Buffalo Law Review

Volume 59 | Number 3 | Article 3

5-1-2011

# Jurisdiction, Treaties, and Due Process

Roberto Iraola
*U.S. Department of Justice*

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

Part of the Criminal Law Commons, and the International Law Commons

Recommended Citation
Roberto Iraola, *Jurisdiction, Treaties, and Due Process*, 59 Buff. L. Rev. 693 (2011).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol59/iss3/3

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

# Jurisdiction, Treaties, and Due Process

ROBERTO IRAOLA†

## INTRODUCTION

It is well-settled under the *Ker-Frisbie* doctrine[1] "that a court's power to try a defendant is ordinarily not affected by the manner in which the defendant is brought to trial."[2] This doctrine "rest[s] on the sound basis that due process of law is satisfied when one present in court is convicted of [a] crime after being fairly appri[s]ed of the charges against him and after a fair trial in accordance with constitutional procedural safeguards."[3] Nevertheless, the Supreme Court recognized in *United States v. Alvarez-Machain* that if the extradition treaty[4] between the United States and the

---

† Senior Trial Attorney, U.S. Department of Justice, Office of International Affairs; J.D. 1983, Catholic University Law School. The views expressed herein are those of the author and do not necessarily represent the views of the U.S. Department of Justice or the United States.

1. *See* Frisbie v. Collins, 342 U.S. 519, 522-23 (1952) (upholding the conviction of a defendant who was brought to trial in Michigan after he was kidnapped by Michigan officers in Chicago, Illinois); Ker v. Illinois, 119 U.S. 436, 444 (1886) (holding that the power of a state court to try the defendant was not impaired by the fact he had been forcibly abducted from Peru).

2. United States v. Best, 304 F.3d 308, 311 (3d Cir. 2002); *see also* United States v. Noorzai, 545 F. Supp. 2d 346, 351 (S.D.N.Y. 2008) ("Under the . . . *Ker-Frisbie* rule, the constitutional due process requirement is limited to a guarantee of a fair trial, regardless of the method by which jurisdiction was obtained over the defendant.").

3. *Frisbie*, 342 U.S. at 522.

4. Extradition involves "the surrender by one nation to another of an individual accused or convicted of an offen[s]e outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender." Terlinden v. Ames, 184 U.S. 270, 289 (1902). It requires "a demand in some form by the one country upon the other." Stevenson v. United States, 381 F.2d 142, 144 (9th Cir. 1967). Outside of extradition, a fugitive's presence may be secured through other means including abduction, informal surrender, or deportation. *See* Matthew W. Henning, Comment, *Extradition Controversies: How Enthusiastic Prosecutions Can Lead to International Incidents*, 22 B.C. INT'L & COMP. L. REV. 347, 361 (1999) (discussing these three alternatives).

country from which a defendant was transferred contains an explicit provision making the treaty the exclusive means by which the defendant's presence may be secured, the doctrine will not apply.[5] Additionally, there is support in case law for the proposition that certain government conduct used to secure the custody of a criminal defendant may be so offensive under the Due Process Clause that a court may, as a remedy, dismiss the charges against the defendant.[6]

This Article, which is divided into three parts, analyzes the developing case law on the two exceptions to the *Ker-Frisbie* doctrine. First, and by way of background, the Article discusses the two Supreme Court cases which led to the formulation of the doctrine. Next, the Article examines how courts have applied the holding of *Alvarez-Machain* that, for extradition to be the sole method of transfer of a criminal defendant, the treaty must expressly provide for such. Lastly, the Article analyzes the ruling of the Second Circuit in *United States v. Toscanino*, which originally promulgated an exception to the *Ker-Frisbie* doctrine for outrageous government conduct in the procurement of a criminal defendant, but whose continuing validity is suspect.[7]

## I. FORCIBLE ABDUCTION AND JURISDICTION

In *Ker v. Illinois*, the defendant fled to Peru after having been charged in Illinois with larceny and embezzlement.[8] A messenger was sent to Peru with a

5. *See* 504 U.S. 655, 664 (1992).

6. *See, e.g.*, United States *ex rel.* Lujan v. Gengler, 510 F.2d 62, 66 (2d Cir. 1975) (holding that the defendant failed to allege a level of "shocking government conduct" that would amount to a violation of the defendant's due process); United States v. Toscanino, 500 F.2d 267, 275 (2d Cir. 1974) ("[W]e view due process as . . . requiring a court to divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights."). *See generally* United States v. Russell, 411 U.S. 423, 431-32 (1973) ("[W]e may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.").

7. 500 F.2d at 275.

8. 119 U.S. 436, 437-38 (1886).

warrant requesting the defendant's extradition under the treaty.[9] However, instead of presenting the warrant to the proper authorities, the messenger kidnapped the defendant and brought him to the United States where he was convicted of larceny in Cook County, Illinois.[10] Rejecting the defendant's contention that his forcible seizure and transfer violated his right to due process, the Supreme Court observed that "such forcible abduction [was not a] sufficient reason why [a] party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offen[s]e, and presents no valid objection to his trial in such court."[11]

Sixty-six years later, in *Frisbie v. Collins*, the Court had occasion to reaffirm the rule in *Ker*.[12] In *Frisbie*, Michigan police officers kidnapped the defendant in Chicago, Illinois, and brought him back to Michigan where he was tried and convicted of murder.[13] Once again, the defendant argued that his conviction was obtained in violation of the Due Process Clause of the Fourteenth Amendment.[14] Applying the rule in *Ker*, the Court rejected that argument holding "that the power of a court to try a person for [a] crime is not impaired by the fact that he ha[s] been brought within the court's jurisdiction by reason of a 'forcible abduction.'"[15]

---

9. *Id.* at 438.

10. *Id.* at 438-39. As Justice Miller explained, the papers the messenger carried to procure the defendant's extradition "were never brought to light in Peru" and the facts revealed "that it was a clear case of kidnapping within the dominions of Peru, without any preten[s]e of authority under the treaty or from the government of the United States." *Id.* at 442-43.

11. *Id.* at 444. Discussing the meaning of "due process of law" under the Fourteenth Amendment, Justice Miller noted that in the context of the case before the Court, that guarantee was met "when the party is regularly indicted by the proper grand jury in the State court, has a trial according to the forms and modes prescribed for such trials, and when, in that trial and proceedings, he is deprived of no rights to which he is lawfully entitled." *Id.* at 440.

