UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN GREGORY LAMBROS,

Appellant - Plaintiff,

Vs.

Federative Republic of Brazil, et al.,

Appellees - Defendants.

Civil Action No. 21-7121

APPEAL FROM:
U.S. District Court For the District of Columbia, Civi No. **19-cv-1929 (TSC)**

AFFIDAVIT FORM

STATEMENT OF ISSUES TO BE RAISED

Pursuant to the Court's and/or Clerk's order on October 28, 2021, Appellant Lambros believes the following to be the issues he plans to raise to this Court. **Appellant would appreciate if he is not held responsible for all of the following issues and may decide to add more or less, as he is not a lawyer and did not expect that he would be required to conduct all research before the briefing schedule was established. Thank you for your consideration in this matter.**

I. Statement of Issues to be Raised:

A. Whether the District Court erred in failing to apply this Circuit's and the Supreme Court holding in *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 342 (1999) (construed that thirty-day (30) removal clock to begin counting down only after the defendant has received the complaint *and* formal service) when Appellees Brazil et

al. were served with the complaint and summons on September 13, 2017, and they did not file for REMOVAL until June 27, 2019 -- SIX HUNDRED AND FIFTY TWO (652) DAYS TOO LATE. The statute requires that the Appellees' file a notice of removal within 30 days of being served. 28 U.S.C. 1446(b)(1).

B. Whether the District Court erred in failing to ORDER Appellees to "SHOW CAUSE" why this case should not be remanded for failure to file a timely "Notice of Removal", when the Court determined that removal to federal court was inappropriately invoked under the circumstances presented in this case and Appellees Brazil et al. own court's docket sheet proving service of complaint and summons on September 13, 2017? Six hundred and fifty-two (652) days too late! 28 U.S.C. 1446(b)(1). Appellant Lambros was PREJUDICED without the "SHOW CAUSE" ORDER and response explaining why Appellees' notice of removal is timely and the Court must enforce 28 U.S.C. 1446(b) strictly so that this pro se Appellant may proceed with this action in his chosen forum. The "strong presumption" against removal places the burden of establishing that removal is appropriate on the Appellees.

C. Whether the District Court erred in granting Appellees Brazil, et al. motion to vacate the Superior Court's **entry of default**. The District Court erred in determining whether to remand, the district court should construe the removal statute strictly against removal and in favor of remand and give weight to the extent to which the action had progressed before the Superior Court. See, *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U.

S. 100, 108-09 (1941). Appellee's petition for removal was improvidently filed and the District court erred in granting Appellee's motion to vacate the Superior Court's entry of default.

D. Whether the District Court erred in granting Appellees Brazil, et al. Motion to Dismiss This Action for Want of Jurisdiction. Appellee's petition for removal was improvidently filed. The Act of State Doctrine **does not** preclude this action when the act in question concerns a thing or interest located beyond the confines of the foreign state's territory, as the determining factor is where the act comes to fruition. Appellant Lambros' extradition occurred in Brazil. However, the actual act of Appellees vacating counts within Appellant Lambros criminal indictment had their situs in Minnesota, thus fruition was not completed in Brazil. Other policy rationales, treaties and legal arguments will be offered within briefing of this issue. Please note: Treaty of Extraditions are **SELF-EXECUTING**. "Extradition treaties by their nature are **DEEMED SELF-EXECUTING.**.." See, United States of America vs. Rafael CARO-QUINTERO, et al, 745 F.Supp. 599, 607 (C.D. Calif. 1990). Brazil has **WAIVED** its sovereign immunity when it signed the Extradition Treaty with the US. Proof of same is offered within: Lois FROLOVA vs. UNION OF SOVIET SOCIALIST REPUBLICS, 761 F.2d 370, 376-377, FootNote 9:

"In Part II of this opinion, we discussed the international agreement exception found in 28 U.S.C. Sec. 1604. In the context of waiver of immunity by treaty, sections 1605(a)(1) and 1604 obviously overlap to some extent. If an international agreement is **SELF-EXECUTING** and may therefore be the basis of an action under Sec. 1604--that

is, if it creates rights enforceable by **PRIVATE litigants**--then, in addition, it almost certainly **WAIVES sovereign immunity** under Sec. 1605(a)(1), **thus PROVIDING a dual basis for DISTRICT COURT jurisdiction.** For purposes of this opinion, however, we need not define the interrelationship between the two sections because it is clear that neither the United Nations Charter nor the Helsinki Accords implicitly waives the Soviet Union's immunity from suit" (emphasis added)

E. Whether the District Court erred in not granting Appellant Lambros' Motion for Counsel.

F. Whether the District Court erred in denying Appellant Lambros' timely filed motion under Rule 59(e) of the Federal Rules of Civil Procedure, stating Appellant has asserted nothing to overcome the jurisdictional bar to this action against a foreign state.

Pursuant to 28 U.S.C. 1746, I JOHN GREGORY LAMBROS, declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: November 12, 2021.

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John Gregory Lambros, Pro Se