International Law - Extradition Treaties - Criminal Law - Jurisdiction

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INTERNATIONAL LAW—EXTRADITION TREATIES—CRIMINAL LAW—JURISDICTION—The United States Supreme Court has held that a foreign national criminal defendant is subject to this country’s court jurisdiction when that person is forcibly abducted and brought to the United States from a country with which the United States has an extradition treaty.


Humberto Alvarez-Machain ("Alvarez") was indicted in the United States for his participation in the abduction and murder of United States Drug Enforcement Administration ("DEA") special agent Enrique Camarena-Salazar ("Camarena") and Camarena's pilot, Alfredo Zavala-Avelar. Alvarez, who is a Mexican citizen and resident, is a medical doctor whom the DEA believed aided in prolonging Camarena's life during his torture and interrogation at the hands of Mexican drug dealers in Mexico. On April 2, 1990, Alvarez was arrested by DEA officers after being forcibly abducted from his medical office in Mexico and transported by a private plane to El Paso, Texas. After Alvarez's arrest by DEA officials, the United States Department of State received three diplomatic notes from the Embassy of Mexico stating that it considered the abduction a violation of the extradition treaty between the countries and demanded the return of Alvarez to Mexico. In *United States v Caro-Quintero*, the district court found that although DEA officials did not directly participate in Alvarez's abduction they were the parties responsible for the kidnapping.

1. *United States v Alvarez-Machain*, US, 112 S Ct 2188, 2190 (1992). The indictment contained the following charges: (1) violation of 18 USC §§ 371, 1959—conspiracy to commit violent acts in furtherance of racketeering activity; (2) violation of 18 USC § 1959 (a) (2)—committing violent acts in furtherance of racketeering activities; (3) violation of 18 USC §§ 1201 (a) (5), 1201 (c)—conspiracy to kidnap a federal agent; (4) violation of 18 USC § 1201 (a) (5)—kidnap of a federal agent and (5) violation of 18 USC §§ 1111 (a), 1114—felony murder of a federal agent. Alvarez, 112 S Ct at 2190.

2. *Alvarez*, 112 S Ct at 2190.

3. Id. Alvarez testified that he was beaten by his abductors, injected with an unknown substance and shocked several times with an electrical-shock apparatus. *United States v Caro-Quintero*, 745 F Supp 599, 603 (CD Cal 1990).


5. Id at 599. Alvarez was tried along with other individuals who also allegedly participated in Camarena's murder. Id.

6. Id at 602-04, 609.
Alvarez challenged the validity of the indictment by filing a motion to dismiss. First, Alvarez claimed that his kidnapping constituted outrageous governmental conduct, and also, since he was abducted in violation of the United States-Mexico extradition treaty, the district court lacked jurisdiction necessary to try him in the United States. The claim of outrageous governmental conduct was denied. Alvarez was discharged by the district court after it held that his abduction violated the Extradition Treaty and therefore it lacked jurisdiction in the case.

The United States appealed to the United States Court of Appeals for the Ninth Circuit. In affirming the district court decision, the court of appeals relied on its decision in United States v Verdugo-Urquidez. In Verdugo, the court of appeals held that a forcible abduction of a Mexican national from Mexico by United States agents without the consent of the Mexican government was a violation of the Extradition Treaty. Verdugo acquired standing to assert rights under the Extradition Treaty when Mexico protested the action in letters to the district court and the court of appeals held that the proper solution to remedy the violation was dismissal of the indictment and repatriation of the Mexican national to Mexico.

The court of appeals in the present case affirmed the findings of the district court that there was United States involvement in the abduction of Alvarez and that sufficient governmental protest was provided by Mexico in its letters to the United States government to constitute a violation of the Extradition Treaty. In accordance with the above-mentioned findings, the court of appeals dismissed the indictment of Alvarez and ordered his immediate repatriation.
to Mexico. The United States Supreme Court granted certiorari in the case.

The issue before the Supreme Court was whether the forcible abduction of Alvarez with the authorization of the United States government violated the Extradition Treaty between the United States and Mexico thereby denying the district court jurisdiction over Alvarez.

