Leave to file is denied. 10/5/09

September 14, 2009

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
Website: www.BrazilBoycott.org

U.S. CERTIFIED MAIL
#7008-1830-0004-2648-5857

CLERK OF THE COURT
U.S. District Court for the
District of Columbia
U.S. Courthouse
333 Constitution Avenue, N.W.
WASHINGTON, D.C. 20001

RE: USA vs. WILBER ALIRIO VARELA, et al., CRIMINAL NO. 1:04-cr-00126-EGS - Judge Emmet G. Sullivan

Dear Clerk:

Attached for **FILING** in the above-entitled action is one (1) original and one (1) copy of:

1. "JOHN GREGORY LAMBROS' MOTION FOR LEAVE TO FILE A PETITION OF INTERVENTION - OR ALTERNATIVELY - JOHN GREGORY LAMBROS' MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF." **Dated: September 14, 2009.**

Please contact me if I have not followed any of the filing rules.

Attached is copy of the first page of the enclosed motion, **PLEASE FILE/DATE STAMP SAME AND RETURN TO ME FOR MY RECORDS. THANK YOU!!!!**

Please note that I have served all effected parties, as listed within the below certificate of service.

Sincerely,

John Gregory Lambros, Pro Se

CERTIFICATE OF SERVICE

I declare under the penalty of perjury that a true and correct copy of the above listed motion was mailed within a stamped addressed envelop from the United States Penitentiary Leavenworth's legal mail box/room on this **14th DAY OF SEPTEMBER, 2009, TO:**

September 14, 2009

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Reg. No. 00436-124
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2. Clerk of the Court, as addressed above.
3. U.S. Attorney Glenn C. Alexander, U.S. Department of Justice, Narcotic and Dangerous Drug Section, 1400 New York Avenue, NW, Bond Building, 8th Floor, Washington, DC 20005.
4. Carlos J. Vanegas, Attorney - Federal Public Defender - 625 Indiana Avenue, NW, Suite 550, Washington, DC 20004. Represents **LUIS HERNANDO GOMEZ-BUSTAMANTE.**
5. Alexei Schacht & Paul R. Nalven, Attorney's - NALVEN & SCHACHT - 350 Fifth Avenue, Suite 4022, New York, NY 10118. U.S. CERTIFIED MAIL NO. **7008-1830-0004-2648-5864.** Represents **JUAN CARLOS RAMIREZ-ABADIA.**
6. Thomas Abbenante, Attorney - THOMAS ABBENANTE, ESQ. - 1919 Pennsylvania Avenue, NW, Suite 200, Washington, DC 20006. Represents **JAIRO APARICIO-LENIS.**
7. **EMBASSY OF COLOMBIA,** Attn: Counsel General, 2118 Leroy Place N.W., Washington, DC 20008. Tel. (202) 387-8338.
8. **EMBASSY OF BRAZIL,** Attn: Counsel General, 3006 Massachusetts Ave., N.W., Washington, DC 20008. Tel. (202) 238-2805.

John Gregory Lambros, Pro Se
Website: www.BrazilBoycott.org

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	CRIMINAL DOCKET NO. 1:04-cr-00126-EGS-
vs.	*	All Defendants
	*	
WILBER ALIRIO VARELA,	*	
DIEGO LEON MONTOYA-SANCHEZ,	*	Assigned to: The Honorable Judge Emmet G. Sullivan
LUIS HERNANDO GOMEZ-BUSTAMANTE,	*	
ARCANGEL HENAO-MONTOYA,	*	
JUAN CARLOS RAMIREZ-ABADIA,	*	AFFIDAVIT FORM
CARLOS ALBERTO RENTERIA-MANTILLA,	*	
GABRIEL PUERTA-PARRA,	*	
DANILO ALFONSO GONZALEZ-GIL,	*	This Motion is dated:
JORGE ORLANDO RODRIGUEZ-ACERO,	*	September 14, 2009.
JAIRO APARICIO-LENIS,		
Defendants.	*	

JOHN GREGORY LAMBROS' MOTION FOR LEAVE TO FILE A PETITION OF INTERVENTION

OR ALTERNATIVELY

JOHN GREGORY LAMBROS' MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

COMES NOW, Intervenor or alternatively Amicus JOHN GREGORY LAMBROS, Pro Se, (hereinafter Intervenor) offering his "MOTION FOR LEAVE TO FILE A PETITION OF INTERVENTION" or alternatively "MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF", as the existence of a common question of law and fact exists before this Court. This Intervenor will significantly contribute to the full development of the

underlying factual issues which currently violate principles of clearly established federal law relevant to enforcing extradition treaties and the terms of specific extraditions.

This Intervenor believes that the current disparity between the extradition decree's limitation and the sentence(s) this Court will impose upon the Defendant's in this action, will cause an "injury in fact." See, LUJAN vs. DEFENDERS OF WILDLIFE, 119 L.Ed.2d 351, 364 (1992). Defendant **JUAN CARLOS RAMIREZ-ABADIA**, and the other defendant's within this action who have been arrested or will be arrested and extradited from COLOMBIA, BRAZIL, MEXICO, and VENEZUELA will be sentenced to more than thirty (30) years - forty (40) years if extradited from Mexico. Sentences for criminal offenses MAY NOT EXCEED thirty (30) years within the countries of COLOMBIA, BRAZIL, VENEZUELA and forty (40) years in Mexico, as the language of the sentence limitation is contained within the extradition decree from the Supreme Court's of COLOMBIA, BRAZIL, MEXICO, and VENEZUELA and the Ministry of Foreign Affairs when extraditing persons to the United States. Therefore, if the Defendant's within this action are sentenced to more than thirty (30) years - forty (40) years if extradited from Mexico - disparity between the extradition decree limitation and the sentence imposed - proof is offered as to a sufficient possibility of "future injury." See, CENTRAL DELTA WATER AGENCY vs. U.S., 306 F.3d 938, 947-948 (9th Cir. 2002). This injury may be "redressed by a favorable decision" by this Court with the assistance of this Intervenor.

The defendant's in this action have a legal right to be protected prior to entering judgment on a guilty plea - if applicable - and at the sentencing hearing, when pure issues of law are presented which set forth the principles of

interpretation and international comity relevant to enforcing extradition treaties and the terms of a specific extradition. RAUSCHER and BROWNE established that the extraditing country's expectations regarding PUNISHMENT LIMITATIONS MUST BE RESPECTED if they are within that country's rights under the extradition treaty. See, U.S. vs. RAUSCHER, 119 U.S. 407, 7 S.Ct. 234, 30 L.Ed. 425 (1886), and JOHNSON vs. BROWNE, 205 U.S. 309, 27 S.Ct. 539, 51 L.Ed. 816 (1907). (emphasis added). In RAUSCHER, the Supreme Court found that an extraditing country has the right to decide the grounds of extradition, which bind the receiving country. See, RAUSCHER, 119 U.S. at 419-20. Also, "the processes by which it is to be carried into effect." RAUSCHER, 119 U.S. at 420-21. Most importantly, this means that language in a foreign nation's extradition order invoking provisions of an extradition treaty must be enforced by federal courts. See, BROWNE, 205 U.S. at 311-12.

JURISDICTION

1. John Gregory Lambros believes this Court may allow him "PERMISSIVE" intervention in this action, as the existence of a common question of law and/or fact exists. See Fed. R. Civ. P. 24(b)(1)(B).

2. INTERVENTION HAS BEEN ALLOWED IN CRIMINAL CASES: A women convicted of selling cocaine was permitted to intervene in habeas corpus action brought by individuals convicted of cocaine-related offenses to challenge constitutionality of provisions of state law governing treatment of particular felony drug offenders, where, her principal contentions were similar to those raised by named

plaintiff's in original petition, so that there were common questions of law and fact; and where addition of women would not unduly delay or prejudice adjudication of rights of original parties. See, UNITED STATES EX REL. CARMONA vs. WARD, 416 F.Supp. 276 (S.D. NY 1976).

3. To the best of this Intervenor's knowledge, only Defendant **JUAN CARLOS RAMIREZ-ABADIA** has been arrested outside the United States - August 7, 2007 - and is awaiting extradition from BRAZIL. Therefore, none of the Defendant's have started entering into possible guilty pleas and/or sentencing that involves a foreign nation's extradition order invoking provisions of an extradition treaty that must be enforced by this court. This motion is timely.

