IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

VS.

APPEAL NO. 03-16392-DD

DWIGHT D. YORK

GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF

COMES NOW the United States of America, by and through its attorney, the United States Attorney for the Middle District of Georgia, and submits this response to the Motion for Leave of Court to File Amicus Curiae Brief on behalf of the appellant, received by the Clerk of Court on March 9, 2005. The motion purportedly is filed in the name of the Republic of Liberia. The appellee opposes this untimely motion and proposed brief, for a number of reasons as discussed below.

- 1. The movant allegedly owes York a duty to protect and to defend him. However, the movant does not show the reason that an amicus brief will be useful for this Court, pursuant to Fed. R. App. P. 29(b). York is not entitled to another brief on his own behalf.
- 2. If the movant's supporting papers are authentic, the Republic was ordered to protect and defend York's interest pursuant to a judgment entered in July 2004, even though the federal government commenced its prosecution of York in May 2002. York's

initial brief on appeal was submitted to this Court in November 2004 and the government filed its brief in December 2004. The proposed amicus brief is untimely per Fed. R. App. P. 29(e), and no adequate excuse is shown.

3. The appellant allegedly desires deportation and repatriation to the Republic of Liberia, presumably on the basis of a valid conviction. However, again if the movant's supporting papers are taken as authentic, the Republic commenced its diplomatic overtures to the U.S. State Department in June 2004, roughly two years after this prosecution began, and renewed its request in August 2004, apparently without success. Accordingly, in the absence of intercession by the U.S. Department of State with the U.S. Department of Justice, this proceeding should go forward without the participation of the Republic of Liberia. See Abdulaziz v. Metro. Dade Cty., 741 F.2d 1328, 1331 (11th Cir. 1984); United States v. Lumumba, 741 F.2d 12, 15 (2nd Cir. 1984).

RESPECTFULLY SUBMITTED. this 44 day of March, 2005.

MAXWELL WOOD UNITED STATES ATTORNEY

BY:

DEAN S. DASKAL

ASSISTANT UNITED STATES ATTORNEY

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United States v. Dwight D. York Appeal No. 04-12354-II

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, the undersigned counsel of record certifies that no additional persons beyond those listed in the Appellant's Certificate have an interest in the outcome of this case.

DEAN S. DASKAL

State Bar No. 205715

Attorney for Appellee

U.S. Attorney's Office P.O. Box 2568 Columbus, Georgia 31902 (706) 649-7700

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF on the Defendant and upon movant's counsel by first-class mail. postage prepaid, addressed to Adrian L. Patrick, Esq., 1044 Baxter Street, Athens GA 30606; and Cllr. Francis Y.S. Garlawolu, Opposite the DDRR Office, Capitol Hill, Monrovia, Liberia 011231-651-5306.

This <u>14</u> day of March, 2005.

DEAN S. DASKAL

ASSISTANT UNITED STATES ATTORNEY

Address:

Post Office Box 2568 Columbus, GA 31902 Adrian Lopez Patrick Law Offices of Adrian L. Patrick 1044 Baxter Street Athens GA 30606

March 16, 2005

Appeal Number: 04-12354-II

Case Style: USA v. Dwight D. York District Court Number: 02 00027 CR-CAR-5-1

CC: Matthew McGayock Robinson

CC: Benjamin A. Davis, Jr.

CC: Adrian Lopez Patrick

CC: Dean S Daskal

CC: Maxwell Wood

CC: Richard S. Moultrie, Jr.

CC: Administrative File