APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15112
Non-Argument Calendar
D.C. Docket No. 2:17-cv-00025-RWS

[Filed June 14, 2018]

BRADLEY CHRISTOPHER STARK,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(June 14, 2018)

Before TJOFLAT, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Bradley Stark appeals the district court's dismissal of his complaint against the United States for lack of subject matter jurisdiction and for sovereign immunity. We review the dismissal of a complaint for lack of

subject matter jurisdiction or for sovereign immunity *de novo*. King v. United States, 878 F.3d 1265, 1267 (11th Cir. 2018); Carmichael v. Kellogg, Brown & Root Servs., Inc., 572 F.3d 1271, 1279 (11th Cir. 2009). "In the face of a factual challenge to subject matter jurisdiction, the burden is on the plaintiff to prove that jurisdiction exists." OSI, Inc. v. United States, 285 F.3d 947, 951 (11th Cir. 2002). Additionally, the plaintiff must demonstrate an unequivocally expressed waiver of sovereign immunity. King, 878 F.3d at 1267.

Stark has not carried his burden here. He has not pointed to a statute that either conveys subject matter jurisdiction or unequivocally waives sovereign immunity[1]. Stark argues that the Administrative Procedure Act ("APA") constitutes such a waiver; however, he points to no "agency action" that he is challenging, and so the provision does not apply in this case[2]. 5 U.S.C. § 702. Additionally, Stark argues that the district court has subject matter jurisdiction under 28 U.S.C. § 1331 and the APA. However, Stark has not

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[1] To the extent that Stark argues that the Federal Arbitration Act ("FAA") either conveys subject matter jurisdiction or waives sovereign immunity, we note that the FAA cannot provide subject matter jurisdiction, and it does not contain an explicit waiver of sovereign immunity. See Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 103 S.Ct. 927, 942 n.32 (1983).

[2] The most that Stark can allege is the Attorney General's inaction in response to his "offer" to arbitrate; however, "the only agency action that can be compelled under the APA is action legally required." Norton v. S. Utah Wilderness Alliance, 124 S. Ct. 2373, 2379 (2004). Because the Attorney General was not legally required to respond to Stark's offer to arbitrate, Stark does not allege agency action within the meaning of 5 U.S.C. § 702.

identified a viable federal claim arising under the Constitution, laws or treaties of the United States. The APA fails to establish subject matter jurisdiction for the same reason it fails to constitute a waiver of sovereign immunity. Accordingly, the district court is

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15112
District Court Docket No. 2:17-cv-00025-RWS

[Filed June 14, 2018]

BRADLEY CHRISTOPHER STARK, Plaintiff - Appellant,	)
versus	)
UNITED STATES OF AMERICA, Defendant - Appellee.	)

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: June 14, 2018
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA GAINESVILLE DIVISION

CIVIL ACTION NO. 2:17-CV-25-RWS

[Filed September 27, 2017]

BRADLEY CHRISTOPHER STARK and SHAWN MICHAEL RIDEOUT, Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant.

ORDER

This matter is before the Court on Plaintiffs' Motion for Reconsideration [Doc. No. 13], Defendant's Motion to Dismiss [Doc. No. 15], and Plaintiff Stark's Motion in the Nature of a Petition for Habeas Corpus [Doc. No. 19].

I. Plaintiffs' Motion for Reconsideration [Doc. No. 13]

Under the Local Rules of this Court, "[m]otions for reconsideration shall not be filed as a matter of routine practice[,]" but rather, only when "absolutely necessary." LR 7.2(E), N.D. Ga. Such absolute necessity

arises where there is "(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." Bryan v. Murphy, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003). A motion for reconsideration may not be used "to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind." Id. at 1259 (quoting Brogdon ex rel. Cline v. Nat'l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D.Ga. 2000)). Nor may it be used "to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation." Adler v. Wallace Computer Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001). Finally, "[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court 'could have done it better' the first time." Pres. Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995), aff'd, 87 F.3d 1242 (11th Cir. 1996).

Plaintiffs have failed to satisfy the standard for seeking reconsideration. As a result, Plaintiffs' Motion [Doc. No. 13] is DENIED.

II. Defendant's Motion to Dismiss [Doc. No. 15]

As an initial matter, the Court notes that Plaintiffs have not filed a response in opposition to Defendant's Motion to Dismiss. Pursuant to Local Rule 7.1B, failure to file a response indicates there is no opposition to a motion. However, in an abundance of caution, the

Court has reviewed Defendant's arguments to ensure that dismissal is appropriate.

Plaintiffs claim that the Attorney General, by not responding to a conditional offer Stark made in 2009, not responding to later offers to arbitrate a "dispute" arising from Stark's conditional offer, and not responding to other communications agreed to Stark representing the Attorney General in negotiations and arbitrations. Specifically, Stark claims that he could negotiate and arbitrate with himself. Plaintiffs further claim that the issues they raised in their offers and other communications were decided by arbitration conducted pursuant to the parties' agreement, the arbitration awards are unassailable, and they are entitled to a court ordering affirming interim awards issued by Ms. Patton in February 2006.

Plaintiffs' claims are subject to dismissal on jurisdictional grounds and for failure to state a claim. As the parties asserting claims against the United States, Plaintiffs have the burden of identifying an unequivocal waiver of sovereign immunity. Plaintiffs have not, and cannot, establish that the United States waived sovereign immunity for actions seeking confirmation of arbitration awards, or a grant of subject matter jurisdiction to district courts. Defendant's Motion to Dismiss [Doc. No. 15] is GRANTED.

III. Motion in the Nature of a Petition for Habeas Corpus [Doc. No. 19]

As to Plaintiff Stark's Motion for habeas relief, if Plaintiff wishes to challenge his convictions, he must file a new civil action seeking this relief. However,

given where Plaintiff is currently incarcerated, Plaintiff is advised that such an action would not be properly filed in this district. Plaintiff's Motion [Doc. No. 19] is DENIED.

IV. Conclusion

Plaintiffs' Motion for Reconsideration [Doc. No. 13] is DENIED. Defendant's Motion to Dismiss [Doc. No. 15] is GRANTED. Plaintiff Stark's Motion in the Nature of a Petition for Habeas Corpus [Doc. No. 19] is DENIED. The Clerk is DIRECTED to close this action.

