

No. 22-5604 ORIGINAL

IN THE

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

John Gregory Lambros - PETITIONER, Pro Se

Vs.

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

RESPONDENT(S)

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT -**

No. 21-7121

PETITION FOR WRIT OF CERTIORARI

**John Gregory Lambros, Pro Se
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Saint Paul, Minnesota 55104**

QUESTIONS PRESENTED

QUESTION ONE (1):

Whether an untimely “Motion for Removal” by a foreign state, 28 U.S.C. 1441(d) - 652 days to late - suffices when the non-jurisdictional procedural removal defect permitting remand is timely raised, “Motion to Remand” - 28 U.S.C. 1447(c)(2020) and cause is not shown by the foreign state. Violations of 28 U.S.C. 1446(b)(1) and 1446(c)(1). See, MURPHY BROTHERS, INC. V. MICHETTI PIPE STRINGING, INC., 526 U.S. 344 (1999)(“ the removal notice ‘shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the [complaint].’”

QUESTION TWO (2):

Whether a foreign state defendant represented by attorneys in a removal action, who did not answer before removal, allowed to file untimely answers or present other defenses or objections in violation of Federal Rules of Civil Procedure, Rule 81(c)(2)(C) “7 days after the notice of removal is filed.” See, Willy v. Coastal Corp. et al., 503 U.S. 131, 134-135 (1992)(“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”); MURPHY BROTHERS, INC. V. MICHETTI PIPE STRINGING, INC., 526 U.S. 344, 354-355 (1999)

i.

LIST OF PARTIES

All parties appear in the caption of the case on the cover sheet.

All parties DO NOT appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- 1. U.S. vs. JOHN GREGORY LAMBROS**, Criminal File No. CR-4-89-82(05), United States District Court for the District of Minnesota.
- 2. Federal Supreme Court of Brazil extradition judgment** #539-1, for John Gregory Lambros to the United States of America, as to USA vs LAMBROS, Criminal File No. CR-4-89-82(5). Brazil granted "Partial Extradition" on April 30, 1992.
- 3. U.S. vs. LAMBROS**, 65 F.3d 698 (1995). (8th Cir. 1995).
- 4. Superior Court of the District of Columbia.** 2017 CA 000929 B - LAMBROS, JOHN GREGORY Vs. FEDERATIVE REPUBLIC OF BRAZIL et al. Before the Honorable Judge Florence Pan.
- 5. U.S. District Court for the District of Columbia (Washington, DC)**, Civil Docket for Case #: 1:19-cv-01929-TSC. LAMBROS, JOHN GREGORY Vs. FEDERATIVE REPUBLIC OF BRAZIL et al. Before the Honorable Judge Tanya S. Chutkan.

6. June 1, 2022: "JUDGMENT" U.S. Court of Appeals for the District of Columbia Circuit (Washington, DC). John G. Lambros vs. FEDERATIVE REPUBLIC OF BRAZIL et al., Civil Docket for Case #: 21-7121.

7. July 20, 2022: REHEARING en banc "ORDER" - U.S. Court of Appeals for the District of Columbia Circuit (Washington, DC). John G. Lambros vs. FEDERATIVE REPUBLIC OF BRAZIL et al., Civil Docket for Case #: 21-7121.

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EXHIBIT B: April 8, 2019: "ORDER" by Judge Pan 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. Ct. R. 55(a).".....8.

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OPINIONS BELOW

Petitioner, John Lambros, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case, No. 21-7121.

Appendix A: July 20, 2022: REHEARING en banc "ORDER" - U.S. Court of Appeal for the District of Columbia Circuit (Washington, DC) unpublished.

Appendix B: June 1, 2022: "JUDGMENT" U.S. Court of Appeals for the District of Columbia Circuit (Washington, DC) is unpublished.

Appendix C: October 8, 2021: U.S. District Court for the District of Columbia (Washington, DC), Civil Docket for Case #: 1:19-cv-01929-TSC. "ORDER" (Rule 59(e)). Honorable Judge Tanya S. Chutkan. Unpublished.

Appendix D: May 6, 2021: U.S. District Court for the District of Columbia (Washington, DC), Civil Docket for Case #: 1:19-cv-01929-TSC. "MEMORANDUM OPINION". Honorable Judge Tanya S. Chutkan. Unpublished.

