

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

\_\_\_\_\_) No. \_\_\_\_\_  
)  
Petitioner) )  
)  
v. ) Related Case Nos. \_\_\_\_\_  
)  
)  
\_\_\_\_\_)  
United States Marshal for) MOTION TO AMEND PETITION  
the Middle District of North) FOR WRIT OF HABEAS CORPUS  
Carolina, and \_\_\_\_\_) \_\_\_\_\_  
)  
\_\_\_\_\_) Sheriff of Forsyth) )  
County) )  
Respondents) )  
\_\_\_\_\_)

NOW COMES the Petitioner, \_\_\_\_\_, by and through his legal counsel, \_\_\_\_\_, Assistant Federal Public Defender, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, and moves this Honorable Court for an order allowing an amendment to the Petition for a Writ of Habeas Corpus filed in this action. In support of this motion, and as his proposed amendment, Petitioner shows unto the Court the following:

1. The Petitioner is presently being held in the \_\_\_\_\_ pursuant to a provisional warrant issued subsequent to the request of \_\_\_\_\_ that Petitioner be returned to that country to serve a sentence imposed subsequent to his conviction.

2. A hearing was held, pursuant to Title 18, United States Code, Section 3184, before the Honorable \_\_\_\_\_, United States Magistrate Judge, on November 17, 2003.

3. Judge [REDACTED] decision, in part, was based upon his belief that the Petitioner had been present at his trial and sentencing, and had filed an appeal of his conviction and sentencing. (See Order of Judge [REDACTED] dated December 4, 2003).

4. Had Judge [REDACTED] known that [REDACTED] had tried the Petitioner in absentia his decision would likely have been different.

5. One of the tasks to be performed by a court holding a hearing pursuant to Title 18, United States Code, Section 3184, is to determine whether probable cause exists to believe that a crime was committed, that it would be covered under the Treaty, and that there was probable cause to believe that the person whose extradition is sought likely committed the crime.

6. In deciding the issue of probable cause, a conviction in absentia should only be considered a charge of a crime, rather than a conviction for probable cause purposes. United States v. Fernandez-Morris, 99 F.Supp.2d 1358, 1365 (S.D. Fla. 1999); see also, In re Mylonas, 187 F.Supp. 716, 721 (N.D. Ala. 1960).

7. In the Petitioner's hearing before Judge [REDACTED], no evidence was presented to support the government's contention that probable cause existed other than the exhibits which showed that Petitioner had been tried and found guilty in [REDACTED] and had filed an appeal which had been heard and denied.

8. Without additional evidence to support the issue of probable cause, the finding of probable cause by Judge [REDACTED] cannot be supported.

9. In response to a letter written by Petitioner's counsel to the government of [REDACTED], Petitioner received the attached letter, which is attached hereto as EXHIBIT 1, from the [REDACTED] Minister of Justice which verifies that Petitioner was tried in absentia.

10. The Romanian government indicates that if Petitioner returns to [REDACTED], he will be given a new trial at which he can be present and defend himself. If Petitioner had been previously tried and convicted, and filed and been denied an appeal, the Romanian government would not state that he could elect to have a new trial and be present.

11. Since this petition was filed, Petitioner's case before the Immigration Court has been reopened and the judge has granted Petitioner additional relief. He granted Petitioner withholding of removal under Article III of the Convention Against Torture. A copy of the order is attached hereto as EXHIBIT 2.

12. Petitioner requests that this motion to amend be granted and treated as an amendment to the Petition on file in this matter.

This the 23<sup>rd</sup> day of January, 2006.

[REDACTED]  
Federal Public Defender

/s/ [REDACTED]  
[REDACTED]  
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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Assistant United States Attorney [REDACTED] [REDACTED] [REDACTED], United States Marshall for the Middle District of North Carolina; and I hereby certify that I have mailed the document to the following non CM/ECF participants: [REDACTED], Assistant County Attorney for [REDACTED] [REDACTED], Sheriff of Forsyth County, Forsyth County Government Center, 201 N. Chestnut Street, Fifth Floor Winston-Salem, NC 27101-4120.

/s/ [REDACTED]

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