SO ORDERED, this 27th day of September, 2017.

/s/ Richard W. Story
RICHARD W. STORY
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

CIVIL ACTION FILE NO. 2:17-cv-00025-RWS

[Filed September 27, 2017]

BRADLEY CHRISTOPHER STARK and SHAWN MICHAEL RIDEOUT, Plaintiffs,	)
vs.	)
UNITED STATES OF AMERICA, Defendant.	)

J U D G M E N T

This action having come before the court, Honorable Richard W. Story, United States District Judge, for consideration of Defendant's Motion to Dismiss, and the court having granted said motion, it is

Ordered and Adjudged that the action be, and the same hereby, is **dismissed**.

Dated at Gainesville, Georgia, this 27th day of September, 2017.

JAMES N. HATTEN
CLERK OF COURT

By: _____
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
September 27, 2017
James N. Hatten
Clerk of Court
By: _____
Deputy Clerk

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15112-HH

[Filed August 24, 2018]

BRADLEY CHRISTOPHER STARK,
Plaintiff - Appellant,

versus

UNITED STATES OF AMERICA,
Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/
UNITED STATES CIRCUIT JUDGE

ORD-42

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ROME DIVISION

Civil Action No. 2:17-cv-000250-WCO

[Filed February 3, 2017]

In re Sealed Arbitration No. 0:15-CC-00522-A-KP	)
BRADLEY CHRISTOPHER STARK; SHAWN MICHAEL RIDEOUT, *Claimants,*	)
and	)
UNITED STATES OF AMERICA, *Respondent.*	)

FILED UNDER SEAL

APPLICATION TO CONFIRM INTERIM ARBITRATION AWARDS

THIS APPLICATION IS FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE OF SAID COURT:

Relief Sought

Claimants Bradley Christopher Stark ("Stark") and Shawn Michael Rideout ("Rideout"), move the Court to enter an order confirming and entering a judgment in conformance with the Interim Awards of the Arbitrator and to subsequently transfer the action to the United States Court of Federal Claims.

Record on Application

Section 9 of the Federal Arbitration Act mandates that a party seeking to confirm an award is required to file with the Clerk of the court "(a) the agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award; (b) the award; and (c) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application." 9 U.S.C. § 13.

Accordingly, this application is supported by the authorities incorporated herein; the proof of service on the United States by serving notice of these confirmation proceedings on the Attorney General and the Civil Process Clerk of the United States Attorney for the Northern District of Georgia; the Stipulation and Settlement Agreement of May 22, 2015 ("Agreement") including the three (3) addendums thereto; the Irevocable Special Power of Attorney Coupled with Interest ("SPOA"); the Selection and Appointment of Substitute Arbitrator; the Affidavit of Kenya L. Patton; the Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling of the Arbitrator; the Interim Award of the Arbitrator; and

the Second Interim Award of the Arbitrator, attached in the appendix hereto.

Introduction

Is the United States District Court for the Northern District of Georgia Authorized to Confirm Interim Arbitration Awards and Grant the Affirmative Relief Awarded Therein?

As far as we have been able to discover, an action seeking confirmation of an arbitral award for the type if relief sought therein has not, as of yet, been brought in this jurisdiction. However, a lack of similarly filed actions does not automatically create a disfavorable presumption that this Court is not authorized to grant the requested relief. Because this is ostensibly a matter of first impression in this forum, a more detailed analysis of the Court's authorization is warranted.

The statutory authority and decisions of this Court, the United States Court of Appeals for the Eleventh Circuit, and the Supreme Court that attenuate to affirmative relief under confirmation proceedings on arbitral awards militates heavily in favor of the authority of this Court's ability to grant the awarded relief. To clarify the grounds on which Stark asserts this claim, note that the statutes cited in this Application to Confirm the Interim Arbitration Awards granting said authority do not confine the ancillary jurisdiction of the FAA's confirmation proceedings to any particular court other than a "court of the United States." It is axiomatic that the United States District Court for the Northern District of Georgia is well within these defined parameters and is construed to sit as a "court of the United States."

Since the jurisdiction of the Federal Arbitration Act ("FAA") in confirmation proceedings is ancillary, this Court would naturally look to see if it had jurisdiction to hear these matters notwithstanding the FAA. Clearly, the Congress has granted such authority to the Court and specifically waived sovereign immunity through the statutes: 5 U.S.C. §§ 580(c), 702; 28 U.S.C. §§ 1331, 1651(a), and 2241 *et seq*. Because the respondent is the United States, Article III of the Constitution of the United States of America at Section 2, provides for jurisdiction in this Court. Moreover, these statutes express the clear intent of Congress to waive sovereign immunity in these instances.

The instant action presented involves "post-judgment" enforcement mechanisms under alternative dispute resolution ("ADR") statutes. These ADR provisions were part of the express terms and clauses agreed to in the Stipulation and Settlement Agreement ("Agreement"). The Agreement was voluntarily entered into by and between the parties to this proceeding and was intended to resolve all disputes arising under a previous "release-dismissal agreement"[1] between Stark and the United States government--via the Office of the Attorney General--that was voluntarily entered into during the pretrial phase of the related criminal proceedings. The parties agreed that arbitration was the exclusive remedy for any disputes arising thereunder. Because a final, binding, and

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[1] *Town of Newton v. Rumery*, 480 US 386, 94 L Ed 2d 405, 107 S Ct 1187 (1986) (holding that voluntarily entered into "release-dismissal agreements" are not per se against public policy, are interpreted under *Restatement (Second) of Contracts*, not subject to court supervision, and are enforceable).

nonappealable decision on the merits of the Phase 1 equitable relief has been made by a duly qualified and appointed arbitrator, judicial discretion is severely mitigated and the mandatory enforcement of the awards is analogous to a ministerial act. This is especially so when any defensible claims against the awards have been expressly waived and concurrently time-barred by statute. 9 U.S.C. § 12.