The Supreme Court, in a 6-3 decision, reversed and remanded. Justice Rehnquist began by stating that the precise issue raised in the present case had never been before the Court. The last case in which the Court considered this general area of law was United States v Rauscher which held that when an individual has been brought before the court's jurisdiction by an extradition treaty, that person can only be tried for an offense listed in the treaty and one which caused him to be extradited. The Court differentiated the present case from Rauscher due to the fact that Alvarez was not brought before the United States courts by means of the Extradition Treaty.

The Court then cited Ker v Illinois which held "forcible abduction was not a sufficient reason why the party should not answer

18. Id.
20. Alvarez, 112 S Ct at 2190.
21. Id. Chief Justice Rehnquist wrote the majority opinion, joined by Justices White, Scalia, Kennedy, Souter, and Thomas. The dissent was written by Justice Stevens, joined by Justices Blackmun and O'Connor. Id.
23. Alvarez, 112 S Ct at 2191.
24. 119 US 407 (1886). Rauscher involved the extradition of Rauscher in accordance with the Webster-Ashburton Treaty of 1842. Rauscher, 119 US at 410. The Court held that Rauscher could not be tried for any crimes other than those for which he had been extradited. Id at 430. This principle is also known as the doctrine of specialty. Alvarez, 112 S Ct at 2200.
27. 119 US 436 (1886). Ker involved the forcible abduction of the defendant from Peru and his subsequent transportation to the United States where he stood trial. Ker, 119 US at 438-39. The parties responsible for kidnapping Ker were in no way representatives of or authorized by the U.S. government and the Extradition Treaty was not called into operation. Id at 443.
when brought within the jurisdiction of the court which has the right to try him for an offense, and presented no valid objection to his trial in such court."\(^{28}\) The *Ker* rule was later followed in the 1952 Supreme Court case of *Frisbie v Collins*.\(^{29}\)

The first step for the Court was to determine whether the actions taken by the United States government constituted a violation of the Extradition Treaty.\(^{30}\) The Court found that the terms of the Treaty did not prevent one nation from forcibly abducting individuals from the other nation.\(^{31}\) Alvarez contended that to allow forcible abduction would frustrate the intent of the Extradition Treaty.\(^{32}\) Justice Rehnquist read Article 9\(^{33}\) to provide the means of extraditing an individual when the Treaty was actually invoked.\(^{34}\) The Court noted that absent the Extradition Treaty this procedure for extraditing an individual would not exist.\(^{35}\) In addition, Justice Rehnquist examined the prior practice of the two nations under the Treaty and determined that such history did not warrant the finding that a forcible abduction constituted a violation of the Treaty.\(^{36}\)

The Court next considered Alvarez's claim that general international law principles prohibiting forcible abductions should be implied in the Treaty.\(^{37}\) Justice Rehnquist refused to accept this argument stating that only international law principles relating to

\(^{28}\) Id at 444.
\(^{30}\) *Alvarez*, 112 S Ct at 2193.
\(^{31}\) Id. Alvarez argued that Article 9 of the Treaty impliedly disallowed any forcible abduction by either nation. Id at 2193-94. 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.

Extradition Treaty, 31 UST at 5065.

\(^{32}\) *Alvarez*, 112 S Ct at 2194. This line of reasoning was adopted by the district court and court of appeals in their respective decisions. Id.

\(^{33}\) Extradition Treaty, 31 UST at 5065. See note 31 and accompanying text.

\(^{34}\) *Alvarez*, 112 S Ct at 2194.

\(^{35}\) Id.

\(^{36}\) Id at 2195.

\(^{37}\) Id. Alvarez argued that international abductions so clearly violated international law that such an action should be viewed as an automatic breach of the Extradition Treaty. Id.
“the practice of nations with regard to extradition treaties” should be considered in construing the terms of the Extradition Treaty.

In conclusion, the Court stated that due to well-established practice and precedent it could not infer that the Extradition Treaty prohibited any and all means of securing jurisdiction over an individual outside of the express terms listed in the Treaty. Justice Rehnquist concluded that the forcible abduction of Alvarez did not violate the Treaty; therefore, Ker v Illinois fully applied and the district court had jurisdiction to try Alvarez on all counts in the indictment. Moreover, Justice Rehnquist noted that the Mexican government had formally protested the abduction of Alvarez and concluded that “the decision of whether respondent should be returned to Mexico, as a matter outside of the Treaty, is a matter for the Executive Branch.”