12. 342 U.S. 519, 522 (1952).

13. *Id.* at 520.

14. *Id.* The defendant also argued that his conviction could not stand under the Federal Kidnapping Act. *Id.* The Court disagreed, finding that the sanctions under that Act did not include "barring a state from prosecuting persons wrongfully brought to it by its officers." *Id.* at 523.

15. *Id.* at 522. Following the teaching of *Ker*, Justice Black observed:

## II. TREATIES AND JURISDICTION

In *Ker*, which involved a treaty, the United States government did not sponsor the abduction; the person kidnapped was a United States citizen and Peru did not object to his prosecution.[16] Contrariwise, *Frisbie* did not involve an extradition treaty and law enforcement authorities engaged in the domestic kidnapping of the wanted defendant.[17] But what if the United States government sponsored the abduction of a fugitive defendant from a country with which the United States had an extradition treaty, and that country thereafter protested? Would the *Ker-Frisbie* doctrine bar any challenge to the jurisdiction of the court over the defendant? The Supreme Court squarely addressed this issue forty years after *Frisbie* in *United States v. Alvarez-Machain*.[18]

In *Alvarez-Machain*, Drug Enforcement Administration ("DEA") agents were involved in the kidnapping from Mexico to the United States of a doctor who was suspected of participating in the kidnapping and murder of a DEA agent and a pilot who worked with the agent.[19] Mexico formally protested this conduct as a violation of the

---

> [D]ue process of law is satisfied when one present in court is convicted of crime after having been fairly appri[s]ed of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There 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.*

16. *Ker*, 119 U.S. at 443; *see also* Linda C. Ward, Note, *Forcible Abduction Made Fashionable:* United States v. Alvarez-Machain's *Extension of the* Ker-Frisbie *Doctrine*, 47 ARK. L. REV. 477, 490 (1994) (noting that Peru did not object to the abduction of Ker, a United States citizen).

17. *Frisbie*, 342 U.S. at 520.

18. 504 U.S. 655 (1992); *see* Ward, *supra* note 16, at 493 ("[*Alvarez-Machain*] was the first case to come before the [Supreme] Court which combined the elements of a government-sponsored abduction, a valid extradition treaty in force, and the prompt and unequivocal protest of the offended nation.").

19. *Alvarez-Machain*, 504 U.S. at 657 & n.2 ("DEA officials had attempted to gain [the defendant's] presence in the United States through informal negotiations with Mexican officials, but were unsuccessful. DEA officials then, through a contact in Mexico, offered to pay a reward and expenses in return for the delivery of [the defendant] to the United States.").

extradition treaty then in effect between both countries.[20] The issue before the Court was "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 [United States] courts" in such circumstances.[21]

The Court analyzed the language of the treaty and determined that it did "not purport to specify the only way in which one country may gain custody of a national of the other country for purposes of prosecution."[22] The Court then rejected the contention that, based on international precedent and practice, the treaty should be interpreted to imply a prohibition against prosecution when the presence of a defendant is secured by means outside the treaty.[23]

Following *Alvarez-Machain*, it is clear that "an extradition treaty does not divest courts of jurisdiction over a defendant who has been abducted from another country where the terms of the extradition treaty do not prohibit such forcible abduction."[24] But what if the transfer, in a case involving a treaty in force, is not effected by means of an abduction, but rather by some form of expulsion or

---

20. *Id.* at 659.

21. *Id.* at 657.

22. *Id.* at 664; *see also id.* at 666 ("[T]he language of the Treaty, in the context of its history, does not support the proposition that the Treaty prohibits abductions outside of its terms.").

23. *Id.* at 666-69.

24. Kasi v. Angelone, 300 F.3d 487, 495 (4th Cir. 2002); *see also* United States v. Noriega, 117 F.3d 1206, 1213 (11th Cir. 1997) ("[T]o prevail on an extradition treaty claim, a defendant must demonstrate, by reference to the express language of a treaty and/or the established practice thereunder, that the United States affirmatively agreed not to seize foreign nationals from the territory of its treaty partner."); United States v. Matta-Ballesteros, 71 F.3d 754, 762 (9th Cir. 1995) ("The treaties between the United States and Honduras . . . did not sufficiently specify extradition as the only way in which one country may gain custody of a foreign national for purposes of prosecution."); Reyes-Vasquez v. U.S. Att'y Gen., No. 3:07-CV-1460, 2007 WL 3342759, at *4 (M.D. Pa. Nov. 8, 2007) ("[E]ven presuming the Petitioner was forcibly abducted, his abduction did not violate an express provision of the treaty between the United States and the Dominican Republic."); United States v. Lazore, 90 F. Supp. 2d 202, 203-04 (N.D.N.Y. 2000) (holding that even if the defendant was abducted, the extradition treaty between the United States and Canada did not contain an express prohibition against such transfer).

deportation, or less formally, with the cooperation or assistance of the foreign government? Or what if the extradition violates the requested country's domestic law or the provisions of the treaty? Can a defendant raise a jurisdictional defense under those circumstances? The developing case law reveals that, as to the former question, under the rationale of *Alvarez-Machain*, unless the extradition treaty expressly prohibits the method used—i.e., deportation, expulsion, or informal cooperation—a defendant has no grounds to challenge the jurisdiction of the court over him.[25] With respect to the latter, principles of international comity, the act of state doctrine, and Supreme Court precedent have been found to foreclose a jurisdictional challenge on the grounds that a defendant's extradition violated the requested country's domestic laws or provisions of the treaty.[26] The following cases illustrate these points.

### A. *Deportation and Expulsion*

In *United States v. Chapa-Garza*, the defendant absconded from federal custody while serving a sentence for drug related charges and fled to Mexico.[27] The United States requested his extradition from Mexico and Mexican authorities, upon discovering that he was an American citizen, deported him to the United States.[28] Summarily rejecting the defendant's jurisdictional challenge, the United States Court of Appeals for the Fifth Circuit ruled that the defendant's transfer had not violated the terms of the treaty, that he had not been turned over to the United States under the treaty, and that the initiation of extradition proceedings against him was irrelevant.[29]

---

25. *See supra* Part II.A-B.

26. *See supra* Part II.C.

27. 62 F.3d 118, 120 (5th Cir. 1995).

