

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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BURUJI KASHAMU,  
*Petitioner,*

v.

UNITED STATES DEPARTMENT OF JUSTICE, *et. al.*,  
*Respondents.*

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*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Seventh Circuit*

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether a foreign national who properly alleges that he is subject to imminent arrest and abduction in a foreign country in violation of the laws of the foreign country based on a pending indictment in the United States District Court alleging narcotics crimes has an implied private right of action to seek injunctive or declaratory relief under 22 U.S.C. sec. 2291(c)(1) and (2) (known as the “Mansfield Amendment”), which expressly prohibits officers and employees of the United States from “directly” effecting an arrest in any foreign county as part of any foreign police action with respect to narcotics control efforts.

## **LIST OF PARTIES**

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:

Dana J. Boente, Acting Attorney General of the United States in his official capacity only;

The United States Department of Justice;

James Comey, Director of the Federal Bureau of Investigation in his official capacity only;

The Federal Bureau of Investigation;

John F. Kelly, Secretary of the United States Department of Homeland Security in his official capacity only; and

The United States Department of Homeland Security

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**Legislative History**

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Petitioner, Senator Buruji Kashamu (“Senator Kashamu”), respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

### **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Seventh Circuit is unreported, but is available at 2017 U.S. App. LEXIS 1116 (7th Cir. Jan. 23, 2017) and reproduced as Appendix A to this Petition. Prior to entering the above-mentioned opinion, the Court of Appeals issued an order on November 18, 2016 that is unreported and is reproduced as Appendix B to this Petition. The Court of Appeals entered an order recalling its mandate and vacating its November 18, 2016 order that is unreported and is reproduced as Appendix C to this Petition. The decision of the United States District Court for the Northern District of Illinois has been reported as *Kashamu v. Lynch*, 142 F. Supp. 3d 695 (N.D. Ill. 2015) and is reproduced as Appendix D to this Petition.

### **JURISDICTIONAL STATEMENT**

The opinion, order and judgment of the Court of Appeals sought to be reviewed was dated and entered January 23, 2017. Judgment of the Court of Appeals in this case is a final judgment. The statutory provision to confer jurisdiction of this Supreme Court to review this case is 28 U.S.C. § 1254(1).



**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**

Section 22 U.S.C. § 2291(c)(1) and (2) state that:

c) Participation in foreign police actions.

(1) Prohibition on effecting an arrest

No officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotic control efforts, notwithstanding any other provision of law.

(2) Participation in Arrest Actions.

Paragraph (1) does not prohibit an officer or employee of the United States, with the approval of the United States chief of mission, from being present when foreign officers are effecting an arrest or from assisting foreign officers who are effecting an arrest.

**STATEMENT OF THE CASE**

This case concerns the issue of whether a foreign national, who is a duly elected Senator of a foreign nation, can seek injunctive and declaratory relief to prevent his seizure, arrest and abduction by officers and agents of the United States in violation of the laws of the foreign nation and the Mansfield Amendment. As this case was dismissed on a motion to dismiss, this Court should accept as true the facts alleged by the Petitioner below. *Ashcroft v. Iqbal*, 556 U.S. 662, 696 (2009).

## 1. Proceedings in the District Court

Senator Kashamu is a citizen of Nigeria. (App. D at App. 11; Short Appendix to Plaintiff-Appellant's Brief in the Court of Appeals (hereinafter "C.A. Pl. Short App.") S.A.11 at para. 5). On May 21, 1998, Senator Kashamu's name was introduced into an existing indictment alleging conspiracy to import and distribute heroin in violation of 21 U.S.C. § 963. (App. D at App. 11; C.A. Pl. Short App. S.A.12 at para. 12). From approximately 1998 to 2003, Senator Kashamu was incarcerated in Brixton Prison in London, England, at the request of the United States while it attempted to have him extradited based on the pending indictment. (App. D at App. 11; C.A. Pl. Short App. S.A.12 at para. 13). The courts of the United Kingdom denied two attempts by the United States to have Senator Kashamu extradited, and the United Kingdom ultimately refused to extradite him, finding that Senator Kashamu was not involved in the conspiracy charged in the United States, and that the evidence submitted by the United States against him was incredible and valueless. (C.A. Pl. Short App. S.A.13 at para. 14).

Since then, Senator Kashamu tried to have the indictment against him dismissed. See *United States v. Kashamu*, 656 F.3d 679 (7<sup>th</sup> Cir. 2011), *cert. denied*, 132 S. Ct. 1046 (2012) and *In re Kashamu*, 769 F.3d 490 (7<sup>th</sup> Cir. 2014). In its 2014 opinion, the Seventh Circuit stated that the United States had not tried to extradite Senator Kashamu from Nigeria. *In re Kashamu*, 769 F.3d at 493.