4. Intervenor John Gregory Lambros was arrested in Brazil in 1991 by U.S. and Brazilian Officials, as per the request of the United States Government. After contesting extradition to the United States, Lambros was extradited to the United States in June 1992 and convicted of cocaine offenses in January 1993. Lambros was sentenced to **MANDATORY LIFE WITHOUT PAROLE** for conspiracy to distribute cocaine and three counts of possession-with-intent-to distribute cocaine. Lambros challenged the disparity between Brazil's extradition treaty, which clearly states in ARTICLE XI:

> "The determination that extradition based upon the request therefore should or should not be granted shall be **MADE IN ACCORDANCE WITH THE DOMESTIC LAW OF THE REQUESTED STATE [Brazil]**, and the person whose extradition is desired shall have the right to use such remedies and recourses as are authorized by such law."

EXHIBIT A. (STATE vs. PANG, 940 P.2d 1293, 1358), affirmed 139 L.Ed.2d 608 (1997).

and his sentence, which should not have been more than thirty (30) years including supervised release, to NO-AVAIL. Brazil's Constitution clearly states within ARTICLE 5, Clause XLVII(b) that there will be no sentence of **LIFE**. Also, ARTICLE 75 of the Brazilian Criminal Code, limits prison sentences to thirty (30) years. See trial excerpts from the extradition of MARTIN SHAW PANG by Brazilian Supreme Court Justices MARCO AURELIO, MAURICIO CORREA and Justice CELSO DE MELLO, when they granted the request of extradition of PANG to the United States, with the following **RESTRICTIONS**:

> "I also exclude the possibility of [this person] receiving a **LIFE SENTENCE**, therefore establishing that he **CANNOT REMAIN UNDER THE STATE'S CUSTODY FOR MORE THAN THIRTY (30) YEARS.**" (emphasis added)

EXHIBIT B. See, PANG, at 1350.

> ".... I grant the request now under examination, with the **RESTRICTION**, which I consider necessary, of **COMMUTING** the **LIFE SENTENCE** to a **PRISON SENTENCE NOT TO EXCEED 30 (THIRTY) YEARS**, agreeing completely with the learned vote of the Honorable Mauricio Correa." (emphasis added)

EXHIBIT C. See, PANG, at 1352-1353.

> ".... I oppose him, with all due respect, only with the proviso that the Requesting State, in the event that the person sought for extradition is condemned to life in prison, that his prison sentence be limited to a maximum of **THIRTY (30) YEARS.**"

See, PANG, at 1345-1347.

Lambros' attorney REFUSED to appeal his **MANDATORY LIFE SENTENCE WITHOUT PAROLE** as to the disparity between Brazil's extradition treaty - which does not allow a prison sentence to exceed 30-years - and his sentence. Lambros' appeal was based

only on the fact that his conspiracy charge was not mandated, as the MANDATORY part DID NOT take effect until November 1988. Lambros was resentenced. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). See, **EXHIBIT D.** (U.S. vs. LAMBROS, 65 F.3d at 698).

PARTIES

5. To the best of this Intervenor's knowledge, the following is a list of defendant's in this above-entitled action and there current status:

a. **JUAN CARLOS RAMIREZ-ABADIA:** Defendant was arrested in **BRAZIL** on or about August 7, 2007 and is awaiting extradition to the United States on a three (3) count indictment for RACKETEERING, RACKETEERING CONSPIRACY and Conspiracy to import, manufacture and distribute 500,000 kilograms of cocaine worth $10 billion from Colombia to the USA from 1990 to 2004, in violation of Title 18 U.S.C. Section §1962(c) and §1962(d) and Title 21 U.S.C. Sections 959, 960(a), 960(b)(1)(B), & 963. If convicted of the narcotics RICO and conspiracy charge, he faces a maximum sentence(s) of life in prison and an additional term of SUPERVISED RELEASE of at least five (5) additional years to such term of imprisonment. **Brazil's** Constitution and domestic laws do not allow LIFE SENTENCES AND ONLY ALLOW A PERSON TO **"REMAIN IN THE STATE'S CUSTODY FOR NO-MORE THAN THIRTY (30) YEARS."**

b. **WILBER ALIRIO VARELA:** Listed as a fugitive.

c. **DIEGO LEON MONTOYA-SANCHEZ:** In custody, Rule 20 transfer to Southern District of Florida, Miami Division, Docket No. 09-20665-CR-JORDAN/MCALILEY - 8/11/2009.

d. **LUIS HERNANDO GOMEZ-BUSTAMANTE:** Arrested on September 16, 2008,

in United States.

e. **ARCANGEL HENAO-MONTOYA:** In custody, Rule 20 transfer to USDC for the Eastern District of New York, Docket No. CR-05-0670.

f. **CARLOS ALBERTO RENTERIA-MANTILLA:** Listed as fugitive.

g. **GABRIEL PUERTA-PARRA:** In custody, Rule 20 transfer to USDC for the Southern District of Florida, Docket No. 06-20724-CR-MGC/STB.

h. **DANILO ALFONSO GONZALEZ-GIL:** Listed as fugitive.

i. **JORGE ORLANDO RODRIGUEZ-ACERO:** Listed as fugitive.

j. **JAIRO APARICIO-LENIS:** In custody, arraigned on October 21, 2005.

As of this date, four (4) of the above defendant's - b, f, h, & i - are fugitives and indicted within all Counts of this action in violation of RACKETEERING, RACKETEERING CONSPIRACY and Conspiracy to import, manufacture and distribute over 500,000 kilograms of cocaine worth $10 billon from Colombia to the United States from 1990 to 2004, in violation of Title 18 U.S.C. Sections 1962(c), 1962(d) and Title 21 U.S.C. Sections, 959, 960(a), 960(b)(1)(B) and 963. If convicted of the above narcotic charges, defendants face a maximum sentence of life in prison and an additional term of **SUPERVISED RELEASE** of at least five (5) additional years to such term of imprisonment. Like Brazil, Colombia's Constitution and domestic laws do not allow LIFE SENTENCES AND ONLY ALLOW A PERSON TO **"REMAIN IN THE STATE'S CUSTODY FOR NO-MORE THAN THIRTY (30) YEARS."**

Research indicates that the Colombian Supreme Court ALWAYS includes a resolution that states, "...., if extradited and convicted, ... **MUST NOT** be sentenced to **REMAIN UNDER** the State's custody for more than **THIRTY (30) YEARS."** See, U.S. vs. GALLO-CHAMORRO, 48 F.3d 502, 503 (11th Cir. 1995); U.S. vs. ABELLO-SILVA, 948 F.2d 1168, 1174 (10th Cir. 1991). Also, U.S. vs.

SALAZAR-ESPINOSA, et al., Docket No. 1:05-cr-00517-LAK-1, U.S. District Court for the Southern District of New York. On February 23, 2008, Intervenor Lambros wrote MANUEL FELIPE SALAZAR-ESPINOSA attorney's Lawrence Murry Herrmann and Linda George as to the additional term of **"SUPERVISED RELEASE"** SALAZAR-ESPINOSA received from Judge Lewis A. Kaplan, above his 30 year sentence. Lambros does not know if SALAZAR-ESPINOSA 'S attorney raised the issue within his direct appeal or his Title 28 USC §2255, as he was sentenced on or about February 5, 2008.

k. **OTHER KNOWN AND UNKNOWN DEFENDANT'S WITHIN THIS ABOVE-ENTITLED ACTION THAT WILL BE EXTRADITED FROM COLOMBIA, BRAZIL, VENEZUELA, AND MEXICO:** Intervenor Lambros incorporates all unknown Defendant's within this action who will be or have been arrested in Colombia, Brazil, Venezuela, and Mexico, and extradited to the United States to be prosecuted within this action. These unknown Defendant's, if extradited, will have **RESTRICTIONS** of commuting LIFE SENTENCES and establishing the fact that they **CANNOT REMAIN UNDER THE STATE'S CUSTODY FOR MORE THAN THIRTY (30) YEARS.**

l. **INTERVENOR JOHN GREGORY LAMBROS:** Lambros hereby repeats, realleges and incorporates by reference, paragraph four (4) within this action, as if fully set forth herein. (Jurisdiction)

m. **LUIS IGNACIO GUZMAN, Counsel General for Colombia:** Intervenor Lambros has written Consel General Guzman via U.S. Certified Mail on June 3, 2008 and November 17, 2008, explaining the **"QUESTION OF LAW AND/OR FACT IN COMMON" - :**

> **"Whether the United States Court's are NOT enforcing the conditions/resolutions within the extradition decree by the Supreme Court of Colombia when they DO NOT include the term of 'SUPERVISED RELEASE' within the maximum thirty (30) year term of custody?"**

Counsel General Guzman responded to Intervenor Lambros on July 30, 2008, stating "we have taken due note of its contents". On March 2, 2009, Consel Guzman was served copy of Intervenor Lambros' Motion to File Intervention and/or Motion to

File Amicus Curiae in USA vs. RAYO-MONTANO, et al., Criminal No. 1:06-cr-20139-DMM (All Defendants), U.S. District Court for the Southern District of Florida (Miami).

n. **GLENN C. ALEXANDER, MARC P. BERGER & MELANIE LAFLIN, Assistant U.S. Attorney's:** This prosecution is being handled by the Office's of the Narcotic and Dangerous Drug Section, Washington, DC; U.S. Attorney's Office, New York; Criminal Division of the U.S. Dept. of Justice, Washington, DC.

o. **BOYCOTT BRAZIL - www.BrazilBoycott.org:** Intervenor John Gregory Lambros is Founder and President of "BOYCOTT BRAZIL" a website and non-profit organization to educate the world as to the illegal extradition processes that exist within Brazil's State and Federal Government. Also, the objective of "BOYCOTT BRAZIL" is to undertake actions on the behalf of persons being extradited to the United States "in a way that increasingly assure that they receive the sentence limitations contained within extradition decrees and treaties, which are made in accordance with the domestic laws of the requested country." Therefore, effective and enduring representation in the decision making councils of government, as well as by applying processes which will obtain direct or indirect reimbursement for the unfair exploitation to which they may have been subjected. "BOYCOTT BRAZIL" has over one million (1,000,000) supporters worldwide and commanded TOP LISTINGS - 1st place - search engine ratings within Google, Yahoo!, and MSN for over ten (10) years under the terms "BOYCOTT BRAZIL" and "BRAZIL BOYCOTT".

