

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MINNESOTA**

JOHN GREGORY LAMBROS,

* **Case No. 19-CV-01870-MJD-ECW**

Plaintiff,

*

*

*

Vs.

*

*

UNITED STATES OF AMERICA,

*

AFFIDAVIT FORM

*

Defendant.

*

**MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL
RULES OF CIVIL PROCEDURE RULE 59(e)**

1. COMES NOW, Plaintiff - Movant JOHN GREGORY LAMBROS, (Hereinafter "MOVANT"), Pro Se, and requests this Court to construe this filing liberally. See, HAINES vs. KERNER, 404 U.S. 519, 520-21 (1972), and not limit the jurisdictional statutes identified in this complaint. The "ORDER" by Honorable Judge Davis GRANTED Defendants' Motion to Dismiss this action on September 11, 2020.

2. Federal Rules of Civil Procedure allows this filing within twenty-eight (28) days of entry of this Court's "ORDER" filed on September 11, 2020, mailed by Clerk on September 14, 2020.

3. In support of this request Plaintiff relies upon the record in this case and the following facts that are submitted in affidavit form herein. Therefore, Plaintiff restates and incorporates all pleadings, motions, exhibits, testimony and documents filed within this action. See, F.R.C.P. 10(c).

4. John Gregory Lambros declares under penalty of perjury:

FACTS:

5. July 20, 2020: U.S. Magistrate Judge Wright issued her “REPORT AND RECOMMENDATION” in this action, which recommended Defendants’ Motion to Dismiss be granted and Plaintiff’s complaint be “Dismissed without Prejudice” due to the following facts:

- A. Movant Lambros did not effectuate proper service.
- B. Movant Lambros’ request for declaratory relief is moot.
- C. Movant Lambros’ FTCA claims against the BOP should be dismissed.
- D. Movant Lambros’ claims for damages against the United States - employees of the U.S. Parole Commission and Bureau of Prisons - are entitled to quasi-judicial immunity - **ABSOLUTE IMMUNITY** - when considering and deciding parole questions, as this function is **comparable to that of judges** and should be dismissed.

QUESTION ONE (1):

WHETHER DEFENDANTS ARE ENTITLED TO ABSOLUTE IMMUNITY TAKEN IN THE CLEARLY COMPLETE ABSENCE OF ALL JURISDICTION OVER THE SUBJECT MATTER. See, STUMP vs. SPERKMAN, 435 U.S. 349,356-357 (1978). WHEN DEFENDANTS VIOLATED THE PROVISIONS OF THE

“EXTRADITION TREATY” BETWEEN THE UNITED STATES AND BRAZIL AND CONDITIONS ESTABLISHED IN THE SENTENCE OF THE SUPREME COURT OF BRAZIL, WHICH APPROVED THE EXTRADITION REQUEST PRESENTED BY THE GOVERNMENT OF THE UNITED STATES -- A VIOLATION OF FEDERAL LAW PURSUANT TO THE SUPREMACY CLAUSE. See, U.S. CONSTITUTION, Art. VI.

FACTS:

6. The extradition of Movant Lambros from Brazil was conditioned upon a limitation on what sentence could be *entered* against Movant Lambros, as well as what sentence he could actually serve.

7. **APRIL 30, 1992:** The extradition decree entered by the Brazilian Supreme Court **DID NOT GRANT EXTRADITION ON THE AUGUST 21, 1989 "WARRANT" BY THE U.S. PAROLE COMMISSION, THAT MOVANT WAS ARRESTED ON BY DEA AGENT TERRYL ANDERSON IN BRAZIL ON MAY 17, 1991.**

8. **May 5, 1992: THE OFFICE OF INTERNATIONAL AFFAIRS:** The "OIA", Justice Department reviewed the request for Plaintiff's extradition and was informed on or about MAY 5, 1992 by telex, as where the following U.S. Government Offices:

a. **Secretary of State;**

b. **U.S. Department of Justice, Washington DC;**

c. All Embassies and consulates within Brazil;

d. **DEA Washington;**

That Plaintiff Lambros was **only** extradited on criminal indictment U.S. vs. LAMBROS, Criminal No. CR-4-89-82(05), District of Minnesota. Also see, EXTRADITION TREATY BETWEEN U.S. AND BRAZIL, Article XXI, - **A person extradited may not be tried or**

punished by the requesting state for any crime or offense committed prior to the request for extradition, other than that which gave rise to the request, ...) **Article XXI.** See, EXHIBIT B.