JURISDICTION

The Order upon consideration of the petition for rehearing en banc of the court of appeals was entered on July 20, 2022 (App. A) and the Mandate filed on August 1, 2022. The jurisdiction of Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1441(d): "Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown."

28 U.S.C. 1446(b)(1): "The notice of removal of a civil action or proceeding shall be filed within 30 days after 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 within 30 days after 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."

28 U.S.C. 1446(c)(1): "A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 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. 1447(c): "A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)."

FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

Rule 81(c)(2)(C): "After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

- (A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;
- (B) 21 days after being served with the summons for an initial pleading on file at the time of service; or
- (C) 7 days after the notice of removal is filed."

STATEMENT OF THE CASE

The Petitioner - herein, John Gregory Lambros, was indicted by a United States Grand Jury for the District of Minnesota on May 17, 1989, which is not at issue here. See, U.S. District Court for the District of Minnesota, USA vs. Lambros, CR-4-89-82.

February 10, 2017: Petitioner Lambros filed - Pro Se - a Foreign Sovereign Immunities Act ("FSIA") complaint against Brazil and the State of Rio de Janeiro, Brazil. Petitioner Lambros' request for forma pauperis status was granted. See, John Gregory Lambros vs. Federative Republic of Brazil, et al., Case No. 2017-CA-929-B, Superior Court of the District of Columbia, Civil Division. Judge: Florence Y. Pan.

Appellant Lambros' complaint includes the following causes/areas of law:

- A. Unlawful Trade Practices, D.C. Consumer Protection Act ("DCCPPA"), codified under D.C. Code 28-3901 et seq. See, Complaint pages 26-34.
- B. Torts. See, Complaint pages 34-80.
- C. Declaratory Judgment. See, Complaint pages 80-85.

- D. RICO. See, Complaint pages 85-125.
- E. Medical Monitoring Damages. See, Complaint page 130, Paragraph 485.
- F. Injunctive Relief. See, Complaint pages 130-131.

FACTS OF THE CASE:

1. June 27, 2017: The Honorable Judge F. Pan issued an "ORDER" stating that she signed all necessary material to effectuate service under applicable international law, including the Inter-American Convention on Letters Rogatory and the Additional Protocol to the Inter-American Convention on Letters Rogatory and "ORDERED" the Clerk to affix the seal of the Court and mailed the forms to Petitioner Lambros and Crowe Foreign Service, the agent for service of process, acting in Petitioner behalf. Both Petitioner Lambros and Crowe Foreign Service received the mailing. See, EXHIBIT H. (February 10, 2017, SUMMONS to Respondents - Defendant Brazil, et al.)

2. August 18, 2017, the documents in this case, with signed Inter-American Convention forms and Portuguese translations of all, were

forwarded to the U.S. Central Authority for final transmission to the Central Authority for Brazil, to be served upon the Federative Republic of Brazil and the State of Rio de Janeiro of the Federative Republic of Brazil in accordance with the Inter-American Convention and the laws of Brazil. See, EXHIBIT A. (November 5, 2018, Letter from Celeste Ingalls, Director of Operations, Crowe Foreign Services to the Honorable Florence Y. Pan, Superior Court of the District of Columbia, Civil Division. Please note that two (2) docket sheets from Brazil are attached. -(attached is a copy of the Brazilian court docket reports for each service" - Letter Rogatory 12537 and 12540) - that were established when Respondents - Defendants received service of the complaint and summons in this action and docketed receipt - September 13, 2017.)

3. September 13, 2017: Respondents - Defendants received a copy of Petitioner's complaint and summons in this action, according to the current Brazilian court docket sheets that are attached. Two (2) docket sheets are attached, one verifying process on the State of Rio de Janeiro - Letter Rogatory 12537 and one verifying process on the Federal Government of Brazil - Letter Rogatory 12540. See, EXHIBIT A. (November 5, 2018, Letter from Celeste Ingalls, Director of Operations, Crowe Foreign Services to the Honorable Florence Y. Pan, Superior Court of the District of Columbia,

Civil Division)(“attached is a copy of the Brazilian court docket reports for each service”).

