

The UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,

Plaintiff,

Vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 0:19-cv-01870
(MJD/ECW)

**Transferred from U.S. District
Court The District of Columbia.**
Civil Action No. 18-1312(TJK)

AFFIDAVIT FORM

**PLAINTIFF LAMBROS' RESPONSE TO DEFENDANT'S "MOTION TO
DISMISS", DATED: February 19, 2020.**

1. COMES NOW, Plaintiff - Movant JOHN GREGORY LAMBROS, (Hereinafter "MOVANT"), Pro Se, and request this Court to construe this filing liberally. See, HAINES vs. KERNER, 404 U.S. 519 , 520-21 (1972).
2. JOHN GREGORY LAMBROS, Movant in the above-entitled action, stating in affidavit form, opposition to Defendant's "MOTION TO DISMISS", by Attorney Ana H. Voss, Assistant U.S. Attorney, dated: February 19, 2020.
3. John Gregory Lambros declares under penalty of perjury:
4. I am the Plaintiff in the above entitled case.

5. Plaintiff - Movant Lambros DENIES EACH AND EVERY MATERIAL ALLEGATION CONTAINED IN DEFENDANT'S "MOTION TO DISMISS", filed on February 19, 2020, Docket Entry 22, except as hereinafter may be expressed and specifically admitted.

6. Movant's complaint survives Defendant's motion to dismiss, as Movant's complaint includes "enough facts to state a claim to relief that is plausible on its face." See, BELL ATLANTIC vs. TWOMBLY, 550 US 544, 570 (2007).

7. This Court, in deciding a motion to dismiss, is required to "accept the allegations of the complaint as true and construe those allegations, and any reasonable inference that might be drawn from them, in the light most favorable to the plaintiff. See, BELL ATLANTIC, 550 U.S. 544, 555 (2007).

FACTS:

8. Treaty of Extradition Between Brazil and the United States **DOES NOT** allow extradition of U.S. Parole Commission **Administrative Warrants:**

A. ARTICLE II, U.S. AND BRAZIL EXTRADITION TREATY: SPECIAL PAROLE AND/OR PAROLE ARE NOT INCLUDED WITHIN THIS SECTION OF THE TREATY, as an extraditable offense. See, **STATE VS. PANG, 940 P.2d 1293, 1355-1356 (Wash. Supreme Ct. 1997)**

B. ARTICLE V(4), U.S. AND BRAZIL EXTRADITION TREATY: **Article V:**
Extradition shall not be granted in any of the following circumstances:

(4.) **When the person sought would have to appear, in the requesting State, before an extraordinary tribunal or court. See, STATE VS. PANG, 940 P.2d 1293, 1357 (Wash. Supreme Ct. 1997) Please note: The U.S. Parole Commission is an extraordinary tribunal or court!**

9. **ADMINISTRATIVE WARRANTS:** Parole violation warrants are **ADMINISTRATIVE WARRANTS** rather than **JUDICIAL WARRANTS**. “Section 4213 expressly authorizes only ‘the COMMISSION [U.S. Parole Commission]’ to issue a PAROLE VIOLATOR ‘WARRANT and thereby provides for an ADMINISTRATIVE WARRANT.” Sherman vs. U.S. Parole Comm’n, 502 F.3d 869, 876 (9th Cir. 2007)(citing 18 U.S.C. 4213(a)). “Only in replacing parole with supervised release did Congress shift issuing **AUTHORITY TO ‘THE COURT’** and thereby use the term **‘WARRANT’ IN THE ORDINARY SENSE OF A JUDICIAL WARRANT.**” Id. (citing 18 USC 3606; See, Gozlon-Peretz vs. U.S., 498 US 395, 400-401 (1991). See, Denoyer vs. Warden, 2016 U.S. Dist. LEXIS 132371 (Dist. of Kansas, 2016)(Footnote 18).

10. **SPECIAL PAROLE:** “Special Parole was ‘a period of supervision served upon completion of a prison term’ and **ADMINISTERED BY THE UNITED STATES PAROLE COMMISSION.**” See, Gozlon-Peretz vs. U.S., 498 US 395, 399 (1991)(quoting BIFULCO vs. U.S., 447 U.S. 381, 388 (1980)). The **SPECIAL PAROLE TERM** was “designed to take effect upon the expiration of the period of parole supervision **FOLLOWING MANDATORY**

RELEASE, OR AT THE FULL TERM DATE FOLLOWING PAROLE, OR UPON RELEASE FROM CONFINEMENT FOLLOWING SENTENCE EXPIRATION.” See, U.S. vs. Watson, 548 F.2d 1058, 1060 FN. 3 (D.C. Cir. 1977 (quoting Roberts vs. U.S., 491 F.2d 1236, 1238 (3rd Cir. 1974). Movant Lambros was on **SPECIAL PAROLE** when arrested on **May 17, 1991, pursuant to the parole violation warrant.**

11. **FEDERAL PRISONERS CAN NOT BE RELEASED FROM CUSTODY UNTIL U.S. PAROLE COMMISSION MAKES PAROLE REVOCATION DETERMINATION:** See, MOODY vs. DAGGETT, 429 US 78, 80 FN. 2 (1976).