CLAIMS

6. The principle claim as to whether the term of **"SUPERVISED RELEASE"** must

be included within the conditions of extradition limiting what sentence could be issued to persons extradited to the United States, will be presented within one (1) issue, as the Country of Brazil is the only country represented within this action at this time.

7. ISSUE ONE (1):

WHETHER THE EXPECTATIONS OF THE EXTRADITING COUNTRY - BRAZIL -, AS EXPRESSED IN ITS EXTRADITION ORDERS AND TREATY, ARE HONORED, WHEN A TERM OF "SUPERVISED RELEASE" IS NOT INCLUDED WITHIN THE THIRTY (30) YEAR LIMITATION IN REMAINING UNDER UNITED STATES CUSTODY. JUAN CARLOS RAMIREZ-ABADIA, et al. SENTENCES WILL VIOLATE THE TERMS OF THE EXTRADITION TREATY AND DECREE LIMITATIONS IF DEFENDANT'S REMAIN UNDER THE CUSTODY OF THE UNITED STATES FOR MORE THAN THIRTY (30) YEARS. - THE CONDITIONS OF JUAN CARLOS RAMIREZ-ABADIA, et al. EXTRADITION FROM BRAZIL LIMITED WHAT SENTENCE COULD BE ISSUED AS WELL AS WHAT SENTENCE COULD BE SERVED.

8. This Court's failure to give effect to Brazil's extradition order and laws would be an unreasonable application of RAUSCHER and BROWNE, the clearly established Supreme Court precedent. Brazil has the right to refuse extradition to the United States unless it receives assurances that the thirty (30) year limitation is enforced. The U.S. Department of State's attorney attends all extradition proceedings in Brazil and **DOES NOT** object to the thirty (30) year sentence limitation.

RAUSCHER and BROWNE place heavy emphasis on whether the expectation of the extraditing country, as expressed in its extradition orders, are honored. Only by doing so can the "manifest scope and object" of an extradition treaty be honored in the "highest good faith." See, RAUSCHER, 119 U.S. at 422, 7 S.Ct.

234; BROWNE, 205 U.S. at 321, 27 S.Ct. 539. The United States longstanding extradition relationship with Brazil calls for the term of **"SUPERVISED RELEASE"** to be included within the thirty (30) year limitation for Defendant's to remain under United States custody.

DISCUSSION:

9. Defendant's JUAN CARLOS RAMIREZ-ABADIA, et al. in this action and Intervenor Lambros where indicted on cocaine-related offenses. All U.S. drug law violations include as part of the SENTENCE a REQUIREMENT that the person be placed on a term of **SUPERVISED RELEASE** after imprisonment. See, Title 21 U.S.C. Section 960(b)(1)(B):

> ".... Notwithstanding section 3583 of Title 18, any sentence under this [sub] paragraph shall, in the absence of such prior conviction, impose a **TERM OF SUPERVISED RELEASE** of at least 5 years in **ADDITION TO SUCH TERM OF IMPRISONMENT** and shall, if there was such a prior conviction, impose a **TERM OF SUPERVISED RELEASE** of at least 10 years in **ADDITION TO SUCH TERM OF IMPRISONMENT**." (emphasis added)

10. The United States Court of Appeals for the Ninth Circuit has ruled and clearly stated within the following cases that **"SUPERVISED RELEASE"** is a **"TERM OF IMPRISONMENT"**, because the supervised release term itself is part of the punishment imposed for a person's original crime. See, U.S. vs. ROBERTS, 5 F.3d 365, 368-369 (9th Cir. 1993):

> Roberts was advised by the Court that he faced a statutory maximum sentence of twenty (20) years, as per Title 21 U.S.C. §841(b)(1)(C). (emphasis added)
>
> "At sentencing, Roberts received the twenty (20) year maximum **PLUS** a three (3) year term of **SUPERVISED RELEASE**

pursuant to the Sentencing Guidelines. ..... If Roberts violates the conditions of his **SUPERVISED RELEASE**, the Court may revoke his **SUPERVISED RELEASE AND SEND HIM BACK TO PRISON FOR UP TO THREE (3) MORE YEARS.** 18 U.S.C. §3583(e)(3). Thus, Robert's **MAXIMUM SENTENCE IS AT LEAST TWENTY-THREE (23) YEARS, NOT TWENTY (20) YEARS.** Because of the term of **SUPERVISED RELEASE**, Roberts received a **POTENTIALLY LONGER SENTENCE THAN HE WAS APPRISED OF AT HIS PLEA HEARING.** (emphasis added)

EXHIBIT E. (U.S. vs. ROBERTS, 5 F.3d 365, 368-369 (9th Cir. 1993)

11. Also see, U.S. vs. ETHERTON, 101 F.3d 80, 81 (9th Cir. 1996):

Etherton was sentenced to 51 months in prison for one count of conspiracy to manufacture marijuana in violation of Title 21 U.S.C. §841(b)(1)(C) and §846.

The district court sentenced Etherton to 51 months in prison to be followed by a three (3) year term of **SUPERVISED RELEASE.**

Etherton completed his prison term and began serving his **SUPERVISED RELEASE.**

Etherton violated the terms of his **SUPERVISED RELEASE**, and the Court sentenced him to **SEVEN (7) MONTHS IN PRISON.**

The Ninth Circuit ruled, "The seven months imprisonment is NOT punishment for a new substantive offense, rather **'IT IS THE ORIGINAL SENTENCE THAT IS EXECUTED WHEN THE DEFENDANT IS RETURNED TO PRISON AFTER A VIOLATION OF THE TERMS OF ... SUPERVISED RELEASE.'** UNITED STATES vs. PASKOW, 11 F.3d 873, 881 (9th Cir. 1993). We held in PASKOW that **'A TERM OF SUPERVISED RELEASE ... IS SIMPLY PART OF THE WHOLE MATRIX OF PUNISHMENT WHICH ARISES OUT OF A DEFENDANT'S ORIGINAL CRIMES.'** Id. at 883."

EXHIBIT F. (U.S. vs. ETHERTON, 101 F.3d 80, 81 (9th Cir. 1996)

12. The above cases of law proves that the term of **SUPERVISED RELEASE** must be included within the sentence issued by this Court when sentencing Defendant's JUAN CARLOS RAMIREZ-ABADIA, et al., in this action, so as to meet the expectations of the extraditing country.

13. **FEDERAL RULES OF CRIMINAL PROCEDURE RULE 11(b)(1)(H) "any maximum**

possible penalty, including imprisonment, fine, and TERM OF SUPERVISED RELEASE":

This rule requires the District Court considering whether to accept a guilty plea was required to inform Defendant's that if his/her **SUPERVISED RELEASE** following service of sentence was revoked, he/she would be subject to an additional term of imprisonment. Failure to inform Defendant's that if his/her period of **SUPERVISED RELEASE WAS REVOKED HE WOULD BE SUBJECT TO ADDITIONAL TERM OF IMPRISONMENT IS NOT HARMLESS ERROR.** See, U.S. vs. OSMENT, 13 F.3d 1240, 1243 (8th Cir. 1994).

EXHIBIT G.

> Court informed OSMENT that he faced a maximum prison term of 60 months, OSMENT was sentenced to 15 months in prison and 36 months of **SUPERVISED RELEASE**, and if his supervised release was revoked on day before term expired OSMENT could be sentenced to an additional 24 months, bringing total worst case period of punishment to **75 MONTHS** less one day.

