



TEXTO OFICIAL



SERVICIO INFORMATIVO, EMBAJADA DE LOS ESTADOS UNIDOS DE AMERICA, AGUSTINAS 1343, PISO 6, FONOS 6710135, CASILLA 27-D, SANTIAGO-CHILE

ARCHIVO

17 de junio de 1992

DECLARACION DEL DEPARTAMENTO DE ESTADO SOBRE EL CASO ALVAREZ MACHAIN

WASHINGTON -- El Departamento de Estado expresó que Estados Unidos "inicia conversaciones" con el gobierno de México "para asegurar que continúe nuestra excelente cooperación en cuestiones antinarcóticas".

El Departamento emitió una declaración el 16 de junio, el día después de que el Tribunal Supremo de Estados Unidos falló que a pesar de su secuestro forzado en México, Humberto Alvarez Machain puede ser enjuiciado en un tribunal federal de Estados Unidos. A Alvarez Machain, médico mexicano, se lo acusa de haber participado en 1985 en la tortura y asesinato de Enrique Camarena, agente de la Agencia de Estados Unidos para el Control de la Droga.

A continuación una traducción extraoficial del texto de la declaración del Departamento de Estado:

"La decisión adoptada por el Tribunal Supremo en el caso de Alvarez Machain reafirmó la postura jurídica interna del gobierno de Estados Unidos de que un tribunal estadounidense tiene jurisdicción sobre un acusado penal pese a los medios empleados para traer al acusado ante la justicia.

"Se acusa a Alvarez Machain de haber participado en 1985 en la tortura y asesinato de Enrique Camarena, agente de la Agencia de Estados Unidos para el Control de la Droga. Alvarez

REPUBLICA DE CHILE					
PRESIDENCIA					
REGISTRO Y ARCHIVO					
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Machain fue sacado de México y entregado a las autoridades estadounidenses en abril de 1990. Desde ese entonces, Estados Unidos y México han negociado entendimientos claros de que todos los esfuerzos de cooperación en el área antinarcótica "deben realizarse con pleno respeto por los derechos y prerrogativas soberanas de ambas naciones". Nosotros reafirmamos hoy este compromiso.

El Secretariado de Relaciones Exteriores de México emitió un parte de prensa donde anunciaba ciertas medidas. Sin embargo, estamos iniciando conversaciones para asegurar que continúe nuestra excelente cooperación en cuestiones antinarcóticas.

Hemos instruido a nuestro embajador para que comience conversaciones con el Gobierno de México sobre estas cuestiones. Confiamos en que podremos abordar plenamente las susceptibilidades de México respecto a la cooperación policial futura entre nuestros dos países. Sentimos un profundo respeto por la soberanía de México. Nos proponemos colaborar cuidadosamente con el Gobierno de México para apaciguar cualquier inquietud o percepción al contrario.

"Respecto a la política norteamericana sobre el arresto de personas en otros países, aludimos a nuestra política expresada en nuestra sesión informativa del 20 de abril de 1990:

'Es importante aislar la cuestión de si la autoridad legal nacional existe o no independiente de la cuestión separada de si el Presidente actuará o no de hecho para autorizar el uso de esa autoridad.

'En cualquier caso particular, el Presidente tiene que pesar sus responsabilidades constitucionales para la formulación y ejecución de la política exterior y la política sobre ejecución de la ley.

'Existe un proceso intergubernamental para asegurar que el Presidente tome en cuenta la gama total de las consideraciones de política exterior y el derecho internacional así también como las cuestiones nacionales de ejecución de la ley planteadas por cualquier caso específico. No habrá arrestos en el exterior que no hayan sido considerados a través de ese proceso intergubernamental'.

"Esa política sigue vigente hoy día."

promover el respeto por las reglas internacionales de derecho, incluyendo en particular los principios de respeto por la integridad territorial e igualdad de soberanía de los estados.