12. Movant Lambros was arrested **illegally** by DEA agents and Brazilian Federal Police on May 17, 1991, in Rio de Janeiro, Brazil on the U.S. Parole Commission Warrant issued on August 21, 1989. **Movant was on SPECIAL PAROLE.** DEA Agent Terryl Anderson testified before U.S. Magistrate Judge Jonathan Lebedoff on December 9, 1992, **stating that he arrested Plaintiff Lambros on May 17, 1991, pursuant to the parole violation warrant.** See, “REPORT AND RECOMMENDATION”, filed on December 21, 1992 by Judge Lebedoff, specifically pages 1,2,3, 11, and 13.

13. **APRIL 30, 1992:** 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.

14. **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 was the 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.**

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

16. **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).

17. **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.**).

MOVANT'S RESPONSE TO GOVERNMENT'S REQUEST TO DISMISS THIS ACTION

18. Page 1: Attorney Voss, Assistant US Attorney (hereinafter "GOVT.") states that Movant "Was detained under an August 21, 1989, parole violation warrant." This is not true. Movant Lambros was arrested and locked-up on the August 21, 1989, parole violation warrant by United States of America DEA Agent **TERRYL ANDERSON IN BRAZIL ON MAY 17, 1991.** Within the

United States, after extradition on another offense, Movant was detained within the United States Bureau of Prisons after producing documents - on or about April 6, 1994 - from the U.S. Department of State and the Brazilian Supreme Court that Movant **was not** extradited from Brazil on the August 21, 1989 parole violation warrant. **Overview:** On or about 1993 or the early part of 1994 the "USPC" forwarded to Plaintiff Lambros, pursuant to 18 U.S.C. 4214(b)(1), an application for a dispositional record review of Plaintiff's outstanding August 21, 1989 "WARRANT" by the USPC, while plaintiff was housed at U.S. Penitentiary Leavenworth. This information was processed through the staff of Defendant U.S. Bureau of Prisons. Defendant "BOP" informed Plaintiff that he had the right to be represented by an attorney and that it would be best to contact the U.S. Public Defender's Office to appoint an attorney **due to the confusion regarding the legality of Plaintiff's extradition from Brazil on the August 21, 1989 U.S. Parole Commission Warrant.** Plaintiff requested services of court appointed attorney on March 29, 1994, to assist in the dispositional record review of August 21, 1989 "WARRANT". On April 6, 1994, the Court appointed Attorney David J. Phillips, a federal public defender, to assist Plaintiff. Plaintiff Lambros requested Attorney Phillips to pursue claims concerning the illegal arrest and extradition of Plaintiff from Brazil on the August 21, 1989 "WARRANT", by the US PAROLE COMMISSION ("USPC"). During the "USPC" dispositional record review of Plaintiff Lambros, Attorney Phillips argued that the parole commission warrant was having **ADVERSE IMPACT ON THE PLAINTIFF'S SECURITY CLASSIFICATION AS WELL AS THE TYPES OF PROGRAMS AND EMPLOYMENT TO WHICH PLAINTIFF HAD ACCESS WHILE INCARCERATED WITHIN DEFENDANT "BOP' FACILITIES.** "He also included several documents discussing various issues Plaintiff Lambros thought pertinent, such as his **ILLEGAL EXTRADITION FROM BRAZIL.** On September 14, 1994, the "USPC" ordered that the parole violation warrant remain in place (ORDER...." See, LAMBROS vs. U.S., 1997

U.S. Dist. LEXIS 2373 (D.C. Kan. 1997)(“FootNote 3, **The U.S. sought to extradite the plaintiff** to stand trial in the U.S. District Court for the District of Minnesota for alleged narcotic crimes contained in his indictment **AS WELL AS HIS PAROLE VIOLATIONS CONTAINED IN HIS PAROLE VIOLATION WARRANT (PVC).**

19. Page 2: The Govt. states “Plaintiff also claims that by **July 4, 2017**, he should have been released to serve a period of supervised release from sentences he does not challenge here, but that the unlawful August 21, 1989, parole warrant acted as a detainer, delaying his release.” **This is not totally true.** Movant Lambros should have been released on or about **JULY 4, 2015.** Movant incorporates and restates paragraphs 15, 16, and 17 above.

