States through informal negotiations with Mexican officials. When those efforts proved unsuccessful, DEA officials, using a contact in Mexico, offered to pay a reward plus expenses in return for the delivery of respondent to the United States.¹³ Although they were not personally involved in the abduction, the district court concluded that DEA agents were responsible for the action.¹⁴

III. THE COURT'S OPINION

In attempting to decide the present issue, the Supreme Court took a three-step approach. First, the Court laid out the relevant case law pertaining to issues similar to the one presented in this case. Second, the Court looked to the terms of the Treaty, and the history of negotiation and practice under the Treaty, in reaching the conclusion that the Treaty did not prohibit respondent's abduction. Third, the Court looked to principles of international law and found no support for construing the Treaty to include an implied term prohibiting abductions.¹⁵

9. *Id.* at 2193.

10. *Id.* at 2197.

11. *Id.*

12. *Id.* at 2190.

13. *Id.* at 2190 n.2.

14. *Id.* at 2190.

15. *Id.* at 2190-97.

A. Relevant Law

The Court relied primarily on three prior Supreme Court cases that addressed similar issues to the one presented in *Alvarez-Machain*.

In *United States v. Rauscher*,¹⁶ the Court considered whether the Webster-Ashburton Treaty of 1842,¹⁷ which governed extraditions between England and the United States, prohibited the prosecution of defendant Rauscher for a crime other than the crime for which he had been extradited.¹⁸ This prohibition, known as the doctrine of specialty, became a source of debate between the parties because it was not expressly provided for in the terms of the treaty.¹⁹ Justice Miller, writing for the Court, examined the terms and history of the treaty, the practice of nations regarding extradition treaties, the case law from the states, and the writings of commentators, in reaching his decision to construe the treaty with an *implied* doctrine of specialty.²⁰ Justice Miller concluded that when a person has been brought within the jurisdiction of a court "by virtue of proceedings under an extradition treaty," he can only be tried for the offense with which he is charged in the proceedings for his extradition.²¹ In *Rauscher*, unlike the present case, the defendant was brought to the United States using an extradition treaty and no issue of a forcible abduction existed.²²

In *Ker v. Illinois*,²³ the Supreme Court ruled on a situation where the defendant was brought before the Court by way of forcible abduction rather than through the use of an extradition treaty.²⁴ Because the defendant's presence was not secured by virtue of the extradition treaty between the United States and Peru, he had no rights or defenses under the treaty.²⁵ The Court announced a general rule soon to be known as the *Ker* doctrine: The power of a court to try a person for a crime is not impaired by the manner in which he has been brought within the court's jurisdic-

16. 119 U.S. 407 (1886).

17. For the full text of this treaty, see Treaty with Great Britain, Aug. 22, 1842, United States-Great Britain, 8 Stat. 572.

18. 112 S. Ct. at 2191.

19. *Id.* at 2197.

20. *Id.*

21. *Id.* at 2191 (quoting *United States v. Rauscher*, 119 U.S. 407, 430 (1886)).

22. *Id.* at 2191-92.

23. 119 U.S. 436 (1886).

24. 112 S. Ct. at 2192. Defendant Ker was tried and convicted in an Illinois court for larceny. His presence there was "procured by means of forcible abduction from Peru." *Id.* Apparently, a messenger was sent to Lima to bring back Ker using a proper warrant under the extradition treaty between the United States and Peru. For unknown reasons, the messenger instead ignored the formal extradition process and forcibly kidnapped Ker and brought him to the United States. *Id.*

25. *Id.*

tion, whether by forcible abduction, violation of international treaty, or illegal arrest.²⁶

In *Frisbie v. Collins*,²⁷ the Supreme Court upheld the *Ker* doctrine. The Court stated that no persuasive reasons existed to overrule that line of cases (i.e. *Ker*), and that a guilty defendant should not be able to "escape justice because he was brought to trial against his will."²⁸

Respondent Alvarez-Machain argued that the differences between *Ker* and the present case were dispositive. There, the United States government was not involved in the abduction, and the nation from which the defendant was abducted did not object to his prosecution. Relying on these differences and the rule espoused in *Rauscher*,²⁹ respondent argued that his prosecution, like that of defendant Rauscher, violated the implied terms of the Treaty.³⁰

The government argued that *Rauscher* is an exception to the *Ker* doctrine "only" when an extradition treaty is invoked.³¹ Because respondent was not brought to the United States through the use of a treaty, *Rauscher* did not apply.³²

At this point, the Court announced its first inquiry in its attempt to resolve the issue: Whether the abduction violated the Extradition Treaty between the United States and Mexico. The Court reasoned that if the Treaty language did not prohibit forcible abductions, then the *Ker* doctrine would apply and respondent could be tried in a United States court.³³

B. *The Treaty Does Not Prohibit Abductions*

The first step in construing any treaty or statute is to look at the terms of the document in order to determine its meaning.³⁴ As Chief Justice Rehnquist noted, "The Treaty says 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 the consequences under the Treaty if such an abduction occurs."³⁵

26. *Id.* (citing *Ker v. Illinois*, 119 U.S. 436, 444 (1886)).

