

June 03, 2008

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U.S. CERTIFIED MAIL NO.
7005-3110-0003-4742-1682

CONSULADO GENERAL de COLOMBIA
Attn: Paulina Gomez B.
500 North Michigan Avenue
Suite 2040
Chicago, Illinois 60611

RE: EXTRADITIONS FROM COLOMBIA TO UNITED STATES

Dear Paulina Gomez B.:

This letter is a request for the Consulado General de Colombia within the United States to investigate the ethical conduct of U.S. Assistant Attorney Andrea G. Hoffman, Court ID# A5500885 in Miami, Florida and other U.S. Assistant Attorney's who are requesting extraditions of persons from Colombia.

I JOHN GREGORY LAMBROS, declare under the penalty of perjury that the following is true and correct. See, Title 28 U.S.C. §1746.

STATEMENT OF FACTS:

1. U.S. Assistant Attorney ANDREA G. HOFFMAN and other U.S. Assistant Attorney's within the United States request Colombia to EXTRADITE citizens of Colombia to the United States due to criminal indictments they sign after grand jury hearings. Therefore, arrest warrants are issued and the U.S. Department of State requests the Supreme Court of Colombia to arrest and extradite citizens to the United States for a criminal trial.
2. After arrest of an individual for extradition to the United States, the Colombian Supreme Court reviews the extradition documents submitted by the United States and issues a resolution to extradite the person to the United States for trial.
3. Research indicates that the Colombian Supreme Court always includes a resolution that states that, "...., if extradited and convicted, ... must not be sentenced to prison for more than thirty (30) years." Colombia does not allow a criminal penalty of over thirty (30) years and enforces same within every extradition. See, U.S. vs. GALLO-CHAMORRO, 48 F.3d 502, 503 (11th Cir. 1995); U.S. vs. ABELLO-SILVA, 948 F.2d 1168, 1174 (10th Cir. 1991). Also, USA vs. SALAZAR-ESPINOSA, et. al,

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Lambros' letter to CONSULADO de COLOMBIA

RE: EXTRADITIONS FROM COLOMBIA TO UNITED STATES

Docket No. 1:05-cr-00517-LAK-1, U.S. District Court for the Southern District of New York. Mr. Salazar-Espinosa was extradited from Colombia and sentenced by the District Court to thirty (30) years on or about February 2008, as per the Colombian Supreme Court's resolution that stated he must not be sentenced to prison for more than 30-years.

4. U.S. DISTRICT COURT'S HAVE BEEN SENTENCING PERSONS EXTRADITED FROM COLOMBIA TO SENTENCES OF MORE THAN THIRTY (30) YEARS: The United States is not enforcing the condition/resolution within the extradition decree by the Supreme Court of Colombia that states that a person "must not be sentenced to prison for more than thirty (30) years." The following U.S. Laws prove same:

a. All U.S. drug law violations include as part of the sentence a requirement that the person be placed on a term of **SUPERVISED RELEASE** after imprisonment. See, Title 21 U.S.C. §841(b)(1)(A) - "... Notwithstanding section 3583 of Title 18, an sentence under this subparagraph shall, in the absence of such prior conviction, impose a term of **SUPERVISED RELEASE** of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of **SUPERVISED RELEASE** of at least 10 years in addition to such term of imprisonment." (emphasis added)

See, **EXHIBIT A** (Title 21 USC §841(b)(1)(A))

5. An example of same can be found within the recent sentencing of Mr. Salazar-Espinosa by the U.S. District Court for the Southern District of New York, Docket No. 1:05-cr-517-LAK-1. On or about February 2008 the U.S. District Court sentenced Mr. Salazar-Espinosa to a thirty (30) term of prison with a term of **SUPERVISED RELEASE** of at least five (5) years in addition to his thirty (30) years. Therefore, Mr. Salazar-Espinosa received at least a thirty-five (35) year term of incarceration, which is not possible as per his extradition by the Supreme Court of Colombia. See, U.S. vs. ROBERTS, 5 F.3d 365, 368-369 (9th Cir. 1993):

Roberts was advised by the Court that he faced a statutory maximum sentence of twenty (20) years, as per Title 21 U.S.C. §841(b)(1)(C).