In April of 2015, Senator Kashamu became a democratically elected Senator of Nigeria. (App. D at App. 11; C.A. Pl. Short App. S.A.11 at para. 5). On April 9, 2015, Senator Kashamu filed a Complaint in the Northern District of Illinois. (Complaint, ECF No. 1). Senator Kashamu alleged that United States officials were making plans with Nigerian officials to forcibly abduct him for the purpose of transporting him to the United States outside the formal extradition process. (Complaint, ECF No. 1 pp. 1-4 at paras. 1, 18-20).

On July 10, 2015, Senator Kashamu filed a First Amended Complaint in which he alleged that on May 22, 2015, shortly after Senator Kashamu filed his April 9, 2015 Complaint, operatives of Nigeria's National Drug Enforcement Agency ("NDLEA"), along with, and at the direction of, United States officers and employees did, in fact attempt to arrest and forcibly abduct him outside the extradition process. (App. D at App. 12; C.A. Pl. Short App. S.A.13-16 at paras. 19-31). Specifically, Senator Kashamu alleged that on May 22, 2015, operatives of the NDLEA surrounded his residence in Lagos, entered the residence and attempted to seize him pursuant to an illegally issued and invalid provisional warrant. (App. D at App. 12; C.A. Pl. Short App. S.A.14-15 at paras. 22-24). Senator Kashamu refused to surrender and demanded that the agents cease their illegal efforts. (App. D at App. 12; C.A. Pl. Short App. S.A.14-15 at para. 22). Senator Kashamu was kept a prisoner in his own home for six days, until a Nigerian federal court ordered the agents to cease their activities and depart from the premises. (App. D at App. 12; C.A. Pl. Short App. S.A.14-15 at paras. 22, 25, 30)

Senator Kashamu further alleged that two officers or employees of the United States Drug Enforcement Administration or other United States agency (hereinafter the U.S. agents) directed the NDLEA officers surrounding Senator Kashamu's residence by coordinating and providing instructions to NDLEA agents with regard to the operations. (C.A. Pl. Short App. S.A.14-15 at paras. 25-28) Senator Kashamu further alleged that the officers or employees of the United States attempted to directly effect his arrest and abduction to the United States without a valid extradition order and alleged that he reasonably feared that officers or employees of the United States would continue their efforts to illegally directly effect his arrest and transport him to the United States without a valid extradition order. (App. D at App. 12; C.A. Pl. Short App. S.A.14-16 at paras. 29-34, 37-38). As a result, Senator Kashamu alleged that the actions of the officers or employees of the United States had violated and reasonably threatened to again violate the Mansfield Amendment and asked for injunctive and declaratory relief. (App. D at App. 12-13; C.A. Pl. Short App. S.A.16-17 at paras. 36-41).

The United States filed a motion to dismiss Senator Kashamu's First Amended Complaint. (App. D at App. 13). In its November 6, 2015 Opinion and Order, the District Court granted the United States' motion finding that Senator Kashamu did not have a private right nor remedy under the Mansfield Amendment. (Appendix D at App. 15-18). In finding that Senator Kashamu did not have a private right of action under the Mansfield Amendment, the district court stated that the Mansfield Amendment is silent on the creation of a private right or a private remedy. (App. D. at

App. 17). In addition, the District Court stated that since Congress enacted the Mansfield Amendment, all of the cases in which the Amendment had been discussed were criminal cases and that “[t]he consensus opinion from these cases is that the Mansfield Amendment is prescriptive; Congress did not intend for and did not create a private remedy. (App. D at App. 17-18, citing, e.g. *United States v. Zabaneh*, 837 F.2d 1249, 1261 (5<sup>th</sup> Cir. 1988); *United States v. Bourdet*, 477 F. Supp. 2d 164, 175 (D.D.C. 2007); and *United States v. Bridgewater*, 175 F. Supp. 2d 141, 146 (D.P.R. 2001)).

In reaching its decision, the District Court also stated that it had not made a finding as to “whether the Government does or does not intend to extradite Kasahmu in the future” or a finding “regarding the legalities of the Government’s previous attempt to seize and remove Kashamu from Nigeria.” (Appendix D at App. 19).

Senator Kashamu’s basis for jurisdiction in the District Court is pursuant to 28 U.S.C. § 1331.

## **2. Disposition in the Seventh Circuit**

The Court of Appeals initially affirmed the decision of the district court in an Order issued on November 18, 2016, in which it stated that “the appeal lacks merit for the reasons fully and adequately stated by the district judge.” (App. C at App. 8-9). However, on January, 20, 2017, after its mandate had issued, the Court of Appeals, *sua sponte*, issued an Order in which it recalled its mandate and vacated its final order dated November 18, 2016. (App. B at App. 6-7).