Justice Stevens dissented in an opinion joined by Justices Blackmun and O'Connor. Justice Stevens read the Extradition Treaty as having “been designed to cover the entire subject of extradition” between Mexico and the United States. In so doing, Justice Stevens gave the specific words and provisions of the Extradition Treaty a meaning consistent with the shared expectations of each party to the treaty. This shared expectation was the desire of the United States and Mexican governments “to cooperate more closely in the fight against crime and, to this end, to mutually render better assistance in matters of extradition.” Justice Stevens argued that to permit a nation to forcibly abduct individuals not extradited robbed the Extradition Treaty of its entire scope and intent.

38. Id.
39. Id at 2196.
40. Alvarez, 112 S Ct at 2196.
41. 119 US 436 (1886). For discussion of Ker, see note 27 and accompanying text.
42. Alvarez, 112 S Ct at 2197.
43. Id at 2196.
44. Id at 2197.
45. Id at 2198.
46. Id.
47. Id. In particular, Justice Stevens noted Article 2, Article 9, and Article 22 of the Treaty. Id. Article 9 requires that the nation requested to deliver one of its citizens must either extradite or begin prosecution of that individual. Extradition Treaty, 31 UST at 5065. Cited in note 31. This choice is left to the discretion of the host country under the Treaty. Id.
48. Alvarez, 112 S Ct at 2198.
49. Id at 2198-99.
Justice Stevens then applied the reasoning of *Rauscher*\(^50\) to the case at hand.\(^51\) It was “shocking” to Justice Stevens that a party to an extradition treaty would reasonably believe that it retained a right to seize residents of the other country when that nation did not extradite the individual in question.\(^52\) Just as the *Rauscher* Court denied jurisdiction over the person to the district court, Justice Stevens contended that the district court should be denied jurisdiction over Alvarez due to the violation of the Treaty.\(^53\)

Justice Stevens proceeded to distinguish the present case from *Ker*\(^54\) and stated that the *Ker* rule could not be applied to this case.\(^55\) In concluding, Justice Stevens observed that the majority totally ignored “customary and conventional international law principles”\(^56\) and its decision “is thus entirely unsupported by case law and commentary.”\(^57\) Justice Stevens, therefore, would have affirmed the decisions of the district court and the court of appeals.\(^58\)

In order to fully understand the Supreme Court’s holding in *Alvarez*, it is necessary to review the Court’s prior decisions in the area of forcible abductions of parties outside of the jurisdiction of a court and the application of related extradition treaties purporting to cover such situations. On December 6, 1886, the United States Supreme Court decided two cases that established the law in this area: *United States v Rauscher*\(^59\) and *Ker v Illinois*.\(^60\)

In *Rauscher*, the United States requested the extradition of Rauscher from Great Britain in accordance with the Treaty of 1842.\(^61\) Rauscher was extradited to the United States on the charge of murder but was indicted by a grand jury for unlawful infliction

50. 119 US 407.
51. *Alvarez*, 112 S Ct at 2201.
52. Id.
53. Id at 2202-03.
54. 119 US 436.
55. *Alvarez*, 112 S Ct at 2203. Justice Stevens stated that *Ker* involved forcible abduction by a person not acting within the U.S. government’s authority; however, Alvarez had been abducted by agents of the United States acting within their authority at the time of abduction. Id.
56. Id at 2205.
57. Id.
58. Id.
60. *Ker*, 119 US at 436. For discussion of *Ker*, see note 27 and accompanying text.
of cruel and unusual punishment. The Court was faced with the issue of whether a person could be tried for an offense other than that for which he had been extradited.

The Court held that a party can only be tried for the offense contained in the extradition proceedings under its interpretation of the Treaty of 1842. This holding was based on several writings of American and English legal scholars on the law of nations and extradition treaties. The Court also considered two statutes passed by Congress that expressly imposed the doctrine of specialty on any extradition treaties to which the United States was a party.