Because the merits of this matter have been resolved and embraced in the decision and awards of the arbitrator in accordance with the parties' Agreement, the Court is without jurisdiction to sit in review of merits. Attempting to bring the confirmatory action under any other Rule or alternative action of this Court would be antithetical to the statutory commands of the FAA, as well as the bright line decisions of the Supreme Court of the United States.[2]

The conditions precedent to activate this Court's jurisdiction under 9 U.S.C. §§ 9-13, to confirm the awards, has been met. In this particular case, venue is proper because the United States and the Office of the Attorney General are parties to this arbitration and the underlying claims involve federal statutes and constitutional rights that invoke the Court's jurisdiction and the parties Agreement specified this Court for confirmation proceedings. These proceedings would not burden the Court's docket since the matter has already been decided and simply requires

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[2] 5 U.S.C. § 580(c); 9 U.S.C. § 9; *and see Hall Street Assocs, L.L.C. v. Mattel, Inc.*, 552 US 576, 170 L Ed 2d 254, 261-262, 264-265, 128 S Ct 1396 (2008).

enforcement that is well within the power of this Court to grant.

A silent factor that cannot be ignored, and that the Supreme Court has addressed on numerous occasions, is the propensity for judicial hostility toward arbitration, along with the stigma attached to criminal defendants in general (whether wrongfully convicted or not) in the lower courts. This has already been experienced by Stark on several occasions where the district courts made an error of law in considering certain factors in an earlier related arbitration confirmation proceeding. Given the Supreme Court, the Circuit Court of Appeals, and this Court's precedent regarding favorable treatment of arbitration proceedings, and the Chief Justice's views in particular,[3] applying for confirmation of the awards to this Court and transferring the related cases under the multijurisdictional litigation statutes and rules mitigates any such hostility while concurrently making the most judicially economic sense. That is to say, this Court recognizes what the rule of law is, not what it ought to be, and is empowered to enforce this matter according to law. This is accomplished by issuing any and all writs necessary in aid of the Court's jurisdiction. 5 U.S.C. § 703; 28 U.S.C. § 1651(a).

Jurisdictional Statement and Identification of Parties

1. The Federal Arbitration Act supplies ancillary jurisdiction for enforcement proceedings under 9 U.S.C.

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[3] Richard Wolf, *Chief Justice John Roberts seeks to limit role of courts.* USA Today (Feb. 4, 2016).

§§ 9-13. The Alternative Dispute Resolution in the Administrative Process Act provides for confirmation of arbitral awards and expressly waives sovereign immunity under 5 U.S.C. § 580(c). This Court has jurisdiction over these matters, notwithstanding the arbitration confirmation action, under Article III, § 2, CI 1, of the Constitution of the United States of America; 5 U.S.C. §§ 702, 703; 28 U.S.C. §§ 1331, 1651(a), 2241 *et seq.,* and D.C. Code § 16-4418 because:

a. Claimant Bradley Christopher Stark ("Stark") is a citizen of the State of California and is temporarily residing in the custody of the United States Attorney General at the Federal Correctional Institution, located on State Route 716, in Boyd county, city of Ashland, Kentucky commonwealth;

b. Claimant Shawn Michael Rideout ("Rideout") is a citizen of the State of Ohio and is temporarily residing in the custody of the United States Attorney General at the Federal Correctional Institution, located on State Route 716, in Boyd county, city of Ashland, Kentucky commonwealth;

c. Respondent United States of America ("United States") is the Federal Government having its seat of Government located in Washington, District of Columbia and may be served with a copy of this Application to Confirm Interim Arbitration Awards at the Office of the Attorney General, United States Department of Justice, located at 950 Pennsylvania Avenue, NW, Suite 5111, in the city of Washington, District of Columbia 20530-0001;

d. The Claimants and Respondent are parties to a Stipulation and Settlement Agreement under the

Administrative Procedures Act, and the Tucker Act, and have agreed that certain named third parties are to benefit from the rights and terms under the Agreement as specified therein;

e. Claimants have and continue to suffer specific actual injury (including, but not limited to, economic and noneconomic harm) within the meaning of 5 U.S.C. § 702 as set out in the Request for Dispute Resolution on Complaint attached in the appendix hereto as Exhibit "1" (Appx. pp. 6-15); and

f. The Claimants have suffered actual injuries to their rights in violation of the Constitution, statutory law, and treaties of the United States, under the color of law within the meaning of 5 U.S.C. § 702; and 28 U.S.C. § 1331. *See* Exhibit "1," *id.*

g. The violations and injuries to the Claimants and third party beneficiaries are ultimately sourced in constitutional and statutory rights that are directly related to the actions of the U.S. Department of Justice ("Agency"), its officers, employees, attorneys, contractors, and those acting in concert with them, and the remedies awarded are related to the injuries inflicted.

2. Venue is proper in the United States District Court for the Northern District of Georgia because the parties agreed to confirmation and enforcement of any award(s) of the arbitrator in their Agreement as appropriate before this Court. As noted above, because the multijurisdictional litigation rules allow for case transfers to a single district, the confirmation and judgment of this Court would result in a substantial saving of judicial resources. Venue for the final award

is proper in the United States Court of Federal Claims because the Tucker Act provides for exclusive jurisdiction in said court on claims for money damages against the United States under contract that exceed $10,000. Therefore, the just efficient and economical conduct of the litigations would be advanced, and the convenience of the parties would be served due to the multijurisdictional nature of the related cases in the sister courts.

Facts of the Case

3. On August 20, 2008, Stark was indicted in the United States District Court for the Northern District of Texas, Dallas Division, having been charged with committing seven (7) counts of wire fraud in violation of 18 U.S.C. § 1343; one (1) count of securities fraud in violation of 15 U.S.C. §§ 77q(a) and 77x; and three (3) counts of money laundering in violation of 18 U.S.C. § 1956(a)(1)(A)(ii) (counts 9 through 11 (money laundering) were dismissed with prejudice). *See United States of America v. Bradley C Stark*, No. 3:08-cr-00258-M-1 (N.D. Tex. 2008).

4. In or around October or November of 2008, the United States Attorney for the Northern District of Texas through the Assistant United States Attorney ("AUSA") initiated negotiations and tendered a contractual offer to Stark through his appointed counsel, David J. Pire, to enter into the terms of a binding plea agreement. Stark rejected the initial offer and reserved the right to re-enter contractual negotiations with the United States at a later date if he chose to do so.