28. *Id.*

29. *Id.* at 120-21; *see also Kasi*, 300 F.3d at 499 ("[E]ven if we assume that the United States had formally initiated extradition proceedings under the Extradition Treaty as now claimed, the United States government's act of forcibly abducting [the defendant] in lieu of pursuing the extradition process . . . did not deprive the state court of jurisdiction over him."); United States v. Herbert, 313 F. Supp. 2d 324, 330 (S.D.N.Y. 2004) ("[A]bsent . . . a specific prohibition, even after the instigation of formal extradition, the U.S.

In a similar vein, in *United States v. Arbane*, the defendant was acquitted on drug possession charges in Ecuador and ordered deported to Iran.[30] En route to Iran, the plane stopped in Houston, Texas, where the defendant was arrested on an indictment charging him with conspiracy to distribute cocaine.[31] Following his conviction, the defendant argued on appeal that the district court lacked jurisdiction to try him because his presence in the United States had not been procured through the extradition treaty with Ecuador.[32] The United States Court of Appeals for the Eleventh Circuit rejected this contention since the treaty did not contain a clause expressly providing that extradition was the exclusive means to obtain a fugitive's presence.[33]

---

government may act to obtain custody of the defendant through other channels without invoking or violating an extradition treaty.").

30. 446 F.3d 1223, 1225 (11th Cir. 2006). Unlike *Chapa-Garza*, no extradition request was submitted to the foreign authorities in the case of *Arbane*. *See id.* at 1224-25.

31. *Id.* at 1225.

32. *Id.*

33. *Id.*; *see also* United States v. Struckman, 611 F.3d 560, 573 (9th Cir. 2010) (holding that the defendant's deportation, not extradition, from Panama to the United States did not violate the treaty between the parties); United States v. Gardiner, 279 F. App'x 848, 850 (11th Cir. 2008) (holding that the expulsion of a drug trafficker was not prohibited under the terms of the extradition treaty between the United States and the Dominican Republic); United States v. Baker, No. 93-5621, 1995 WL 134498, at *2 (4th Cir. Mar. 29, 1995) (finding that the defendant's expulsion from Panama did not violate extradition treaty between the parties); United States v. Liersch, No. 04CR2521, 2006 WL 6469421, at *6-9 (S.D. Cal. June 26, 2006) (ruling that the defendant's deportation from Guatemala to the United States did not violate the treaty between the parties); United States v. Bin Laden, 156 F. Supp. 2d 359, 366 (S.D.N.Y. 2001) (holding that the delivery of the defendant to FBI agents by South African officials, which a South African court later characterized as a deportation, did not deprive the district court of jurisdiction because no provision in the extradition treaty between South Africa and the United States expressly prohibited this method of transferring custody); United States v. Stroh, No. 396CR139AHN, 2000 WL 1833397, at *5 (D. Conn. Nov. 3, 2000) (finding that the defendant's expulsion from Panama, leading to his immediate transfer to the United States by DEA agents, did not violate the extradition treaty between the parties); United States v. Trujillo, 871 F. Supp. 215, 217-20 (D. Del. 1994) (finding that the defendant was deported from the United Kingdom to Colombia when he was arrested during a stopover in Miami, and since this was not an extradition, it did not violate the treaty between the

B. *Informal Cooperative Transfers*

Informal cooperative methods resulting in a fugitive's removal from a foreign country also have been found to fall outside the terms of extradition treaties and therefore provide no basis for a jurisdictional challenged under *Alvarez-Machain.*[34] For example, in *United States v. Torres Gonzalez,* the defendant challenged his conviction for engaging in a continuing criminal enterprise on the grounds that he had not been formally extradited from Venezuela to the United States in accordance with the bilateral treaty.[35] The United States Court of Appeals for the First Circuit dismissed the defendant's jurisdictional argument, finding that the cooperation of the Venezuelan authorities in his apprehension and their voluntary transfer of the defendant to the United States was not prohibited by the treaty.[36]

In *United States v. Mejia,* Panamanian authorities seized two defendants who were charged in the United States with conspiracy to distribute cocaine, and transferred them to the custody of DEA agents in Panama who, in turn, transported them to the United States.[37] After being convicted, the defendants argued on appeal that the district court had lacked jurisdiction over their case because they

---

United States and the United Kingdom); *cf.* United States v. Berganza, No. S(4) 03 CR. 987(DAB), 2005 WL 372045, at *3 (S.D.N.Y. Feb. 16, 2005) (holding that the manner in which the defendant was removed to the United States does not invalidate indictment); United States v. Felix, No. S8 91 Cr. 451 (SWK), 1992 WL 322015, at *6 (S.D.N.Y. Oct. 28, 1992) (stating that even if the defendant's deportation from the Dominican Republic was improper, under the *Ker-Frisbie* doctrine, the court has power to try him). Prior to *Alvarez-Machain,* there was well-established case law that the mere existence of an extradition treaty did not preclude the parties from deporting a fugitive. *See* United States v. Cordero, 668 F.2d 32, 37-38 (1st Cir. 1981) (ruling that nothing in the extradition treaties between the United States and Panama or Venezuela prevented either of those sovereign nations from deporting the defendant to the United States to stand trial); United States v. Valot, 625 F.2d 308, 309 (9th Cir. 1980) (noting that there was no demand for the defendant's extradition from the United States to Thailand authorities who delivered the defendant to DEA agents at the Bangkok airport).

34. Informal cooperation may lead to a defendant's deportation. *See* *Struckman,* 611 F.3d at 572.

35. 240 F.3d 14, 16 (1st Cir. 2001).

36. *Id.*

37. 448 F.3d 436, 439 (D.C. Cir. 2006).

were transferred to the United States in disregard of the requirements of the extradition treaty between the two countries.[38] Applying the rationale of *Alvarez-Machain*, the United States Court of Appeals for the District of Columbia Circuit rejected this argument, reasoning that the United States-Panama treaty, like the United States-Mexico treaty, "contain[ed] no prohibition against procuring the presence of an individual outside the terms of the treaty—let alone one barring the signatories from informally cooperating with each other as they did in th[at] case."[39]

### C. *Act of State Doctrine and International Comity*

In some instances, a defendant who is extradited will argue that in granting the extradition request, the requested country's executive violated its own domestic law; therefore, the court lacks jurisdiction and the case must be dismissed. In other instances, a defendant will maintain that the indictment should be dismissed because his extradition violated specific provisions in the treaty. In either case, the deference which our courts must give to the foreign country's extradition determination—through application of either the act of state doctrine[40] or principles

---

38. *Id.* at 442.

