

High court okays U.S. right to overseas kidnaping

by Leo F. Scanlon

On June 15, the U.S. Supreme Court ruled that the Executive Branch of the U.S. government may violate the sovereignty of foreign nations, abrogate treaties ratified by the U.S. Congress, and forcibly abduct foreign citizens who are indicted in U.S. courts. The 6-3 ruling in *U.S. v. Alvarez Machaín* (91-712) effectively renders null and void over 100 extradition treaties between the United States and other nations, and strikes a resounding blow against the rule of law in international affairs.

Writing in dissent from the majority, Justice John Paul Stevens concluded that "most courts throughout the civilized world will be deeply disturbed by the 'monstrous' decision the Court announces today. For every nation that has an interest in preserving the rule of law is affected, directly or indirectly, by a decision of this character."

Within hours of the decision, leaders of governments across Ibero-America and Europe expressed shock and amazement. In Sweden, Prime Minister Carl Bildt joined his visiting Chilean counterpart in identifying the ruling as "not acceptable." In Spain, where the entire judiciary spoke out in disgust, the Federation of Associations of Progressive Jurists branded the decision a "miserable" violation "of international law, the sovereignty of nations, and, above all, human dignity." The conservative Professional Association of the Magistracy found the ruling "surprising and strange, we know no precedent for it." A government spokesman said that the matter would be taken to the European Community for further consideration.

The reaction of the Mexican government was the clearest reminder of the brutal power politics which the United States is conducting. In response to the ruling, the Mexican government suspended the operations of all U.S. law enforcement

agencies active in that country, but reversed its position within 24 hours, and accepted the ruling as a *fait accompli*.

The Alvarez Machaín decision is the second major signal from the Court that it will not impede the implementation of the "Thornburgh Doctrine" as implemented by Attorney General William Barr. That doctrine asserts the extraterritorial jurisdiction of any U.S. law which the Executive Branch considers necessary for the conduct of U.S. foreign policy. The first decision supporting this imperialist theory came in the 1990 ruling in *U.S. v. Verdugo Urquidez*, (88-1353) in which the Court said that U.S. criminal law extends beyond U.S. borders but the protections of the U.S. Bill of Rights do not. The Court will rule soon on the matter of the abduction of Verdugo Urquidez as well, a decision which is expected to complete the overhaul of traditional extradition law.

Alvarez Machaín has not yet been tried, and this decision was a ruling on a pre-trial motion, which narrowly addressed the question of whether the abduction violated the terms of the extradition treaty with Mexico. Thus, the case will now go back to the California courts, which initially ruled the government actions illegal, and broader questions involving the violation of customary international law can be raised in future pre-trial motions or on appeal. In the interim, no sovereign nation dare underestimate the implications of this "monstrous" attack on the rule of law, or the desperate impulses of the Bush administration which crafted it.

Behind the arrogant bluster of the Court stand the reckless policies of an imperial bully intent on destabilizing the government of a smaller neighbor, in order to impose an economic system which will murder the citizens of both. The Mexican political system is scheduled to be battered by new rounds of corruption scandals which will flow from revelations elic-

ited during the trial, and opposition to this atrocity, or the North American Free Trade Agreement, is expected to take a back seat to survival during the coming storm.

Treaties mean what we want them to mean

The legal issues in the Alvarez Machaín case stem from the kidnaping and murder of Drug Enforcement Administration (DEA) agent Enrique Camarena by Mexican drug dealers. The resulting conspiracy indictment charges 22 persons, including Dr. Humberto Alvarez Machaín, with participating in the crime. To date, seven of the 22 have been brought to court in California to stand trial on the charges, of whom three have been brought before the court by means of covert forcible abduction from a foreign country.

The Ninth Circuit Court of Appeals ruled, in *U.S. v. Caro Quintero* (the lead figure in the conspiracy which included Alvarez Machaín) that "it is axiomatic that the United States or Mexico violates its contracting partner's sovereignty, and the extradition treaty, when it unilaterally abducts a person from the territory of its contracting partner without the participation of or authorization from the contracting partner where the offended state registers an official protest."