"La política de Estados Unidos es cooperar con los estados extranjeros en alcanzar los objetivos de la ejecución de la ley. Ni el arresto de Alvarez Machain ni la reciente decisión del Tribunal Supremo de Estados Unidos reflejan algún cambio en esta política. Reflejando esta política, Estados Unidos ha informado a México que después del arresto de Alvarez Machain, Estados Unidos ha tomado medidas adicionales para asegurar que las actividades norteamericanas de ejecución de la ley en el exterior tomen plenamente en cuenta las relaciones exteriores y el derecho internacional".



MATERIAL DE CONSULTA



SERVICIO INFORMATIVO, EMBAJADA DE LOS ESTADOS UNIDOS DE AMERICA, AGUSTINAS 1343, PISO 6, FONOS 6710133, CASILLA 27-D, SANTIAGO-CHILE

June, 17, 1992

SUPREME COURT JUSTICES DISAGREE ON ABDUCTION VERDICT

Excerpts of the majority and dissenting opinions

WASHINGTON -- Justices of the Supreme Court disagreed sharply over whether abducting a Mexican national in his own country for trial in the United States violated an extradition treaty between Mexico City and Washington as well as the fundamentals of international law.

U.S. agents may engage in such activities subject to the orders of the president and his officials, the high court ruled June 15 in a 6-3 opinion written by Chief Justice William Rehnquist. But the dissenting members of the court argued, in an opinion written by Justice John Paul Stevens, that the suspect should be returned to Mexico for trial there or for orderly extradition proceedings.

The defendant, Dr. Humberto Alvarez-Machain, was taken from his office in the Mexican city of Guadalajara in 1990 and flown to the United States, where he was arrested and charged as an accomplice in the murder of U.S. drug enforcement agent Enrique Camarena in Mexico in 1985.

Following are excerpts from the Supreme Court's majority and dissenting opinions.

The Chief Justice delivered the opinion of the court.

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. We hold that he does not, and that he may be tried in federal district court for violations of the criminal law of the United States.

Respondent, Humberto Alvarez-Machain, is a citizen and resident of Mexico. He was indicted for participating in the kidnap and murder of U.S. Drug Enforcement Administration (DEA) special agent Enrique Camarena-Salazar and a Mexican pilot working with Camarena, Alfredo Zavala-Avelar. The DEA believes that respondent, a medical doctor, participated in the murder by prolonging agent Camarena's life so that others could further torture and interrogate him. On April 2, 1990, respondent was forcibly kidnapped from his medical office in Guadalajara, Mexico, to be flown by private plane to El Paso, Texas, where he was arrested by DEA officials.

Respondent moved to dismiss the indictment, claiming that his abduction constituted outrageous governmental conduct, and that the district court lacked jurisdiction to try him because he was abducted in violation of the extradition treaty between the United States and Mexico. The district court rejected the outrageous governmental conduct claim, but held that it lacked jurisdiction to try respondent because his abduction violated the Extradition Treaty. The district court discharged respondent and ordered that he be repatriated to Mexico.

The Court of Appeals affirmed the dismissal of the indictment. The Court of Appeals held that the forcible abduction of a Mexican national with the authorization or participation of the United States violated the Extradition Treaty between the United States and Mexico. Although the treaty does not expressly prohibit such abductions, the Court of Appeals held that the "purpose" of the treaty was violated.

The Court of Appeals affirmed the district court's finding that the United States had authorized the abduction of respondent, and that letters from the Mexican government to the U.S. government served as an official protest of the treaty violation.

It does not purport to specify the only way in which one country may gain custody of a national of the other country for the purposes of prosecution. In the absence of an extradition treaty, nations are under no obligation to surrender those in their country to foreign authorities for prosecution. Extradition treaties exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures. The treaty thus provides a mechanism which would not otherwise exist.

The history of negotiation and practice under the treaty also fails to show that abductions outside of the treaty constitute a violation of the treaty.