39. *Id.* at 443; *see also* United States v. Torres-Garcia, No. 05-267(RMC), 2007 WL 1207204, at *1-4 (D.D.C. Apr. 24, 2007) (ruling that provisions of extradition treaty between the United States and Panama did not preclude Panamanian authorities from denying the defendant admission to Panama and turning him over to DEA officials who then took him by plane to the United States); United States v. Bourdet, 477 F. Supp. 2d 164, 169-70, 178 (D.D.C. 2007) (finding that the defendants' arrest by Salvadorian authorities and subsequent transfer to DEA agents who then transported them by plane to the United States did not violate provisions of the extradition treaty between El Salvador and the United States); United States v. Herbert, 313 F. Supp. 2d 324, 327 (S.D.N.Y. 2004) (holding that the voluntary transfer of the defendant by Belizian authorities to DEA agents who then transported him to the United States did not violate the United States-Belize extradition treaty).

40. The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401 (1964). While "once viewed . . . as an expression of international law, resting upon 'the highest considerations of international comity and expediency,'" more recently, the Supreme Court has described the doctrine as one guided by our "domestic separation of powers, reflecting 'the strong sense of the Judicial Branch that its engagement in the task of passing

of international comity[41]—generally leads to the rejection of such contentions.[42] The following cases illustrate this point.

1. *Alleged Violation of Domestic Law by Requested Country.* In *Reyes-Vasquez v. U.S. Attorney General*, after pleading guilty to racketeering and conspiracy to commit murder, the defendant filed a petition for a writ of habeas corpus alleging that he was extradited to the United States from the Dominican Republic in violation of the Dominican Republic's domestic law which precluded the surrender of its own citizens.[43] The district court denied the petition on the basis of the act of state doctrine,[44] and this ruling was affirmed by the United States Court of Appeals for the Third Circuit.[45] The circuit court reasoned that the presidential decree granting the defendant's extradition was "an 'official act of a foreign sovereign'" under the act of state doctrine and therefore it was "appropriate for United States

on the validity of foreign acts of state may hinder' the conduct of foreign affairs." W.S. Kirkpatrick & Co. v. Envtl. Tectonics Corp., 493 U.S. 400, 404 (1990) (citations omitted).

41. International comity has been described as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Hilton v. Guyot, 159 U.S. 113, 164 (1895). International comity is manifested in two ways. First, under prescriptive comity, courts will "construe[] ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations." F. Hoffmann-La Roche Ltd. v. Empagran S.A., 542 U.S. 155, 164 (2004). Additionally, there is "comity of courts, whereby judges decline to exercise jurisdiction over matters more appropriately adjudged elsewhere." Hartford Fire Ins. Co. v. California, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting).

42. Courts tend to apply the act of state doctrine to challenges involving the alleged misapplication by a foreign government of its own domestic law when granting an extradition request. Principles of international comity come into play when the question involves the alleged misapplication by a foreign government of the terms of the extradition treaty.

43. No. 3:07-CV-1460, 2007 WL 3342759, at *2 (M.D. Pa. Nov. 8, 2007).

44. *See id.* at *2-3.

45. Reyes-Vasquez v. U.S. Att'y Gen., 304 F. App'x 33, 36 (3d Cir. 2008).

federal courts to abstain from declaring it invalid under Dominican Republic domestic law."[46]

A similar result was reached in *United States v. Knowles*, where following his convictions for drug-related offenses, the defendant appealed to the Eleventh Circuit, arguing in part that the district court had erred in denying his motion to dismiss the indictment for lack of personal jurisdiction.[47] Specifically, the defendant maintained that his extradition from the Bahamas to the United States had violated both Bahamian law and an order from the Bahamian Supreme Court.[48] Applying the act of state doctrine, the circuit court rejected the defendant's argument that the district court had erred in not dismissing the indictment.[49] The circuit court reasoned that a determination that the Bahamian authorities had violated their own laws when they elected to authorize the defendant's extradition would, in contravention of the act of state doctrine, require a United States court "'to declare invalid the official act of a foreign sovereign performed within its own territory.'"[50]

2. *Alleged Violation of Treaty Terms by Requested Country. Johnson v. Browne*[51] is the seminal case on the question of whether United States courts have the authority to review the decision of a foreign country granting a United States extradition request on the grounds that the offense for which the fugitive was sought and surrendered was in fact not extraditable under the treaty. There, the Supreme Court held that "[w]hether the crime came within the provision of the treaty was a matter for the decision of the

46. *Id.* ("[W]hether [the] President [of the Dominican Republic] may lawfully authorize [the defendant's] extradition despite a prohibition under Dominican Republic law is a question for the courts of the Dominican Republic.").

47. 390 F. App'x 915, 928 (11th Cir. 2010).

48. *Id.*

49. *Id.*

50. *Id.* (quoting W.S. Kirkpatrick & Co.. v. Envtl. Tectonics Corp., 493 U.S. 400, 405 (1990)); *see also* United States v. Merit, 962 F.2d 917, 921 (9th Cir. 1992) ("Even if the Republic did disregard its own laws in failing to issue a warrant of extradition, this court cannot question the validity of South Africa's domestic actions.").

51. 205 U.S. 309 (1907).

[Canadian] authorities, and such decision was final by the express terms of the treaty itself."[52] While the treaty in *Johnson* contained a provision granting finality to the requested state's surrender decision, *Johnson* "has been interpreted to stand for the broader proposition that a foreign government's decision to extradite an individual in response to a request from the United States is not subject to review by United States courts."[53] As the court aptly observed in *United States v. Campbell*, if "cordial international relations" is the goal, "[i]t could hardly promote harmony to request a grant of extradition and then, after extradition is granted, have the requesting nation take the stance that the extraditing nation was wrong to grant the request."[54]

This rationale will also bar a challenge based not on whether the offense in question is an extraditable crime within the treaty, but rather whether the extradition for the offense sought is foreclosed by the application of another provision in the treaty, such as a *non bis in idem* clause.[55]

---

52. *Id.* at 316.