Article Nine of the U.S.-Mexico Extradition Treaty specifies that if one partner refuses an extradition request by another, the case must be submitted to the courts of that party for prosecution. Mexico has tried and convicted and sentenced to very long jail terms those members of the conspiracy who have been apprehended. In addition, Mexico protested the kidnaping, demanded extradition of the kidnapers (some have been given asylum in the United States), and has prosecuted some of the kidnapers involved.

On the basis of these two points, the California District Court and the Ninth Circuit Court of Appeals ruled that the kidnaping violated the treaty, which had been duly invoked by Mexico, and therefore the United States had no jurisdiction to try Alvarez Machaín, who should be returned for trial in Mexico.

The Bush administration appealed this ruling, arguing that the Mexican government has no basis to protest since it knew that the United States considers abduction a legitimate act, and has only weakly protested in related cases. The administration contends that the Executive Branch is bound by the terms of the treaty only if it is invoked, and not when a unilateral action is taken outside the treaty. The U.S. Supreme Court agreed that "to imply from the terms of this treaty that it prohibits obtaining the presence of an individual by means outside of the procedures the treaty establishes requires a much larger inferential leap, with only the most general of international law principles to support it. The general principles cited by respondent simply fail to persuade us that we should imply in the United States-Mexico Extradition Treaty a term prohibiting international abductions."

The "general principles" so summarily dismissed include the fundamental premise, that the purpose of negotiating such

a treaty (which is self-executing, and is therefore the law of the land), is to bring order to such situations, and prevent escalating acts of retaliation. Stevens points out that the government's argument transforms every provision of the treaty "into little more than verbiage." Chief Justice William Rehnquist, the author of the opinion, admits that "Respondent and his *amici* may be correct that respondent's abduction was 'shocking' . . . and it may be a violation of general international law principles."

But such considerations are irrelevant, since the decision of whether to return Alvarez Machaín to Mexico is "a matter for the Executive Branch," and any contrary ruling would constitute an interference by the courts with the right of the Executive to conduct foreign policy. This point was emphasized by the U.S. State Department, which reiterated that the kidnaping was authorized at the highest levels of the U.S. government, and represented the consensus of an interagency group which reviewed all implications of the action.

The gap between the mind of Rehnquist and the authors of the Constitution is highlighted by a decision in an 1824 customs case, written by Justice Story, and quoted in Stevens's dissent. Story wrote: "*It would be monstrous* to suppose that our revenue officers were authorized to enter into foreign ports and territories, for the purpose of seizing vessels which had offended against our laws. It cannot be presumed that Congress would voluntarily justify such a clear violation of the laws of nations."

Corruption and vengeance as foreign policy

Justice Stevens speculates in his dissent that the administration's bizarre logic is based on the desire to attain vengeance for the brutal murder of a U.S. agent, and cites Tom Paine's warning that an "avidity to punish is always dangerous to liberty" because it leads a nation "to stretch, to misinterpret, and to misapply even the best of laws."

The history of this case portrayed in the court documents is even worse: the war on drugs has become little more than the stage for political corruption, and is now debasing the law, as well as the law enforcement officers caught in this swamp.

Throughout the motions filed by the Bush administration in the case, it is noted that the Mexican government has been a silent partner in the sordid affair—by withholding protest in the kidnaping of Verdugo Urquidez, and others, for example. It is also stated that secret negotiations, conducted by the office of the Attorney General of Mexico and the DEA, were held to arrange for the swap of Alvarez Machaín for Isaac Naredo Moreno, a fugitive residing in the United States, who was wanted for stealing money from Mexican politicians.

The negotiations broke down when NBC News ran an inflammatory mini-series which alleged widespread corruption in the Mexican government. That charge will be the centerpiece of the trial of Alvarez Machaín, which will rock the Mexican system to its roots.