AMICUS CURIAE

14. This Intervenor requests that this Court "IN THE ALTERNATIVE" allow JOHN GREGORY LAMBROS to file an AMICUS CURIAE BRIEF or MEMORANDUM OF LAW in this action.

15. The legal definition of AMICUS CURIAE is as follows:

> Means literally, friends of the court. A person with strong interest of views on the subject matter of an action may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views.

See, BLACK'S LAW DICTIONARY, 75 (5th ed. 1979)

16. John Gregory Lambros believes as AMICUS he has stated an INTEREST IN THE CASE and the above information is RELEVANT and DESIRABLE, since it alerts this Court to possible implications of law in sentencing the Defendant's in this

action.

17. Lambros believes even when a party is very well represented, an amicus may provide important assistance to the court. "Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group." See, LUTHER T. MUNFORD, WHEN DOES THE CURIAE NEED AN AMICUS? 1 J.App. Prac. & Process 279 (1999).

18. Lambros DOES NOT want to undertake the distasteful task of showing that the attorney for the parties he wishes to support is incompetent. See, Robert L. Stern, APPELLATE PRACTICE IN THE UNITED STATES, 306 (2d ed. 1989) (The lawyer preparing an amicus brief "would normally be unwilling to state, except in most unusual circumstances, that the counsel for the party being supported will do an inadequate job.").

19. A restrictive policy towards this amicus may create the perception of viewpoint discrimination and the openness of this Court.

RELIEF

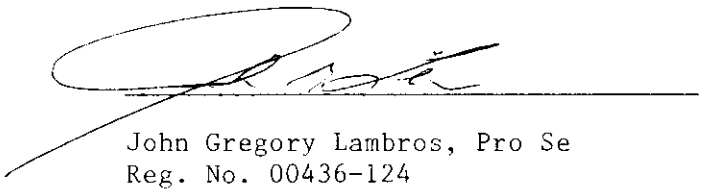
20. Lambros requests this Court to grant him PERMISSIVE INTERVENTION in this action, as the existence of a common question of law and/or fact exists.

21. Lambros requests in the ALTERNATIVE to be allowed to file an amicus

brief or amicus memorandum of law.

22. I JOHN GREGORY LAMBROS, declare under the penalty of perjury that the foregoing is true and correct. Title 28 USCA §1746.

EXECUTED ON: September 14, 2009



John Gregory Lambros, Pro Se
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U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
Website: www.BrazilBoycott.org

ADDITIONAL EXHIBITS:

EXHIBIT H: MEXICO DOES NOT ALLOW EXTRADITION FOR CRIMES CARRYING A MAXIMUM SENTENCE OF OVER FORTY (40) YEARS - Attached is the article "MEXICAN RULING LIMITS EXTRADITION - Those facing life won't go to U.S.", that was written by the New York Times and appeared in the Sunday, January 20, 2002, Minneapolis "STAR TRIBUNE" newspaper. Of interest is the ruling by Mexico's Supreme Court that blocks the extradition of more than 70 high-profile defendants facing life sentences in the United States on drug trafficking and murder. The decision is rooted in Mexico's constitution, which says that all people are capable of rehabilitation. A life sentence, the court ruled, flies in the face of that concept. The maximum sentence in Mexico is 40 years, although sometimes a 60 year term may be imposed. Also, the article stated, "Now it appears that in order to extradite him, Arizona may have to dismiss the case and try him on lesser charges." "Similarly, the indictment against Villanueva, ..., will have to be redrawn if he is ever to face justice in the United States, officials said."

been frivolous. Denial of Stenson's request served no legitimate purpose.

Most disturbing about the majority's rejection of Stenson's claim is the fact the majority cites nothing in the record upon which it could conceivably be argued Stenson equivocated in his request. The majority merely notes Stenson did not refute the trial court's conclusion he did not really wish to proceed without counsel, as if the trial court's conclusion stands as evidence of Stenson's state of mind. While Stenson's main objective in his motions was [777] to remove Leatherman from his case, his desire in the event his motion for substitution was denied was clear: he wished to represent himself. A conditional request is not an equivocal one. The majority's decision, therefore, stands as the triumph of form over substance.

The denial of the right to self-representation is not amenable to a harmless error analysis: "The right is either respected or denied; its deprivation cannot be harmless." *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944, 950 n. 8, 79 L.Ed.2d 122 (1984).

CONCLUSION

I would reverse Stenson's conviction and remand for a new trial without consideration of other issues.

132 Wash.2d 852

[852] **STATE of Washington, Respondent,**

v.

Martin Shaw PANG, Petitioner.

No. 64786-1.

Supreme Court of Washington, En Banc.

Argued April 8, 1997.

Decided July 31, 1997.

Defendant was charged with four counts of murder in the first degree and one count of arson in the first degree. The Superior Court, King County, Larry Jordan, J., denied motion to dismiss or sever murder counts. Defendant moved for direct discretionary review. The Supreme Court, Smith, J., held that: (1) defendant had standing to object to violation of terms of order on extradition issued by Federal Supreme Court of Brazil; (2) Brazil did not waive any objection it could have made to prosecution for murder; (3) specialty doctrine prohibited state from prosecuting defendant for crimes specifically excluded in extradition order; and (4) state was obligated to follow decision of Federal Supreme Court of Brazil which ruled that, as a condition for extradition, defendant could not be prosecuted on murder counts.

Reversed.

Durham, C.J., filed dissenting opinion in which Dolliver and Talmadge, JJ., joined.

Alexander, J., filed opinion joining in dissent.

1. **Extradition and Detainers** ⇐19

In absence of asylum country's consent to prosecution of accused for crime other than that for which accused was extradited, extradited person may raise any objections to post-extradition proceedings that might have been raised by rendering country.

2. **Extradition and Detainers** ⇐19

Only asylum country's express consent to prosecution will be considered a waiver of doctrine of specialty, under which requesting country may not prosecute accused for a crime other than that for which accused was extradited.

3. **Extradition and Detainers** ⇐19

Letter from Brazil Minister of Justice to United States Attorney General, in which Minister discussed ruling by Brazil's Federal Supreme Court that state could try extraditee for arson but not for murder, was neither an implicit waiver nor an explicit waiver of doctrine of specialty, and thus defendant had standing to assert limitations on his post-extradition prosecution; Minister explained in follow-up letter than he had provided no type

16/

EXHIBIT A.

Affirmed by Supreme Ct. 139 L.Ed.2d 608 (1997)

OPINION APPENDIX B--Continued

4. A declaration that there exist and will be forthcoming the relevant documents required by Article IX of the present Treaty.

If, within a maximum period of 60 days from the date of the provisional arrest of the fugitive in accordance with this Article, the requesting State does not present the formal request for his extradition, duly supported, the person detained will be set at liberty and a new request for his extradition will be accepted only when accompanied by the relevant documents required by Article IX of the present Treaty.

Article IX

The request for extradition shall be made through diplomatic channels or, exceptionally, in the absence of diplomatic agents, it may be made by a consular officer, and shall be supported by the following documents:

1. In the case of a person who has been convicted of the crime or offense for which his extradition is sought: a duly certified or authenticated copy of the final sentence of the competent court.

2. In the case of a person who is merely charged with the crime or offense for which his extradition is sought: a duly certified or authenticated copy of the warrant of arrest or other order of detention issued by the competent authorities of the requesting State, together with the depositions upon which such warrant or order may have been issued and such other evidence or proof as may be deemed competent in the case.

The documents specified in this Article must contain a precise statement of the criminal act of which the person sought is charged or convicted, the place and date of the commission of the criminal act, and they must be accompanied by an authenticated copy of the texts of the applicable laws of the requesting State including the laws relating to the limitation of the legal proceedings or the enforcement of the penalty for the crime or offense for which the extradition of the person is sought, and data or records which will prove the identity of the person sought.

The documents in support of the request for extradition shall be accompanied by a duly certified translation thereof into the language of the requested State.

OPINION APPENDIX B—Continued

Article X

When the extradition of a person has been requested by more than one State, action thereon will be taken as follows:

1. If the requests deal with the same criminal act, preference will be given to the request of the State in whose territory the act was performed.

2. If the requests deal with different criminal acts, preference will be given to the request of the State in whose territory the most serious crime or offense, in the opinion of the requested State, has been committed.

3. If the requests deal with different criminal acts, but which the requested State regards as of equal gravity, the preference will be determined by the priority of the requests.

Article XI

The determination that extradition based upon the request therefor should 1968or should not be granted shall be made in accordance with the domestic law of the requested State, and the person whose extradition is desired shall have the right to use such remedies and recourses as are authorized by such law.