Justice Gray concurred in the decision of the majority only to the extent that it was based on the two federal statutes imposing the doctrine of specialty on the treaty.

Chief Justice Waite dissented in the decision. He reasoned that since the treaty did not expressly provide for the doctrine of specialty to apply, it should not be applied by the Court. In addition, Justice Waite stated that once a person is within the jurisdiction of a court, that court must be able to prosecute the party for

62. Id at 409. Rauscher was charged with the murder of second mate Janssen on the American ship, J.F. Chapman. Id. Rauscher then fled to England to avoid arrest by American authorities. Id at 407. Rauscher was extradited from England to the United States under the Treaty of 1842 for the charge of murder. Id at 409. Once in America, Rauscher was put on trial for the charge of cruel and unusual punishment. Id.
63. Id.
64. Id at 424. This doctrine is commonly known as the doctrine of specialty. Alvarez, 112 S Ct at 2191. This concept is defined in the Third Restatement of Foreign Relations Law:

Under most international agreements, state laws, and state practice:
(1) A person who has been extradited to another state will not, unless the requested state consents,
   (a) be tried by the requesting state for an offense other than one for which he was extradited; or
   (b) be given punishment more severe than was provided by the applicable law of the requesting state at the time of the request for extradition.
(2) A person who has been extradited to another state for trial and has been acquitted of the charges for which he was extradited must be given a reasonable opportunity to depart from that state.

67. Id at 433 (Gray concurring).
68. Id at 434 (Waite dissenting).
69. Id. Chief Justice Waite stated in his dissent that if the doctrine of specialty was meant to be applied to the treaty then the authors of the treaty would have written it into the treaty. Id.
all offenses he has committed in the jurisdiction.\textsuperscript{70}

The United States Supreme Court handed down its decision in another important case the same day as its \textit{Rauscher} decision. A messenger was dispatched by the President of the United States to Peru with a warrant to receive Ker from the proper authorities in Peru in \textit{Ker v Illinois}.\textsuperscript{71} This action by President Cleveland was in compliance with the 1870 treaty\textsuperscript{72} between the United States and Peru.\textsuperscript{73} Upon arriving in Peru, the messenger failed to present the papers to Peruvian officials, forcibly abducted Ker, and accompanied him back to the United States.\textsuperscript{74} Ker was indicted, tried, and convicted in Illinois on the charges of larceny and embezzlement.\textsuperscript{75}

Ker challenged the jurisdiction of the Illinois court by attempting to invoke the United States-Peru treaty.\textsuperscript{76} The argument by Ker was that a party could not be subject to state or federal jurisdiction if there "was some positive provision of the Constitution or of the laws of this country violated in bringing him into court,"\textsuperscript{77} and that his kidnapping was a violation of the existing extradition treaty between the countries.\textsuperscript{78} The Illinois Supreme Court affirmed the lower court conviction and denied Ker's jurisdiction argument.\textsuperscript{79}