53. United States v. Medina, 985 F. Supp. 397, 401 (S.D.N.Y. 1997); *see also* United States v. Campbell, 300 F.3d 202, 209 (2d Cir. 2002) ("[W]e interpret *Johnson v. Browne* to mean that our courts cannot second-guess another country's grant of extradition to the United States."); Casey v. Dep't of State, 980 F.2d 1472, 1477 (D.C. Cir. 1992) ("[A]t a minimum, *Johnson* means that an American court must give great deference to the determination of the foreign court in an extradition proceeding."); United States v. Van Cauwenberghe, 827 F.2d 424, 429 (9th Cir. 1987) ("*Johnson* . . . makes a broad[] statement regarding the proper deference to be accorded a surrendering country's decision on extraditability."); McGann v. U.S. Bd. of Parole, 488 F.2d 39, 40 (3d Cir. 1973) ("The holding of *Johnson v. Browne* precludes any review of the Jamaican court's decision as to the extraditable nature of the offense.") (internal citation omitted).

54. 300 F.3d at 209.

55. The Latin phrase *non bis in idem* means "[n]ot twice for the same thing" and usually refers to the legal bar against double jeopardy. BLACK'S LAW DICTIONARY 1150 (9th ed. 2009). The double jeopardy protections of the Fifth Amendment do not foreclose a successive prosecution for the same offense by a different sovereign; therefore, they do not serve as a bar to extradition. *See In re* Extradition of Coleman, 473 F. Supp. 2d 713, 717 (N.D.W. Va. 2007). The treaty under which a defendant's extradition is sought, however, is likely to contain a double jeopardy provision—commonly known as a *non bis in idem* clause—that may be more restrictive than the Double Jeopardy Clause. *See* United States v.

For example, in *United States v. Salinas Doria*, the United States requested the defendant's extradition from Mexico on drug-related charges.[56] After he was surrendered, the defendant moved to dismiss the indictment, arguing that his extradition had violated the *non bis in idem* provision in the extradition treaty.[57] Relying on *Johnson* and its progeny, the district court denied the defendant's motion.[58] In doing so, the district court noted that the Mexican government not only was "fully capable" of making an informed decision regarding whether the offenses for which the United States sought the defendant's extradition constituted the same offenses for which he had been convicted in Mexico, it had also considered the defendant's argument under the *non bis in idem* provision of the treaty and rejected it.[59]

In *United States v. Anderson*, following convictions for conspiracy to commit mail and wire fraud, conspiracy to defraud the United States, and other related offenses, the defendant argued on appeal that his convictions should be vacated because he had been extradited to the United States while his appeal of the annulment of his Costa Rican citizenship was still pending before the Costa Rican courts.[60] The United States Court of Appeals for the Ninth Circuit rejected the defendant's contention that his extradition violated the governing treaty between the United States and Costa Rica.[61] The court observed that the treaty did not

---

Rezaq, 134 F.3d 1121, 1128 (D.C. Cir. 1998); *see also* Sindona v. Grant, 619 F.2d 167, 177 (2d Cir. 1980).

56. No. 01 Cr. 21(GEL), 2008 WL 4684229, at *1 (S.D.N.Y. Oct. 21, 2008).

57. *Id.* at *2.

58. *Id.* at *2-3.

59. *Id.* at *3. Whether a defendant who has been extradited has standing to raise a violation of the treaty's terms absent a protest by the foreign country is debatable. *Compare* Matta-Ballesteros v. Henman, 896 F.2d 255, 259 (7th Cir. 1990) ("It is well established that individuals have no standing to challenge violations of international treaties in the absence of a protest by the sovereigns involved."), *with* United States v. Herbert, 313 F. Supp. 2d 324, 330-31 (S.D.N.Y. 2004) ("Courts have . . . found that in limited circumstances a defendant may have standing to raise violations of an extradition treaty. Those exceptions arise where the extradition has violated the rule of speciality or where the United States government participated in shocking and outrageous conduct in securing the presence of the defendant.").

60. 472 F.3d 662, 664 (9th Cir. 2006).

61. *Id.* at 666-67.

prohibit a grant of extradition if an appeal regarding a fugitive's citizenship status was pending.[62] The court further noted that the defendant was granted citizenship by Costa Rican authorities contrary to the provisions of the treaty since the defendant's naturalization proceedings should have been suspended after the United States formally requested his extradition.[63] Costa Rican authorities recognized this error when they subsequently annulled the defendant's grant of citizenship and suspended any further naturalization proceedings, ultimately leading to the defendant's appeal.[64] In *Anderson*, the court found no breach of the treaty.[65] If it had, *Johnson* and the application of principles of international comity presumably would have led the circuit court to conclude that Costa Rica's decision to grant the extradition request was not subject to review by United States courts.

## III. OUTRAGEOUS CONDUCT AND JURISDICTION

In *United States v. Toscanino*, the defendant was convicted in the United States District Court for the Eastern District of New York of conspiracy to import narcotics into the United States and sentenced to twenty years in prison.[66] On appeal, the defendant argued that the court unlawfully acquired jurisdiction over him because he was kidnapped by American agents in Uruguay, taken to Brazil where he was tortured, and then brought to the United States to stand trial.[67]

The defendant alleged that he and his wife, who was seven months pregnant at the time, were lured by Uruguayan policemen (at least one of whom was a paid agent of the United States) to a deserted bowling alley in Montevideo, Uruguay, where he was knocked unconscious with a gun, bound, blindfolded, and thrown into the rear seat of a police car.[68] From there he was taken to Brazil

62. *Id.*

63. *Id.*

64. *Id.* at 667.

65. *Id.*

66. 500 F.2d 267, 268-69 (2d Cir. 1974).

67. *Id.* at 269.

68. *Id.*

where, during a seventeen day period, he was interrogated and tortured.[69] The defendant asserted that his Brazilian captors denied him food and sleep for days at a time and fed him intravenously to keep him alive.[70] When he was not responsive to questioning, the defendant maintained that his captors pinched his fingers with metal pliers and flushed alcohol into his nose and eyes and other fluids into his anal passage.[71] In addition, his captors attached electrodes to his toes, earlobes, and genitals, sending electricity throughout his body "rendering him unconscious for indeterminate periods of time."[72] After this seventeen day ordeal, the defendant claimed that he was drugged by Brazilian-American agents and placed on a flight destined for the United States where he was then arrested and brought before the court to answer for the drug charge pending against him.[73]

The United States Court of Appeals for the Second Circuit determined that, in light of the evolving standards since the promulgation of the *Ker-Frisbie* doctrine, due process "requir[ed] a court to divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights."[74] The Second Circuit remanded the case to the district court for further proceedings, including an evidentiary hearing if the defendant offered credible "evidence that the action was taken by or at the direction of United States officials."[75] Because the defendant failed to present credible evidence of participation by United States officials in his abduction or torture, the district court subsequently declined to hold a hearing and denied the motion to dismiss.[76]

---

69. *Id.* at 270.
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.* at 275.
75. *Id.* at 281.
76. *See* United States v. Toscanino, 398 F. Supp. 916, 917 (E.D.N.Y. 1975).