20. Page 2 and 3: The Govt. states, “Plaintiff’s claims are subject to dismissal for several reasons”:

1. Plaintiff has failed to **effect proper service** of the summons and complaint;

This is not true. The following facts exist:

A. The Clerk of the Court forwarded all instructions to Movant as to proper service of defendants in this action. Movant has consulted with the Clerk’s Office and followed every step exactly.

B. September 14, 2018: Judge Kelly issued an “ORDER” instructing Movant to offer proof of service of Defendants on or before October 19, 2018, or file for an enlargement of time.

C. October 8, 2018: Movant filed a motion requesting an enlargement of time to serve process and file proof of service with the Court.

D. October 17, 2018: The Court granted Movant’s motion for enlargement of time to November 1, 2018.

E. Movant mailed all Defendants copy of the summons and complaint on October 6, 2018 via U.S. Certified Mail, return receipt requested.

F. All Defendants were served no later than October 10, 2018, as per the direction of the Clerk of Court, as to the correct procedure for Pro Se litigants.

G. October 24, 2018: Movant filed a "MOTION OFFERING AFFIDAVIT OF MAILING TO ALL DEFENDANTS IN THIS ACTION WITH CLARIFICATION, AS PER THIS COURT'S ORDER FILED OCTOBER 17, 2018".

H. June 24, 2019: U.S. District Judge Timothy J. Kelly issued a "MEMORANDUM OPINION AND TRANSFER ORDER" (See, Docket Sheet Document 17), as to the Govt.'s "MOTION TO DISMISS" Movant Lambros' TORT CLAIM in its entirety on four (4) grounds: 1) **improper service**; (2) improper venue; (3) sovereign immunity; and (4) mootness. Judge Kelly "ORDERED that Defendants' Motion to Dismiss, ECF No. 10, is **GRANTED IN PART**, to the extent that the Court concludes that venue is improper in the District of Columbia." Therefore, Movant believes he has complied with the Courts "ORDER", as to proper service to all defendants.

21.. Page 2 and 3: The Govt. states, "Plaintiff's claims are subject to dismissal for several Reasons":

1. Plaintiff has not identified a **waiver of sovereign immunity** for his claim. **This is not true.** Please see "ORIGINAL COMPLAINT", paragraph 49, pages 16 and 17:

"LIABILITY UNDER THE FTCA: Assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, are actionable when committed by federal investigative or law enforcement officers. See, 28 U.S.C. 2680(h). This category includes federal correctional officers and employees of the U.S. Bureau of Prisons who are empowered to make arrests for certain federal law violations. See, SHEPPARD vs. U.S., 537 f. Supp. 2d 785, 790-791 (D. MD. 2008) and cases cited. The Supreme Court

held the BOP were law enforcement officers in interpreting another section of the FTCA. See, *ALI vs. FEDERAL BUREAU OF PRISONS*, 552 U.S. 214 (2008).”

2. Here the significant limitation on the waiver of immunity is the Act's exception for "[a]ny claim arising in a foreign country," § 2680(k), a provision that on its face seems plainly applicable to the facts of this action.

22. The issue is whether Movant Lambros’ allegation that the United States of America, Drug Enforcement Administration, Bureau of Prisons, and other agencies instigated his illegal assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, in Brazil and the United States, for **PAROLE VIOLATIONS CONTAINED IN HIS PAROLE VIOLATION WARRANT (PVC)** in the United States, supports a claim against the Government under the Federal Tort Claims Act (FTCA or Act), 28 U. S. C. §§ 1346(b)(1), 2671-2680.

23. The FTCA renders the United States liable for tort claims "in the same manner and to the same extent as a private individual under like circumstances." 28 U. S. C. § 2674. The Act gives federal district courts "exclusive jurisdiction of civil actions on claims against the United States, for money damages ... for injury or loss of property, or personal injury or death **caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.**" § 1346(b)(1). Congress included in the FTCA a series of exceptions to that

sovereign-immunity waiver. Relevant to this litigation, **the Act expressly excepts "[a]ny claim arising in a foreign country." § 2680(k).**

24. The United States of America and DEA agents had no authority under Brazilian law or U.S. federal law to execute an extraterritorial arrest of Movant Lambros on a Administrative Warrant by the U.S. Parole Commission - an extraordinary tribunal or court for special parole violations.

25. The foreign-country exception **does not** bar Movant Lambros' false-arrest claim because that claim involved federal employees working from offices in the United States to guide and supervise actions in other countries.

26. Movant Lambros asserts that the negligent [or intentional] activity that injured Movant was the consequence of faulty training, selection or supervision—or even less than that, lack of careful training, selection or supervision—in the United States.

27. The United States of Brazil has from the outset expressed its position that Movant Lambros **should not be charged** with the U.S. Parole Commission **Administrative Warrant** by the United States of America. The Federal Supreme Court of Brazil fully considered and unequivocally rejected the extradition of Movant Lambros on the U.S. Parole Commission **Administrative Warrant**. No appeal was filed by the United States!