27. 342 U.S. 519 (1952).

28. 112 S. Ct. at 2192 (quoting *Frisbie v. Collins*, 342 U.S. 519, 522 (1952)).

29. See *supra* text accompanying notes 16-22.

30. 112 S. Ct. at 2193.

31. *Id.*

32. *Id.*

33. *Id.*

34. See, e.g., *Air France v. Saks*, 470 U.S. 392, 397 (1985); *Valentine v. United States ex. rel. Neidecker*, 299 U.S. 5, 11 (1936).

35. 112 S. Ct. at 2193.

In the absence of any express language directly on point, respondent argued that Article 9 of the Treaty incorporated the terms of the bargain on which the United States settled.³⁶ The Court described respondent's view of the bargain as follows:

If the United States wishes to prosecute a Mexican national, it may request that individual's extradition. Upon a request from the United States, Mexico may either extradite the individual, or submit the case to the proper authorities for prosecution in Mexico. In this way, respondent reasons, each nation preserved its right to choose whether its nationals would be tried in its own courts or by the courts of the other nation.³⁷

Respondent submitted that if either country were free to abduct nationals at will, the preservation of rights would be frustrated, and restrictions on the obligation to extradite contained in the Treaty would "make no sense."³⁸

Chief Justice Rehnquist then promulgated the Court's view that Article 9 was not intended to be the only method of gaining custody of a foreign national. Because countries are under no duty to surrender their citizens to a foreign nation in the absence of a valid extradition treaty, it followed that extradition treaties exist in order "to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures."³⁹ The Court concluded that the Treaty merely served as a mechanism, which would not otherwise exist, requiring the countries to extradite individuals only under certain circumstances.⁴⁰ The Treaty served to set forth the procedure to be used only when the Treaty was invoked.⁴¹

The Court next looked to the history of negotiation and practice under the Treaty.⁴² It noted that the Mexican government was aware of the *Ker* doctrine and the United States' position on forcible abductions made

36. *Id.* Article 9 provides:

1. Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the Requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.

2. If 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.

31 U.S.T. at 5065.

37. 112 S. Ct. at 2193-94.

38. *Id.* at 2194.

39. *Id.* (citing 1 J. MOORE, A TREATISE ON EXTRADITION AND INTERSTATE RENDITION § 72 (1891)).

40. *Id.*

41. *Id.*

42. *Id.*

outside the terms of the Treaty, yet failed to include any language in the Treaty addressing this topic. In sum, the language of the instrument, in the context of this history, failed to persuade the Court that the Treaty prohibited abductions outside of its terms.⁴³

C. The Treaty Shall Not Contain An Implied Term Prohibiting Abductions

Once the Court established that the Treaty contained no express prohibitions to forcible abductions, it turned to the question of an implied prohibition.⁴⁴ Respondent contended that in order to avoid upsetting international law principles,⁴⁵ which clearly prohibit forcible abductions in the territory of another state without its consent, the *Rauscher* line of reasoning should be used to imply a term prohibiting forcible abductions.⁴⁶ Chief Justice Rehnquist found this reference to international law difficult to accept and justified the implied term in *Rauscher* as being based on the practice of nations with respect to extradition treaties in particular, but not with international law more generally.⁴⁷ According to the Court, respondent's argument would mean "that the Treaty acts as a prohibition against a violation of the general principle of international law that one government may not exercise its police power in the territory of another state."⁴⁸ The Court found this to be false reasoning because it would lead to the improper and unintended conclusion that many actions taken by a nation, including waging war, would violate the terms of the Extradition Treaty between the two nations.⁴⁹ While *Rauscher* was only a small step to take, implying a term in this Treaty that prohibited securing the presence of individuals by means not specifically mentioned in the instrument would require "a much larger inferential leap, with only the most general of international law principles to support it."⁵⁰

In conclusion, the Court conceded that the abduction may be shocking and in violation of general international law principles, but noted that Mexico's protest and the possibility of respondent's return to Mexico

43. *Id.* at 2194-95.

