IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN GREGORY LAMBROS,

Plaintiff - Appellant

Vs.

Federative Republic of Brazil and State of Rio De Janeiro of the Federative Republic of Brazil,

Defendant - Appellees.

CASE NO.

21-7121

On Appeal from the United States District Court

For the District of Columbia

Case No. 19-cv-01929-TSC

PETITION FOR REHEARING EN BANC

John Gregory Lambros
Plaintiff - Appellant - Pro-Se

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REASONS FOR GRANTING REHEARING EN BANC::

REASON ONE (1):

The panel decision conflicts with several decisions of the United States Supreme Court, the Court to which the petition was addressed and the U.S. District Court for the District of Columbia. Consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions. See, Rule 35(b)(1)(A), Federal Rules of Appellate Procedure, District of Columbia:

Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999)((construed that thirty-day (30) removal clock to begin counting down only after the defendant has received the complaint and formal service);

Home Depot U.S.A., Inc. v. Jackson - 139 S. Ct. 1743, 1746 (2019)("diversity cases must be removed within "1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." 28 U.S.C. § 1446(c)(1)").

***Caterpillar Inc. Lewis*, 519 U.S. 61, 69 (1996)**(“No case, however, may be removed from state to federal court based on diversity of citizenship "more than 1 year after commencement of the action.")

Willy v. Coastal Corp., 503 U.S. 131, 134-135 (1992)(“The Rules Enabling Act, 28 U. S. C. § 2072, authorizes the Court to "prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . ." Those rules may not "abridge, enlarge or modify any substantive right." In response, we have adopted the Federal Rules of Civil Procedure. Rule 1 governs their scope. It provides that "[t]hese rules govern the procedure in the United States district courts in all suits of a civil nature . . . ." **Rule 81(c) specifically provides that the Rules "apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal." This expansive language contains no express exceptions”)**

TABLE OF AUTHORITIES

Cases Cited: **Page of Brief:**

REFERENCED ORDERS AND REPORTS WITHIN THE LOWER COURTS IN THIS ACTION:

DOCKET SHEETS:

Foreign Sovereign Immunities Act ("FSIA"):

OTHER AUTHORITIES:

Treaties and International Law:

STATUTES:

FEDERAL RULES OF APPELLATE PROCEDURE:

FEDERAL RULES OF CIVIL PROCEDURE:

D.C. SUPERIOR COURT RULES OF PROCEDURE:

EXHIBIT:

EXHIBIT A: JUDGMENT - Dated: June 1, 2022. Lambros vs. Federative Republic of Brazil And State of Rio De Janeiro of the Federative Republic of Brazil ,Case No.21-7121, United States Court of Appeals For the District of Columbia Circuit.

STATEMENT REQUIRED BY FED. R. APP. P. 35(b)(1)

Rehearing En Banc of this case is warranted when the panel wrongly stated that Plaintiff - Appellant Lambros "has not shown that the district court committed error in denying the motion to remand and vacating the entry of default." That holding conflicts directly with multiple decisions of the United States Supreme Court, the Court to which the petition was addressed and the U.S. District Court for the District of Columbia. Consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions. See, Rule 35(b)(1)(A), Federal Rules of Appellate Procedure, District of Columbia.

This case was filed in the Superior Court of the District of Columbia, Civil Division in front of the Honorable Florence Y. Pan on February 10, 2017. On June 27, 2017, Judge Pan issued an order stating she signed all necessary material to effectuate service under applicable international law. Appellees - Defendants received copy of Appellant's complaint and summons, according to the Brazilian court docket sheet verifying process - Letter Rogatory 12537 and 12540 on September 13, 2017. Process was contracted thru Crowe Foreign Services, Celeste Ingalls, Director of Operations who testified to the same during a hearing with Judge Pan. On April 8, 2019, Judge Pan issued an ORDER stating "Defendants have not filed a responsive

pleading to the complaint nor have they filed an opposition to the instant motion. The Court therefore enters a default against defendants. See, D.C. Super. C.R. 55(a)." On May 15, 2019, Judge Pan issued an ORDER stating "the status hearing scheduled for July 5, 2019, is converted to an ex parte proof hearing;".