Article XII

If at the time the appropriate authorities of the requested State shall consider the documents submitted by the requesting State, as required in Article IX of the present Treaty, in support of its request for the extradition of the person sought, it shall appear that such documents do not constitute evidence sufficient to warrant extradition under the provisions of the present Treaty of the person sought, such person shall be set at liberty unless the requested State or the proper tribunal thereof shall, in conformity with its own laws, order an extension of time for the submission by the requesting State of additional evidence.

Article XIII

Extradition having been granted, the surrendering State shall communicate promptly

EXHIBIT A.

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OPINION APPENDIX A—Continued

according to the Criminal Law Code, Article 250:

> . . . to cause a fire, exposing to risk of life, the physical integrity or the property of another:
>
> Penalty - confinement, from three to six years, . . .

In considering the resulting "death", there is the qualifying [clause] included in the first portion of Article 258, which says:

> . . . If serious bodily harm results from an intentional crime of common danger, the prison sentence is increased by half—the penalty of Article 250—if it results in death, it is doubled. In the case of non-intentional [crime] [illegible] and then by lack of prudence, negligence and lack of skill—if bodily harm—as it relates to fire—results from the act, the penalty would be increased by half, if it results in death, the sentence imposed for Non-Intentional Homicide is increased by one third.

Now, looking at the facts in the narrative, my opinion is that the case, from the point of view of dual criminality, taking into consideration Brazilian legislation, fits in the first portion of Article 258 of our Criminal Law Code. Therefore I agree, on this, with Justice Francisco Rezek.

There is the issue of life sentence. The established jurisprudence of this Court, I [956]believe, unless I am mistaken, is to lay down conditions for granting the Extradition, when there is the risk of the Person Sought being sentenced to death. Therefore, we proceed with the utmost care in clause XLVII of the list of basic guarantees, as included in the Constitution, Article 5's "caput", pertaining to foreign nationals living in Brazil. The question is: Is it possible to distinguish; is it possible to establish the application of the clause, obstructing certain procedure, if it implies in "death", and not proceed in exactly the same way, when there is risk of a life sentence? What would be the basis for the divergence, if guarantees are placed in the same clause of Article 5?

Article 5 is categorical, in clause XLVII:

> XLVII—there will be no sentences:

OPINION APPENDIX A—Continued

> a) of death, unless war has been declared, according to Article 84, XIX;
>
> b) of life [in prison];
>
> c) of forced labor;
>
> d) of exile;
>
> e) of cruelty;

I do not see how this Court's Jurisprudence can make a stand as to the restriction, concerning paragraph "a" and not continue in the same vein, since the basis is the same, as to paragraph "b", concerning the impossibility of a life sentence, as it exists in American law.

First, I am unable—and in this respect I am one of Justice Francisco Rezek's disciples—to place the Treaty above the Political Document of the Republic [Constitution]. I look at its content and I place the treaties at the same level as our ordinary laws.

Second, concerning specific law, which some think it is demanded by constitutional rule, we do have that. Our Criminal Law Code states that no one will remain in prison for more than thirty years. Thus, the requirement defined in our jurisprudence is being echoed by the very Brazilian Criminal Law Code.

Therefore, in this case, I remove the possibility for the Person sought for Extradition to answer for Murder in the First Degree—having in mind the material conflict, the four counts, the four Murders—and, further, I also exclude the possibility of [this person] receiving a life sentence, therefore establishing that he cannot remain under the State's custody for more than thirty years.

I grant the Request [for Extradition] on these terms, therefore, partially.

[Signature illegible]

FULL SESSION

EXTRADITION No. 654-1 USA

VOTE

JUSTICE CARLOS VELLOSO: Mr. President, in examining the request for [957]extradition, the Brazilian judge must verify if the mentioned criminal acts, according to the laws of the Requesting State, are also typical here, [dual criminality] i.e., if they

EXHIBIT B.

OPINION APPENDIX A Continued

mately joined in international treaties, and another based on constitutional statute - standard regulations that are clearly revealed as unmatched in degree of validity, efficacy and authority.

It is necessary to accentuate, in this respect, that the standard derived from international treaties, within the Brazilian legal system, allows the placement of these acts of public international law, in the hierarchy of sources, in the same plane and degree of efficacy given to internal laws of an infra-constitutional character. (JOSÉ ALFREDO BORGES, in Revista de Direito Tributário [Taxation Law Magazine], vol. 27-28, pg. 170-173; FRANCISCO CAMPOS, in RDA [expansion unknown] 47 / 452; ANTONIO ROBERTO SAMPAIO DORIA, "Da Lei Tributária no Tempo" [Of Taxation Law in Time], pg. 41, 1968; GERALDO ATALIBA, "Apontamento de Ciencia das Finanças, Direito Financeiro e Tributário" [Finance Science Finance and Taxation Law Code, Annotated], pg. 110, 1969, RT [expansion unknown]; IRINEU STRENGER, "Curso de Direito Internacional Privado" [Private International Law Course], pg. 108 112, 1978, Forense; JOSÉ FRANCISCO REZEK, "Direito dos Tratados" [Treaty Laws], pg. 470 475, items 393-395, 1984, Forense, v.g.).

Indeed, there is no hierarchic-standard precedence or priority of these [950] international acts, compared to internal positive law, specially according to clauses contained in the Constitution of the Republic, since the external standard practice is not superimposed on what is found in our Basic Law level.

I know, Mr. President that in 1985 this Court changed its orientation as far as the jurisprudence is concerned, which conditioned the handing over of the person sought for extradition to the existence of a formal agreement –previously done by the requesting State– concerning the commutation of the life sentence penalty in temporary sanction of prison sentences (RTJ 108 / 18 -RTJ 111 / 16).

In fact, Extradition Hearing No. 426-3, requested by the Government of the United States of America, led the Federal Supreme

OPINION APPENDIX A –Continued

Court, per majority vote to declare "... irrelevant the allegation for the restriction of life sentence commutation in prison sentences, due to lack of provision in the Law or in the treaty" (RTJ 115 / 969).

Despite the current prevailing orientation in this Court, I do not see consistent with the votes in previous extradition hearings (Ext. 486—The Monarchy of Belgium, for instance) -how to give precedence to penalty rules only present in formal agreements (international treaties) or simply of a legal nature as far as rules contained in the Constitution, which prohibit, absolutely, the imposition of any penalty of a lifelong character (CC, Article 5, clause XLVII, b).

This constitutional prohibition, absolute and impossible to bypass, contains, in reality, the very basis of the legal norm consolidated by Article 75 of the Brazilian Criminal Code, which limits the maximum prison sentence to 30 (thirty) years (DAMÁSIO E. DE JESUS, "Código Penal Anotado" [Criminal Law Code Annotated] pg. 212, 5th Edition, 1995, Saraiva; CELSO DELMANTO "Código Penal Comentado" [Comments on the Criminal Law Code], pg. 121, 3rd ed., 1991, Renovar; JULIO FABRINI MIRABETE, "Manual de Direito Penal" [Criminal Law Manual], vol. I/320, item 7.6.7, 9th ed., 1995, Atlas; ÁLVARO MAYRINK DA COSTA, "Direito Penal– Parte Geral" [Criminal Law--General Part], vol. I, tome II / 579, 4th ed., 1992, Forense; JORGE ALBERTO ROMEIRO, "Curso de Direito Penal Militar" [Military Criminal Law Course], p. 196, item No. 114, 1994, Saraiva; LUIZ VICENTE CERNICHIARO / PAULO JOSÉ DA COSTA JÚNIOR, "Direito Penal na Constituição" [Criminal Law in the Constitution], p. 112 114, 1990, RT).

From the teachings of CELSO RIBEIRO BASTOS (Comentário à Constituição do Brasil" [Comments on the Brazilian Constitution], vol. 2 / 242, 1989, Saraiva) for whom the Brazilian criminal legislature "... grasped very well the sense of the Greater Law precept", because in fixing the limit of time mentioned (CC, Article 75), it defined the maximum penalty legally possible in our country.

EXHIBIT C.

Id. The Fifth Circuit reasoned that the Commission's invocation of broader authority to support section 4B1.1 would have prospective application. *Id.* Following the *Bellazerius* opinion, the Sentencing Commission submitted to Congress a nearly identical amendment to the background commentary to section 4B1.1. 60 Fed.Reg. 25074, 25086–87 (1995). If there is any doubt that the Commission was relying on section 994(h) as its authority for the inclusion of conspiracy in the enumeration of offenses, such doubt is swept away by the Commission's more recent efforts to extend the statutory basis to section 994, specifically subsections (a)–(f). The amendment specifically cites 28 U.S.C. § 994(a)–(f) as authority for section 4B1.1. Moreover, the stated reason for the additional background commentary is the *Price* decision. 60 Fed.Reg. at 25087. This proposed amendment confirms that the Commission's sole rationale and authority for section 4B1.1 is section 994(h), and remained so at the time Mendoza–Figueroa committed his offense, entered his guilty plea, and received his sentence.