On January 23, 2017 the Court of Appeals issued a new opinion and order. (App. A at App. 1-7). In its January 23, 2017 opinion, the Court of Appeals determined that the Mansfield Act does not create a private action. (App. A at App. 4). The Court of Appeals stated that: “Although the statute forbids federal employees to arrest a person in a foreign county on narcotics charges, the Supreme Court has repeatedly construed statutes similar to the Mansfield Amendment as directives to federal agencies and their employees (i.e. ‘behave yourselves,’ or face disciplinary action) rather than ‘as a conferral of the right to sue’ the agencies and their employees.” (App. A at App. 4, citing *Armstrong v. Exceptional Child Center*, 135 S. Ct. 1378, 1387 (2015); *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Thompson v. Thompson*, 484 U.S. 174 (1988); *California v. Sierra Club*, 451 U.S. 287 (1981)).

In describing the complaint, the Court of Appeals stated that Kashamu “speculates that U.S. agents directed and coordinated the entire affair” and that “[i]n the absence of injunctive relief, he maintains, he is vulnerable to “a very real threat of abduction by U.S. authorities.” (App. A at App. 4). Nevertheless, the Court of Appeals stated that Kasahmu’s suit further lacks merit because it confuses an attempt by United States government agents to arrest him on a provisional warrant in coordination with local law enforcement with an attempted abduction. (App. A at App. 4). In addition, the Appellate Court stated that:

The Mansfield Amendment is explicit in *not* prohibiting an employee of the United States, provided he has the approval of the United States chief of mission from “being present when

foreign officers are effecting an arrest or from assisting foreign officers who are effecting an arrest.” 22 U.S.C. sec. 2291(c)(2). The conduct of which Kashamu complains - that U.S. agents actively participated in an attempt by *Nigerian* agents to arrest him - was thus lawful.

(App. A at App. 4-5) (emphasis in original).

### **REASONS FOR GRANTING THE WRIT**

The United States Supreme Court should grant the writ of certiorari because this case raises an important federal question that should be resolved by this Court involving the right of a private action under the Mansfield Amendment to enjoin an imminent violation of the statute. The case raises an issue that was not discussed in *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) which involved the abduction of a foreign national charged with the murder. The case has implications for international law and comity at a time when criminal charges against foreign nationals have become increasingly prominent.

In addition, this Court should exercise its discretion in allowing the issuance of a writ of certiorari in this case because the Court of Appeals erred when it concluded that individuals do not have a private right of action to seek equitable relief under the Mansfield Amendment. The Court of Appeals stated that: “Although the statute forbids federal employees to arrest a person in a foreign county on narcotics charges, the Supreme Court has repeatedly construed statutes similar to the Mansfield Amendment as directives to federal agencies and their employees (i.e. ‘behave yourselves,’ or face disciplinary action) rather

than ‘as a conferral of the right to sue’ the agencies and their employees.” (App. A at App. 4). In addition, the District Court stated that since Congress enacted the Mansfield Amendment, all of the cases in which the Amendment had been discussed were criminal cases and that the consensus opinion from these cases is that the Mansfield Amendment is prescriptive. (App. D at App. 17-18).

However, the cases relied on by the Court of Appeals and the District Court are distinguishable from this case. First, none of the cases relied on by the Court of Appeals seek enforcement of the Mansfield Amendment.

Moreover, the cases relied on by the District Court did not seek equitable relief to prevent a violation of the Mansfield Amendment. Instead, these cases all confirmed the longstanding rule set forth in *Ker v. Illinois*, 119 U.S. 436 (1886) that a criminal defendant who has already been abducted unlawfully must stand trial whether or not the abduction was unlawful. See e.g. *Zabaneh*, 837 F.2d at 1261; see also *United States v. Mejia*, 448 F.3d 436, 442-443 (D.C. Cir. 2006), *cert. denied*, 549 U.S. 1137 (2007).

In addition, none of the cases relied on by the Court of Appeals sought equitable relief against a federal agency. See e.g. *Cal. v. Sierra Club*, 451 U.S. 287 (1981) (seeking to enjoin the construction and operation of water diversion facilities of the State of California); *Alexander v. Sandoval*, 532 U.S. 275 (suit against Director of Alabama agency). For example, in *Armstrong v. Exceptional Child Center*, 135 S. Ct. 1378, 1384-1387 (2015) (which also did not seek equitable relief against a federal agency) the Court based its



denial of an equitable remedy on the fact that Congress implicitly precluded private enforcement of a section of the Medicaid Act by expressly providing another method for enforcing the substantive rule at issue.