4. January 16, 2019: Celiste Ingalls, Director of Operations, Crowe Foreign Services, wrote the Honorable Florence Y. Pan outlining the current status of the process service in this above entitled action. Ms. Ingalls stated:

“On January 11, 2019, I received thousands of pages of returned documents from the Brazilian courts (which includes a copy of what was served, etc.) representing the completion of the services requested upon the 2 foreign sovereign defendants in accordance with Title 28 U.S.C. 1608(a)(2). We call these the “proof books” because they are so large. The procedural practice of the Brazilian courts is that any person that touches the documents and forwards them on to the next step in the 12 month Brazilian court process, must complete a formal signed document and all are included in the documents returned because there isn’t one independent page or documents representing the “proof of service”. The entire “book” is considered the proof of service because unless all steps are followed, service was not properly performed.”

“That being said, the documents appear to have been served to the appropriate defendant entities but after completely reviewing them, they returned them with various other documents (such as the original extradition request issued by the federal government while Mr. Lambros was in prison in Brazil).”

See, EXHIBIT F. (Please note: Appellant Lambros has included the April 18, 2018, document from State Prosecutor Marcelo Mello Martins, State of Rio de Janeiro, Brazil, stating “The letter serving process on the Federal

Government is number 12540; and that of the State is number 12537." - Docket Sheet Numbers)(emphasis added)

5. April 8, 2019: "ORDER" by Judge Pan 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. Ct. R. 55(a)." See, EXHIBIT B.

6. May 15, 2019: "ORDER" by Judge Pan stating "the status hearing scheduled for July 5, 2019, is converted to an ex parte proof hearing;". See, EXHIBIT C.

7. June 27, 2019: Respondent - Defendant Brazil, et. al., represented by Attorneys Clara Brillembourg, Janis Brennan, Nicholas Renzler and Andrew B. Loewenstein, Foley Hoag LLP, Boston, MA and Washington, DC, made their first appearance in this action and filed a "Notice of Removal" in this action within the Superior Court of the District of Columbia, Civil Division and the United States District Court for the District of Columbia.

Respondents Brazil stated:

"PLEASE TAKE NOTE that, pursuant to 28 U.S.C. 1441(a) and (d), and 28 U.S.C. 1446, the Federative Republic of Brazil ("Brazil") and the State of Rio de Janeiro of the Federative Republic of Brazil ("Rio de Janeiro State") (collectively, the "Sovereign Defendants") hereby remove to this Court the state court action described in paragraph 1 below, as follows: ..." See, EXHIBIT D. (Notice of Removal filed as

document 1 within the United States District Court for the District of Columbia, in this action)"

See, Martinez vs. Republic of Cuba, 708 F. Supp. 2d 1298, 1302 (S.D. Fla. 2010) ("Congress intended that 1441(d) be the exclusive basis for removal in actions against foreign states.") (citing Dole Food Co. vs. Patrickson, 538 U.S. 468, 473 (2003)). Title 28 U.S.C. 1441(d) ("Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown."); see also 28 U.S.C. 1446(b) ("The notice of removal of a civil action or proceeding shall be filed within 30 days after 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 within 30 days after the service of summons upon the defendant if such initial pleading has been filed in court and is not required to be served on the defendant, whichever period is shorter ..."). Also, 28 U.S.C. 1446(c)(1) contains a time limitation of one (1) year for removal to the district court after commencement of the action. See, 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'.")

8. June 27, 2019: Respondent - Defendant Brazil, et al. filed CIVIL COVER SHEET at the Clerk's office of the United States District Court for the District of Columbia in this action. Attorney Clara B. Brillembourg, FOLEY HOAG LLP filed the Civil Cover Sheet in this action - Document 1-1, two pages in length, which offered the following information:

- A. Case No. 1:19-cv-01929.
- B. Plaintiff: John Gregory Lambros
- C. Defendants: Federative Republic of Brazil; and State of Rio de Janeiro.
- D. REQUESTED IN COMPLAINT: DEMAND \$301,700,000,000.00 (Three Hundred One Billion, Seven-Hundred Million Dollars.)

9. June 27, 2019: Respondent - Defendant Brazil, et al. filed "Notice of Removal" at the Clerk's office of the United States District Court for the District of Columbia in this action.

