

The Legality of the U.S. Abduction of Venezuelan President Nicolás Maduro

by Gary Lincenberg and Michael Landman (July 26, 2026)

I. Introduction

On January 3, 2026, the United States military abducted Venezuelan President Nicolás Maduro Moros from his residence in Caracas and transported him to New York to face federal drug trafficking charges. Overnight, Maduro went from living in the presidential palace of a sovereign nation to a small, locked cell in a federal detention facility. His trial is set for June 2027. Jurisdictional and immunity motions will be heard in November 2026.

The Maduro apprehension will lead to the next test of President Trump's unilateral exercise of executive power: Can the United States military seize the sitting president of another country and place him on trial in a federal court? At first glance, Supreme Court precedent appears to provide a straightforward answer. For well over a century, American courts have generally held, under the *Ker-Frisbie* doctrine, that even forcible overseas apprehensions ordinarily do not prevent prosecution. But unlike prior challenges to overseas apprehensions, Maduro was the sitting head of state of a country that maintains an extradition treaty with the United States. His reported apprehension was carried out not by bounty hunters or law-enforcement officers, but by the U.S. military. And the treaty governing relations between the United States and Venezuela differs from the treaty the Supreme Court considered in its leading overseas-abduction decision, *United States v. Alvarez-Machain*. Whether those differences matter may determine not only Maduro's fate, but also the future limits of the *Ker-Frisbie* doctrine.

II. Judicial Tolerance for Irregular Foreign Apprehensions

American courts have long distinguished between the legality of a defendant's capture and a court's authority to try him. In *Ker v. Illinois*, decided in 1886, the Supreme Court held that a defendant forcibly abducted from Peru could nonetheless be prosecuted because the applicable extradition treaty did not provide him with an enforceable right to avoid prosecution. *Ker v. People of State of Illinois*, 119 U.S. 436, 442 (1886). The Court distinguished *Ker* from a case it decided that same day, *United States v. Raucher*, where the Court had recognized the doctrine of specialty: a defendant extradited under treaty procedures may be tried only for the offense for which extradition was granted unless the treaty allows otherwise. *United States v. Rauscher*, 119 U.S. 407, 419 (1886). The main difference between the two is that the extradition treaty had not been invoked in *Ker* and the defendant could not identify any treaty provision that had been violated by his apprehension. *Ker*, 119 U.S. at 442.

The Court reaffirmed the principle that the manner in which a defendant arrives in court is not ordinarily relevant to the Court's jurisdiction. *Frisbie v. Collins*, 342 U.S. 519, 523 (1952). *Frisbie* involved the forcible abduction of a defendant from Illinois to Michigan in an alleged violation of the Federal Kidnaping Act. The Court held that the district court's power to try the defendant did not depend on whether his apprehension violated a federal law. *Id.*

Courts have since tested what is known as the *Ker-Frisbie* doctrine, questioning whether due process might still bar extreme conduct used to secure the appearance of a foreign defendant in the United States. For example, the Second Circuit in *Toscanino* recognized, at least in principle, a due-process exception where government conduct involved torture, brutality, or similar outrageous treatment. *United States v. Toscanino*, 500 F.2d 267 (2d Cir. 1974). However, more recent decisions have questioned the continued vitality of *Toscanino* following the Supreme Court’s decision in *United States v. Alvarez-Machain*. See *United States v. al Liby*, 23 F. Supp. 3d 194, 198 (S.D.N.Y. 2014).

III. The Camarena Investigation and Alvarez-Machain

The modern incarnation of the *Ker-Frisbie* doctrine emerged from one of the DEA’s most notorious investigations. In 1985, DEA Special Agent Enrique “Kiki” Camarena was kidnapped, tortured, and murdered in Mexico after playing a central role in disrupting major narcotics-trafficking operations there. The investigation resulted in charges against multiple Mexican nationals, including Dr. Humberto Alvarez-Machain, who was alleged to have assisted Camarena’s captors by administering medication that enabled them to prolong the interrogation.