In contrast, in this case, Senator Kashamu is seeking equitable relief against a federal agency and is seeking to prevent a violation of the Mansfield Amendment before it occurs. As a result, the Court of Appeals erred in finding that no private action exists to enforce the Mansfield Amendment.

First, the plain language of the statute prohibits officers and employees of the United States from “directly effect[ing] an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts . . .” 22 U.S.C. sec. 2291(c)(1). The proponent of the Mansfield Amendment, Mike Mansfield, stated that “we cannot enlist the cooperation of others in the cause of protecting basic human rights and at the same time espouse a doctrine of law and order at any price. And . . . we cannot have it both ways - and then refuse to accept responsibility when things go sour.” 121 CONG. REC. 38994 AT 38995 (DAILY ED. Dec. 8, 1975) (Statement of Sen. Mansfield). Thus, in light of the language of the statute and its legislative history, Congress must have intended for there to be a private right of action for equitable relief under the Mansfield Act because absent such a right the Mansfield Amendment would be effectively nullified.

The Court of Appeals also erred because it failed to properly accept the facts alleged in Senator Kashamu’s Amended Complaint as true. For example, in its final opinion (issued after it recalled its mandate and

vacated its earlier final order) the Court of Appeals appeared to find that the conduct Kashamu complained of was lawful because the Mansfield Amendment allows employees of the United States to be present when foreign officers are effecting an arrest or to assist foreign officers who are effecting an arrest, provided that he has the approval of the United States chief of mission. (App. A at App. 4). However, Senator Kashamu specifically alleged that the United States employees were directly effecting the arrest. (App. D at App. 12; C.A. Pl. Short App. S.A. 14-15 at paras. 25-34, 37-38). Moreover, the United States did not plead or provide any evidence that the United States chief of mission gave approval to any United States employee to be present or assist in Senator Kashamu's arrest. (Plaintiff-Appellant's Court of Appeals Reply Brief, at 9).

In addition, the Court of Appeals erred when it stated that Senator Kashamu's suit confuses an attempt by U.S. government agents to arrest him on a provisional warrant in coordination with local law enforcement with an attempted abduction. (App. A at App. 4). Contrary to the Court of Appeals's opinion, Senator Kashamu has not confused an attempted extradition with an abduction. Senator Kashamu alleged and argued that the United States was trying to abduct him without proper authority outside of the extradition process. (C.A. Pl. Short App. S.A.13-16 at paras. 18-30, 32). Moreover, since the Nigerian courts have continued to enjoin Senator Kashamu's extradition, Senator Kashamu reasonably fears that another illegal abduction attempt is imminent. (C.A. Pl. Short App. S.A. 15 at para. 31-34). The Court of Appeals applied an incorrect standard which resulted

in an incorrect outcome. For this reason, as well as for all the foregoing reasons, the Court should grant the petition for a writ of certiorari.

**CONCLUSION**

This Court should grant the petition for a writ of certiorari and reverse the decision of the Seventh Circuit Court of Appeals.

Respectfully submitted,

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## **APPENDIX**

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**APPENDIX A**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**No. 16-1004**

**[Filed January 23, 2017]**

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BURUJI KASHAMU,	)
<i>Plaintiff-Appellant,</i>	)
	)
<i>v.</i>	)
	)
U.S. DEPARTMENT OF JUSTICE, <i>et al.</i> ,	)
<i>Defendants-Appellees.</i>	)

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.  
No. 15 CV 3159 — **Charles R. Norgle**, *Judge*.

SUBMITTED NOVEMBER 18, 2016 —  
DECIDED JANUARY 23, 2017

Before POSNER and KANNE, *Circuit Judges*.

POSNER, *Circuit Judge*. Buruji Kashamu, a fugitive for nearly two decades and the alleged leader of a heroin-importing conspiracy that inspired the hit show “Orange is the New Black,” appears before us for a third time not in person but through counsel because he is unwilling to risk being present in the United States, and in fact has never in his life been in the United States. See “Man Who Inspired Orange is the

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New Black Elected Senator in Nigeria” *The Guardian*, Apr. 16, 2015, <https://www.theguardian.com/world/2015/apr/16/alleged-drug-kingpin-wanted-us-elected-senator-nigeria> (visited Jan. 20, 2017).

In 1998 a grand jury in the Northern District of Illinois had charged him and thirteen others with conspiracy to import heroin, in violation of 21 U.S.C. § 963. Eleven co-conspirators pleaded guilty, and one other was convicted after trial. But Kashamu, refusing to appear (which would have required his presence in the United States), insisted that the authorities were trying to pin crimes committed by his dead brother—who he said bore a striking resemblance to him—on him.