"At sentencing, Roberts received the twenty (20) year maximum **PLUS** a three (3) year term of supervised release pursuant to the Sentencing Guidelines. If Roberts violates the conditions of his **SUPERVISED RELEASE**, the court may revoke his **SUPERVISED RELEASE AND SEND HIM BACK TO PRISON FOR UP TO THREE (3) MORE YEARS**. 18 U.S.C. §3583(e)(3). Thus, Robert's **MAXIMUM SENTENCE IS AT LEAST TWENTY-THREE (23) YEARS, NOT TWENTY (20) YEARS**. Because of the term of **SUPERVISED RELEASE**, Roberts received a **POTENTIALLY LONGER SENTENCE THAN HE WAS APPRISED OF AT HIS PLEA HEARING**. (emphasis added)

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See, EXHIBIT B. (U.S. vs. ROBERTS, 5 F.3d at 369 (9th Cir. 1993))

6. My research indicates that **DAINER CAMACHO-BENITEZ** was extradited from Colombia on or about 2008 and Attorney Hugo A. Rodriguez, Miami, Florida, Tel. (305) 373-1200, was appointed by the Court to represent him in criminal action - USA vs. RAYO-MONTANO, et. al, Criminal Docket No. 1:06-cr-20139-DMM-ALL, U.S. District Court for the Southern District of Florida (Miami). See, Docket Sheet entries 569, 570, 573, 574, 575, 581, etc.

On May 24, 2008, I wrote Attorney Rodriguez via U.S. Certified Mail No. 7005-3110-0003-4742-4904 - advising him of the issues within this letter and requesting him to file motions to the court requesting that the TERM OF SUPERVISED RELEASE BE INCLUDED WITHIN CAMACHO-BENITIZ'S TOTAL SENTENCE WHICH CAN BE NO MORE THAN THIRTY (30) YEARS.

It is also my intent to place U.S. Assistant Attorney ANDREA G. HOFFMAN, Court ID# A5500885, who is prosecuting CAMACHO-BENITEZ, on **NOTICE** as to the facts within this letter.

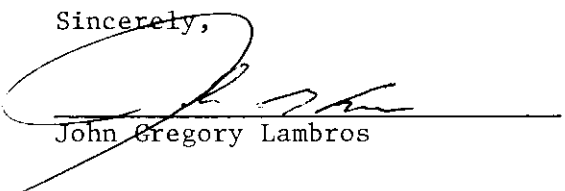
CONCLUSION:

7. The above facts prove that persons extradited from Colombia to the United States are being subjected to an "INJURY IN FACT", thus giving your office - Consulado General de Colombia - and the Supreme Court of Colombia STANDING to bring action within the United States and Columbia to challenge sentences given to those extradited who receive maximum sentences of more than thirty (30) years, due to the term of SUPERVISED RELEASE.

8. I am also requesting that you forward copy of this letter to the Supreme Court of Colombia and file a motion with the U.S. District Court as to the maximum sentence - 30-years including supervised release - Mr. Dainer Camacho-Benitez may receive. Copy of your motion to the Court would be greatly appreciated.

9. Thank you in advance for your consideration in this most important matter.

Sincerely,


John Gregory Lambros

c:

Boycott Brazil website posting: www.BrazilBoycott.org

File

and evaluation and to include in such report such recommendations as he deemed appropriate.

§§ 831 to 840. Reserved for future legislation.

PART D—OFFENSES AND PENALTIES

§ 841. Prohibited acts A

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 1,000 or more marijuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of Title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgo-

mandatory penalty assessment of \$50. 21 U.S.C. § 841(b)(1)(C). The judge mentioned nothing about supervised release. At sentencing, Roberts received the twenty year maximum plus a three year term of supervised release pursuant to the Sentencing Guidelines. C.R. 35 at 20; U.S.S.G. §§ 5D3.1(a), 5D3.2(b)(1). If Roberts violates the conditions of his supervised release, the court may revoke his supervised release and send him back to prison for up to three more years. 18 U.S.C. § 3583(e)(3). Thus, Roberts's maximum sentence is at least twenty-three years, not twenty years. Because of the term of supervised release, Roberts received a potentially longer sentence than he was apprised of at his plea hearing.