The case was then taken to the United States Supreme Court on

\textsuperscript{70} Id.
\textsuperscript{71} Ker, 119 US at 438. Ker was a resident of Peru who was charged with larceny and embezzlement in the criminal court of Cook County, Illinois. Id at 437. President Cleveland issued the warrant for Ker after the request for extradition made by Illinois Governor Hamilton was denied by Peruvian officials. Id.
\textsuperscript{72} Treaty with the Republic of Peru, 18 Stat Pt 3 719, Treaty Ser No 283 (1874).
\textsuperscript{73} Ker, 119 US at 438.
\textsuperscript{74} Id at 438-39. The reason why the messenger did not present the papers to officials in Peru is provided by a commentator. John G. Kester, Some Myths of United States Extradition Law, 76 Georgetown L J 1441, 1451 (1988). In the aftermath of a recent revolution in Peru, the messenger could not locate proper authorities; therefore, he merely kidnapped Ker. Kester, Myths, 76 Georgetown L J at 1451.
\textsuperscript{75} Ker, 119 US at 437.
\textsuperscript{76} Id at 439. The treaty in question was very similar to the treaty disputed in \textit{Rauscher}. Id at 443. The treaty provided Peru the option of extraditing Ker to the United States voluntarily or waiting until agents of the United States formally demanded Ker's extradition. Id at 442. However, the treaty did not allow Peru to provide asylum to a criminal by not delivering that person to the country where the crime was committed when that country requests extradition. Id.
\textsuperscript{77} Id at 440.
\textsuperscript{78} Id. Ker contended that due to the treaty he acquired a right of asylum in Peru and could only be forcibly removed from that country in accordance with the terms of the treaty. Id at 441.
\textsuperscript{79} Id at 439. The Illinois Supreme Court stated that the fact that Ker was brought to the United States by kidnapping does not invalidate his indictment and conviction in the criminal courts of that state. Id.
a writ of error from the Illinois Supreme Court based on the jurisdictional aspects of the extradition treaty. The Court reasoned that since the messenger did not present the papers he had in his possession at any time in Peru, the treaty was not called into operation or relied upon in making the arrest of Ker. The Court found that "the facts show that it was a clear case of kidnapping within the dominions of Peru, without any pretense of authority under the treaty or from the government of the United States." Finally, the Court held that since the treaty was not invoked in this case, Ker could not claim rights under that document and the Illinois state courts had full jurisdiction to prosecute him once he was physically within that state's borders. In its holding, the Court cited its decision of Rauscher that same day, but differentiated Ker due to the fact that the treaty was not brought into operation under the facts of Ker as it was in Rauscher.

The next case considered by the Supreme Court that dealt with an extradition treaty was Cook v United States, decided on January 23, 1933. A Prohibition Era case, Cook involved the confiscation of a British ship by United States Coast Guard officers after the vessel was searched. The Coast Guard officers found unmanifested liquor on board the ship in violation of United States law. In addition to statutory law, the situation was also governed by the

80. Id.
81. Id at 442-43.
82. Id at 443.
83. Id.
84. Id. As stated above, the Court held that the extradition treaty was not brought into operation due to the lack of reliance on the treaty by the messenger sent to Peru by the United States. Id. See notes 81-83 and accompanying text. In Rauscher, however, the defendant was extradited to the United States under the extradition treaty between the United States and Great Britain. See note 62 and accompanying text.
85. 288 US 102 (1933). This case is also known as "The Mazel Tov." Cook, 288 US at 102.
86. Id at 107. The Mazel Tov was searched pursuant to section 584 of the Tariff Act of 1930, 19 USC § 1584 (1930), as were many other ships during the Prohibition Era. Cook, 288 US at 108. Section 594 of the Tariff Act, 19 USC § 1594 (1930), permitted the Coast Guard officers to seize any ship containing unmanifested liquor and proceed summarily by libel to recover the fine assessed upon the ship's master. Cook, 288 US at 108. In the case of the Mazel Tov, this procedure was followed and libels, or complaints, were filed against both the vessel and its cargo. Id.
87. Id at 107-08. The United States law provided that all liquor being transported on a ship within ten miles from the United States coast must be listed on the ship's official manifest. 19 USC § 1584 (1930). Cook, 288 US at 108. The penalty imposed upon a ship's master for unmanifested liquor was a fine equal to the value of all liquor that was not included on the manifest. Id.
1924 Treaty between the United States and Great Britain. This treaty authorized Coast Guard officers to stop and search vessels within one hour travel time from the United States coast. The facts in the record indicated that the vessel was boarded at a point over eleven miles from the United States coast and the maximum travel speed of the vessel was ten miles per hour. Cook argued that the search and seizure and his subsequent arrest were invalid due to the provisions of the treaty.

The district court dismissed the action but the circuit court of appeals vacated and remanded the case back to the district court. At that point, the United States Supreme Court granted certiorari. The issue before the Supreme Court was whether the seizure and arrest under the Tariff Act of 1922 was valid in light of the conflicting provisions of the Treaty of 1924 with Great Britain. The Court held that the action must be dismissed for lack of jurisdiction due to the provisions of the Treaty of 1924. The Court distinguished Ker in that officials of the United States apprehended Cook when the United States did not have any authority to do so under the treaty provisions; Ker, however, was seized by a private party and brought into the jurisdiction of United States courts by no action of United States officials.