The present suit is Kashamu’s latest attempt to avoid answering the still-pending charges that the Justice Department has brought against him. When he surfaced in England six months after his indictment Justice Department lawyers commenced what turned out to be a four-year legal battle seeking his extradition to the United States—unsuccessfully. Later Kashamu moved to dismiss the American indictment on the ground that the doctrine of collateral estoppel barred his prosecution by the United States. We denied that motion, explaining that the English magistrate’s refusal to authorize his extradition to the United States had been based simply on the Justice Department’s inability to convince the judge that the person it was seeking to extradite was indeed Kashamu. *United States v. Kashamu*, 656 F.3d 679 (7th Cir. 2011). Because the magistrate had not ruled on Kashamu’s guilt or innocence of the U.S. charges, the refusal to

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extradite him did not preclude further efforts to prosecute him. *Id.* at 688.

Three years later Kashamu again appeared before the court, this time petitioning for a writ of mandamus to dismiss the indictment on speedy-trial grounds. Again we turned him down, this time on the ground that he had forfeited any speedy-trial right by remaining a fugitive, and noting that if “he wants to fight the charges, he has only to fly from Lagos to Chicago.” *In re Kashamu*, 769 F.3d 490, 494 (7th Cir. 2014).

Rather than do that, Kashamu devised a new strategy. He filed suit in the district court in Chicago in April 2015—one month after his election to the Nigerian Senate—asking the court to “enjoin his abduction abroad by U.S. authorities.” He claimed to have been tipped off that U.S. authorities, colluding with his political rivals, were planning to abduct him in Nigeria and drag him to Chicago to stand trial before he could be sworn into office as a Nigerian senator. He relied on a provision of the Mansfield Amendment, 22 U.S.C. § 2291(c)(1), that states that “no officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts.”

A month after filing the suit, Kashamu amended the complaint to allege that his fear of abduction had nearly come true: agents of Nigeria’s National Drug Law Enforcement Agency, along with two white men who Kashamu reasons must have been operatives of the United States Drug Enforcement Administration, surrounded his Lagos residence and tried to arrest him on an “invalid provisional warrant.” But, the complaint



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continues, he “refused to surrender,” and so the agents “laid siege ... keeping him prisoner in his own home for six days, until a Nigerian federal court ordered them to cease their activities and depart from the premises.” He speculates that U.S. agents directed and coordinated the entire affair, and that U.S. authorities still are trying to extradite him. In the absence of injunctive relief, he maintains, he is vulnerable to “a very real threat of abduction by U.S. authorities.”

The district court dismissed Kashamu’s complaint on the ground that the Mansfield Amendment does not create a private right of action. Although the statute forbids federal employees to arrest a person in a foreign country on narcotics charges, the Supreme Court has repeatedly construed statutes similar to the Mansfield Amendment as directives to federal agencies and their employees (i.e., “behave yourselves,” or face disciplinary action) rather than “as a conferral of the right to sue” the agencies and their employees. See, e.g., *Armstrong v. Exceptional Child Center*, 135 S. Ct. 1378, 1387 (2015); *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Thompson v. Thompson*, 484 U.S. 174 (1981); *California v. Sierra Club*, 451 U.S. 287 (1981).

Kashamu’s suit further lacks merit because it confuses an attempt by U.S. government agents to arrest him on a provisional warrant (a first step toward possible extradition) in coordination with local law enforcement, with an attempted abduction. The Mansfield Amendment is explicit in *not* prohibiting an employee of the United States, provided he has the approval of the United States chief of mission, from “being present when foreign officers are effecting an arrest or from assisting foreign officers who are

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effecting an arrest.” 22 U.S.C. § 2291(c)(2). The conduct of which Kashamu complains—that U.S. agents actively participated in an attempt by *Nigerian* agents to arrest him—was thus lawful.

For all these reasons, the decision of the district court is

AFFIRMED.

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**APPENDIX B**

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**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**No. 16-1004**

**[Filed January 20, 2017]**

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604

Office of the Clerk  
Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

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BURUJI KASHAMU, )  
Plaintiff - Appellant )  
 )  
v. )  
 )  
UNITED STATES DEPARTMENT )  
OF JUSTICE, et. al., )  
Defendants - Appellees )  

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**ORDER**

*By the Court:*

**Originating Case Information:**

District Court No: 1:15-cv-03159  
Northern District of Illinois, Eastern Division  
District Judge Charles R. Norgle

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**IT IS ORDERED** that the mandate in this appeal is **RECALLED**. The court's final order dated November 18, 2016, is **VACATED**. An opinion will follow.



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O R D E R

The appeal lacks merit for the reasons fully and adequately stated by the district judge. The dismissal of the plaintiff's suit with prejudice is therefore affirmed.