10. July 5, 2019: Respondent Brazil, et al. filed a Motion to Set Aside the Superior Court's Entry of a Default and Opposition to Petitioner 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). Respondents Motions filed on July 5, 2019 and all other further motions are untimely and void. (June 27, 2019 to July 5, 2022 is eight (8) days)(emphasis added)

11. July 5, 2019: Petitioner Lambros mailed the Clerk of the U.S. District Court for the District of Columbia his "Motion to Remand this Action Back to the Superior Court of the District of Columbia." Filed July 11, 2019. See, 28 USC 1447(c); 1446(b)". 28 U.S. Code 1447(c) states:

"(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)."

Petitioner Lambros filed his Motion to Remand within 30 days after the filing of Respondent Brazil, et al. Notice of Removal. See, EXHIBIT E. (Petitioner Lambros' "Motion to Remand" is nine (9) pages in length. PLEASE NOTE: Only Exhibits A & D of the "Motion to Remand" are attached to the Motion, Celeste Ingalls, Director of Operations for Crowe Foreign Services letters to the Honorable Florence Y. Pan, dated: November 5, 2018 and January 16, 2019.)

12. NOVEMBER 16, 2020: "MEMORANDUM OPINION AND ORDER" by the Honorable Tanya S. Chutkan, U.S. District Judge, U.S. District Court for the District of Columbia, response to Appellant Lambros' "Motion to Remand". Honorable Judge Chutkan stated:

"(28 U.S.C.) Section 1441(d) explicitly authorizes foreign state defendants to remove a case to the federal district court embracing the State where the action is pending, and it permits enlarging the

thirty-day limit “at any time for cause shown. Id. Plaintiff has identified no plausible defect to support remanding the case. Although the removal deprives Superior Court of “all jurisdiction over the case,” ... the entry of default remains “in full force and effect until dissolved or modified by the district court,” 28 U.S.C. 1450 Paragraph 3, applying federal law. See, *Granny Goose Foods, Inc. vs. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 437 (1974)(“Once a case has been removed to federal court, it is settled that federal rather than state law governs the future course of proceedings, notwithstanding state court orders issued prior to removal.”).” (emphasis added)

“**ORDERED** that Plaintiff’s motion for remand, ECF No. 10 is DENIED;”

“**ORDERED** that Defendants’ motion to vacate the Superior Court’s entry of default, ECF No. 7, is GRANTED, and all other unresolved motions, ECF Nos. 14, 16, are DENIED;” (emphasis added)

See, EXHIBIT G.

13. November 24, 2020: Respondent Brazil, et al. filed a “Motion to Dismiss” this action. This filing was AFTER the July 4, 2019 deadline to comply with Federal Rule of Civil Procedure 81(c). Respondents Motions filed on July 5, 2019 and all other further motions are untimely and void. (emphasis added)

14. MAY 06, 2021: U.S. District Court Judge Tanya S. Chutkan issued a “MEMORANDUM OPINION” AND “ORDER” to “GRANT DEFENDANTS’ MOTION TO DISMISS THIS ACTION FOR WANT OF JURISDICTION”. (App. D.) Judge

Chutkan stated, "Defendants argue that Plaintiff has not met his burden of establishing jurisdiction under the Foreign Sovereign Immunities Act (FSIA). Mem. at 17-27. The court agrees." Respondents requested dismissal under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. The Court ORDERED this case DISMISSED and CLOSED. Also,

- A. ORDERED that Defendants' Motion to Dismiss for Lack of Jurisdiction, is GRANTED; it is further
- B. ORDERED that Plaintiff's Motion for Counsel is DENIED.
- C. This is a final appealable Order.

15. MAY 25, 2021: Petitioner Lambros shipped via United Parcel Service to the Clerk of the U.S. District Court for the District of Columbia his "MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 59(e)".

16. OCTOBER 8, 2021: "ORDER" by the Honorable Tanya S. Chutkan, stated: (App. C.)

"Plaintiff has filed a timely motion under Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend the May 6, 2021, Order dismissing this case for lack of subject-matter jurisdiction. For the following reasons, the motion will be denied."