In my view, *Price* and *Bellazerius* have the better argument because they apply the guidelines and commentary as written. The Sentencing Commission plainly meant what it said in stating that section 994(h) was the basis of its Guideline. This is made abundantly clear by the Commission's proposal to modify the basis for the Guideline, as noted by the Fifth Circuit in *Bellazerius*, 24 F.3d at 702, and by the Commission's subsequent submission of the modification to Congress. 60 Fed.Reg. at 25086.

For these reasons, I conclude that the Sentencing Commission exceeded its statutory authority by including a drug conspiracy offense in the definition of a career offender, and I would reverse the sentence.

UNITED STATES of America, Appellee,

v.

John Gregory LAMBROS, Appellant.

No. 94–1332.

United States Court of Appeals, Eighth Circuit.

Submitted May 18, 1995.

Decided Sept. 8, 1995.

Following his extradition from Brazil, defendant was convicted in the United States District Court for the District of Minnesota, Diana E. Murphy, J., of conspiracy to distribute cocaine and three counts of possession of cocaine with intent to distribute. Defendant was sentenced to life in prison, and he appealed. The Court of Appeals, Wollman, Circuit Judge, held that: (1) defendant was not subject to statute's mandatory life sentence for conspiracy to distribute cocaine; (2) career offender provisions of Sentencing Guidelines were applicable to defendant's conspiracy conviction and one of his possession convictions; (3) evidence established that defendant was not tortured in Brazil with complicity of American officials while he awaited extradition; (4) evidence sustained finding that defendant was competent to stand trial; and (5) evidence sustained finding that defendant willfully perjured himself, warranting sentencing enhancement for obstruction of justice.

Convictions affirmed; sentence vacated and remanded.

1. Conspiracy ⇨51

Defendant who was convicted of a conspiracy to distribute cocaine was not subject to statute's mandatory life sentence, where statute did not take effect until well after conspiracy end date charged in indictment. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b)(1)(A)(ii), as amended, 21 U.S.C.A. § 841(b)(1)(A)(ii).

2. Criminal Law ⇨51

Defendant who was convicted of conspiracy to distribute cocaine was not eligible for

EXHIBIT D.

other motions.[1] He filed a timely notice of appeal.

II.

JURISDICTION AND STANDARDS OF REVIEW

[1] The district court had jurisdiction under 18 U.S.C. § 3231 and 28 U.S.C. § 2255. We have jurisdiction under 28 U.S.C. § 2255 and 28 U.S.C. § 1291. The decision whether to grant or deny a petition for habeas corpus is reviewed *de novo*. *Adams v. Peterson*, 968 F.2d 835, 843 (9th Cir.1992) (en banc). Findings of fact are reviewed for clear error. *Thomas v. Brewer*, 923 F.2d 1361, 1364 (9th Cir.1991).

III.

DISCUSSION

A. *Violation of Fed.R.Crim.P. 11.*

[2] The voluntariness of a guilty plea is subject to *de novo* review. *United States v. Signori*, 844 F.2d 635, 638 (9th Cir.1988). Before accepting a guilty plea, the lower court judge must speak personally to the defendant to ensure his plea is voluntary. Fed.R.Crim.P. 11(d). Roberts argues his guilty plea was not voluntary because the court: 1) told him he would be sentenced under the "old law," not the Sentencing Guidelines, 2) failed to tell him he would not be eligible for parole, and 3) gave him a potentially longer sentence than the one he was advised of at his plea hearing.

1. *The judge was not obligated to sentence him under pre-Guidelines law.*

[3, 4] The first contention fails. The Sentencing Guidelines apply retroactively to guilty pleas, such as this one, which were entered in the "window period" between our decision suspending the Guidelines and the Supreme Court's holding in *Mistretta* that the Guidelines were constitutional. *United States v. Ramos*, 923 F.2d 1346, 1358 (9th Cir.1991). The Guidelines went into effect on November 11, 1987 and apply to conspiracies, such as this one, that ended after that date. *United States v. Kohl*, 972 F.2d 294, 298 (9th Cir.1992). The version of Rule 11 in effect at Roberts's November 21, 1988 plea hearing did not obligate the court to tell Roberts about the Sentencing Guidelines. *Ramos*, 923 F.2d at 1357. That the judge said he would be sentenced under the "old law" had no effect. *United States v. Carey*, 884 F.2d 547, 548 (11th Cir.1989), *cert. denied*, 494 U.S. 1067, 110 S.Ct. 1786, 108 L.Ed.2d 787 (1990).

2. *Ineligibility for parole.*

[5] The judge did not violate Rule 11 by failing to advise Roberts that he would be ineligible for parole. Rule 11 does not require the trial court to notify a defendant of parole eligibility before accepting his guilty plea. *United States v. Sanclemente-Bejarano*, 861 F.2d 206, 209 (9th Cir.1988) (per curiam).

3. *Failure to discuss supervised release.*[2]

[6, 7] Rule 11 requires that the judge advise the defendant of the "maximum possible penalty" before accepting his guilty plea. Fed.R.Crim.P. 11(c)(1). Here, the judge violated Rule 11 because Roberts received a potentially longer sentence than the maximum he was advised of. At his November 21, 1988 plea hearing, the judge told Roberts that he faced a statutory maximum sentence of twenty years, a $1 million fine, and a

1. All the issues raised in his motions but not specifically discussed lack merit.

2. The government contends this issue was not raised below. However, Roberts did take issue with the magistrate's finding that "the Rule 11 violation movant has raised is immaterial due to movant having been informed of the maximum sentence." C.R. 95 at 1. He also complained that imposing the term of supervised release violated Rule 11. C.R. 58 at 3. Even if this issue was not raised sufficiently below, Roberts can now raise it if it is purely a question of law, which is not dependent on the factual record, *United States v. Barnett*, 935 F.2d 178, 180 (9th Cir.1991), and if the opposing side does not suffer prejudice as a result, *United States v. Flores-Payon*, 942 F.2d 556, 558 (9th Cir.1991). Whether a Rule 11 violation occurred because of the judge's failure to discuss the term of supervised release at Roberts's plea hearing is purely a legal question, and we do not think the government will suffer any prejudice.

mandatory penalty assessment of $50. 21 U.S.C. § 841(b)(1)(C). The judge mentioned nothing about supervised release. At sentencing, Roberts received the twenty year maximum plus a three year term of supervised release pursuant to the Sentencing Guidelines. C.R. 35 at 20; U.S.S.G. §§ 5D3.1(a), 5D3.2(b)(1). If Roberts violates the conditions of his supervised release, the court may revoke his supervised release and send him back to prison for up to three more years. 18 U.S.C. § 3583(e)(3). Thus, Roberts's maximum sentence is at least twenty-three years, not twenty years. Because of the term of supervised release, Roberts received a potentially longer sentence than he was apprised of at his plea hearing.

If the defendant receives a potentially longer sentence than the maximum he was told, the failure to inform him of the supervised release term affects his "substantial rights" and is not harmless error. Fed.R.Crim.P. 11(h); *Rodriguera v. United States*, 954 F.2d 1465, 1469 (9th Cir.1992) (no harmless error where defendant was advised maximum was forty years but received eight years in prison plus ten years supervised release which could potentially be extended to life); *United States v. Sanclemente-Bejarano*, 861 F.2d 206, 209–10 (9th Cir.1988) (harmless error where defendant was advised maximum sentence was life imprisonment and received fifteen year sentence and five year term of supervised release); *United States v. Sharon*, 812 F.2d 1233, 1234 (9th Cir.1987) (not harmless error where defendant was advised maximum was twenty-one years and he received ten year term and ten years of special parole because liberty could be restricted for well over twenty-one years).

The government argues that the version of Rule 11 in effect at the time of Roberts's plea hearing did not require the judge to discuss supervised release under the Guidelines. This is probably true.[3] The government further contends the judge was not obligated to discuss *statutory* supervised release. This is also true.[4] However, Rule 11 still mandates that the judge tell the defendant the "maximum possible penalty." The defendant should not receive a sentence longer than the one discussed at the plea hearing.

[8] The government also argues that the plea agreement mentioned a term of supervised release, so Roberts's plea was voluntary, and any failure to mention it in open court was harmless error. However, the plea agreement simply listed the statutory maximum penalties for all the counts in the indictment. Supervised release was mentioned as part of the maximum statutory penalty for violating 21 U.S.C. § 841(a)(1)—a crime that Roberts did not plead guilty to.