5. Stark filed a motion to waive counsel and proceed pro se in April of 2009 and was granted pro se status in August of 2009. On November 11, 2009, Stark drafted an omnibus petition for redress to the Attorney General of the United States ("Attorney General") in accordance with the Administrative Procedures Act (5 U.S.C. §§ 551 *et seq.)* requesting proof that the United States had the jurisdictional authority to prosecute Stark in the first instance. The burden was on the Attorney General to prove the validity of the jurisdiction, along with the Agency's rules and orders. 5 U.S.C. § 556(d). The Attorney General failed to meet the burden of proof and admitted and stipulated to the jurisdictional defects that prevent the Department of Justice from prosecuting Stark.

6. Admissions and stipulations function as an agreed case that render the evidence conclusive so as to override a trier-of-fact's findings to the contrary. The federal government can and does enter into contracts and agreements as a regular course of business in criminal cases. The United States has adopted the *Restatement (Second) of Contracts* in the construction and interpretation of contracts and agreements with the government and its agencies. Stipulations are contractual in nature and are subject to federal common law. *Restatement (Second) of Contracts* § 94.

7. The *Restatement (Second) of Contracts* § 69 authorizes contracts and agreements to be accepted *sub silentio* when expressed in the terms of acceptance. Both stipulations and contractual agreements can and are routinely formed, even in the federal venue, *sub silentio* when the Section 69 criteria are met.

Ratification occurs when the parties do not object and persist in the contractual agreement.

8. The petition for redress submitted by Stark to the Attorney General on November 11, 2009, contained an express term of acceptance by silence and assent to enter into stipulation by way of failed proofs. Further, the petition itself would operate as a release-dismissal agreement upon acceptance. The entire petition established a plausible and factual basis to sustain civil lawsuits and Federal Tort Claims Act ("FTCA") lawsuits for violation of Stark's constitutional, statutory, and civil rights due to the unlawful prosecution, and the collateral consequences thereto, by the Department of Justice. The release-dismissal agreement was validly entered into and binding on the parties.

9. In contravention of the release-dismissal agreement entered into by the Attorney General, the United States Attorney's Office for the Northern District of Texas ("USAO-NDTX") seized all copies of the contract and withheld it from Stark for a period of time that covered key events in the case. Specifically, after seizing the contract from Stark's residence and placing him back into custody from pretrial release, the USAO-NDTX continuously attempted to coerce Stark into a superseding plea agreement.

10. Immediately after Stark was back in custody the USAO-NDTX went to great lengths in a cooperative effort with the Federal Bureau of Prisons ("FBOP") Special Investigation Supervisors ("SIS") office at the Federal Detention Center in Seagoville, Texas, to unlawfully seize and deprive Stark of his discovery, exculpatory evidence, work-product, and the release-

dismissal agreement in order to place Stark in duress and coerce him into superseding the contract with the Attorney General by entering a detrimental plea agreement. This plea agreement was not accepted by the district court and was repudiated by Stark, rendering it invalid. Stark's release-dismissal agreement was still in force and effect at all times.

11. The USAO-NDTX continuously made multiple attempts to get Stark into another plea agreement. Stark rejected the offers, asserted his innocence at all times, and demanded the government return his contract so that he could seek enforcement in court. The USAO-NDTX refused to return the contract and disclaimed any knowledge of the release-dismissal agreement in their possession. Moreover, Stark made three (3) independent requests to counsel for the government before trial to provide him the specific named documents and records that were necessary for Stark to assert his jurisdictional and factual defenses at trial. The AUSA agreed to produce the documents but failed to ever do so.

12. Due to the actions of the USAO-NDTX in obfuscating the contract with the Attorney General, Stark was forced to exercise his rights and go to trial. The government maintained plenary control over Stark's contract, exculpatory evidence, and work product for the entirety of trial, persisted in its claims that it lacked any knowledge or complicity in withholding these items essential to the defense of Stark's case, and impliedly asserted that such items did not exist.

13. On January 18, 2012, the petit jury returned a verdict of guilty on the remaining eight (8) counts of

the indictment. In or around May of 2012, during the presentencing phase, the FBOP's SIS officers returned Stark's evidence, contract, and incomplete components of his work product while Stark was housed in the Special Housing Unit ("SHU").

14. Between June through October of 2012, Stark prepared clarifying amendments to the release-dismissal agreement that were to be submitted to the Attorney General for purposes of both notice and updating the records. These clarifying amendments were seized by SIS and confiscated as contraband.

15. On October 9, 2012, Stark was sentenced to 276 months in prison and three years supervised release.

16. On November 29, 2012, Stark was designated to the Federal Correctional Institution ("FCI") located in Big Spring, Texas. During the time period of December 12, 2012 through August 9, 2013, Stark was placed in the SHU for approximately three (3) months before being emergency transferred to the Special Management Unit ("SMU") at the Federal Detention Center located in Oakdale, Louisiana, because of the outbreak of a prison riot at FCI Big Spring.

17. Stark was redesignated and transferred to FCI Ashland, Kentucky on November 9, 2013. While at FCI Ashland, Stark successfully reconstructed the clarifying amendments to the contract and submitted them to the Attorney General by certified mail along with the updated release-dismissal agreement on January 14, 2014.

18. In and around March of 2014, the conditions precedent to move the dispute under contract to arbitration were met. Stark and the Attorney General

selected and agreed upon Katrina Glenn Hawkins as the arbitrator of the contract in dispute. A pre-hearing evidence packet and request for summary disposition was prepared by Stark and submitted to the Attorney General and the arbitrator. The Attorney General did not object to the request for summary disposition and on June 9, 2014, the arbitrator issued her award.

19. In August of 2014, Stark sought confirmation in the United States District Court for the Northern District of Texas. *Stark v. Holder, et al.,* 3:14-cv-02420-B-BH (N.D. Tex. 2014). That court misapplied the law, recharacterized the pleading and dismissed the action with prejudice until such time as Stark could meet the factors under *Heck v. Humphrey*, 512 US 477, 129 L Ed 2d 383, 114 S Ct 2364 (1994).

20. Stark subsequently filed a confirmation action similar to the one in Texas in the United States District Court for the District of Columbia. *Stark v. Holder, et al.*, 1:15-cv-00202-ABJ (D. D.C. 2015).