If the defendant receives a potentially longer sentence than the maximum he was told, the failure to inform him of the supervised release term affects his "substantial rights" and is not harmless error. Fed. R.Crim.P. 11(h); *Rodriguera v. United States*, 954 F.2d 1465, 1469 (9th Cir.1992) (no harmless error where defendant was advised maximum was forty years but received eight years in prison plus ten years supervised release which could potentially be extended to life); *United States v. Sanclemente-Bejarano*, 861 F.2d 206, 209-10 (9th Cir.1988) (harmless error where defendant was advised maximum sentence was life imprisonment and received fifteen year sentence and five year term of supervised release); *United States v. Sharon*, 812 F.2d 1233, 1234 (9th Cir.1987) (not harmless error where defen-

3. As previously stated, the judge was not obligated to discuss the Guidelines at that time. *Ramos*, 923 F.2d at 1357. However, the version of Rule 11 in effect at the plea hearing required the judge to discuss a "term of supervised release." Fed.R.Crim.P. 11(c)(1) (1988). The government contends that these words refer only to *statutory* supervised release, not supervised release imposed under the Guidelines. The plain words of Rule 11 make no such distinction, although, with the benefit of both hindsight and legislative history, the government may be right.

4. Roberts pled guilty only to conspiracy under 21 U.S.C. § 846. Until November 18, 1988, a conspirator was *not* subject to the mandatory term of supervised release contained in the underlying statute—in Roberts's case, 21 U.S.C. § 841(b)(1)(C). *Bifulco v. United States*, 447 U.S. 381, 401, 100 S.Ct. 2247, 2259, 65 L.Ed.2d 205 (1980). However, effective November 18,

defendant was advised maximum was twenty-one years and he received ten year term and ten years of special parole because liberty could be restricted for well over twenty-one years).

The government argues that the version of Rule 11 in effect at the time of Roberts's plea hearing did not require the judge to discuss supervised release under the Guidelines. This is probably true.³ The government further contends the judge was not obligated to discuss *statutory* supervised release. This is also true.⁴ However, Rule 11 still mandates that the judge tell the defendant the "maximum possible penalty." The defendant should not receive a sentence longer than the one discussed at the plea hearing.

[8] The government also argues that the plea agreement mentioned a term of supervised release, so Roberts's plea was voluntary, and any failure to mention it in open court was harmless error. However, the plea agreement simply listed the statutory maximum penalties for all the counts in the indictment. Supervised release was mentioned as part of the maximum statutory penalty for violating 21 U.S.C. § 841(a)(1)—a crime that Roberts did not plead guilty to.

In fact, we take the Rule 11 mandate quite literally. In *Sanclemente-Bejarano*, 861 F.2d at 208, the judge at the plea hearing asked the defense counsel if there was a supervised release term and she said "Yes. . . . According to the new [law], there should be five years supervised release. At

1988--three days before Roberts's plea hearing—the conspiracy statute was amended so conspirators would get the same penalties, including § 841's mandatory term of supervised release, as do people who commit the underlying offense. Anti-Drug Abuse Act of 1988, Pub.L. No. 100-690 § 6470(a), 102 Stat. 4181, 4377. Nonetheless, we hold that the amended version of the conspiracy statute should apply only to offenses committed after its effective date. *United States v. Moon*, 926 F.2d 204, 210 (2d Cir.1991); *United States v. Curry*, 902 F.2d 912, 917 (11th Cir.), cert. denied, 498 U.S. 1015, 111 S.Ct. 588, 112 L.Ed.2d 592 (1990), and cert. denied, 498 U.S. 1091, 111 S.Ct. 973, 112 L.Ed.2d 1059 (1991). If we were to apply the amended version of § 846 to offenses committed before its effective date, such as Roberts's, it would violate the Ex Post Facto Clause of the Constitution. *Curry*, 902 F.2d at 917 n. 5.