"Plaintiff has asserted nothing to overcome the jurisdictional bar to this action against a foreign state. ... ORDERED that Plaintiff's Motion to Alter or Amend judgment is DENIED."

PLEASE NOTE: Judge Chutkan did not respond to Petitioner Lambros' first issue within his timely motion under Rule 59(e) of the Federal Rules of Civil

Procedure to alter or amend the May 6, 2021, Order dismissing this case for lack of subject-matter jurisdiction: (emphasis added)

ISSUE ONE: (1)

WHETHER THIS COURT HAD JURISDICTION AND/OR PLAINTIFF LAMBROS WAS PREJUDICED WHEN DEFENDANTS FILED NOTICE OF REMOVAL SIX HUNDRED AND TWENTY THREE (623) DAYS TOO LATE TO THIS COURT - TO SET ASIDE THE HONORABLE JUDGE FLORENCE YU PAN'S - SUPERIOR COURT OF THE DISTRICT OF COLUMBIA - ORDER OF DEFAULT AND OPPORTUNITY FOR PLAINTIFF TO ATTEND AN EX PARTE PROOF HEARING ON JULY 5, 2019. See, 28 U.S.C. 1446(b) (30-DAY TIME LIMIT)"

17. OCTOBER 26, 2021: Clerk of the U.S. District Court for the District of Columbia received Petitioner Lambros' NOTICE OF APPEAL in this action and forwarded the docket sheet and all records to this Court for appeal.

18. OCTOBER 28, 2021: The Clerk of the United States Court of Appeals for the District of Columbia Circuit filed and docketed this action under Case No. 21-7121. Petitioner Lambros raised four (4) issues to the Appeals Court:

ISSUE ONE: Whether the District Court erred in denying Appellant Lambros' "Motion to Remand" by failing to apply this Circuit's and the Supreme Court holding in 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) 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). 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).

ISSUE TWO: 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 should of clearly understood that removal to federal court was inappropriately invoked under the circumstances presented in this case and Appellees Brazil et al. own court's docket sheets 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.

ISSUE THREE: 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.

ISSUE FOUR: Whether the District Court erred in granting Appellees Brazil, et al. Motion to Dismiss this action for Want of Jurisdiction, as the "Commercial Activity Exception" of the Foreign Sovereign Immunities Act (FSIA) was not considered as to District of Columbia

Consumer Protection Act ("DCCPPA") codified under D.C. Code 28-3901 et seq.. Also, 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 - both before and after - occurred within the District of Columbia, Minnesota and 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. 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 and performed "commercial activity carried on in the United States" in the manner of a private citizen or corporation. See, Republic of Argentina v. Weltover, Inc., 504 U.S. 607, 614 (1992)

19. JUNE 1, 2022: U.S. Court of Appeals For The District of Columbia Circuit handed down "JUDGMENT" that DENIED Petitioner Lambros stating:
(App. B.)

ORDERED that the Motion to appoint counsel is denied.

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. Moreover, appellant has not shown that the district court committed any error in denying the motion to remand and vacating the entry of default.

20. JUNE 13, 2022: Petitioner Lambros mailed his Petition for Rehearing En Banc to the Clerk of the Court.

21. JULY 20, 2022: The U.S. Court of Appeals For The District of Columbia Circuit “ORDER” stated, “Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is “ORDERED” that the petition be denied.” (App. A)

22. DATE TO DATE CALCULATION: Respondents received Petitioner Lambros’ complaint and summons on September 13, 2017, see paragraph 3 above. Respondents filed “Notice of Removal” on June 27, 2019, see paragraph 9 above. Therefore, 652 days is too late.

REASONS FOR GRANTING THE WRIT

QUESTION ONE (1):

Whether an untimely “Motion for Removal” by a foreign state, 28 U.S.C. 1441(d) - 652 days to late - suffices when the non-jurisdictional procedural removal defect permitting remand is timely raised, “Motion to Remand” - 28 U.S.C. 1447(c)(2020) and cause is not shown by the foreign state. Violations of 28 U.S.C. 1446(b)(1) and 1446(c)(1). See, MURPHY BROTHERS, INC. V. MICHETTI PIPE STRINGING, INC., 526 U.S. 344 (1999) (“the removal notice ‘shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the [complaint].’”