21. An Offer of Settlement was successfully transmitted to the Attorney General, Deputy Attorney General, Associate Attorney General, and the Dispute Resolution Office by facsimile to the appropriate numbers for said offices. A physical package containing the Offer of Settlement and Self-Executing Irrevocable Special Power of Attorney Coupled with Interest was delivered by certified mail to the Attorney General, Deputy Attorney General, Associate Attorney General, Dispute Resolution Office, and the Civil Process Clerk of the United States Attorney for the District of Columbia. No objections were made and no rejections submitted. Stark filed the executed documents into the record of the District Court for the District of Columbia

and the presiding judge granted leave to file after a two (2) week analysis of the authenticity of the documents.

22. In March of 2015, the District Court dismissed the action as barred by *res judicata.* Stark promptly filed a motion for relief from the judgment of dismissal under Rule 60(b)(6) of the Federal Rules of Civil Procedure. The District Court denied the motion for relief on the grounds that Stark failed to explain how the award voided his criminal conviction.

23. On June 22, 2015, Stark, Rideout, and the Attorney General entered into a Stipulation and Settlement Agreement on the original award and release-dismissal agreement, effectively modifying any judgments and entering into a new and independent contractual relationship for resolution of all claims or potential claims. The stipulations and admissions in the Agreement and the subsequent Addendums thereto conclusively established the grounds that void Stark, Rideout, and the Third Party Beneficiaries judgments of conviction.

24. The three (3) addendums to the Agreement were entered into and based upon *de bene esse* requests for admission and stipulations between the parties as well as certified documentary evidence.

25. Despite the ratification of the Agreement and its Addendums, the government breached by failure to perform its obligations thereunder. The parties negotiations broke down and the conditions precedent to enter into dispute resolution of the Agreement were met. The arbitration was bifurcated into equitable Phase 1 relief, and legal damages Phase 2 relief in

order to stay within the parameters of the *Heck v. Humphrey* factors[4].

26. Phase 1 was completed on February 5, 2016, and the selected arbitrator issued an Affidavit; Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling of the Arbitrator; along with an Interim Award. A certificate of authenticity was issued by the Clerk of the Superior Court for Blairsville, Georgia.

27. On February 26, 2016, the arbitrator issued a Second Interim Award and merged it with the original award.

28. The United States has failed to abide by the awards of the arbitrator in contravention of the law. Accordingly, Stark and Rideout now seek confirmation of the awards m this Court for post-judgment enforcement.

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[4] *See, e.g., Preiser v. Rodriguez*, 411 US 475, 494, 500 (1973); *Bailey v. Faultier*, 765 F.2d 102, 105 (7th Cir. 1985); *Clark v. Williams*, 693 F.2d 381 (5th Cir. 1982); *Flaherty v. Nadjari*, 548 F.Supp. 1127, 1129 (E.D.N.Y. 1982). By making a habeas corpus (or some similar) order declaring a conviction or other custody unconstitutional a prerequisite for some prisoner damage actions under the Civil Rights Act (42 U.S.C. § 1983), the Court's decision in *Heck v. Humphrey*, 512 US 477 (1994) may have the effect of softening the courts' resistance to damages remedies in habeas corpus cases. Under *Heck*, the most efficient way to seek damages for unlawful incarceration may be to file an action under both 28 U.S.C. §§ 2241 *or* 2255 and 42 U.S.C. § 1983, asking for release (under sections 2241 *or* 2255) and, in the event that release is ordered, damages (under section 1983).

Finality of Interim Arbitration Awards

29. On or about May 22, 2015, Claimants and Respondent entered into a written Stipulation and Settlement Agreement for complete resolution of their misconvictions and unlawful imprisonment as prosecuted by the Respondent for alleged violations of federal statutes directly pertaining to and affecting foreign or interstate commerce. A true and correct copy of the written Stipulation and Settlement Agreement is attached to this application as Exhibit "1-A" and incorporated as if fully set forth herein. *See* Appx. pp. 24-38.

30. The original named arbitrator under the arbitration agreement became unavailable due to scheduling concerns, and the parties selected a substitute arbitrator pursuant to Article 6.1 of the Agreement (Appx. p. 31). Notice of the selection and appointment of the substitute arbitrator is attached to this application as Exhibit "1-B" and is incorporated as if fully set forth herein. *See* Appx. pp. 39-41.

31. A dispute arose under this Agreement between the parties in that Claimants have at all times fully performed to the terms of the Agreement. Respondent is obligated to perform to its promises under the terms of the Agreement and immediately and unconditionally release Claimants from incarceration, vacate their sentences and set aside their judgments of convictions and the alleged criminal actions voided; expunge Claimants federal records; return all property seized from Claimants or provide just compensation in the alternative if said property has been disposed of; immunization from all criminal, civil, and administrative actions by the Respondent and all 50

States, Territories and Possessions; exemption from all federal and state taxation; and payment of consideration money delineated in the Agreement. Respondent agreed that it has breached the terms of the Agreement by failing to perform its obligated promises to Claimants while concurrently enjoying the benefit of Claimants performance of their obligations under the terms of the Agreement. Pursuant to Article 5.1 of the Agreement (Appx. p. 30), the parties were directed to attempt to resolve any disputes by negotiation before proceeding to arbitration. These negotiations resulted in three (3) addendums to the Agreement that are attached to this application as Exhibits "1-C," "1-D," and "1-E," respectively, and are incorporated as if fully set forth herein. *See* Appx. pp. 42-44, 45-64, and 65-85.

32. The negotiations and addendums were entered into under the authority of the SPOA attached to this application as Exhibit "1-F" and incorporated as if fully set forth herein. *See* Appx. pp. 86-88.

33. Respondent refused to enter into further negotiations on January 10, 2016, and the parties elected to resolve their disputes by arbitration. The final request to enter negotiations for resolution of disputes under the Agreement is attached to this application as Exhibit "2" and incorporated as if fully set forth herein. *See* Appx. pp. 89-92.

34. The written Agreement provided for arbitration of disputes at Article 6.1 (Appx. p. 31) by stating, in relevant part:

> If the Parties cannot resolve a Dispute through negotiations, the Parties agree and consent to

> submit any and all Disputes, which could otherwise be submitted to a court of competent jurisdiction, to arbitration. [. . .] Arbitration hereunder shall be the Parties exclusive remedy, and the arbitrator is empowered under this Agreement to make any and all necessary and appropriate order(s), pre-award ruling(s), and award(s) granting both legal and equitable relief to enforce the terms and obligations of this Agreement, including all matters relating hereto and arising therefrom. In the event of any conflict of laws or rules for arbitration of this Agreement, the provisions of this Agreement shall govern.

