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946 F.2d 1466

UNITED STATES of America, Plaintiff-Appellant,
v.
Humberto ALVAREZ-MACHAIN, Defendant-Appellee.

No. 90-50459.

**United States Court of Appeals,
Ninth Circuit.**

Argued April 4, 1991.

Submission Deferred April 8, 1991.

Resubmitted July 22, 1991.

Decided Oct. 18, 1991. (date)

Andrew G. McBride, Asst. Deputy Atty. Gen., Washington, D.C., for plaintiff-appellant.

Paul L. Hoffman, ACLU Foundation of Southern California, Robert K. Steinberg, Law Offices of Robert K. Steinberg, Los Angeles, Cal., for defendant-appellee.

Charles L. Hobson, Crim. Justice Legal Foundation, Sacramento, Cal., Ellen L. Lutz, American Watch, Los Angeles, Cal., John P. Mandler, Minnesota Lawyers Intern. Human Rights Committee, Minneapolis, Minn., David Westin, Wilmer, Cutler & Pickering, Washington, D.C., Ruth Wedgwood, Lawyers Committee for Human Rights, New Haven, Conn., for amicus.

Appeal from the United States District Court for the Central District of California.

Before GOODWIN and SCHROEDER, Circuit Judges, and KING,* District Judge.

PER CURIAM:

- 1 The Government appeals the district court's judgment of dismissal. We affirm. See *United States v. Verdugo Urquidez*, 939 F.2d 1341 (9th Cir.1991).
- 2 Verdugo held that the forcible abduction of a Mexican national from Mexico by agents of the United States without the consent or acquiescence of the Mexican government violates the 1980 Extradition Treaty between the United States and Mexico. 939 F.2d at 1351-52. Verdugo further held that the protest of the Mexican government in letters to the district court that Verdugo's abduction violated the 1980 treaty provided standing for Verdugo to assert rights under the Treaty in United States courts. 939 F.2d at 1356. Finally, Verdugo held that the proper remedy for such a violation of the 1980 Extradition Treaty is repatriation of the Mexican nationals seized by United States agents. 939 F.2d at 1359.
- 3 These holdings apply a fortiori to the facts of this case. After a full evidentiary hearing in the district court, the court found that Alvarez-Machain is a Mexican national who was forcibly seized from his medical office in Guadalajara, Mexico. The court found that appellee's abductors were the paid agents of the U.S. Drug Enforcement Agency ("DEA") and that the abduction was accomplished at the behest of the DEA. *United States v. Caro-Quintero*, 745 F.Supp. 599, 609 (C.D.Cal.1990). These findings have not been disputed by the Government in this appeal.
- 4 In Verdugo, the court remanded the case to the district court for an evidentiary hearing on this and other issues. 939 F.2d at 1359. In this case, the requisite findings of United States involvement in the abduction have already been made.

5 An additional distinction between this case and the Verdugo case is that in this case the
« up Mexican government has made several specific formal diplomatic protests to the United States
6 overnment. The Government of Mexico has stated unequivocally that the abduction of Dr.
Alvarez-Machain by United States agents violated the 1980 Extradition Treaty and general
principles of international law and has at all times demanded his immediate repatriation to
Mexico. Moreover, the Mexican government has stated its position on these issues
unequivocally to the court in this case.

6 The Government of Mexico continues to insist that appellee's forcible abduction from
Mexico by DEA agents violated the 1980 Treaty and that he must be returned. Thus, there
remains no question about the adequacy of Mexico's protests in this case or about Mexico's
demand for repatriation. For this reason, the facts of this case would also satisfy the concerns
set forth in Judge Browning's separate opinion in Verdugo. 939 F.2d at 1363, 1364-65.

7 The Verdugo case requires the dismissal of the indictment and the repatriation of the
appellee.

8 AFFIRMED.

* Honorable Samuel P. King, United States District Judge for the District of Hawaii, sitting by
designation



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