June 27, 2019, Appellees - Defendant Brazil et. al. made their first appearance in this action and filed a **"NOTICE OF REMOVAL"** in this action to the Superior Court and the U.S. District Court for the District of Columbia.

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). In addition to the 30-day time limits, diversity cases must be removed within "1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." 28 U.S.C. § 1446(c)(1). See, Home Depot U.S.A., Inc. v. Jackson - 139 S. Ct. 1743, 1746 (2019). Also see, Federal Rules of Civil Procedure, Rule 81(c)(2)(C)("7 days after notice of removal is filed - Appellee's were one day to late. Appellee's defenses or objections are not valid in this action. The following Supreme Court cases conflict with the panel decision:

A. Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999)((construed that thirty-day (30) removal clock to begin counting down only after the defendant has received the complaint and formal service);

B. Home Depot U.S.A., Inc. v. Jackson - 139 S. Ct. 1743, 1746 (2019)("diversity cases must be removed within "1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." 28 U.S.C. § 1446(c)(1)").

C. ***Caterpillar Inc. v. Lewis*, 519 U.S. 61, 69 (1996)**("No case, however, may be removed from state to federal court based on diversity of citizenship "more than 1 year after commencement of the action.")

D. *Willy v. Coastal Corp.*, 503 U.S. 131, 134-135 (1992)("The Rules Enabling Act, 28 U. S. C. § 2072, authorizes the Court to "prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . ." Those rules may not "abridge, enlarge or modify any substantive right." In response, we have adopted the Federal Rules of Civil Procedure. Rule 1 governs their scope. It provides that "[t]hese rules govern the procedure in the United States district courts in all suits of a civil nature . . . ." **Rule 81(c) specifically provides that the Rules "apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal." This expansive language contains no express exceptions")**

The panel decision contravenes binding authority of the Supreme Court and this Circuit, as offered within the above four (4) Supreme Court cases. Appellant Lambros only requests this Court to interep a number of REMOVAL provisions - that involve a plaintiff who moved promptly, but unsuccessfully, to remand a case improperly removed from state court to federal court. Plaintiff's request requires this Court to interpret a number of removal provisions. As in any case of statutory construction, your analysis begins with "the language of the statute". And where the statutory language provides a clear answer, it ends there as well. The rules Congress prescribed for removal would have kept this case in state court. Accordingly, Plaintiff - Appellant Lambros respectfully requests this Court grant rehearing en banc.

STATEMENT OF THE CASE

This case was filed in the Superior Court of the District of Columbia, Civil Division in front of the Honorable Florence Y. Pan on February 10, 2017. On June 27, 2017, Judge Pan issued an order stating she signed all necessary material to effectuate service under applicable international law. Appellees - Defendants received copy of Appellant's complaint and summons, according to the Brazilian court docket sheet verifying process - Letter Rogatory 12537 and 12540 on September 13, 2017. Process was contracted thru Crowe Foreign Services, Celeste Ingalls, Director of Operations who testified to the same during a hearing with Judge Pan. On April 8, 2019, Judge Pan issued an ORDER stating "Defendants have not filed a responsive pleading to the complaint nor have they filed an opposition to the instant motion. The Court therefore enters a default against defendants. See, D.C. Super. C.R. 55(a)." On May 15, 2019, Judge Pan issued an ORDER stating "the status hearing scheduled for July 5, 2019, is converted to an ex parte proof hearing;".

June 27, 2019, Appellees - Defendant Brazil et. al. made their first appearance in this action and filed a **"NOTICE OF REMOVAL"** in this action to the Superior Court and the U.S. District Court for the District of Columbia. **SIX HUNDRED AND FIFTY TWO (652) DAYS TOO LATE.** See, Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999); Home Depot U.S.A., Inc. v. Jackson - 139 S. Ct. 1743, 1746 (2019); ***Caterpillar Inc. v. Lewis,* 519 U.S. 61, 69 (1996)**.