44. *Id.* at 2195.

45. Article 2, paragraph 4 of the United Nations Charter states, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Charter of the United Nations, June 26, 1945, art. 2, 59 Stat. 1031, T.S. 993.

46. 112 S. Ct. at 2195.

47. *Id.* at 2195-96.

48. *Id.* at 2196.

49. *Id.*

50. *Id.*

were issues better left to the Executive Branch and its diplomatic approach, rather than to the unilateral actions of a court in one nation.⁵¹ However, the Supreme Court found respondent's abduction not in violation of the Extradition Treaty; therefore, the *Ker* doctrine applied, allowing respondent to be tried in a United States court for violations of this country's laws.⁵²

IV. ANALYSIS OF THE OPINION

The outcome of *United States v. Alvarez-Machain* turned on both a statutory interpretation issue and an international law issue. A valid argument can be made in favor of either respondent or the government with regard to each of these issues; nevertheless, in the end the Court found the government's position the most persuasive. In light of the applicable canons of statutory construction, placed in context with the relevant principles concerning international policy, the Court reached the wrong conclusion.

A. *Statutory Interpretation*

The Court clearly applied a strict textualist approach in resolving the issue of whether the Treaty prohibited forcible abductions. With Justice Scalia joining in the majority opinion, Chief Justice Rehnquist analyzed the Treaty completely within the parameters of the instrument itself. The Court refused to go beyond the text of the document and found the language to be plain and unambiguous.⁵³ The Treaty contained no language tailored to the issue of forcible abductions and, as mentioned, the Court declined to imply any. Therefore, according to the Court, forcible abductions do not violate the Treaty.⁵⁴

The Court failed to give any attention to the well-established doctrine that the letter is only the surface—whatever is within the reason of the law is within the law itself and it is necessary to go beyond the text to effectuate the purpose of the document.⁵⁵ Because it is presumed that every statute and every doctrine of unwritten law serves some purpose or objective, “ambiguities can be intelligently resolved, first, by identifying that purpose and the policy or principle it embodies and, then, by deducing the result most consonant with that principle or policy.”⁵⁶ Thus, the

51. *Id.*

52. *Id.* at 2197.

53. See *supra* text accompanying note 35.

54. See *supra* text accompanying note 52.

55. See William N. Eskridge, Jr. & Philip P. Frickey, *Legislation Scholarship and Pedagogy in the Post-Legal Process Era*, 48 U. PITT. L. REV. 691, 694-700 (1987).

56. *Id.* at 695-96.

purpose of the Treaty must be determined and the Court's interpretation should serve that purpose.

The Treaty appears to be drafted to cover the entire subject of extradition between the countries.⁵⁷ Although a preamble will not expand the scope of its document, preambles may be consulted to determine the true construction of terms and therefore the purpose to be achieved.⁵⁸ This particular preamble informs the parties that the Treaty is designed to help the nations "cooperate more closely in the fight against crime" and to "mutually render better assistance in matters of extradition."⁵⁹ Basically, the spirit, or intent, of the Treaty is to promote peaceful relations between the countries and a judicial construction leading to this result is desirable. As Justice Stevens pointed out in his dissent, "It is difficult to see how an interpretation that encourages unilateral action [forcible abductions] could foster cooperation and mutual assistance—the stated goals of the Treaty."⁶⁰

In contrast to the strict textual approach employed by the Court,⁶¹ a more persuasive theory would hold that when the literal interpretation leads to a result that thwarts the manifest purpose of the instrument, the instrument (Treaty) may be implemented beyond its text.⁶² Because the purpose of the Treaty, in addition to the various provisions governing the aspects and procedures of extradition, would be "utterly frustrated"⁶³ and useless under the Court's ruling (which allowed forcible abductions as permissible governmental conduct), a prohibition on international abductions should have been implied. Respondent Alvarez-Machain had the more convincing argument.

57. 112 S. Ct. at 2198.

58. See Karl Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons about how Statutes are to be Construed*, 3 VAND. L. REV. 395, 401-06 (1950).

59. Extradition Treaty, *supra* note 3 at 5061.

60. 112 S. Ct. at 2198 n.4.

61. See Note, *Intent, Clear Statements and the Common Law: Statutory Interpretation in the Supreme Court*, 95 HARV. L. REV. 892 (1982). The Supreme Court will sometimes find the bare language of a statute determinative and will apply it stringently, even if it yields unreasonable results. See, e.g., *Board of Governors of Federal Reserve System v. Dimension Financial Corp.*, 474 U.S. 361 (1986); *North Dakota v. United States*, 460 U.S. 300 (1983).