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89. Cook, 288 US at 111.
90. Id at 107-08. The United States contended that it had proper jurisdiction to search the vessel and arrest Cook due to the Tariff Act of 1922, 19 USC § 1581 (1922). Id at 107. That statute authorized seizures of foreign vessels within four leagues (twelve miles) of the United States coastline. Id.
91. Id at 109-10. The terms of the treaty explicitly stated that the rights and powers granted by the treaty "shall not be exercised at a greater distance from the coast of the United States, its territories, or possessions then can be traversed in one hour by the vessel" suspected to be carrying unmanifested alcohol. Id at 111 citing 43 Stat Pt 2 1761, Treaty Ser No 685 (1924).
92. The Mazel Toy, 51 F2d 292 (D RI 1931).
93. The Mazel Toy; United States v Cook, 56 F2d 921 (1st Cir 1932). The circuit court of appeals held that the treaty did not have the effect of changing the United States customs-revenue laws which relied on the four league, or twelve miles, zone established by Congress. Cook, 56 F2d at 923.
96. Id at 122. The Court reasoned that since the ship seized by United States officials was a British vessel the applicable law was contained in the United States-Great Britain treaty. Id at 121. The ship was seized in violation of the terms of that treaty therefore the United States government totally lacked power to seize the vessel and subject its crew to United States laws. Id at 122.
97. Id at 121.
98. Id.
Justices Sutherland and Butler dissented stating that the purpose and intent of the treaty was not to limit the effect of existing prohibition statutes. Both Justices would have therefore affirmed the decision of the circuit court.

The most recent decision by the United States Supreme Court dealing with this area of law was handed down in 1952 in the case of Frisbie v Collins. In Frisbie, the Court revisited the issue of whether a court obtained valid jurisdiction over a person forcibly abducted and transported against his will into that jurisdiction.

Collins was forcibly seized in Illinois by Michigan police officers. After the abduction, Collins was taken to Michigan and formally arrested on murder charges. In reversing the decision of the court of appeals, the Court held that "the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'" The Ker doctrine was therefore fully upheld by the Court in rendering its decision in Frisbie.

The majority opinion in United States v Alvarez-Machain correctly stated the legal principles set forth by the Ker and Frisbie cases. Those cases held that a United States court properly exercises its jurisdictional powers when it indicts and convicts

99. Id at 122 (Sutherland and Butler dissenting).
100. Id. According to the dissenters, the purpose and intent of both countries was to enlarge any rights of the United States to more effectively enforce its prohibition laws. Id.
101. Id.
103. Frisbie, 342 US at 522.
104. Id at 520. Collins was wanted in Michigan for a murder committed in that state. Id. The Michigan police officers discovered that Collins was living in Chicago, Illinois, and thereafter forcibly abducted him and transported him to Michigan against his will. Id.
105. Id.
106. Id at 519. The district court denied the writ without a hearing reasoning that the state court had the power to try a defendant in a criminal action regardless of how his presence was procured. Id at 520. On appeal, the court of appeals reversed and remanded the case for hearing, Collins v Frisbie, 189 F2d 464 (6th Cir 1951). The court held that the Federal Anti-kidnapping Act, 18 USC § 408 (1934), changed the rule applied by United States courts that proper jurisdiction could be acquired by obtaining the defendant by force. Collins, 189 F2d at 467-68. The United States Supreme Court granted certiorari after the circuit court of appeals reversed and remanded. Frisbie v Collins, 342 US 665 (1951).
107. Frisbie, 342 US at 522. The Court stated "[t]here is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." Id. Furthermore, the Court held that no persuasive reasons were presented to justify overruling Ker and its progeny. Id.
108. Id.
110. 119 US 436 (1886).
111. 342 US 519 (1952).
an individual brought before the court by means of forcible abduction as long as the kidnapping was done without any pretense of authority of the United States government.\textsuperscript{112} However, the \textit{Alvarez} majority applied this line of reasoning to the present case where Alvarez was forcibly abducted and brought to the United States by the actions of United States DEA agents.\textsuperscript{113} The involvement of United States agents in the kidnapping constituted governmental activity in violation of the extradition treaty and in violation of the most basic international law principles. The Court cannot possibly utilize the \textit{Ker} doctrine in such a case.