JULY 5, 2019: Appellees Brazil, et al. filed a Motion to Set Aside the Superior Court's Entry of a Default and Opposition to Appellant Lambros' Motion for Entry of a Default Judgment. This filing was one (1) day AFTER the July 4, 2019 deadline to comply with **Federal Rule of Civil Procedure 81(c)(2)(C).** In addition, the Appellees Brazil, et al. **did not show cause** why they failed to comply with **Federal Rule of Civil Procedure 81(c)**, which dictates that, if the defendants in a removed action did not respond to the plaintiff's complaint prior to removal, the defendants must answer the plaintiff's complaint within the longest of three time periods: (1) "21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief"; (2) "21 days after being served with the summons for an initial pleading on file at the time of service"; or (3) "7 days after the notice of removal is filed." **Under that rule, the defendants had until July 4, 2019 to answer the plaintiff's complaint, which would have been seven (7) days after the notice of removal was filed**. **Appellee's Brazil et al defenses and objection to this action are not valid.** See, *Willy v. Coastal Corp.*, 503 U.S. 131, 134-135 (1992). Additionally, the district court did not follow the **SET IN STONE** rulings of this circuit and other circuits which require the Court to settle the parties' dispute regarding **REMOVAL BEFORE IT COMTEMPLATES OTHER RELIEF** when improperly removed from State Court to Federal Court. See, *Lazarus v. KARIZAD, LLC*, No. 1: 20-cv-1787-RCL (**United States District Court, District of Columbia.** Feb. 26, 2021). Senior Judge Royce C. Lamberth - former Chief Judge 2008-2013 - ruled in Lazarus stating "Because the Court **must settle** the parties' dispute about the propriety of Wilmington's **removal before it may contemplate other relief**, the Court turns to Lazarus's motion to remand." "It will also DENY Wilmington's

motion to dismiss, ECF No. 7, since this case was improperly removed." (emphasis added).

ARGUMENT

REHEARING EN BANC IS WARRANTED BECAUSE THE PANEL DECISION CONFLICTS WITH MULTIPLE STANDING DECISIONS OF THE UNITED STATES SUPREME COURT, THE COURT TO WHICH THE PETITION WAS ADDRESSED, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND CIRCUIT COURTS THROUGHOUT THE UNITED STATES.

Appellant an uneducated legal Pro Se litigant, Plaintiff - Appellant Lambros believes this argument - question whether a plaintiff, who timely objects to removal, may later successfully challenge an adverse judgment on the ground that the removal did not comply with statutory and the Federal Rules of Civil Procedure, that govern procedure before and after removal from a state court to federal court. The expansive language of federal statutes and the Federal Rules of Civil Procedure, apply to all district court civil proceedings.

As the Supreme Court has repeatedly explained, as in any case of statutory construction, our analysis begins with "the language of the statute." " *Estate of Cowart v. Nicklos Drilling Co.*, 505 U. S. 469, 475 (1992). And where the statutory language provides a clear answer, it ends there as well. See *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 254 (1992).

This action also requires the application of the Federal Rules of Civil Procedure that apply to all district court civil proceedings - Rule 81(c), et al. See, Willy v. Coastal Corp., 503 US 131, 134-135 (1992)

> "The Rules Enabling Act, 28 U. S. C. § 2072, authorizes the Court to "prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . ." Those rules may not "abridge, enlarge or modify any substantive right." In response, we have adopted the Federal Rules of Civil Procedure. Rule 1 governs their scope. It provides that "[t]hese rules govern the procedure in the United States district courts in all suits of a civil nature . . . ." **Rule 81(c) specifically provides that the Rules "apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal."** This expansive language contains no express exceptions and indicates a clear intent to have the Rules, including Rule 11, apply to all district court civil proceedings." (Emphasis added)

Plaintiff - Appellant Lambros incorporates and restates the facts offered within the above "Statement of the Case", as to the timeline of events in this case. Also, Appellant Lambros restates all legal Supreme Court cases listed above, including: See, Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999); Home Depot U.S.A., Inc. v. Jackson - 139 S. Ct. 1743, 1746 (2019); ***Caterpillar Inc. v. Lewis*, 519 U.S. 61, 69 (1996)**; *Willy v. Coastal Corp.*, 503 U.S. 131, 134-135 (1992).