That same year, in *United States* ex rel. *Lujan v. Gengler*, the Second Circuit clarified the holding in *Toscanino*.[77] Under the direction of United States agents, the defendant in *Gengler*, a licensed pilot, was lured to travel from Argentina to Bolivia.[78] There, he was taken into custody by Bolivian officials and placed on a plane bound for the United States where he was then arrested upon landing in New York.[79]

In rejecting the defendant's challenge to the manner in which the district court acquired jurisdiction over him, the Second Circuit first observed that it had not "intend[ed] to suggest [in *Toscanino*] that *any* irregularity in the circumstances of a defendant's arrival in the jurisdiction would vitiate the proceedings of the criminal court."[80] The court went on to rule that since the process involving the defendant's transfer to the United States did not involve "torture, brutality and similar outrageous conduct," he could not avail himself of the exception to the *Ker-Frisbie* rule recognized in *Toscanino*.[81]

While the First[82] and Ninth[83] Circuits have recognized the *Toscanino* exception, the Seventh Circuit has rejected

---

77. 510 F.2d 62, 65 (2d Cir. 1975).

78. *Id.* at 63.

79. *Id.*

80. *Id.* at 65.

81. *Id.* The court observed in *Gengler*:

> Lacking from [the defendant's] petition is any allegation of that complex of shocking governmental conduct sufficient to convert an abduction which is simply illegal into one which sinks to a violation of due process. Unlike Toscanino, [the defendant] does not allege that a gun blow knocked him unconscious when he was first taken into captivity, nor does he claim that drugs were administered to subdue him for the flight to the United States. Neither is there any assertion that the United States Attorney was aware of his abduction, or of any interrogation. Indeed, [the defendant] disclaims any acts of torture, terror, or custodial interrogation of any kind.

*Id.* at 66; *see also* United States v. Noorzai, 545 F. Supp. 2d 346, 352 (S.D.N.Y. 2008) ("Subsequent decisions . . . have made it clear that . . . an exception to the *Ker-Frisbie* rule is essentially limited to the extreme facts of *Toscanino*, or cases which demonstrate an analogous invasion of a defendant's bodily integrity and indicate government conduct of a most shocking and outrageous character.").

82. *See* United States v. Cordero, 668 F.2d 32, 36-37 (1st Cir. 1981).

such an exception.[84] The Third,[85] Fourth,[86] Fifth,[87] Sixth,[88] Eighth,[89] Eleventh,[90] and District of Columbia Circuits[91] have left the door open—in varying degrees.[92] In the thirty-

---

83. *See* United States v. Struckman, 611 F.3d 560, 573-74 (9th Cir. 2010). As the court recognized in *Struckman*, there is "tension" in the Ninth Circuit's case law as to the continuing vitality of the outrageous conduct defense as a basis for dismissal. *Id.* at 573 n.8. For example, in *United States v. Matta-Ballesteros*, a panel held that Supreme Court cases after *Toscanino* undermined its holding and that a "court should only consider dismissing [an] indictment based upon its supervisory powers." 71 F.3d 754, 763 n.3 (9th Cir. 1995). Over a decade later, in *United States v. Anderson*, a different panel considered an outrageous conduct defense as a basis for dismissal of an indictment, citing *Matta-Ballesteros*. 472 F.3d 662, 666-67 (9th Cir. 2006).

*Struckman* evaluated a defendant's challenge to jurisdiction under both outrageous conduct grounds (which would violate due process) *and* a court's supervisory powers. *Struckman*, 611 F.3d at 573-75. As to the latter, the panel observed that an indictment would be subject to dismissal "(1) to implement a remedy for the violation of a recognized statutory or constitutional right; (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury; and (3) to deter future illegal conduct." *Id.* at 574 (quoting *Matta-Ballesteros*, 71 F.3d at 763).

84. Matta-Ballesteros v. Henman, 896 F.2d 255, 263 (7th Cir. 1990).

85. *See* United States v. Best, 304 F.3d 308, 312-13 (3d Cir. 2002).

86. *See* United States v. Wilson, 721 F.2d 967, 972 (4th Cir. 1983).

87. *See* United States v. Chapa-Garza, 62 F.3d 118, 121 (5th Cir. 1995); United States v. Wilson, 732 F.2d 404, 411 (5th Cir. 1984); *see also* United States v. Fernandez, 500 F. Supp. 2d 661, 665 (W.D. Tex. 2006); United States v. Fraguela, No. CRIM.A. 96-339, 1998 WL 351851, at *1 (E.D. La. June 26, 1998).

88. *See* United States v. Pelaez, 930 F.2d 520, 525 (6th Cir. 1991).

89. *See* Davis v. Muellar, 643 F.2d 521, 527 (8th Cir. 1981).

90. *See* United States v. Noriega, 117 F.3d 1206, 1214 (11th Cir. 1997); United States v. Matta, 937 F.2d 567, 568 (11th Cir. 1991); United States v. Darby, 744 F.2d 1508, 1531 (11th Cir. 1984). In *United States v. Noriega*, the Eleventh Circuit considered jurisdictional challenges based on allegedly unconscionable government conduct on both due process and supervisory power grounds. *Noriega*, 117 F.3d at 1214.

91. *See* United States v. Rezaq, 134 F.3d 1121, 1130 (D.C. Cir. 1998); United States v. Yunis, 924 F.2d 1086, 1093 (D.C. Cir. 1991). The Tenth Circuit has yet to address the application of the *Toscanino* exception.