The language of the treaty, in the context of its history, does not support the proposition that the treaty prohibits abductions outside of its terms. The remaining question, therefore, is whether the treaty should be interpreted so as to include an implied term prohibiting prosecution where the defendant's presence is obtained by means other than those established by the treaty.

Respondent contends that the treaty must be interpreted against the backdrop of customary international law, and that international abductions are "so clearly prohibited in international law" that there was no reason to include such a clause in the treaty itself.

This argument seems to us inconsistent with the remainder of respondent's argument. The Extradition Treaty has the force of law, and if, as respondent asserts, it is self-executing, it would appear that a court must enforce it on behalf of an individual regardless of the offensiveness of the practice of one nation to the other nation.

Respondent would have us find 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."

Respondent may be correct that respondent's abduction was "shocking," and that it may be in violation of general international law principles. Mexico has protested the abduction of respondent through diplomatic notes, and the decision of whether respondent should be returned to Mexico, as a matter outside of the treaty, is a matter for the executive branch. We conclude, however, that respondent's abduction was not in violation of the Extradition Treaty between the United States and Mexico.

The fact of respondent's forcible abduction does not therefore prohibit his trial in a court in the United States for violations of the criminal laws of the United States.

Justice Stevens, with whom Justice Blackmun and Justice O'Connor join, dissenting.

The court correctly observes that this case raises a question of first impression. The case is unique for several reasons. It does not involve an ordinary abduction by a private kidnaper, or bounty hunter; nor does it involve the apprehension of an American fugitive who committed a crime in one state and sought asylum in another. Rather, it involves this country's abduction of another country's citizen; it also involves a violation of the territorial integrity of that other country, with which this country has signed an extradition treaty.

A Mexican citizen was kidnaped in Mexico and charged with a crime committed in Mexico; his offense allegedly violated both Mexican and American law. Mexico has formally demanded on at least two separate occasions that he be returned to Mexico and has represented that he will be prosecuted and punished for his alleged offense. It is clear that Mexico's demand must be honored if this official abduction violated the 1978 Extradition Treaty between the United States and Mexico.

Petitioner's claim that the treaty is not exclusive, but permits forcible governmental kidnaping, would transform these, and other, provisions into little more than verbiage.

It is true, as the court notes, that there is no express promise by either party to refrain from forcible abductions in the territory of the other nation. Relying on that omission, the court, in effect, concludes that the treaty merely creates an optional method of obtaining jurisdiction over alleged offenders, and that the parties silently reserved the right to resort to self help whenever they deem force more expeditious than legal process. If the United States, for example, thought it more expedient to torture or simply to execute a person rather than to attempt extradition, these options would be equally available because they, too, were not explicitly prohibited by the treaty. That, however, is a highly improbable interpretation of a consensual agreement.

Thus, the Extradition Treaty, as understood in the context of cases that have addressed similar issues, suffices to protect the defendant from prosecution despite the absence of any express language in the treaty itself purporting to limit this nation's power to prosecute a defendant over whom it had lawfully acquired jurisdiction.

A critical flaw pervades the court's entire opinion. It fails to differentiate between the conduct of private citizens, which does not violate any treaty obligation, and conduct expressly authorized by the executive branch of the government, which unquestionably constitutes a flagrant violation of international law, and in my opinion, also constitutes a breach of our treaty obligations.

The court's admittedly "shocking" disdain for customary and conventional international law principles, is thus entirely unsupported by case law and commentary.

As the court observes at the outset of its opinion, there is reason to believe that respondent participated in an especially brutal murder of an American law enforcement agent. That fact, if true, may explain the executive's intense

interest in punishing respondent in our courts. Such an explanation, however, provides no justification for disregarding the Rule of Law that this court has a duty to uphold. That the executive may wish to reinterpret the treaty to allow for an action that the treaty in no way authorizes should not influence this court's interpretation. I suspect 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.

(end excerpts)

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