23. Title 28 U.S.C. § 1441 and 1446 of the Judicial Code were enacted to allow defendants to remove a federal claim from state court to federal court. Congress seemed to believe that the defendant's right to remove a case is at least as important as the plaintiff's right to the forum of his choice. While the plaintiff has the right to choose the initial forum, § 1446 provides the defendant with an opportunity to remove a claim with proper federal jurisdiction to a federal court. This statutory right protects the defendant from any unfairness a state forum may create, such as local state prejudice. As such, the removal statute's purpose is and always has been focused on

fairness and equity of forum choice to all parties. Section 1446(b) grants the defendant a thirty-day (30) time limitation for removal. The wording of § 1446(b), however, has caused confusion over the years and has resulted in a sharp split among courts as to when the thirty-day limitation begins. A twenty-three (23) year old Supreme Court case, *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999) clarified the issue of removal. Petitioner Lambros asserts the legal standards within the District of Columbia and all other Circuits and this Courts' opinion *Murphy Bros. v. Michetti Pipe Stringing, Inc.*. "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.); *Barbour v. Int'l Union*, 640 F.3d 599, 605 (4th Cir. 2011) (en banc)("Removal statutes, in particular, must be strictly construed, inasmuch as the removal of cases from state to federal court raises significant federalism concerns."); *see also Forum Ins. Co. v. Texarkoma Crude & Gas Co.*, No. 92 Civ. 8602 (CSH), 1993 WL 228023, at *2 (S.D.N.Y. June 22, 1993) ("Procedural errors are equally 'fatal' to jurisdictional errors in removal petitions."). 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).

24. The District Court did not issue a tolling or extension ORDER of the thirty-day (30) limit delineated in 28 U. S. C. § 1446(b) in this action.

Federal Rule of Civil Procedure 6(b) governs extensions of time for various filings with the trial court. See, Smith v. District of Columbia, 430 F. 3d 450, 457 (D.C.Cir.2005)(“Here, the District concedes that it never moved for an extension of the deadline. In the absence of any motion for an extension, the trial court had no basis on which to exercise its discretion.”)

See, Lujan v. National Wildlife Federation, 497 US 871, 896-897 (1990)

(stating that “any post deadline extension must be ‘upon motion made’”).

Under these circumstances, then, we are compelled to conclude that the district court abused its discretion in entertaining the late motion for summary judgment on Smith's disability discrimination claim.”(emphasis added)

25. Respondents Brazil, et al. lacked an objectively reasonable basis to seek removal. The error by the District Court affected the outcome of this action, thus prejudicial to Petitioner Lambros. The district court DID NOT

issue an order to show cause to Respondents why removal notice was not filed within thirty (30) days after the receipt by Respondents, through service or otherwise, of a copy of the complaint and summons. See, Murphy Brothers, 526 U.S. 344 (1999).

26. Petitioner 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, Petitioner advised the district court that Judge Pan's ORDER on April 8, 2019 and May 15, 2019 granted Petitioner Lambros' "MOTION REQUESTING ENTRY OF DEFAULT". See, LOCKHART vs. CADE, 728 A.2d 65 (District of Columbia 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'"). Petitioner Lambros has no further obligation to prove liability. Please note that the following exhibits were attached to Petitioner 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 Respondent Brazil, et al,. See, EXHIBIT E. PLEASE NOTE: The

January 16, 2019, letters from Crowe Foreign Service, Celeste Ingalls, Director of Operation to Judge Pan clearly outlined Respondent 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 Respondents. The thousands of pages returned by Respondents were in Portuguese. Respondents 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 Respondent Brazil et al. waived immunity merely by failing to timely raise an immunity defense in the course of the legal proceedings in the United States. 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)

SUMMARY OF QUESTION ONE (1)

27. Question One presents this Court with an opportunity to clarify the MURPHY BROTHERS, 526 U.S. 344 (1999) removal notice "thirty days" standard in the face of an untimely "Motion for Removal" by a foreign state, 28 U.S.C. 1441(d) - 652 days to late - when the non-jurisdictional

procedural removal defect permitting remand is timely raised, "Motion to Remand" - 28 U.S.C. 1447(c)(2020) and cause is not shown by the foreign state. Violations of 28 U.S.C. 1446(b)(1) and 1446(c)(1) ("more than 1 year after commencement of the action"), that violate the MURPHY BROTHERS rule and *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'") rule. Absent intervention by this Court, the U.S. Court of Appeals For the District of Columbia decision will work to undermine the carefully-crafted procedural safeguards that this Court has spent the past 50 years developing.