THE PANEL'S DECISION CONFLICTS WITH CIRCUIT AUTHORITY

The Panel did not follow the **SET IN STONE** rulings of this circuit and other circuits which require the Court to settle the parties' dispute regarding **REMOVAL**

BEFORE IT COMTEMPLATES OTHER RELIEF when improperly removed from State Court to Federal Court. See, *Lazarus v. KARIZAD, LLC*, No. 1: 20-cv-1787-RCL (**United States District Court, District of Columbia.** Feb. 26, 2021). Senior Judge Royce C. Lamberth - former Chief Judge 2008-2013 - ruled in Lazarus stating "Because the Court **must settle** the parties' dispute about the propriety of Wilmington's **removal before it may contemplate other relief**, the Court turns to Lazarus's motion to remand." "It will also DENY Wilmington's motion to dismiss, ECF No. 7, since this case was improperly removed." (emphasis added)

"Court's in this Circuit have construed removal jurisdiction strictly, favoring remand where the propriety of removal is unclear." See, Patterson v. HANSES, Civil Action No. 19-392 (BAH) (Dist. Court, Dist. of Columbia 2019)(listing cases)(BERYL A. HOWELL, Chief District Judge.) Patterson v. HANSES, Dist. Court, Dist. of Columbia 2019, **also supported this Circuit's position on Federal Rules of Civil Procedure, Rule 81(c), et al.**:

> "Under 28 U.S.C. § 1446(b)(1), the defendants had 30 days from "the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based" or 30 days from "the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter," to file the notice of removal. Section 1446 applies to cases such as this one removed under 28 U.S.C. § 1442. *See* 28 U.S.C. § 1446(b) (creating general rule that "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant"); *id.* § 1446(g) (creating a carve out from 28 U.S.C. § 1446(b)'s 30-day requirement for the subset of cases "removable under section 1442(a) . . . in which a judicial order for testimony or documents is sought or issued or sought to be enforced"). Thus, based on the supplement to the notice

of removal, containing the documents from the Superior Court record, the defendants appeared to have until February 6, 2019 to file the notice of removal in this Court, making the February 14, 2019 notice of removal untimely."

"Section 1446's 30-day deadline is not jurisdictional. *Wasserman v. Rodacker,* 557 F.3d 635, 638 n.2 (D.C. Cir. 2009); *see also Brown v. Allied Home Mortgage Capital Corp.,* 588 B.R. 271, 276 (D.D.C. Aug. 8, 2018) ("[A] procedural defect in removal . . . does not affect the federal court's subject matter jurisdiction."). Still, "[c]ourts in this circuit have construed removal jurisdiction strictly, favoring remand where the propriety of removal is unclear." *Ballard v. District of Columbia,* 813 F. Supp. 2d 34, 38 (D.D.C. 2011); *Peeters v. Mlotek,* No. 15-cv-835 (RC), 2015 WL 3604609, at *1 (D.D.C. June 9, 2015) ("Because federal courts are courts of limited jurisdiction, the removal statute is to be strictly construed.")."

"On March 19, 2019, the defendants were ordered to show cause, by March 26, 2019, why this case should not be remanded for failure to file a timely notice of removal. In addition, the defendants were ordered to show cause why they failed to comply with **Federal Rule of Civil Procedure 81(c)**, which dictates that, if the defendants in a removed action did not respond to the plaintiff's complaint prior to removal, the defendants must answer the plaintiff's complaint within the longest of three time periods: (1) "21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief"; (2) "21 days after being served with the summons for an initial pleading on file at the time of service"; or (3) "7 days after the notice of removal is filed." Under that rule, the defendants had until February 21, 2019 to answer the plaintiff's complaint, **which would have been seven days after the notice of removal was filed.**" (Emphasis added) See,

https://scholar.google.com/scholar_case?case=14233590799453154321&q=Patterson+v.+HANSES,+Civil+Action+No.+19-392+(BAH)+&hl=en&as_sdt=4,60,77,130,140