According to the \textit{Alvarez} decision, the distinction drawn in \textit{Ker}\textsuperscript{114} between a private party acting to kidnap an individual and the same act being performed by agents of the United States no longer holds any weight. In addition, the \textit{Alvarez} Court held that the acts of the United States agents do not constitute a breach of the extradition treaty between the United States and the nation from which the person was kidnapped.\textsuperscript{115} This latter holding was based primarily on the explicit terms of the treaty and discounted the overall intent of the nations in entering into such an agreement. The intent is to provide a formal mechanism to allow the transportation of an alleged criminal defendant from one country to the other country for purposes of trial of that individual. Absent such an agreement between the nations, there would be no means available to accomplish this goal.

The United States Supreme Court has left no doubt that it intends to stand behind its decision in \textit{Alvarez}. On June 22, 1992, one week after the Court handed down its \textit{Alvarez} decision, the Court vacated the court of appeals judgment in \textit{United States v Verdugo-Urquidez},\textsuperscript{116} and remanded the case for further consideration in light of \textit{Alvarez}.\textsuperscript{117} Thus, the Supreme Court continues to hold that the forcible abduction of a person by United States

\begin{footnotes}
\item[112] See notes 71-84 and 102-08 and accompanying text.
\item[113] See note 6 and accompanying text.
\item[114] \textit{Ker}, 119 US at 443.
\item[115] See note 36-42 and accompanying text.
\item[116] 939 F2d 1341 (9th Cir 1991). Rene Martin Verdugo-Urquidez was indicted and convicted as a party to the kidnap and murder of DEA Special Agent Camarena-Salazar, along with Alvarez, but in a different action. \textit{Verdugo}, 939 F2d at 1343. The court of appeals held that the kidnapping of a Mexican National by agents of the United States violated the extradition treaty and thereby denied the district court proper jurisdiction to try the defendant. \textit{Id}. The court reasoned that such an abduction is violative to the whole purpose and intent of the extradition treaty between the nations. \textit{Id} at 1349-53.
\end{footnotes}
agents from a foreign nation with which the United States has a valid, enforceable extradition treaty does not constitute a breach of the treaty and does not deprive the district court of jurisdiction to try and convict the individual. The international response to this decision was tremendous. Mexico, along with nearly a dozen Latin American countries, demanded that the United Nations seek a World Court ruling on the matter. In the United States, several civil rights groups, including the American Civil Liberties Union, expressed similar concerns.

The approach taken by the Alvarez majority blatantly disregards the entire purpose of an extradition treaty. In the Alvarez dissent, Justice Stevens wisely stated that merely because the treaty does not explicitly state that the parties must refrain from forcible abductions of persons in the other nation does not allow or permit such activity under the treaty. In addition, Stevens distinguished Ker and stated that the Ker doctrine cannot be applied to cases factually similar to Alvarez. The rule in Ker was created to allow jurisdiction over an individual kidnapped from a foreign jurisdiction by a private party. This rule should not be imposed in cases where the United States government authorizes the abduction of a person from a foreign nation in violation of an extradition treaty.

The end result of the Alvarez decision is an extradition treaty between the United States and Mexico that serves no purpose. The doors are now open to allow forcible abductions authorized by the United States in the future, in violation of existing extradition treaties, and the Supreme Court will follow its decision in Alvarez and close its judicial eyes to the breach of these agreements. Every time the United States wants to try a defendant who is residing in a foreign country with which the United States has an extradition treaty, the government can send its agents to that nation to kidnap the individual and forego the procedures set forth in the international agreement. Imagine the reaction in the United States if Mexico or any other nation sent its agents to the United States to kidnap a private American citizen and take that person back to the foreign country to stand trial. The response to such an action by the United States government would surely be fast and furious.

Extradition treaties are created to avoid the exact situations described above and which occurred in the Alvarez and Verdugo

118. Alvarez, 112 S Ct at 2199 (Stevens dissenting).
119. See notes 81-83 and accompanying text.
cases. If the Court allows such conduct, the question arises: Why have an extradition treaty at all? If this is going to be the practice in the future, Congress should terminate all extradition treaties and avoid the procedural games presently being played by the United States Supreme Court.

C. Michael Snyder