9. **JULY 4, 2017:** Movant Lambros completes the required 85 percent of his current 30-year sentence and would have started his supervised release if he **DID NOT** have the **August 21, 1989 U.S. PAROLE "WARRANT"** pending "DETAINER".

10. **JULY 4, 2016:** **August 21, 1989** "WARRANT" from U.S. Parole Commission **PREVENTS** Movant's prerelease custody. **Without the "WARRANT" Movant Lambros would be eligible for "PRE-RELEASE CUSTODY" to a halfway house on JULY 4, 2016.** Inmates are allowed one (1) year within pre-release to adjust and prepare for reentry into the community. See, 18 U.S.C.3624(c)(1) and 28 C.F.R.570.21(a). See. **EXHIBIT C.** (August 21, 1989, Parole "WARRANT")

11. **JULY 4, 2015:** U.S. Parole Commission "WARRANT" - "DETAINER" **PREVENTS** Movant Lambros from attending and participation within the **"RESIDENTIAL DRUG ABUSE PROGRAM (RDAP)"** that would of allowed Movant Lambros **ANOTHER TWELVE (12) MONTHS OFF OF HIS SENTENCE.** **THEREFORE, A RELEASE DATE OF JULY 4, 2015.** See, 18 U.S.C. 3621(e)(2)(B). Also, ESPINOZA vs. LINDSAY, 500 Fed. Appx. 123, 125 FN. 2 (3rd Cir. 2012)(Inmates with detainers lodged against them are **ineligible for RDAP.**).

12. **September 14, 1994:** The US Parole Commission (USPC) ordered that the Special Parole Violation Warrant remain in place. Please note that the USPC and the U.S. Bureau of Prisons **had been placed on notice** with copy of the Extradition papers from the Supreme Court of Brazil and the MAY 5, 1992 telex from the Brazilian Embassy in Brazil as to Movant **NOT being extradited on the 1989 PAROLE VIOLATION WARRANT, before the September 14, 1994 hearing by Movant's Attorney, Movant's Attorney David J. Phillips, a federal public defender, was Court appointed on April 6, 1994 and received the order from the Supreme Court of Brazil and the telex on or about April 20, 1994, which he included within his arguments to the USPC dispositional record review of Movant, as to having ADVERSE IMPACT ON MOVANT'S SECURITY CLASSIFICATION AS WELL AS THE TYPES OF PROGRAMS AND EMPLOYMENT TO WHICH MOVANT HAD ACCESS WHILE INCARCERATED,**

13. **February 27, 2018:** Movant Lambros was able to secure a finding by the Parole Commission that the "Rule of Speciality applied to him and his sentence on this offense from the 1970s had expired." Movant offers **EXHIBIT A** (U.S. Department of Justice, U.S. Parole Commission, February 27, 2018, National Appeals Board **concluded that the Rule of Specialty applies to the 1989 Special Parole Warrant that Movant was arrested on in Brazil and not extradited from Brazil, as per the Brazilian Supreme Court.**)

14. **February 27, 2018: DEFENDANTS ADMIT TO VIOLATIONS OF FEDERAL LAW PURSUANT TO THE SUPREMACY CLAUSE. See, U.S.**

CONSTITUTION, Art. VI. DEFENDANTS VIOLATED THE PROVISIONS OF THE “EXTRADITION TREATY” BETWEEN THE UNITED STATES AND BRAZIL AND CONDITIONS ESTABLISHED IN THE SENTENCE OF THE SUPREME COURT OF BRAZIL, WHICH APPROVED THE EXTRADITION REQUEST PRESENTED BY THE GOVERNMENT OF THE UNITED STATES. See, EXHIBIT A

15. Judge Wright stated , “As such, while Lambros may not be entitled to relief for claims of fraud under Section 2680(h) or claims against the USPC for false arrest and imprisonment, **IT MAY NOT PRECLUDE A FTCA CLAIM FOR FALSE ARREST AND IMPRISONMENT RELATED TO THE BOP’s ACTIONS.**” See, Page 19, Foot Note 7, of Judge Wright’s **PROPOSED FINDING WITHIN THE REPORT AND RECOMMENDATIONS. DATED: JULY 20, 2020.**

16. Judge Wright further stated, “Given that Warden Fox and other unnamed BOP officials were acting pursuant to the USPC’s quasi-judicial actions relating to the 1994 Order on the applicability of the 1989 Warrant and subsequent parole revocation hearing decision, **the Court finds that Lambros’ FTCA claim should be dismissed as being barred by quasi-judicial immunity.**” a.k.a. “**ABSOLUTE IMMUNITY**” See, Page 20, of Judge Wright’s **PROPOSED FINDING WITHIN THE REPORT AND RECOMMENDATIONS. DATED: JULY 20, 2020.**