Petitioner Lambros requests this Court to deny and/or overturn the District Courts November 16, 2020 "MEMORANDUM OPINION AND ORDER" that DENIED Petitioner Lambros' motion for remand and GRANTED Respondent Brazil, et al motion to vacate the Superior Court's entry of default. Also see, *Lazarus v. KARIZAD, LLC*, Case No. 1:20-cv-1787-RCL (D.D.C. Feb. 26, 2021) ("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.) (Judge Lamberth denied as moot all requests by defendants, since the case was improperly removed and granted Lazarus's motion to remand) (emphasis added) This action should be remanded to Superior Court of the District of Columbia, Civil Division. (emphasis added)

QUESTION TWO (2):

Whether a foreign state defendant represented by attorneys in a removal action, who did not answer before removal, allowed to file untimely answers or present other defenses or objections in violation of Federal Rules of Civil Procedure, Rule 81(c)(2)(C) "7 days after the notice of removal is filed." See, Willy v. Coastal Corp. et al., 503 U.S. 131, 134-135 (1992) ("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"); MURPHY BROTHERS, INC. V. MICHETTI PIPE STRINGING, INC., 526 U.S. 344, 354-355 (1999)

28. June 27, 2019: Respondent - Defendant Brazil, et al. filed "Notice of Removal" at the Clerk's office of the United States District Court for the District of Columbia in this action. This is the first time Respondents filed any pleading in State or Federal Court in this action.

29. July 5, 2019: Respondent Brazil, et al. filed a Motion to Set Aside the Superior Court's Entry of a Default and Opposition to Petitioner 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). Respondents Motions filed on July 5, 2019 and all other further motions are untimely and void. (June 27, 2019 to July 5, 2022 is eight (8) days). (emphasis added)

30. Federal Rules of Civil Procedure ("FRCP"), Rule 81(c)(2)(C): "After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

- (A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;
- (B) 21 days after being served with the summons for an initial pleading on file at the time of service; or
- (C) 7 days after the notice of removal is filed."

See, *Willy v. Coastal Corp. et al.*, 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 and indicates a clear intent to have the Rules, including Rule 11, apply to all district court civil proceedings. (emphasis added)

31. In addition, Petitioner 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 Respondent Brazil et al. 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.

SUMMARY OF QUESTION TWO (2)

32. Question Two presents this Court with an opportunity to clarify that violation of Federal Rules of Civil Procedure, Rule 81(c)(2)(C) apply to foreign state defendant(s) represented by attorneys in a removal action.

33. Petitioner Lambros requests this Court to deny and/or overturn the District Courts November 16, 2020 "MEMORANDUM OPINION AND ORDER" that DENIED Petitioner Lambros' motion for remand and GRANTED Respondent Brazil, et al motion to vacate the Superior Court's entry of default. Also see, Lazarus v. KARIZAD, LLC, Case No. 1:20-cv-1787-RCL (D.D.C. Feb. 26, 2021) ("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.)(Judge Lamberth denied as moot all requests by defendants, since the case was improperly

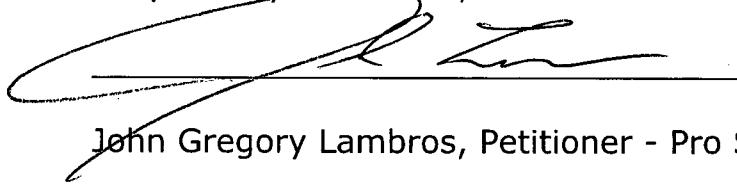
removed and granted Lazarus's motion to remand) (emphasis added) This action should be remanded to Superior Court of the District of Columbia, Civil Division.

CONCLUSION

34. For the foregoing reasons, Petitioner Lambros respectfully requests that this Court issue a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia.

DATED this 14th day of September, 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JGL".

John Gregory Lambros, Petitioner - Pro Se