Frustrated by obstacles to securing his return through official channels, the DEA arranged for Alvarez-Machain’s forcible abduction from Guadalajara. He was transported to Texas and turned over to American authorities. When Alvarez-Machain challenged the prosecution, the Supreme Court confronted the question whether his abduction violated the United States-Mexico extradition treaty. The Court answered no.

A. The Majority Opinion

In reaching its conclusion, the Court analyzed the underlying purpose of the U.S.-Mexico extradition treaty. Writing for the majority, Chief Justice Rehnquist noted that the treaty “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.” *United States v. Alvarez-Machain*, 504 U.S. 655, 664 (1992). Rather, the treaty provides merely “a mechanism [of returning an individual to face prosecution] which would not otherwise exist.” *Id.* at 664. The Court added that 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,” noting that the Mexican Government was aware of the *Ker* doctrine and could have limited its effect by way of the extradition treaty it signed. *Id.* at 665.

The Court also declined to read into the U.S.-Mexico extradition treaty an implicit prohibition on abductions on foreign soil even if they violate international law, noting that the general principles of international law did not alter the express terms of the treaty. *Id.* at 667-68. The Court acknowledged that the abduction might be shocking, and may have violated international law principles, but said it was for the Executive Branch to interpret and conform its actions to international law, not the courts. *Id.* at 669.

B. The Dissent

Justice Stevens, with Justice Blackmun and Justice O’Connor joining, dissented. The dissent concluded that the majority’s holding undermines the entire purpose of the extradition

treaty. *Id.* at 673. The dissent pointed out that each country’s right to refuse extradition in certain circumstances would be “little more than verbiage” if the requesting country could just circumvent the extradition process via a forcible kidnapping. *Id.* Moreover, the dissent noted that the carefully crafted procedural requirements under the treaty would “only make sense” if they were understood as mandatory any time a signatory wishes to prosecute an individual located in the other country. *Id.* at 674.

The dissent also distinguished *Ker v. Illinois* from the case pending before it because, in *Ker*, the forcible abduction was by private citizens whereas the abduction of Alvarez-Machain was directed by U.S. government officials. *Id.* at 682. The dissent noted the far-reaching negative implications of the majority’s holding, writing, that “most courts throughout the civilized world” were likely to be “deeply disturbed” by the Court’s ruling—a ruling that affects “every nation that has an interest in preserving the Rule of Law.” *Id.* at 687.

IV. The Capture and Prosecution of Manuel Noriega

Following the American invasion of Panama in 1989, U.S. forces seized Manuel Noriega, the self-imposed dictator and *de facto* head of state of Panama, and transported him to the United States to stand trial on drug trafficking charges. Noriega argued that his apprehension violated international law, extradition principles, and sovereign immunity doctrines.

The Eleventh Circuit rejected those arguments. Among other things, the court concluded that Noriega was not entitled to sovereign immunity because he had never served as the “constitutional leader of Panama” and because Panama itself had not sought immunity on his behalf. *United States v. Noriega*, 117 F.3d 1206, 1212 (11th Cir. 1997). The court further held that Noriega’s abduction did not violate the U.S.-Panama extradition treaty because neither the “express language of [the] treaty and/or the established practice thereunder” indicated that the “U.S. had affirmatively agreed not to seize foreign nationals from the territory of its treaty partner.” *Id.* at 1213. Noriega’s case demonstrated that even the use of military force to remove a head of state does not necessarily defeat criminal jurisdiction.

V. Why Maduro’s Case May Be Different

A. A Different Treaty

Maduro’s strongest arguments are likely to center on language in the 1922 extradition treaty between the United States and Venezuela. Extradition Treaty and Additional Article, U.S.-Venez., Jan. 19 & 21, 1922, 43 Stat. 1698, T.S. No. 675. Unlike the U.S.-Mexico treaty considered in *Alvarez-Machain*, the United States-Venezuela treaty is more restrictive. Its limitations on extraditable offenses and protections concerning Venezuelan nationals distinguish Maduro’s circumstances from that of Alvarez-Machain. For example, the U.S.-Venezuelan treaty: (1) does not list narcotics trafficking (for which he is charged) as an extraditable offense (Article II); (2) does not provide for the extradition of individuals who were not physically present in the requesting nation at the time of the offense (Article I); (3) and allows Venezuela to refuse to extradite its own nationals and anyone who would be subject to life imprisonment upon conviction of the alleged offense (Articles IV and VIII). Moreover, Venezuela has since constitutionalized its refusal to extradite its own citizens and has abolished both the death penalty