DISCUSSION REGARDING LAW ON ABOVE QUESTION:

17. The interactions between the United States and Brazil pursuant to the treaty indicate that the treaty rights that Movant Lambros claims are clearly established federal law pursuant to the treaty. In addition to the Treaty itself, other sources of clearly established federal law are [*United States v. Rauscher*, 119 U.S. 407, 7 S.Ct. 234, 30 L.Ed. 425 \(1886\)](#), and [*Johnson v. Browne*, 205 U.S. 309, 27 S.Ct. 539, 51 L.Ed. 816 \(1907\)](#).

Rauscher and *Browne* both stand for the same principle: "An extradited defendant can "only be tried for one of the offenses described in that [extradition] treaty." [*Rauscher*, 119 U.S. at 430, 7 S.Ct. 234](#). See also [*Browne*, 205 U.S. at 316, 27 S.Ct. 539](#) (stating that it is impermissible to try a defendant other than "for the crime for which he has been extradited"). This rule from *Rauscher* and *Browne* has come to be known as the doctrine of specialty. See, e.g., [*Quinn v. Robinson*, 783 F.2d 776, 783 \(9th Cir.1986\)](#) ("The doctrine of `specialty' prohibits the requesting nation from prosecuting the extradited individual for any offense other than that for which the surrendering state agreed to extradite."). Also see, [*United States v. Thirion*, 813 F.2d 146, 151, 153 \(8th Cir.1987\)](#).

18. The treaty is federal law, and therefore the U.S. Parole Commission must yield to the extent there are any inconsistencies with the U.S. Parole Commission sentencing rules. **See U.S. CONST., Art. VI** ("[A]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the *Judges in every State shall be bound thereby*, any thing in the Constitution or Laws of any state to the Contrary notwithstanding.") (emphasis added); [*Howlett v. Rose*, 496 U.S. 356, 369-70, 110 S.Ct. 2430, 110 L.Ed.2d 332 \(1990\)](#) ("[S]tate courts have the coordinate authority and consequent responsibility to enforce the supreme law of the land."); [*Hauenstein v. Lynham*, 100 U.S. 483, 490, 25 L.Ed. 628 \(1879\)](#) ("[T]he Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and Constitution.").

RELIEF REQUESTED ON THIS QUESTION:

19. Enforce limitations on punishments following the extradition of Movant Lambros.

20. Find that clearly established federal law applies to limit the punishments Movant Lambros can receive when conditionally extradited under a Treaty, and the facts of this case indicate that such limitations were intended here.

21. Find that **DEFENDANTS ARE NOT ENTITLED TO quasi-judicial immunity - ABSOLUTE IMMUNITY** - when considering and deciding parole questions, as Defendants actions were **TAKEN IN THE COMPLETE ABSENCE OF ALL JURISDICTION.**

QUESTION TWO (2):

WHETHER DEFENDANTS ARE ENTITLED TO ENFORCE THE REQUIREMENTS FOR EFFECTIVE SERVICE UNDER RULE 4(c)(2), AS TO MOVANT LAMBROS' ACT OF MAILING THE SUMMONS AND COMPLAINT - WHEN MOVANT LAMBROS WAS INCARCERATED WITHIN THE U.S. BUREAU OF PRISONS - WHO PREVENTS ANY INMATE OTHER THAN THE INMATE WHO IS PART OF THE LEGAL PLEADINGS BEING SUBMITTED TO THE COURT - TO MAIL THE LEGAL DOCUMENT.

FACTS:

22. Judge Wright stated “Even assuming Lamros met the service requirements of Rule 4(i)(1), his act of mailing the Summons and Complaint via certified mail **HIMSELF** does not meet the requirements for effective service under Rule 4(c)(2):” See, Page 12, of Judge Wright’s **PROPOSED FINDING WITHIN THE REPORT AND RECOMMENDATIONS. DATED: JULY 20, 2020.**

23. Judge Wright stated, “Lambros initiated this action on May 12, 2018 in the United States District Court for the District of Columbia. **At the time he FILED THE COMPLAINT, PLAINTIFF HAD BEEN CONFINED IN A RESIDENTIAL REENTRY CENTER IN MINNEAPOLIS, MINNESOTA.**” See, Page 5, of Judge Wright’s

PROPOSED FINDING WITHIN THE REPORT AND RECOMMENDATIONS. DATED: JULY 20, 2020.