35. Pursuant to the written Agreement, the parties' failure to further negotiate acted as a condition precedent to proceed to arbitration to resolve their disputes under the Agreement. A request for dispute resolution on complaint was submitted to the arbitrator and served on the Respondent by first class mail. *See* Exhibit "1" (Appx. p. 1). The Respondent agreed to enter into consent arbitration under the terms of the Agreement and waived all rights to vacate, modify, appeal, or collaterally attack the decisions, rulings, orders, remedies, and interim awards of the arbitrator. *See* Appx. pp. 29, 62.

Arbitration Agreement Covered by Federal Arbitration Act

36. The Agreement containing the arbitration clause and attached to this application as Exhibit "1" evidences a transaction involving or affecting

"commerce"[5] within the meaning of 9 U.S.C. § 1 because the facts attributable to the Claimants in the underlying alleged criminal cases have been expressly found by Congress to have moved in, used the instrumentalities of, or otherwise affected "commerce among the several States" within the meaning of the statutes in the alleged criminal actions and 9 U.S.C. § 1.

37. Because the Stipulation and Settlement Agreement in question is one that affects "commerce," the arbitration provision contained within it under Article 6 (Appx. pp. 31-32) is "valid, irrevocable, and enforceable" within the meaning of 9 U.S.C. § 2.

38. "Valid, irrevocable, and enforceable" arbitration agreements and the orders, rulings, decisions, remedies, and awards made therefrom may be enforced in the United States District Court for the Northern District of Georgia by way of confirmation and entry of judgment of this Court thereon. 5 U.S.C. §§ 580(c), 702 & 703; 9 U.S.C. §§ 9, 13; and 28 U.S.C. §§ 1651(a), 2241 *et seq*.

Bifurcated Arbitration Proceedings

39. Because Claimants are entitled to equitable relief and monetary damages relief from Respondent, the parties agreed that the arbitration proceedings

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[5] U.S.Cons Art.I, § 8, Cl. 3; *Camps Newfound/Owatonna v. Town of Harrison*, 520 US 564, 137 L Ed 2d 852, 117 S Ct 1590, 97 CDOS 3712, 97 Daily Journal DAR 6299, 10 FLW Fed S 463 (1997); *and Hughes v. Oklahoma*, 441 US 332, 60 LEd 2d 250, 99 S Ct 1727, 12 Envt Rep Cas 2106, 9 ELR 20360 (1979) (declaring there is no two-tiered definition of commerce).

were to be bifurcated in separate and distinct phases in order to address the concerns set out in *Heck v. Humphrey*[6]: Phase 1 addressed the claims for equitable relief; and Phase 2 will address the claims for monetary damages following Phase 1 enforcement proceedings.

40. The parties consented to the United States District Court for the Northern District of Georgia as the named court to enforce any and all Phase 1 equitable relief awarded by the arbitrator.

41. The United States Court of Federal Claims has exclusive jurisdiction for the enforcement of any and all Phase 2 monetary damages relief.

42. The parties agreed that time is of the essence and consented to the conduct of the arbitration proceedings as a "fast-track" arbitration.

43. Under the arbitration provision of the Agreement and the addendums thereto, this Court was granted power to enter a judgment on any Phase 1 Interim Awards resulting from arbitration because the Interim Awards under Phase 1 were supposed to be a final and nonappealable decision of the controversy arbitrated. In particular, Article 6.7 of the Agreement (Appx. p. 32) provided in relevant part:

> The award shall be final and enforceable and may be confirmed by the judgment of the United States District Courts [. . .]; or any other court of competent jurisdiction. If the prevailing party is requested to initiate proceedings to enforce the award or to confirm the award, the prevailing

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[6] 512 US 477, 129 L Ed 2d 383, 114 S Ct 2364 (1994)

> party shall be entitled to recover its/their costs and attorney's fees associated with such action. Any and all writs required and/or necessary may be issued by any of the named courts under this provision so as to enforce any equitable and legal remedies under the Agreement and/or the award of the Arbitrator, or any matters relating thereto and arising therefrom.

Article 2.5 of the Second Addendum to the Agreement (Appx. p. 58) effectively modified the foregoing paragraph to establish personal and venue jurisdiction in this Court, to wit:

> The Parties hereby stipulate that the United States District Court for the Northern District of Georgia has personal and venue jurisdiction for these matters and all matters related hereto.

This was further ratified by the recital culminating the affixed signatures on the Second Addendum (Appx. p. 63), stating:

> WHEREAS, the Parties by executing their signatures, or the signatures of their representatives, or agents to the document hereby unconditionally agree to submit to the personal and venue jurisdiction of the United States District Court for the Northern District of Georgia, for any necessary enforcement proceedings to the arbitration of this matter or any other matter related hereto.

The signed and witnessed Second Addendum was delivered to the ATTORNEY General by certified mail, return receipt signed and delivered, and no objection,

rejection, nullification, or attempts to repudiate have been received at any time.

44. The arbitrator received and accepted the parties admissions, stipulations, and evidence in relation to Phase 1 of the arbitration proceedings, and based on all the evidence, the arbitrator made an Affidavit (Appx. pp. 93-96); an Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling (Appx. pp. 97-143); along with an Interim Award of the Arbitrator in writing (Appx. pp. 144-155). The Affidavit; Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling; and the Interim Award are dated February 5th, 2016, and a true and correct copy of these documents are attached to this application as Exhibits "3," "4," and "5," respectively, and incorporated as if fully set forth herein.

45. The arbitrator made a Second Interim Award in writing (Appx. pp. 156-162) and merged the award with the first Interim Award. The Second Interim Award is dated February 26, 2016, and is attached to this application as Exhibit "6" and incorporated as if fully set forth herein.

46. Respondent has subsequently failed to voluntarily satisfy the Interim Awards. Therefore, a judgment on the awards is needed to permit the Claimants to enforce it.

47. Respondent has failed to give notice of any motions or applications to vacate, modify, or correct the awards under Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. §§ 10, 11) within the three (3) month time frame for giving notice of such motions under Section 12 of the Federal Arbitration Act (9

U.S.C. § 12). Respondent is forever time-barred from seeking vacatur, modification, or correction of the Interim Award and the Second Interim Award. The three (3) month limitations period having already passed divests the Court of jurisdiction to review the Phase 1 awards. The Court is mandated by law to confirm the awards and enter a judgment of the court in conformance therewith.