and sentences of life imprisonment, further making clear its objection to extraditing in those circumstances. In *Alvarez-Machain*, the Supreme Court found that the rendition did not run contrary to Mexico's stated policy interests as set forth in its extradition treaty. *Alvarez-Machain*, 504 U.S. at 664. Though not explicitly discussed, the Supreme Court likely found comfort in the fact that neither the treaty nor Mexico's constitution would have expressly prohibited Alvarez-Machain's extradition. Maduro will be able to demonstrate that under no circumstances would Venezuela agree to his extradition as it would violate the terms of the treaty and the Venezuelan constitution.

The government will likely counter that (i) unless a treaty expressly prohibits forcible apprehensions, courts should not infer such a limitation, and (ii) the U.S.-Venezuela treaty contains no such express prohibition. However, the government will have to answer to an additional wrinkle not present in *Alvarez-Machain*: to the extent that a dispute arises out of the construction of the terms of the extradition treaty, the treaty provides that such dispute must be decided by an arbitrator. See Michael Rips, *The Maduro Case May Be About to Take a Hairpin Turn*, N.Y. Times (July 21, 2026), <https://www.nytimes.com/2026/07/21/opinion/nicolas-maduro-court-extradition.html>. The possible effect of this provision is that the Southern District of New York would be divested of jurisdiction to answer the threshold question of whether Maduro's abduction and subsequent prosecution is in violation of the U.S.-Venezuelan treaty.

B. A Sitting Head of State

Maduro also occupies a position unlike that of any defendant previously considered by the Supreme Court in a foreign abduction case. Dr. Alvarez-Machain was a private citizen. Noriega, as the Eleventh Circuit concluded, was only the *de facto* head of state and his appointment was not authorized by the Panamanian constitution. Maduro, by contrast, was serving as Venezuela's President when he was allegedly removed from Caracas.

That distinction is significant because extradition treaties are fundamentally concerned with relations between sovereign nations. The forcible removal of a sitting head of state implicates concerns regarding territorial integrity, reciprocity, and diplomatic relations far more directly than the abduction of an ordinary criminal suspect. And Maduro's status will make it much easier for him to argue that his abduction violates either the express or implied terms of the extradition treaty.

For that reason, Maduro may contend that his case presents precisely the sort of circumstances Justice Stevens anticipated when he warned in *Alvarez-Machain* that permitting officials to circumvent extradition procedures could undermine the mutual respect upon which such treaties depend, and lead to a parade of horrors. *Alvarez-Machain*, 504 U.S. at 687. The government will likely retort that the status of the individual defendant is not relevant to the analysis and that, even if it was, Maduro was serving as self-imposed ruler rather than a duly elected official.

VI. Conclusion

For more than a century, American courts have generally declined to treat the manner of a defendant's apprehension as a bar to prosecution. *Ker*, *Frisbie*, *Alvarez-Machain*, and *Noriega*

all reflect a judicial reluctance to convert disputes over extradition, sovereignty, or international law into limitations on criminal jurisdiction.

Yet Maduro's case presents features that none of those decisions confronted simultaneously. He was the sitting President of a nation that maintains an extradition treaty with the United States who was forcibly removed from his country by U.S. military personnel under circumstances where it was clear that, had the U.S. followed the procedures of the treaty, Venezuela would have exercised its right not to extradite him. Whether those distinctions are enough to limit the reach of the *Ker-Frisbie* doctrine is left to be decided. What is certain is that Maduro's case may force courts to address a question that has lingered beneath the surface of this area of law for decades: whether there is any point at which the government's power to bring a foreign defendant before an American court becomes so extraordinary that precedent no longer supplies the answer.



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