DISCUSSION:

24. Defendants prevented Movant Lambros from having any other person mail the Summons and Complaint in this action. The **U.S. Bureau of Prisons DOES NOT ALLOW ANYONE OTHER THAN THE PERSON THAT HAS SIGNED ANY LEGAL DOCUMENTS TO MAIL SAME.**

25. Movant Lambros was under the jurisdiction of the U.S. Bureau of Prisons who paid the housing and enforced all policies on May 12, 2018, as if Movant was still incarcerated at U.S. Penitentiary Leavenworth. **Movant Lambros would of incurred disciplinary action by the U.S. Department of Justice, U.S. Bureau of Prisons, if he would have requested ANOTHER INMATE to mail the Summons and Complaint in this action.. Again, it is Defendant's own rules and laws under the U.S. Department of Justice, that DID NOT allow Movant Lambros to meet the requirements for effective service under Rule 4(c)(2).**

DISCUSSION REGARDING LAW ON ABOVE QUESTION:

26. OJELADE vs. UNITY HEALTH CARE, INC., 962 F.Supp. 2d 258, 262 (District of Columbia - 2013) “If a defendant is not served within 120 days after the complaint is filed, the court ... must dismiss the action without prejudice ... or order that service be made within a specified time.” [Fed.R.Civ.P. 4\(m\)](#). Plaintiff has failed to complete service of process within the 120 days allowed under the rules. **However, she has made diligent and repeated efforts to effect service without the assistance of counsel, and Defendant clearly has received actual notice of Plaintiff's complaint.** Therefore, the Court will, *sua sponte* and *nunc pro tunc*,

grant an extension of Plaintiff's deadline. Plaintiff will be given 45 days from today to effect service in accordance with Rule 4. Unless Defendant informs the Court by September 10, 2013, that it is willing to waive service pursuant to Rule 4(d), the Court will appoint a member of the U.S. Marshals to make service. *See id.* at 4(c)(3) (“[T]he court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court.”). (emphasis added)

Although effective service will moot the Rule 12(b)(5) argument in Defendant's pending motion to dismiss, the Court will not require Defendant to re-file its motion in order to maintain its Rule 12(b)(1), (4), and (6) arguments.

RELIEF REQUESTED ON THIS QUESTION:

27. Find Movant has made diligent and repeated efforts to effect service without the assistance of counsel and Defendant clearly has received actual notice of Movant Lambros' complaint.

28. Movant Lambros requests this Court to request Defendants to willingly waive service pursuant to Rule 4(d), in the interest of justice, as Defendants have clearly received actual notice of Plaintiff's complaint.

29. Movant requests this Court, to appoint a member of the U.S. Marshals to make service. *See id.* at 4(c)(3) (“[T]he court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court.”), if Defendants are **NOT** willing to waive service in this action.

RELIEF AND CONCLUSION

30. Movant is requesting this Court to alter and amend its ORDER filed on September 11, 2020.

31. Movant restates and incorporates the relief requested within Question One (1), paragraphs 19, 20, and 21.

32. Movant restates and incorporates the relief requested within Question Two (2), paragraphs 27, 28, and 29.

33. I, JOHN GREGORY LAMBROS, have read the foregoing and declare them to be true. I declare under penalty of perjury that the foregoing is true and correct. See, 28 USC 1746.

EXECUTED ON: **September 30, 2020.**

John Gregory Lambros, Pro Se

Notice of Action on Appeal

U.S. Department of Justice
United States Parole Commission
90 K Street, N.E., 3rd Floor
Washington, D.C. 20530

Name: Lambros, John

Institution: District of Minnesota

Register Number: 00436-124

Date: February 27, 2018.

The National Appeals Board examined the appeal of the above named and ordered the following:

Terminate parole supervision on your original federal sentence in CR3-75-128, 3-76-54, and 3-76-17 and close case.

REASONS:

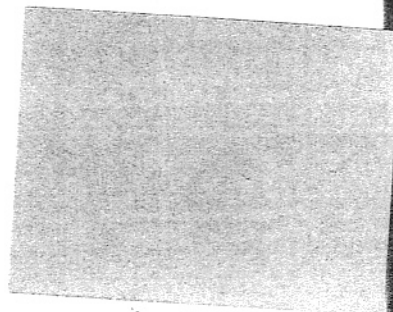
The National Appeals Board concludes that the Rule of Specialty applies in your case. Consequently your sentence in CR3-75-128, 3-76-54, and 3-76-17 has expired.