48. This application is authorized by the terms of the arbitration agreement. Section 580(c) of the Alternative Dispute Resolution in the Administrative Process Act (5 U.S.C. §580(c)), Section 9 of the Federal Arbitration Act (9 U.S.C. § 9), and the awards themselves.

Law, Points, and Citation of Authority

I. MAJOR PREMISE: CONFIRMATION OF AWARDS MANDATORY.

49. Claimants make their application pursuant to the Alternative Dispute Resolution in the Administrative Procedures Act and the Federal Arbitration Act ("FAA") (5 U.S.C. §§ 571 *et seq*.; and 9 U.S.C. §§ 1 *et seq.*), which provides that the Court "must grant [. . .] an order [confirming the awards] unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11." 9 U.S.C. § 9; *see Hall Street Assocs, L.L.C. v. Mattel, Inc.*, 552 US 576, 170 L Ed 2d 254, 261-262, 264-265, 128 S Ct 1396 (2008) ("[J]udicial confirmation carries no hint of flexibility. On application for an order confirming the arbitration award, the court 'must grant' the order 'unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.' There is nothing

malleable about 'must grant,' which tells courts to grant confirmation in all cases, except where one of the 'prescribed' exceptions applies.") The award that results from arbitration to which parties to a contract have bound themselves is not particularly amenable to judicial review. *Oxford Health Plans, LLC v. Sutter*, 569 US ___, 186 L Ed 2d 113, 121-22, 133 S Ct ___ (2013). "Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances.'" *Id.* 186 L Ed 2d at 119. A party seeking to vacate an arbitrator's award under the FAA "bears a heavy burden. 'It is not enough . . .to show that the (arbitrator) committed an error or even a serious error.' *Stolt-Nielson [S.A. v. AnimalFeeds Int'l Corp.],* 559 US [662] at 671, 176 L Ed 2d 605, 130 S Ct 1758 [(2010)].

II. MINOR PREMISE: REVIEW NOT PERMITTED AND DEFENSES WAIVED.

50. Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits. *Eastern Associated Coal Corp. v. Mine Workers*, 531 US 57, 62, 148 1 Ed 2d 354, 121 S Ct 492 (2000) (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 US 593, 599, 4 L Ed 2d 1424, 80 S Ct 1358 (1960); *Paperworkers v. Misco, Inc.*, 484 US 29, 38, 98 L Ed 2d 286, 108 S Ct 364 (1987), internal quotation marks omitted)." *Id.* at 119. Indeed, the standard of review is "among the narrowest known to the law." *ARW Exploration Corp. v. Aguirre*, 45 F.3d 1455, 1462 (10th Cir. 1995). Accordingly, courts accord maximum deference to an arbitrator's decision. *See id; Bowen v.*

Amoco Pipeline Company, 254 F.3d 925, 936 (10th Cir. 2001). This deference is given to findings of fact: "errors in the arbitrator's [. . .] findings of fact do not merit reversal." *Bowles Financial Group, Inc. v. Stifel, Nicolaus & Co.*, 22 F.3d 1010, 1012 (10th Cir. 1994). It is also given to legal conclusions: "an arbitrator's erroneous interpretations or applications of law are not reversible." *ARW*, 45 F.3d at 1463.

51. Added to this extraordinary deferential standard of review with regard to arbitration awards in general is the rule regarding arbitrators' interpretation of contracts: "Whether the arbitrators misconstrued a contract is not open to judicial review." *Bernhardt v. Polygraphic Co.*, 350 US 198, 203 n.4, 100 L Ed 199, 76 S Ct 273 (1956). Central to the law of contracts is the idea that the law should respect parties' intentions to contract for particular rights and remedies, and judicial review of a contractual mechanism for dispute resolution is accordingly narrowly confined: "By agreeing to arbitrate, a party 'trades the procedures and opportunity for review of the court room for the simplicity, informality, and expedition of arbitration.'" *Gilmer v. Interstate/Johnson Lane Corp.*, 500 US 20, 31, 114 L Ed 2d 26, 111 S Ct 1647 (1991) quoting *Mitsubishi Motors Corp. v. Soler Chysler-Plymouth, Inc.*, 473 US 614, 87 L Ed 2d 444, 105 S Ct 3346, 3354 (1985)).

52. Respondent did not attempt to vacate, modify, or correct the awards and allowed the three (3) month limitations period to lapse. 9 U.S.C. § 12. A party to an arbitration award who fails to comply with the statutory precondition of timely service of notice forfeits the right to judicial review of the award and

thereby deprives the Court of power to review the award. *See Piccolo v. Dain, Kalman & Quail, Inc.*, 641 F.2d 598 (8th Cir. 1981). The limitation period found in 9 U.S.C. § 12 bars any motions to vacate the awards even as a defense to the application to confirm the awards brought more than three (3) months after delivery of awards to the parties. *See Florasynth, Inc. v. Pickholz*, 598 F.Supp 17 (S.D. N.Y.), *affd,* 750 F.2d 171 (2d Cir. 1984); *MCI Telecoms. Corp. v. Happy the Glass Man*, 974 F.Supp. 1016 (E.D. Ky. 1997) (Customer's motion to vacate, modify, or correct arbitration award was untimely under 9 U.S.C. § 12 and, thus, court had to confirm award on company's motion to confirm, where award was entered by default for long-distance telephone company in billing dispute with customer, where customer entered into agreement with company providing for arbitration, company properly arbitrated dispute, and arbitrator properly rendered award for company when customer declined to participate in arbitration); *see also United States v. Park Place Assocs*, 563 F.3d 907 (9th Cir. 2009) (discussing jurisdiction to confirm arbitration awards against the United States, and awards held valid though United States refused to participate in arbitration hearing); *and see M.J. Woods, Inc. v. Conopco, Inc.*, 271 F.Supp.2d 576 (S.D. N.Y. 2003) (Where plaintiff did not seek to modify, vacate, or correct arbitration award within three-month limitation period under 9 U.S.C. § 12, court was compelled to affirm award).