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**APPENDIX D**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**Civil Action No. 15 CV 3159**

**Hon. Charles R. Norgle**

**[Filed November 6, 2015]**

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BURUJI KASHAMU,	)
Plaintiff,	)
	)
v.	)
	)
LORETTA E. LYNCH, et al.,	)
Defendants.	)

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**OPINION AND ORDER**

Before the Court is Defendants Loretta E. Lynch's, the United States Department of Justice's, James Comey's, the Federal Bureau of Investigation's, Jeh Johnson's, and the United States Department of Homeland Security's (collectively, the "Government") motion to dismiss Plaintiff Buruji Kashamu's ("Kashamu") First Amended Complaint pursuant to Federal Rules of Procedure 12(b)(1) and 12(b)(6). For the following reasons, the motion is granted.

## I. BACKGROUND

Kashamu is a citizen of Nigeria and also an elected senator of the country. Because of his alleged international drug trafficking operation, Kashamu has been a wanted fugitive in the United States for 17 years. By way of a superseding indictment in 1998, the Government charged Kashamu and fourteen others of conspiring to import and distribute heroin in the United States, a violation of 21 U.S.C. § 963. Since then, thirteen of Kashamu's codefendants have been convicted, while Kashamu and one other remain at large. However, Kashamu's avoidance of the criminal charges is not due to the Government's lack of effort. The Government has tried to bring Kashamu to the United States to face the charges on three separate occasions.

In 1998, after Kashamu was arrested in London by British authorities, the Government tried twice to extradite him, both attempts were unsuccessful. Kashamu was released after the second attempt in 2003 and returned to Nigeria. Subsequently, Kashamu filed a motion to dismiss the indictment, which the Court denied and the Seventh Circuit affirmed. See United States v. Kashamu, 656 F.3d 679, 687 (7th Cir. 2011). Kashamu moved to dismiss the indictment, again in 2014, which the Court denied. That denial lead to Kashamu petitioning the Seventh Circuit for a writ of mandamus. See In re Kashamu, 769 F.3d 490 (7th Cir. 2014). One of the grounds argued by Kashamu for dismissing the indictment was that "the court ha[d] no personal jurisdiction over him because he's never been in the United States..." Id. at 492. The Seventh Circuit denied his petition and Kashamu's criminal



case remains pending. See United States v. Kashamu, No. 94 CR 172-15. The Government's third attempt to apprehend Kashamu occurred this year in Nigeria and forms the basis of Kashamu's civil complaint, the civil matter currently before the Court.

In his First Amended Complaint, Kashamu avers that the Government, along with Nigerian officials, "arrange[d] for [his] forcible abduction" and that the efforts to arrest and transport him to the United States were "outside the extradition process." First Am. Compl. for Injunctive & Declaratory Relief ¶19. Specifically, Kashamu alleges that on May 22, 2015, the Nigerian National Drug Law Enforcement Agency ("NDLEA") surrounded his house in Lagos, Nigeria, entered his home, and tried to arrest him. Kashamu refused to be arrested, and in fact, was not. Instead, he remained "a prisoner in his home for six days" because "NDLEA operatives then laid siege to [his] residence." Id. ¶22. On the sixth day, a Nigerian federal court found that the arrest warrant for Kashamu was invalid and ordered that the efforts to arrest him cease. Regarding the Government's involvement in the attempted arrest, Kashamu alleges that the "United States never made a formal extradition request," that "two white males were present" during his six-day detention, that the two white males were presumably "agents or officers of the United States' Drug Enforcement Administration or one of its other agencies," and that "the two agents or officers were attempting to directly affect [his] arrest." Id. ¶¶24, 25, 27 and 29. Based on the Government's alleged past conduct, Kashamu now seeks injunctive and declaratory relief under the Mansfield Amendment, 22 U.S.C. § 2291(c), and requests a court order directing

“the United States to cease all efforts to abduct Kashamu from Nigeria or any other country....” Id. ¶A at 8.

## II. DISCUSSION

The Government moves to dismiss this civil action, arguing that Kashamu lacks standing and fails to state a claim. The Government gives four reasons why Kashamu failed to allege facts to support Article III standing: 1) his fear of being illegally abducted is speculative; 2) the Government actually formally requested his extradition; 3) he fails to allege facts showing that the Government will seek his arrest again in the future; and 4) the complaint is largely premised on actions taken by Nigerian, not American, officials. The Court agrees that Kashamu does not have standing to bring this claim in a United States Court, but for different reasons, as explained below. Accordingly, the Court does not reach the Government’s Rule 12(b)(6) argument that Kashamu fails to state a claim upon which relief can be granted.