In fact, we take the Rule 11 mandate quite literally. In *Sanclemente-Bejarano*, 861 F.2d at 208, the judge at the plea hearing asked the defense counsel if there was a supervised release term and she said "Yes.... According to the new [law], there should be five years supervised release. At

3. As previously stated, the judge was not obligated to discuss the Guidelines at that time. *Ramos*, 923 F.2d at 1357. However, the version of Rule 11 in effect at the plea hearing required the judge to discuss a "term of supervised release." Fed.R.Crim.P. 11(c)(1) (1988). The government contends that these words refer only to *statutory* supervised release, not supervised release imposed under the Guidelines. The plain words of Rule 11 make no such distinction, although, with the benefit of both hindsight and legislative history, the government may be right.

4. Roberts pled guilty only to conspiracy under 21 U.S.C. § 846. Until November 18, 1988, a conspirator was *not* subject to the mandatory term of supervised release contained in the underlying statute—in Roberts's case, 21 U.S.C. § 841(b)(1)(C). *Bifulco v. United States*, 447 U.S. 381, 401, 100 S.Ct. 2247, 2259, 65 L.Ed.2d 205 (1980). However, effective November 18, 1988 –three days before Roberts's plea hearing— the conspiracy statute was amended so conspirators would get the same penalties, including § 841's mandatory term of supervised release, as do people who commit the underlying offense. Anti-Drug Abuse Act of 1988, Pub.L. No. 100-690 § 6470(a), 102 Stat. 4181, 4377. Nonetheless, we hold that the amended version of the conspiracy statute should apply only to offenses committed after its effective date. *United States v. Moon*, 926 F.2d 204, 210 (2d Cir.1991); *United States v. Curry*, 902 F.2d 912, 917 (11th Cir.), *cert. denied*, 498 U.S. 1015, 111 S.Ct. 588, 112 L.Ed.2d 592 (1990), *and cert. denied*, 498 U.S. 1091, 111 S.Ct. 973, 112 L.Ed.2d 1059 (1991). If we were to apply the amended version of § 846 to offenses committed before its effective date, such as Roberts's, it would violate the Ex Post Facto Clause of the Constitution. *Curry*, 902 F.2d at 917 n. 5.

UNITED STATES of America, Plaintiff–Appellant,

v.

Gregory Alan ETHERTON, Defendant–Appellee.

No. 95–30381.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Sept. 19, 1996.

Decided Nov. 18, 1996.

Defendant pleaded guilty to conspiracy to manufacture and distribute more than 50 marijuana plants, completed prison term, and was subsequently reimprisoned for violating terms of his supervised release. On motion by defendant, the United States District Court for the District of Oregon, Helen J. Frye, J., reduced prison term imposed on defendant following revocation of his supervised release to time served. Government appealed. The Court of Appeals, Boochever, Circuit Judge, held that district court could reduce sentence imposed upon revocation of supervised release under statute that grants court discretion to modify previously imposed term of imprisonment when sentencing range is subsequently lowered by sentencing commission.

Affirmed.

T.G. Nelson, Circuit Judge, filed dissenting opinion.

1. Criminal Law ⇐996(1.1)

District court had discretion to reduce defendant's sentence that was imposed pursuant to revocation of supervised release, under statute granting court discretion to modify previously imposed term of imprisonment when sentencing range is subsequently lowered by sentencing commission; range for defendant's underlying offense of conspiracy to manufacture and distribute marijuana was significantly lowered, sentence upon revocation of supervised release was part of sentence for underlying offense, and court retained broad sentencing discretion despite existence of Sentencing Guidelines. 18 U.S.C.A. § 3582(c)(2); U.S.S.G. §§ 1B1.10, 2D1.1 Table n., 18 U.S.C.A.; § 2D1.1(c) (1994).

2. Criminal Law ⇐982.9(8)

Seven months' imprisonment imposed upon defendant for violating terms of supervised release was not punishment for new substantive offense, but, rather, was original sentence for underlying offense that was executed when defendant was returned to prison after violating terms of supervised release.

Lisa Simotas, United States Department of Justice, Washington, D.C., for plaintiff-appellant.

Wendy Willis, Assistant Federal Public Defender, Portland, Oregon, for defendant-appellee.

Appeal from the United States District Court for the District of Oregon, Helen J. Frye, District Judge, Presiding. D.C. No. CR–90–00028–3–HJF.

Before: PREGERSON, BOOCHEVER and T.G. NELSON, Circuit Judges.

BOOCHEVER, Circuit Judge:

The United States appeals the district court's reduction of the prison term imposed on Gregory Alan Etherton ("Etherton") following the revocation of his supervised release to time served. We affirm.

I. FACTS AND PROCEDURAL HISTORY

In February of 1991 Etherton pleaded guilty to a one-count information charging him with conspiracy to manufacture and distribute more than 50 marijuana plants, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846. The marijuana equivalency guidelines in effect at the time treated each marijuana plant as equivalent to one kilogram of dry marijuana. Etherton's 683 marijuana plants were thus equivalent to 683 kilograms of dry marijuana. [ER 9] *See* U.S.S.G. § 2D1.1(c) (Nov.1994) (amended 1995). After adjustments, the final guideline range called for 51–63 months in prison.

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II. ANALY

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The district court sentenced Etherton to 51 months in prison to be followed by a three-year term of supervised release subject to standard and special conditions. [ER 6–7] Etherton completed his prison term and began serving his supervised-release term in March 1995. Three months later, Etherton's probation officer informed the district court that Etherton had violated his release conditions. Following a hearing at which Etherton admitted to violating the terms of his supervised release, the district court revoked Etherton's supervised release and sentenced him to seven months in prison.

In November of that year the Sentencing Commission issued a retroactive amendment reducing the marijuana plant equivalency ratio to treat each marijuana plant as equivalent to 100 grams of marijuana. U.S.S.G. §§ 1B1.10, 2D1.1(c)(E) (Nov.1995). Etherton filed a motion pursuant to 18 U.S.C. § 3582(c) requesting that the district court reduce his release-violation prison term to time served. Section 3582(c)(2) grants the court discretion to modify a previously imposed term of imprisonment, when the sentencing range has subsequently been lowered by the Sentencing Commission.

The district court held a hearing at which the Government argued that section 3582(c) did not grant the court authority to reduce the sentence for the supervised-release violation. The court issued a summary order reducing the seven-month term to time served.

II. ANALYSIS

[1] The question presented is whether the district court had discretion under section 3582(c)(2) to reduce Etherton's sentence pursuant to the revocation of supervised release. Section 3582(c)(2) provides in relevant part that:

> The court may not modify a term of imprisonment once it has been imposed except that—
>
> (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant ..., the court may reduce the term of imprisonment....

The sentencing range for Etherton's underlying offense, conspiracy to manufacture and distribute marijuana, was substantially reduced when the Sentencing Commission amended the marijuana plant equivalency ratio. Under the original guidelines, Etherton served 51 months, the minimum sentence for a base level of 28 with six points of reduction and a criminal history score of III. He was then subject to three years supervised release. Under the amended guidelines, Etherton's base level would be 22, which, with the same reductions, would call for a sentence of 27–33 months. *See* U.S.S.G. § 1B1.10(b) (Nov.1995) ("In determining whether ... a reduction ... is warranted ... under 18 U.S.C. § 3582(c)(2), the court should consider the sentence that it would have imposed" under the amended guidelines.).

[2] The seven months imprisonment is not punishment for a new substantive offense, rather "it is the original sentence that is executed when the defendant is returned to prison after a violation of the terms of ... supervised release." *United States v. Paskow*, 11 F.3d 873, 881 (9th Cir.1993). We held in *Paskow* that "a term of supervised release ... is 'simply part of the whole matrix of punishment which arises out of a defendant's original crimes.' " *Id.* at 883 (citation omitted). Moreover, in *Koon v. United States*, — U.S. —, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996), the Supreme Court recognized that even in this era of the Sentencing Guidelines, district courts retain broad sentencing discretion. — U.S. at —, 116 S.Ct. at 2046 ("[a] district court's decision ... will in most cases be due substantial deference, for it embodies the traditional exercise of discretion by a sentencing court"). In light of *Paskow* and the sentencing discretion granted to district courts in *Koon*, we interpret the statute's directive that "the court may reduce the term of imprisonment" as extending to the entirety of the original sentence, including terms of imprisonment imposed upon revocation of supervised release.

Because Etherton had been sentenced "based on a sentencing range that has subsequently been lowered," the court had authority to exercise its discretion to reduce the sentence under section 3582(c)(2). In the

EXHIBIT F.

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special parole term, a five-year probation term, and a ten-year suspended sentence of imprisonment. Notwithstanding the lack of complete advice, Jovanovic's actual sentence rendered the error harmless. *McGeehan*, 824 F.2d at 680.

The advice of the maximum fifty-five year sentence makes irrelevant and harmless error the failure to advise of the maximum life special parole term. Any violation of the limited special parole term of three years plus suspended and parole terms (fifteen years) added to his nine-year sentence could in no way approach fifty-five years.