28. Does the **"specialty doctrine"** in international extradition law prohibit the U.S. of

America, et al. from prosecuting Movant Lambros for crimes specifically excluded in the extradition order? The requested state - Brazil - retains an interest in the fate of a person whom it has extradited, so that if, for example, he is tried for an offense other than the one for which he was extradited, or is given a punishment more severe than the one applicable at the time of the request for extradition, **the rights of the requested state, as well as the person, are violated**. See, Restatement (Third) of the Foreign Laws of Nations, Ch. 7, at 557-58.

29. Under international law, the "specialty doctrine" generally prohibits a requesting State from prosecuting an extraditee "for an offense other than the one for which surrender was made." See. I.A. Shearer, *Extradition in International Law* 146 (1971). This doctrine "is designed to prevent prosecution for an offense for which the person would not have been extradited. See, Restatement (Third) of Foreign Relations Law of the United States § 477(cmt.b) (1987).

30. "As a matter of international comity, "[t]he 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." See, [Khan, 993 F.2d at 1373](#) (citing [United States v. Van Cauwenberghe, 827 F.2d 424, 428 \(9th Cir. 1987\)](#) (quoting [Quinn v. Robinson, 783 F.2d 776, 783 \(9th Cir.1986\)](#). "To guarantee limited prosecution by nations seeking extradition of persons from the United States, **the United States has guaranteed, pursuant to the treaty, that it will honor limitations placed on prosecution in the United States.** See, [United States v. Cuevas, 847 F.2d 1417, 1426 \(9th Cir.1988\)](#).

31. In this case, the doctrine of specialty is incorporated into the terms of the Treaty of Extradition Between the United States of America and the United States of Brazil (Treaty) through Article XXI which provides:

“A person extradited by virtue of the present Treaty may not be tried or punished by the requesting State for any crime or offense committed prior to the request for his extradition, other than that which gave rise to the request, nor may he be re-extradited by the requesting State to a third country which claims him, unless the surrendering State also agrees or unless the person extradited, having been set at liberty within the requesting State, remains voluntarily in the requesting State for more than 30 days from the date on which he was released. Upon such release, he shall be informed of the consequences to which his stay in the territory of the requesting State would subject him.”

This provision, read in conjunction with Articles I and II, requires that the crime must be enumerated in the treaty and must satisfy the doctrine of dual criminality, thus incorporating the doctrine of specialty into the Treaty. Because the doctrine is codified in federal statute, 18 U.S.C. § 3192, federal law requires acceptance of the requirement of Brazil that an offense must be extraditable under its interpretation of applicable domestic and international law.

32. The United States of America was obligated to follow the decision of the Federal Supreme Court of Brazil which ruled that, as a condition for extraditing Movant Lambros to the United States of America, he can be prosecuted **only for the crime contained within U.S. vs. JOHN GREGORY LAMBROS, Criminal file number CR-4-89-82(05), District of**

Minnesota without the additional charge of the U.S. PAROLE COMMISSION
WARRANT for John Gregory Lambros, issued on August 21, 1989.

33. Page 3: The Govt. states, "Plaintiff's claim for declaratory relief is moot." **This is not true.** Again, the Govt. tries to take the Court and Movant down the "YELLOW BRICK ROAD" to no-avail, as an "**ACTUAL CONTROVERSY**" exists within this action, thus this Court may issue a declaratory judgment. 28 USC 2201. Movant need not show irreparable harm or inadequate remedies at law to get a declaratory judgment. See, RULE 57, Fed.R.Civ.P.; Also, PGBA, LLC vs. US, 389 f.3d 1219, 1228 n.6 (Fed. Cir. 2004) and cases cited.

34. The Govt. is basically stating that this Court would be representing an ABUSE OF DISCRETION, when offering a binding statement of Movant's legal rights, when it does not actually order anyone to do anything. This is very confusing to Movant, who has never attended law school. Movant's reading of the federal Declaratory Judgment Act allows this Court "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. See, 28 USC 2201. Also, a declaratory judgment is a form of prospective relief. See, ELLIS vs. DYSON, 421 US 426, 443-44 (1975).

35. Movant believes he is entitled to ask this Court for a declaratory judgment along with other forms of relief - damages. Also, Movant requested declaratory judgment in the relief section of his complaint - page 23, Paragraph 69 and believes this is the correct procedure.

CONCLUSION

36.. For the foregoing reasons, this action should move forward and **Movant requests this court to appoint an attorney for him due to the complex nature of this proceeding.**

37. Defendant's MOTION TO DISMISS should not be granted.

38. I JOHN GREGORY LAMBROS declare under the penalty of perjury that the foregoing is true and correct. See, Title 28 USC 1746.

EXECUTED ON: March 2, 2020.

John Gregory Lambros, Pro Se