92. *Compare* United States v. Best, 304 F.3d 308, 312 (3d Cir. 2002) ("Subsequent decisions of the Supreme Court indicate that there is reason to doubt the soundness of the *Toscanino* exception, even as limited to its flagrant facts."), *with Noriega*, 117 F.3d at 1214 ("[The defendant] has not alleged that

seven years since the promulgation of the *Toscanino* exception, however, no court "has ever found conduct that rises to the level necessary to require the United States to divest itself of jurisdiction."[93] In general, when rejecting a defense challenge under the *Toscanino* exception, courts have concluded either that the alleged conduct was not sufficiently outrageous as to warrant dismissal,[94] that it involved only a lure,[95] or that United States officials were

---

the government mistreated him personally, and thus, he cannot come within the purview of the caveat to *Ker-Frisbie* recognized . . . [in *Toscanino*] . . . were this court inclined to adopt such an exception.").

93. Matta-Ballesteros v. Henman, 896 F.2d 255, 261 (7th Cir. 1990). It bears noting that on remand, the district court in *Toscanino* denied the motion to dismiss because the defendant failed to produce credible evidence that United States agents had participated in his torture and abduction. United States v. Toscanino, 398 F. Supp. 916, 917 (E.D.N.Y. 1975).

94. *See, e.g.*, United States v. Struckman, 611 F.3d 560, 573-74 (9th Cir. 2010) (finding a regional security officer's misstatements to Panamanian authorities, after authorities had decided to cooperate with United States officials leading to the defendant's expulsion, not so shocking and outrageous to justify dismissal of indictment); United States v. Matta-Ballesteros, 71 F.3d 754, 761-64 (9th Cir. 1995) (finding that even if after the defendant's forcible abduction he was beaten and burned with a stun gun while being transported to the United States, such alleged treatment would be insufficient to justify dismissal of indictment under the court's supervisory powers); *Darby*, 744 F.2d at 1530-31 (holding that the defendant's claim of being abducted at gunpoint and forced on a plane bound for the United States did not rise to the level of outrageous conduct in *Toscanino*); United States v. Cordero, 668 F.2d 32, 37 (1st Cir. 1981) (ruling that poor treatment of the defendants by Panamanian authorities, which included insults, slaps, and poor jail conditions before they were sent to the United States was "a far cry from deliberate torture"); United States v. Reed, 639 F.2d 896, 901-02 (2d Cir. 1981) (holding that enticement of the defendant onto a plane and subsequent use of a gun and threatening language during transport to the United States did not constitute gross mistreatment); United States v. Bin Laden, 156 F. Supp. 2d 359, 364, 366 (S.D.N.Y. 2001) (finding that delivery of the defendant to FBI agents by South African officials did not involve shocking or outrageous government conduct); United States v. Stroh, No. 396 CR 139 AHN, 2000 WL 1833397, at *5-6 (D. Conn. Nov. 3, 2000) (finding that the defendant's expulsion from Panama did not involve inhuman, cruel, or outrageous treatment).

95. *See, e.g.*, United States v. Wilson, 732 F.2d 404, 411 (5th Cir. 1984) ("[The defendant] was duped by agents of the government who persuaded him to travel to the Dominican Republic. With the cooperation of the authorities there [he] was placed on a commercial aircraft bound for the United States."); United States v. Wilson, 721 F.2d 967, 972 (4th Cir. 1983) (noting that the defendant was lured to board a plane for the Dominican Republic where he was then

not involved in the conduct.[96] It is also noteworthy that while the Supreme Court in *Alvarez-Machain* did not address the *Toscanino* exception because the ruling appealed from below was not premised on the Due Process Clause,[97] the Court affirmed the continuing validity of the *Ker-Frisbie* doctrine even though the forcible abduction of the defendant may have been "shocking" and "in violation of general international law principles."[98]

---

detained and deported to the United States); United States v. Noorzai, 545 F. Supp. 2d 346, 352 (S.D.N.Y. 2008) ("Defendant's allegations of deceit and government misconduct, which do not implicate physical abuse of any kind, are insufficient to provide any basis for refusal to entertain this prosecution on due process grounds."); United States v. Torres-Garcia, No. 05-267(RMC), 2007 WL 1207204, at *1 (D.D.C. Apr. 24, 2007) (finding that the defendant was lured to Panama where he was denied admission, and from which he was then transferred by DEA officials to the United States); United States v. Fernandez, 500 F. Supp. 2d 661, 665-66 (W.D. Tex. 2006) (finding that at worst, the defendant "was the victim of a nonviolent trick" in presenting herself to law enforcement authorities on the United States-Mexico border); United States v. Fraguela, No. CRIM.A. 96-339, 1998 WL 351851, at *1 (E.D. La. June 26, 1998) (alleging that undercover DEA agents lured the defendant to the Dominican Republic where he was denied entry, causing him to travel to Puerto Rico where he was then arrested).

96. *See, e.g.*, United States v. Pelaez, 930 F.2d 520, 525 (6th Cir. 1991) ("[The defendant] acknowledges that United States officials had no involvement in his seizure and removal from Colombia."); United States v. Lopez, 542 F.2d 283, 284-85 (5th Cir. 1976) (finding that the defendant failed to allege United States agents played any role in torture or interrogation of the defendant in the Dominican Republic); United States v. Lara, 539 F.2d 495, 495 (5th Cir. 1976) (holding that even if the *Toscanino* exception was viable, no United States agents played a role in the torture allegedly administered by Panamanian authorities); United States v. Lira, 515 F.2d 68, 71 (2d Cir. 1975) (finding no proof that Chilean police were acting as agents of the United States when they arrested and allegedly mistreated the defendant prior to transferring him to the United States by plane).

97. *See* Brief for Petitioner at *12-13, United States v. Alvarez-Machain, 504 U.S. 655 (1992) (No. 91-712), 1992 WL 551127.