Holloway v. United States, 960 F.2d 1348 (8th Cir.1992), need not give us pause. In *Holloway*, the district court informed defendant that he could be sentenced to fifteen years in prison on each of the four counts to which he pled guilty, for a total of sixty years. The court failed to advise defendant that he could also be sentenced to two consecutive ten-year terms of special parole, for a total of twenty years. Defendant received a prison term of twenty-five years and a special parole term of twenty years. Holloway thereafter sought relief pursuant to 28 U.S.C. § 2255, arguing that had he known of the special parole term, he would not have pled guilty. While recognizing that the district court committed error in failing to inform Holloway of the special parole term, this court rejected defendant's claim, holding the error harmless. *Id.* at 1354. The court reasoned that, because Holloway had been advised that he faced a sixty-year sentence, and that even with inclusion of the special parole term, his total sentence came to 45 years. *Id.* *Holloway* does not address the effect of revocation of a special parole term. *Cf. United States v. Rodrigue*, 545 F.2d 75, 76 (8th Cir.1976) (pursuant to former Rule 11(e)(1) (which did not include "effect of" language), advice as to special parole term required only disclosing possibility of special parole term).

Support for our interpretation of Rule 11(e)(1) also may be found in decisions by our sister circuits. *See, e.g., Rodriguera v. United States*, 954 F.2d 1465, 1468–69 (9th Cir. 1992); *United States v. Garcia–Garcia*, 939 F.2d 230, 232–33 (5th Cir.1991); *Moore v. United States*, 592 F.2d 753, 755 (4th Cir. 1979).

[2] Having determined that "effect of any supervised release term" under Rule 11(e)(1) includes the consequences upon revocation of that release term, the district court's failure to so advise Osment of the consequences mandated by § 3583(e)(3) constitutes error. We now turn to Rule 11(h), to determine whether the error affects defendant's substantial rights, or may be deemed harmless.

[3] The district court advised Osment that he faced a maximum prison sentence of five years. Thus on its face, Osment's sentence of fifteen months imprisonment and a three-year supervised release term, for a total of four years and three months or fifty-one months, does not exceed the statutory penalty of which Osment was advised. The effect of the supervised release term has not, however, been considered.

Revocation of the supervised release term, pursuant to § 3583(e)(3), would require that Osment serve no more than two additional years in prison, without credit for time served post-release. Thus the maximum possible penalty, i.e., the worst case scenario, including the effect of the supervised release term, would be as follows: fifteen months imprisonment, two years and 364 days supervised release, and two years imprisonment, for a total of seventy-five months less one day. This total exceeds the five-year or sixty-month term of imprisonment the district court advised Osment. Accordingly, we cannot deem the error harmless on this direct appeal.

Based on the foregoing, we reverse, vacate and remand to the district court so that Osment may plead anew. With this resolution of the appeal, we deem it unnecessary to discuss Osment's claim that he had been denied the right to represent himself in some of the proceedings in the trial court.

EXHIBIT G.

Mexican ruling limits extradition

Those facing life won't go to U.S.

New York Times

MEXICO CITY — Mexico's Supreme Court has blocked the extradition of criminal suspects facing life sentences in the United States, confounding U.S. authorities seeking to convict defendants accused of drug trafficking and murder.

The ruling, handed down in October but published in full last month, has stopped the extradition of more than 70 high-profile defendants.

The decision is rooted in Mexico's constitution, which says that all people are capable of rehabilitation. A life sentence, the court ruled, flies in the face of that concept. The maximum sentence in Mexico is 40 years, although sometimes a 60-year term may be imposed.

The prisoners for whom extradition has been barred include a former state governor, Mario Villanueva, indicted in New York on charges of smuggling 200 tons of cocaine into the United States. Another is Augustin Vazquez Mendoza, who was on the FBI's list of the 10 most-wanted fugitives, charged with the 1994 murder of an undercover drug-enforcement officer in Arizona.

The Drug Enforcement Administration (DEA) spent six years and more than $1 million pursuing Vazquez before his arrest in July 2000. Now it appears that, in order to extradite him, Arizona may have to dismiss the case and try him on lesser charges.

Similarly, the indictment against Villanueva, a fugitive for two years before his arrest in May 2001, will have to be redrawn if he is ever to face justice in the United States, officials said.

The court, in a 6-2 ruling, said a life sentence negated the Mexican constitution's provisions for rehabilitation. "It would be absurd to hope to rehabilitate the criminal if there were no chance of his returning to society," Justice Roman Palacios wrote for the majority.

Trafficking

The decision was a bitter pill for U.S. officials, who cite the Villanueva and Vazquez cases as crucial for establishing a foundation of justice in matters between the countries.

Villanueva, governor of the state of Quintana Roo from 1993 to 1999, is the highest-ranking Latin American politician to face drug charges filed in a U.S. court since the arrest of Gen. Manuel Noriega, the dictator of Panama, in 1989. Villanueva is accused of working with traffickers to import cocaine into the United States, taking a $500,000 bribe for every major shipment that passed through his state in the mid-1990s.

The charges against him filed in U.S. District Court in New York City — two counts of running a "continuing criminal enterprise" — carry a maximum sentence of life in prison for each charge and a $4 million fine. Law enforcement officials in Mexico said the U.S. attorney's office in New York might have to seek a new indictment on lesser charges, carrying a maximum 20-year sentence, against Villanueva, 55.

Vazquez, 31, is charged as the mastermind in the 1994 killing of Richard Fass, a U.S. DEA agent working undercover, in Glendale, Ariz.

The state of Arizona charges that Vazquez ordered that Fass be killed to recoup a 22-pound shipment of methamphetamine and the $160,000 that Fass had brought along to pay for it. After six years as a fugitive, and a national manhunt, he was arrested by Mexican authorities 18 months ago.

But last week, a judge ruled that the recent Mexican Supreme Court decision barred his extradition. Arizona has two hard choices if it wants to try Vazquez: drop the murder charge or promise Mexico that he will receive a fixed sentence of 60 years or less if convicted.

EXHIBIT H.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on March 3, 2003

UNITED STATES OF AMERICA	:	CRIMINAL NO. 04-126
-v- SEALED	:	GRAND JURY ORIGINAL
	:	FILED UNDER SEAL
WILBER ALIRIO VARELA,	:	VIOLATIONS:
a/k/a "Detergente,"	:	
a/k/a "Jabon,"	:	18 U.S.C. § 1962(c)
DIEGO LEON MONTOYA-SANCHEZ,	:	(RICO)
LUIS HERNANDO GOMEZ-BUSTAMANTE,	:	
a/k/a "Rasguno,"	:	18 U.S.C. § 1962(d)
ARCANGEL HENAO-MONTOYA,	:	(RICO Conspiracy)
a/k/a "El Mocho,"	:	
JUAN CARLOS RAMIREZ-ABADIA,	:	21 U.S.C. § 963
a/k/a "Chupeta,"	:	(Conspiracy to Import Five
CARLOS ALBERTO RENTERIA-MANTILLA,	:	Kilograms or More of
a/k/a "Beto Renteria,"	:	Cocaine and to Manufacture
GABRIEL PUERTA-PARRA,	:	and Distribute Five
a/k/a "Doctor Puerta,"	:	Kilograms of More of Cocaine
JORGE ORLANDO RODRIGUEZ-ACERO,	:	Intending and Knowing that
a/k/a "El Mono Ciquenta," and	:	the Cocaine Will Be
JAIRO APARICIO-LENIS,	:	Unlawfully Imported into
a/k/a "Don Pedro,"	:	the United States)
	:	
	:	18 U.S.C. § 1963(a)
Defendants.	:	21 U.S.C. § 853
	:	(Forfeiture)

SULLIVAN, J. EGS

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

APR 29 2004

Racketeering Violation

The Grand Jury charges:

At all times relevant to this Indictment:

SUPERSEDING

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THIS ARTICLE AS TO THE ARREST OF JUAN CARLOS RAMIREZ-ABADIA IN BRAZIL - APPEARED ON AUGUST 8, 2007, Page 8A - USA TODAY.

ips were distribut- The World Food Program and

Brazil arrests suspected drug kingpin

Brazilian police arrested an alleged Colombian drug kingpin wanted by U.S. authorities and accused of shipping 500 tons of cocaine worth $10 billion from Colombia to the USA from 1990 to 2004.

Juan Carlos Ramirez Abadia, 44, was arrested at an apartment in Aldeia da Serra in São Paulo state, a federal police statement said. He is suspected of masterminding the killings of police and informants in Colombia and the USA. Ramirez Abadia had undergone several plastic surgeries to disguise his appearance, Colombian Defense Minister Juan Manuel Santos said.

Core alleges disinformation on warming