62. See, e.g., *Commissioner v. Brown*, 380 U.S. 563, 571 (1965); *Helvering v. Hammel*, 311 U.S. 504, 510-11 (1941). When a literal interpretation will produce a result demonstrably at odds with the intentions of its drafters, those intentions must control. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

63. *United States v. Verdugo-Urquidez*, 939 F.2d 1341, 1349 (9th Cir. 1991).

B. *International Law Principles*

The legal context (international law) in which the countries drafted the Treaty also militates toward a decision in favor of respondent in this case. It seems logical to assume that the parties would not ratify a treaty that violates international law. To construe the Treaty as permitting forcible abductions without the consent of the offended nation would be to give the Treaty a construction that uproots the territorial integrity of another state. As one author notes:

The universally accepted principle that . . . a state has the exclusive right to exercise governmental authority within its territory and that consequently the officials of one state may not exercise such authority within the territory of another state without the consent of the latter thus serves to facilitate private activities as well as friendly relations between states.⁶⁴

The Treaty could not have been signed with the expectation that the United States has the right to decide unilaterally to enter Mexican territory and abduct one of their nationals.

The Court dismissed the fact that the Mexican government formally protested the abduction by reasoning that the views of a foreign government cannot change the impact of the express Treaty language. This severe adherence to a textual construction completely ignores any principles of foreign relations, which many agree strictly prohibit international abductions.⁶⁵ The Second Circuit Court of Appeals has held that a defendant has standing to challenge his abduction under international law principles after his country has lodged an official objection or protest to the conduct.⁶⁶ This implies that as a matter of international law, when one nation objects to the abduction, the offending nation has a duty to divest itself of jurisdiction over the defendant.⁶⁷ As the chief reporter for the American Law Institute's Restatement of Foreign Relations stated, "When done without consent of the foreign government, abducting a person from a foreign country is a gross violation of international law and a gross disrespect for a norm high in the opinion of mankind."⁶⁸ Therefore,

64. OLIVER J. LISSITZYN, *INTERNATIONAL LAW TODAY AND TOMORROW* 13 (1965).

65. See *RESTATEMENT (THIRD) OF FOREIGN RELATIONS* § 432 cmt. b (1987). "It is universally recognized, as a corollary of state sovereignty, that officials of one state may not exercise their functions in the territory of another state without the latter's consent." *Id.*

66. *United States v. Reed*, 639 F.2d 896 (2d Cir. 1981).

67. *RESTATEMENT (THIRD) OF FOREIGN RELATIONS* § 432 cmt. c (1987). In the absence of such a protest by the offended nation, the abducting nation may proceed to prosecute the defendant under its own laws. *Id.*

68. Henkin, *A Decent Respect to the Opinions of Mankind*, 25 *J. MARSHALL L.J.* 215, 231 (1992).

the Court should have construed the Treaty to effectuate the purpose of fostering international relations so as not to violate accepted principles.

The Court, in its reliance on *Ker*, also dismissed completely the fact that the United States government, and not a private party, sanctioned this abduction. The dissent argued that the majority actually analyzed the issue as it was presented in *Ker*,⁶⁹ where a private citizen's actions were found not to violate the treaty in question.⁷⁰ Because that kidnapping took place "without any pretense of authority under the treaty or from the government of the United States," the Court found no invasion of the sovereignty of the other nation (Peru).⁷¹ The Supreme Court had never before considered the particular issue presented in this case.⁷² The all-important and distinguishing fact in *Alvarez-Machain* is that it was the conduct of the United States that is called into question. When the government of the United States is the offending party, principles of international law (i.e., the preservation of another's sovereign territory) mandate that the Court find a violation and dismiss its jurisdiction to hear the case.⁷³

The Court submitted that the issue was a matter for the Executive Branch, rather than the courts, to settle through diplomatic methods.⁷⁴ This may be a valid argument when the government was not involved in the kidnapping; however, when the United States authorizes the abduction, the Court has a duty to divest itself of jurisdiction. The Court's opinion has been criticized as "ignor[ing] the fundamental principle of international law, namely, respect for the territorial sovereignty of states."⁷⁵ Furthermore, it has been suggested that if the principles announced by the Court were applied, "the International Juridical Order would be irreversibly shattered."⁷⁶ Therefore, the United States is obligated to return Alvarez-Machain to Mexico.⁷⁷

The case law in the area of international abductions illustrates a trend among the circuit courts holding that in extreme circumstances involving outrageous and reprehensible governmental conduct, a court is required

69. 112 S. Ct. at 2203.