### A. Standard of Decision

As the purpose of a motion to dismiss is to test the plausibility of the pleadings, not the merits, the Court accepts as true all well-pleaded facts, and draws all reasonable inferences in a plaintiffs favor. See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind., 786 F.3d 510, 526 (7th Cir. 2015); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “[B]ut a plaintiff faced with a 12(b)(1) motion to dismiss bears the burden of establishing that the jurisdictional requirements have been met.” Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell, 770 F.3d 586, 588-89 (7th Cir. 2014 ). “The

district court may properly look beyond the jurisdictional allegations of the complaint to view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.” Long v. Shorebank Dev. Corp., 182 F.3d 548, 554 (7th Cir. 1999).

**B. The Government’s Rule 12(b)(1) Motion to Dismiss**

***1. Kashamu does not seek jurisdiction pursuant to a writ of habeas corpus***

At the outset, the Court must note that Kashamu does not bring his lawsuit pursuant to a writ of habeas corpus or its statutory counterpart, 28 U.S.C. § 2241, nor could he since he is not in the custody of United States officials and he is not presently, or has ever been, within a territory under the United States’ control. See Johnson v. Eisentrager, 339 U.S. 763, 790-91 (1950) (holding that German nationals convicted by an American military tribunal and held in custody by American officials, but located in China, did not have the privilege of litigation in the United States); Hirota v. Gen. of the Army MacArthur, 338 U.S. 197, 198 (1948) per curiam (holding that Japanese citizen petitioners who were “held in custody pursuant to the judgments of a military tribunal in Japan” did not have standing in the United States courts, because the judgments were “not [entered by] a tribunal of the United States”); cf. Rasul v. Bush, 542 U.S. 466, 408, 484 (2004) (holding that § 2241 conferred jurisdiction because alien petitioners awaiting trial were held in federal custody at Guantanamo Bay Naval Base, a territory where the “United States exercises ‘complete jurisdiction and control’”).

**2. *Kashamu does not allege any violation of a treaty as a basis for the Court's jurisdiction***

It is also worth noting that Kashamu brings this lawsuit in his personal capacity, not within his duties as a senator of Nigeria, and not pursuant to any treaty. In United States v. Cadena, a case where the defendant argued that he had been abducted and brought to the United States in violation of the Convention on the High Seas treaty, the Fifth Circuit held that “[t]here is no indication in the treaty, or elsewhere, that it was intended to confer rights on non-member nations or on vessels of non-member nations let alone on citizens of non-member nations.” 585 F.2d 1252, 1261 (5th Cir. 1978). Therefore, the Fifth Circuit found no authority for granting the relief that the defendant requested. Id. In reaching its conclusion, the Cadena Court referenced how in “a case involving abductions from foreign soil, the Second Circuit adopted the view that only signatory nations to a treaty, and not their individual citizens, can protest its violation.” Id. at 1260-61 (citing United States ex rel. Lujan v. Gengler, 510 F.2d 62, 67 (2nd Cir. 1975)); see also United States v. Zabaneh, 837 F.2d 1249, 1261 (5th Cir. 1988) (“Because neither Guatemala nor Belize protested appellant’s detention and removal to the United States, appellant lacks standing to raise the treaties as bases for challenging the court’s jurisdiction.”). Accordingly, Kashamu cannot personally rely on a treaty to provide jurisdiction in this Court.

**3. *The Mansfield Amendment does not create a private cause of action***

Instead, Kashamu’s First Amended Complaint cites the Court’s original jurisdiction under 28 U.S.C. § 1331

and the Administrative Procedure Act, 5 U.S.C. § 702, to confer jurisdiction. The federal statute that Kashamu relies upon for subject matter jurisdiction is the Mansfield Amendment, 22 U.S.C. § 2291(c) (also referred to as “the Amendment”). Congress enacted 22 U.S.C. § 2291 because “[i]nternational narcotics trafficking poses an unparalleled transnational threat in today’s world, and its suppression is among the most important foreign policy objectives of the United States.” *Id.* § 2291(a)(1)(A). The specific provision under which Kashamu seeks relief states: “No officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, notwithstanding any other provision of the law.” *Id.* § 2291(c).

“It is a longstanding principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’” *EEOC v. Arabian Am. Oil Co.*, 449 U.S. 244, 248 (1991) (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949)). The presumption that Congress is primarily concerned with domestic conditions “serves to protect against unintended clashes between our laws and those of other nations which could result in international discord.” *Id.* Therefore, American laws do not extend beyond the United States’ territorial jurisdiction, “unless there is ‘the affirmative intention of the Congress clearly expressed.’” *Id.* (quoting *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 147 (1949)). Furthermore, “[t]he judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right

but also a private remedy. Statutory intent on this latter point is determinative. Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” Alexander v. Sandoval, 532 U.S. 275, 286-87 (2001) (citations omitted).