98. United States v. Alvarez-Machain, 504 U.S. 655, 669 (1992). Shortly after the Second Circuit's decision in *Toscanino*, in *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Supreme Court reaffirmed the continuing application of the *Ker-Frisbie* doctrine by declining to "retreat from the established rule that illegal arrest or detention does not void a subsequent conviction." *Gerstein*, 420 U.S. at 119. Thereafter, in *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), the Court reiterated that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation

## CONCLUSION

Under the *Ker-Frisbie* doctrine, "the manner by which a defendant is brought to trial does not affect the government's ability to try him."[99] Following *Alvarez-Machain*, it is clear that "an extradition treaty does not divest courts of jurisdiction over a defendant who has been abducted from another country where the terms of the extradition treaty do not prohibit such forcible abduction."[100] Furthermore, the developing case law reveals that under the holding of *Alvarez-Machain*, unless the extradition treaty expressly prohibits it, a defendant has no grounds to challenge the jurisdiction of the court over him if his transfer came about by means of deportation or expulsion,[101]

---

occurred." *Lopez-Mendoza*, 468 U.S. at 1039. More recently, as noted in the text above, in *Alvarez-Machain*, the Court again affirmed the rule of *Ker-Frisbie* even though the forcible abduction could be deemed shocking and in violation of general principles of international law. *Alvarez-Machain*, 504 U.S. at 669-70. These decisions from the Supreme Court have caused some lower courts, even in the Second Circuit, to question the continuing viability of the *Toscanino* exception. *See, e.g.*, United States v. Best, 304 F.3d 308, 312-13 (3d Cir. 2002) ("the exception described in *Toscanino* rests on shaky ground"); Matta-Ballesteros v. Henman, 896 F.2d 255, 263 (7th Cir. 1990) (declining to adopt the exclusionary rule in *Toscanino* as it "no longer retains vitality"); United States v. Umeh, No. 09 Cr. 524(JSR), 2001 WL 9397, at *3-4, (S.D.N.Y. Jan. 3, 2011) ("[W]hile the Second Circuit has never explicitly overruled *Toscaninio*, the fact that both of the pillars on which it rests have been removed suggests that all that remains is a rhetorical facade wholly lacking in legal foundation."); United States v. Ghailani, No. S10 98 Crim. 1023 (LAK), 2010 WL 1839030, at *4 (S.D.N.Y. May 10, 2010) ("it is doubtful that *Toscanino* remains authoritative"); *see also* United States v. Darby, 744 F.2d 1508, 1531 (11th Cir. 1984); United States v. Torres-Garcia, No. 05-267(RMC), 2007 WL 1207204, at *4 (D.D.C. Apr. 24, 2007).

99. United States v. Matta-Ballesteros, 71 F.3d 754, 762 (9th Cir. 1995).

100. Kasi v. Angelone, 300 F.3d 487, 495 (4th Cir. 2002); *see also* United States v. Noriega, 117 F.3d 1206, 1213 (11th Cir. 1997); *Matta-Ballesteros*, 71 F.3d at 762; Reyes-Vasquez v. U.S. Att'y Gen., No. 3:07-CV-1460, 2007 WL 3342759, at *4 (M.D. Pa. Nov. 8, 2007); United States v. Lazore, 90 F. Supp. 2d 202, 203-04 (N.D.N.Y. 2000).

101. *See* United States v. Struckman, 611 F.3d 560, 571-73 (9th Cir. 2010); United States v. Gardiner, 279 F. App'x 848, 850 (11th Cir. 2008); United States v. Arbane, 446 F.3d 1223, 1225 (11th Cir. 2006); United States v. Chapa-Garza, 62 F.3d 118, 120-21 (5th Cir. 1995); United States v. Liersch, No. 04CR2521, 2006 WL 6469421, at *6-9 (S.D. Cal. June 26, 2006); United States v. Bin Laden, 156 F. Supp. 2d 359, 364, 366 (S.D.N.Y. 2001); United States v. Stroh, No. 396CR139AHN, 2000 WL 1833397, at *5-6 (D. Conn. Nov. 3, 2000); United

or informal cooperation[102]—even if the United States had formally requested his extradition.[103] Principles of international comity[104] and the act of state doctrine[105] generally will foreclose a jurisdictional challenge by a defendant on the grounds that his or her extradition violated the requested country's domestic laws[106] or provisions of the treaty.[107]

Lastly, while the First[108] and Ninth[109] Circuits have recognized the *Toscanino* exception, the Seventh Circuit has rejected it.[110] The Third, Fourth, Fifth, Sixth, Eighth, Eleventh, and District of Columbia Circuits[111] have left the door open—some more than others.[112] To date, however, no court "has ever found conduct that rises to the level necessary to require the United States to divest itself of jurisdiction."[113] It is also worth noting that although the Supreme Court in *Alvarez-Machain* did not address the

---

States v. Felix, No. S8 91 Cr. 451 (SWK), 1992 WL 322015, at *6 (S.D.N.Y. Oct. 28, 1992).

102. *See* United States v. Mejia, 448 F.3d 436, 443 (D.C. Cir. 2006); United States v. Torres Gonzalez, 240 F.3d 14, 16 (1st Cir. 2001); United States v. Torres-Garcia, No. 05-267(RMC), 2007 WL 1207204, at *1-4 (D.D.C. Apr. 24, 2007); United States v. Bourdet, 477 F. Supp. 2d 164, 169-70, 177-78 (D.D.C. 2007); United States v. Herbert, 313 F. Supp. 2d 324, 326-27 (S.D.N.Y. 2004).

103. *See, e.g.*, *Gardiner*, 279 F. App'x at 850; *Kasi*, 300 F.3d at 499; *Chapa-Garza*, 62 F.3d at 120; *Herbert*, 313 F. Supp. 2d at 330.

104. *See supra* note 41.

105. *See supra* note 40.

106. *See* United States v. Knowles, 390 F. App'x 915, 928 (11th Cir. 2010); Reyes-Vasquez v. U.S. Att'y Gen., 304 F. App'x 33, 36 (3d Cir. 2008); United States v. Merit, 962 F.2d 917, 921 (9th Cir. 1992).

107. *See* United States v. Salinas Doria, No. 01 Cr. 21(GEL), 2008 WL 4684229, at *3-6 (S.D.N.Y. Oct. 21, 2008); *see also* United States v. Anderson, 472 F.3d 662, 666-67 (9th Cir. 2006).

108. *See supra* note 82.

109. *See supra* note 83 (discussing the tension in the Ninth Circuit's case law as to the continuing vitality of the outrageous conduct defense as a basis for dismissal); *see also Anderson*, 472 F.3d at 666; United States v. Valot, 625 F.2d 308, 309-10 (9th Cir. 1980).

110. *See supra* note 84.

111. *See supra* notes 85-91.

112. *See supra* note 92.

113. Matta-Ballesteros v. Henman, 896 F.2d 255, 261 (7th Cir. 1990).

*Toscanino* exception, the Court affirmed the continuing validity of the *Ker-Frisbie* doctrine, while recognizing that the forcible abduction of the defendant may have been "shocking" and "in violation of general international law principles."[114]

114. United States v. Alvarez-Machain, 504 U.S. 655, 669 (1992).