Appellant Lambros' July 5, 2019 "MOTION TO REMAND" to the district court **specifically raised** violations of 28 U.S.C. 1447(c) and 1446(b) - notice of removal shall be filed within 30 days after defendants receive an initial pleading - complaint and

summons. See, 28 U.S.C. 1446(b). In addition, Appellant advised the district court that Judge Pan's ORDER on April 8, 2019 and May 15, 2019 **granted Appellant Lambros' "MOTION REQUESTING ENTRY OF DEFAULT".** See, LOCKHART vs. CADE, 728 A.2d 65 (District ofColumbia Court of Appeals, March 4, 1999)**("**entry of default 'operates as an admission by the defaulting party that there are no issues of liability, but leaves the issue of damages unresolved until entry of judgment'") **Plaintiff Lambros has no further obligation to prove Liability.** Please note that the following exhibits were attached to Appellant Lambros' July 5, 2019 "MOTION TO REMAND": (1) November 5, 2018; and (2) January 16, 2019, letters from Crowe Foreign Service, Celeste Ingalls, Director of Operation to Judge Pan, Superior Court of the District of Columbia, as to process followed in serving Appellees Brazil, et al,. **PLEASE NOTE:** The January 16, 2019, letters from Crowe Foreign Service, Celeste Ingalls, Director of Operation to Judge Pan **clearly outlined** Appellees Brazil, et al. receipt of service of the complaint and summons in this action and the twelve (12) plus months court process of review by Appellees. The thousands of pages returned by Appellees were in Portuguese. **Appellees chose not to submit the documents to the Superior Court of the District of Columbia in English or retain an attorney** to file the documents that were mailed to Crowe Foreign Services, **thus Appellees waived immunity** merely by failing to timely raise an immunity defense in the course of the legal proceedings. See, Phoenix Consulting, Inc. v. Republic of Angola, 216 F.3d 36, 39 (D.C.Cir.2000)**, (ruling that requirement of asserting immunity no later than filing of responsive pleading "holds even though FSIA immunity is jurisdictional because failure to assert the**

immunity after consciously deciding to participate in the litigation may constitute an implied waiver of immunity"). (emphasis added)

CONCLUSION

For the reasons stated herein, Plaintiff - Appellant Lambros respectfully requests rehearing *en banc*.

Dated: June 13, 2022.

Respectfully submitted,

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John Gregory Lambros, Appellant - Pro Se

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

I, John Gregory Lambros, declare under penalty of perjury that the foregoing is true and correct, as are all the attached exhibits within this appeal brief. Title 28 U.S.C. 1746.

Executed: **June 13 , 2022:**

_____

John Gregory Lambros, Pro Se

CERTIFICATE OF SERVICE

I JOHN GREGORY LAMBROS, declare under penalty of perjury, pursuant to 28 USC 1746, that I SHIPPED copy of the enclosed above-entitled appeal and documents to the following clerk of the court and Brazil, et al. attorney's, by placing them in an envelope with correct shipping fees attached and shipping the envelopes from the **United Parcel Service Store** - (**Foley Hoag LLP, sent U.S. Mail**) on **June 13, 2022: (**Rule 26(c), Fed.R.App.P. compensates me an **additional three (3) days after expiration of the 14-day period for filing a Rehearing En Banc petition**.)

2. Clerk, U.S. Court of Appeals for the District of Columbia, U.S. Court of Appeals for the District of Columbia, Room 5205, 333 Constitution Avenue,N.W., Washington, DC 20001-2866;

3. **Foley Hoag LLP, Attn:** Attorney Clara E. Brillemboug, 1717 K St NW, Washington, DC 20006 **(Sent U.S. Mail)**

_____
John Gregory Lambros, Pro Se

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-7121 **September Term, 2021**

1:19-cv-01929-TSC

Filed On: June 1, 2022

John Gregory Lambros,

Appellant

v.

Federative Republic of Brazil and State of Rio De Janeiro of the Federative Republic of Brazil,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Katsas, Rao, and Walker, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to appoint counsel and the opposition thereto, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's May 6, 2021 order be affirmed. The district court correctly dismissed this action for lack of subject matter jurisdiction because no exception to immunity under the Foreign Sovereign Immunities Act applies. See 28 U.S.C. §§ 1604, 1605(a)(1), 1605(a)(2); Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993); Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 442-43 (1989). Moreover, appellant has not shown that the district court committed any error in denying the motion to remand and vacating the entry of default.

EXHIBIT A