All decisions by the National Appeals Board on appeal are final.

cc: Designation & Sentence Computation Ctr
U.S. Armed Forces Reserve Complex
Grand Prairie Office Complex
346 Marine Forces Drive
Grand Prairie, TX 75051

U.S. Probation Office
District of Minnesota
406 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415-1320

EXHIBIT - A



5/16/92

For Lambros file =

① We need to check on his

W.H. Name

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05-05-92

[REDACTED]

FOL CONS DEA

BT

PR

HM

PR


note

AMEMBASSY BRASILIA
SECSTATE WASHDC, PRIORITY
USDOJ WASHDC
INFD AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO
AMCONSUL RECIFE
AMCONSUL PORTO ALEGRE
AMEMBASSY MONTEVIDEO
DEA WASHDC

USDOJ FOR OFFICE OF INTERNATIONAL AFFAIRS,
MONTEVIDEO FOR LEGATT

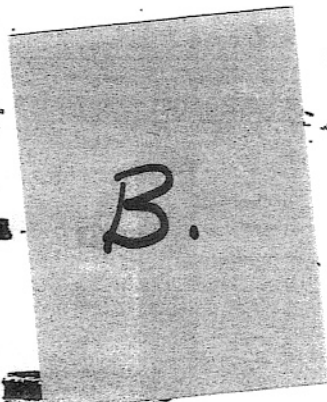
E.O. 12356: N/A

~~TAGS: CIAN, CASC, CPAS, SNAP, BR (LAMBRAS, JOHN GREGORY)~~

SUBJ: EXTRADITION: JOHN GREGORY LAMBRAS - 
EXTRADITION GRANTED

REF: BRASILIA 3021 AND PREVIOUS

Ex. - B.



[REDACTED]

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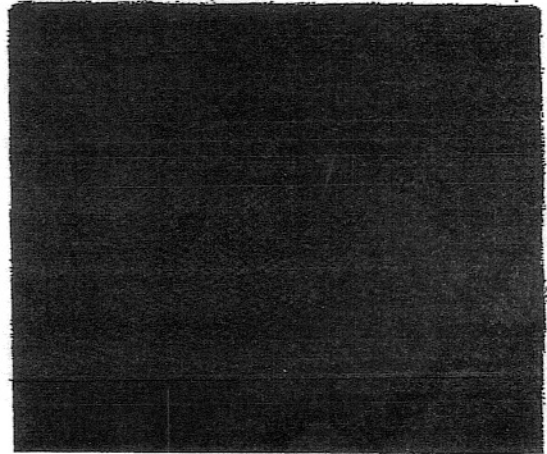
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1. THIS IS AN ACTION MESSAGE.

2. SUMMARY. ON APRIL 30, 1992, THE BRAZILIAN FEDERAL SUPREME COURT (STF) GRANTED, IN PART, BY MAJORITY OF VOTES, THE U.S. REQUEST FOR THE EXTRADITION OF JOHN GREGORY LAMBROS. THE FUGITIVE IS WANTED IN MINNESOTA TO STAND TRIAL FOR VIOLATION OF NARCOTICS LAWS. HE SHOULD BE READY TO BE REMOVED FROM BRAZILIAN TERRITORY WITHIN APPROXIMATELY ONE WEEK. END SUMMARY.

3. LAMBROS IS CHARGED WITH A) CONSPIRACY AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE; B) AIDING AND ABETTING, POSSESSION WITH INTENT TO DISTRIBUTE COCAINE; AND C) TRAVEL IN INTERSTATE COMMERCE WITH INTENT TO DISTRIBUTE COCAINE. IN HIS ORAL PRESENTATION TO THE STF, THE EMBASSY'S FSN LEGAL ADVISOR REITERATED ALL THE POINTS CONTAINED IN THE LAMBROS EXTRADITION DOCUMENTATION PROVIDED BY THE USG. THE STF JUSTICES DECIDED, HOWEVER, BY MAJORITY OF VOTES, THAT LAMBROS SHOULD BE PROSECUTED AND TRIED IN THE U.S. ONLY FOR CHARGES (A) AND (B) LISTED ABOVE, AND NOT FOR (C) I.E., FOR TRAVEL IN INTERSTATE COMMERCE BECAUSE THIS IS NOT A CRIME IN BRAZIL. THE U.S.-BRAZIL EXTRADITION TREATY AND BRAZILIAN LAW PROVIDE THAT EXTRADITION CAN BE EFFECTED ONLY WHEN THE ACT ATTRIBUTED TO THE FUGITIVE IS CONSIDERED A CRIME BOTH IN THE U.S. AND BRAZIL.



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