

Letters

Poor Tool for U.S.-Mexican Prisoner Trade

To the Editor:

The United States Court of Appeals in New York has decided that the United States Government may imprison American citizens whose Mexican convictions were obtained through brutal torture, ratified in farcical judicial proceedings and executed under inhuman prison conditions. You call that decision "Another Kind of Prisoner Rescue" (editorial April 30), but in doing so, you begin from a false premise, proceed to apply faulty logic and reach an unsupportable conclusion.

Your premise is that the existing prisoner exchange treaty between the United States and Mexico is the only mechanism which could be devised to accomplish the purpose, with which no one disagrees, of obtaining the return of American citizens from the intolerable conditions of the Mexican system of "justice."

In fact, as has been pointed out in the scholarly literature, a number of other possibilities exist. For example, our existing extradition treaty with Mexico could form the centerpiece of an arrangement which would insure both the release of prisoners and the observance of their constitutional rights.

Your reasoning is flawed, moreover, when you assert that, because there is no other way to achieve the objective in question, the means chosen to do so must be vindicated. The Government is frequently prevented by our Constitution from doing things which it might consider of benefit to its citizens but which run afoul of other fundamental values. Moreover, the Government's justification whenever it seeks to abridge basic rights is that no less

restrictive alternative is available. By now, both The Times and the public at large should have developed healthy skepticism for such arguments.

Your editorial concludes by asserting that the treaty "does no damage to the civil liberties of Americans." The truth is that the treaty permits American law enforcement authorities to enjoy the fruits of procedures which they could not possibly have employed in this country, and it would be naive to believe that they will not take full advantage of this possibility.

The existing treaty, in short, is a dangerously imperfect tool for reaching a desirable result. That is why the petitioners in *Rosado v. Civiletti* have asked the judicial branch to declare that the professed good intentions of the political branches will not validate the means they have chosen, and to leave to their practical ingenuity the task of devising other means — ones which do not trample our cherished liberties — to achieve their humane purposes.

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New York, May 3, 1980

The writer is an attorney representing Pedro Rosado, one of the petitioners in the Court of Appeals.