70. See *supra* text accompanying notes 23-26.

71. *Ker*, 119 U.S. at 443.

72. 112 S. Ct. at 2191.

73. See *supra* text accompanying note 45. This contention is further supported by a recent decision from the Court of Appeals of the Republic of South Africa. That court held that the prosecution of a defendant kidnapped by agents of South Africa in another country must be dismissed because the abduction "represents a violation of the applicable rules of international law." *S v. Ebrahim*, S. Afr. L. Rep. (Apr.-June 1991).

74. 112 S. Ct. at 2196.

75. David O. Stewart, *The Price of Vengeance*, A.B.A. J., Nov. 1992, at 50.

76. *Id.*

77. *Id.*

to divest itself of jurisdiction.⁷⁸ The majority of the Court in *Alvarez-Machain* agreed with the district court that the conduct did not qualify as outrageous. However, DEA agents reportedly punched Alvarez-Machain, injected him with a drug that made him lightheaded, and shocked him many times during the seizure. These actions, carried out under the authority of the United States government, certainly may be considered outrageous by some. At least one court has held that principles of international law, as well as the Charter of the United Nations,⁷⁹ require forcible abduction cases like this to yield to a new expanded interpretation of due process.⁸⁰

In sum, the Court's decision ignores both fundamental canons of construction and underlying principles of international law. The purpose of the Treaty, in light of current international relations, must be given effect by the Court. Bruce Zagaris, a Washington, D.C. lawyer who specializes in international criminal cases, described the result of this decision most appropriately when he stated that *Alvarez-Machain* may disrupt orderly foreign relations.⁸¹ Zagaris concludes that the "United States is finding it very difficult to negotiate extradition and international . . . treaties' because foreign governments 'are understandably concerned that they have to cover every possible issue in any signed treaty . . . and this has sent a lot of confusion into our relations with other countries.'" ⁸² As Justice Stevens noted in his dissent, the Court may have had a strong desire to punish Alvarez-Machain,⁸³ but it should not have abandoned standard principles of interpretation and international law in order to justify an action that is simply not allowable.

V. CONCLUSION

Based on the narrow and strict textualist approach employed, the Court determined that the Treaty did not expressly prohibit forcible abductions between the United States and Mexico. The Court also refused to imply this prohibition on abductions in light of the general principles

78. See, e.g., *United States ex. rel. Lujan v. Gengler*, 510 F.2d 62 (2d Cir. 1975), *cert. denied*, 421 U.S. 1001 (1975); *United States v. Lira*, 515 F.2d 68 (2d Cir. 1975), *cert. denied*, 423 U.S. 847 (1975); *United States v. Reed*, 639 F.2d 896 (2d Cir. 1981).

79. See Charter of the United Nations, *supra* note 45.

80. *United States v. Toscanino*, 500 F.2d 267 (2d Cir. 1974). For a further discussion of international abductions, United States authority, and constitutional issues, see Theodore C. Jonas, Note, *International "Fugitive Snatching" in U.S. Law: Two Views from Opposite Ends of the Eighties*, 24 CORNELL INT'L L.J. 521 (1991).

81. Stewart, *supra* note 75, at 52.

82. Stewart, *supra* note 75, at 52.

83. 112 S. Ct. at 2205.

of international law argued by respondent. This would have required too large an inferential leap, and the Court declined to take it.

The better approach would have been to construe the Treaty with regard to its stated goal of mutually assisting the parties in their efforts to cooperate in the field of extradition. In order to serve this purpose and avoid a violation of the accepted principle of territorial sovereignty, the Court should have divested itself of jurisdiction and returned respondent to Mexico.⁸⁴ Whether the Court reached the proper decision or not, one thing is for certain: *Alvarez-Machain* has attracted international attention and has "triggered a firestorm of diplomatic criticism."⁸⁵

STEPHEN M. WELSH

84. On December 14, 1992, U.S. District Judge Edward Rafeedie acquitted Alvarez-Machain on his kidnapping and murder charges, citing lack of evidence. Haya El Nasser, *Mexican Doctor is Acquitted*, USA TODAY, December 15, 1992, at 3A. The ACLU responded that the acquittal "underscores how terrible the Supreme Court's decision was to allow this kind of behavior [international abductions]." *Id.*

85. Stewart, *supra* note 75, at 50.