While the Mansfield Amendment explicitly extends the United States’ authority to affect and disrupt international narcotics activities, it is silent on the creation of a private right or a private remedy. The statute also describes the authority, participation, and responsibilities of United States and foreign officials. Even when viewing the facts alleged in the complaint in the light most favorable to Kashamu, filing a civil lawsuit against Government officials of the United States is something he has no right to do. Because the Mansfield Amendment creates neither a private right nor a private remedy, the Court finds that Kashamu is without standing to file this lawsuit.

The Court’s interpretation of the Mansfield Amendment is congruent with Congress’ intent and the precedent cases that have also interpreted the Amendment. Since Congress enacted it, there are only eleven cases in which the provision that Kashamu relies upon, 22 U.S.C. § 2291(c), has been discussed; all eleven cases are criminal cases. The consensus opinion from those cases is that the Mansfield Amendment is prescriptive; Congress did not intend for and did not create a private right or remedy. See e.g., Zabaneh, 837 F.2d at 1261 (“Congress has not provided sanctions or penalties by way of relief for persons arrested in contravention of § 2291(c)(1).”); United States v.

Yaroshenko, No. 09-cr-524, 2015 WL 3400805, \*2 (S.D.N.Y. May 21, 2015) (concluding that “the Court perceives no authority” in the Mansfield Amendment that allows for the dismissal of the indictment); United States v. Bourdet, 477 F. Supp. 2d 164, 175 (D.D.C. 2007) (collecting cases) (“The Mansfield Amendment” is silent as to remedies for its breach, and no court has ever implied a remedy for a defendant alleging its violation”); United States v. Bridgewater, 175 F. Supp. 2d 141, 146 (D.P.R. 2001) (“The Mansfield Amendment regulates Government action prescriptively; it does not provide repercussions for violations of the Amendment.”)

***4. Kashamu does not assert that the Court has jurisdiction pursuant to § 702 of the Administrative Procedure Act***

The alternate federal statute that Kashamu cites as a basis for jurisdiction in his First Amended Complaint is § 702 of the Administrative Procedure Act. However, in his response to the Government’s motion to dismiss, Kashamu states his purpose for citing § 702 is because it “provides the relevant *waiver* of sovereign immunity for [his] non-monetary claims, not the basis of jurisdiction.” Pl.’s Resp. in Opp’n to Defs.’ Mot. to Dismiss First Am. Compl. 11. Given Kashamu’s assertion, the Court proceeds no further in its consideration of § 702 as a basis for jurisdiction. See Fabriko Acquisition Corp. v. Prokos, 536 F.3d 605, 609 (7th Cir. 2008) (“It is not the job of this court to develop arguments...”).

### III. CONCLUSION

In reaching the decision that it is without jurisdiction, the Court makes no finding whether the Government does or does not intend to extradite Kashamu in the future and the Court makes no finding regarding the legalities of the Government's previous attempt to seize and remove Kashamu from Nigeria. To reach its ruling, the Court views Kashamu's allegations in the light most favorable to him, and finds as a matter of law, that Kashamu fails to meet his burden to establish jurisdiction in this Court. If Kashamu desires to avail himself of the court system in the United States, he simply can follow the Seventh Circuit's instruction to "leave his place of refuge voluntarily and travel to the United States." In re Kashamu, 769 F.3d at 494.

"A claim that presents no substantial federal question necessarily states no federal claim; it therefore, 'can justifiably be dismissed with prejudice to avoid burdening the court system with a future suit that should not be brought-anywhere.'" Young-Smith v. Holt, 575 F. App'x 680, 682-83 (7th Cir. 2014). Accordingly, the Government's motion to dismiss is granted and this case is dismissed with prejudice.

IT IS SO ORDERED.

ENTER:

/s/ Charles Norgle

CHARLES RONALD NORGLER, Judge  
United States District Court

DATE: November 6, 2015



App. 20

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**Civil Action No. 15 CV 3159  
Hon. Charles R. Norgle**

**[Filed November 6, 2015]**

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BURUJI KASHAMU, )  
Plaintiff, )  
 )  
v. )  
 )  
LORETTA E. LYNCH, et al., )  
Defendants. )  
\_\_\_\_\_ )

**ORDER**

Defendants' Motion to Dismiss First Amended Complaint for Injunctive and Declaratory Relief [33] is granted. Civil case terminated.

ENTER:

/s/ Charles Norgle

CHARLES RONALD NORGLER, Judge  
United States District Court

DATE: November 6, 2015