53. The United States, by and through the Attorney General (and her authorized agents), is permitted to enter into the Stipulation and Settlement Agreement with the Claimants. *DOJ Opinion of the Office of Legal*

Counsel: Authority of the United States to Enter Settlements Limiting the Future Exercise of Executive Branch Discretion, 1999 OLC LEXIS 45 (Jun. 15, 1999). Further, the United States is permitted to enter into binding arbitration agreements and did so in the Agreement between the parties. Respondent is bound by the terms of the arbitration agreement and the awards. *DOJ Opinion of the Office of Legal Counsel: Constitutional Limitations on Federal Government Participation in Binding Arbitration,* 1995 OLC LEXIS 58 (Sep. 7, 1995); *and see* Executive Order No. 12988. *See also, analogously*, 5 U.S.C. §§ 575; 576; 578; 579; and 580(c) ("A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.")

54. The governing law as to the construction and interpretation of the Agreement is the law of the District of Columbia: Agreement at Art's 6.4 and 7.9 (Appx. pp. 31, 33). The parties agreed that any and all disputes under the Agreement, including the scope of arbitrability of the issues, was to be determined by the arbitrator and to be governed by the Agreement, the FAA, and the D.C. Arbitration Act ("DCAA"): Agreement at Art's 6.1 and 6.4 (Appx. p.31). *See, e.g., Shaw Group v. Triplefine Int's Corp.*, 322 F.3d 115, 120-121 (2d Ch. 2003); *and PaineWebber, Inc. v. Bybyk*, 81 F.3d 1193, 1199-1200 (2d Cir. 1996). The FAA, as agreed to by the parties, was the primary law overseeing the enforcement of the arbitration agreement, while the DCAA was applied to the conduct

of the arbitration proceedings in particular. Any conflicts of law were to be resolved in favor of the Agreement and the FAA.

55. Claimants gave notice in a record to respondent by certified mail on December 14, 2015, return receipt requested and obtained on January 7, 2016 (Cert. Mail No. 7012 3460 0002 1482 2248; DOJ Reference ID No. 3183640) (*see* Appx. p. 89), describing the nature of the controversy and the remedy sought, thereby initiating the arbitration process. D.C. Code § 16-4409(a). The Claimants alleged specific and certain injuries of economic and noneconomic harm inflicted on them by the actions of the Agency and those in concert with it. Appx. p. 6-15. A clear relationship exists between the injuries and the remedies sought. After the arbitrator was appointed and authorized and able to act, the parties consented to the entry of provisional remedies and the issuance of interim awards necessary to protect the effectiveness of the proceeding and to promote the fair and expeditious resolution of the controversy. D.C. Code § 16-4408(b)(1). The arbitrator considered the parties submission (D.C. Code § 16-4415(a), (b), & (c)(3)), granted the request for provisional remedies, issued an Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling, and made two (2) Interim Awards in writing. D.C. Code §§ 16-4408(b)(1); 16-4418. All awarded equitable remedies fell within the four corners of the Agreement and the arbitrator was authorized to order them. D.C. Code § 16-4421(c) ("As to all remedies other than those authorized by subsections (a) and (b) of this section, *an arbitrator may order such remedies as the arbitrator considers just and appropriate* under the circumstances of the arbitration proceeding. *The fact that such a remedy*

could not or would not be granted by the court is not a ground for refusing to confirm an award [. . .] or for vacating an award[.]"); and see 5 U.S.C. §§ 702, 703.

56. The first Interim Award was delivered to the claimants by certified mail on February 16, 2016. Respondent received the first Interim Award on February 16, 2016, by Certified Mail No. 7015 1520 0002 0047 5858. This effectively started the three (3) month limitations time-clock under 9 U.S.C. § 12.

57. The Second Interim Award was delivered to the Claimants by certified mail on March 16, 2016. Respondent received the Second Interim Award by Certified Mail No. 7015 1520 0002 0047 7395 on March 15, 2016. The Second Interim Award was merged and made in conjunction with the first Interim Award, and was based on the February 5, 2016, Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling of the arbitrator, therefore, the three (3) month limitations time-period under 9 U.S.C. § 12 is controlled by the February 16, 2016, delivery date of the first Interim Award.

58. Even though the Agreement resolves all matters in the "criminal" proceedings between the Claimants; the United States of America; and the Third Party Beneficiaries, arbitration of any disputes under the Agreement are fully authorized by law and the remedies enforceable under the FAA. 5 U.S.C. §§ 556(d), 571 *et seq.,* 702, 703; and see *Town of Newton v. Rumery*, *ante. Cf. United States v. Moulder*, 141 F.3d 568, 571 (5th Cir. 1998); *United States v. Ballis*, 28 F.3d 1399, 1409 (5th Cir. 1994); *United States v. Finch,* 964 F.2d 571, 574 (6th Cir. 1992); *United States v. Brown*, 801 F.2d 352, 354 (8th Cir. 1986); *United States*

v. Tilley, 964 F.2d 66, 70 (1st Cir. 1992); *United States v. Price*, 95 F.3d 364, 367 (5th Cir. 1996); *United States v. Witte*, 25 F.3d 250, 262 (5th Cir. 1994); and *United States v. Packwood*, 848 F.2d 1009, 1011 (9th Cir. 1988) (Nonprosecution agreements, like plea bargains, are contractual in nature, and are therefore interpreted in accordance with general principles of contract law. Under these principles, if a defendant lives up to his end of the bargain, the government is bound to perform its promises); *see also Vol. 1 McCloskey, Schoenberg & Shapiro, Criminal Law Deskbook* § 11.03 (§ 11) (Matthew Bender, Rev. Ed., Release No. 32, June 2016) (Copyright © 2016 Matthew Bender & Company, Inc.) (discussing community mediation and arbitration on agreements with prosecutor for deferred adjudication of criminal charges); *and see* Paul R. Rice, *Mediation and Arbitration as a Civil Alternative to the Criminal Justice System – An Overview and Legal Analysis*, 29 Am. U. L. Rev. 17 (1979-1980)[7].

59. The bifurcated nature of the arbitration proceedings into separate and distinct phases with awards finalizing each phase, is authorized for confirmation under the FAA. *See Hart Surgical, Inc. v. Ultracision, Inc.*, 244 F.3d 231 (1st Cir. 2001) ("The issue presented in this appeal is whether, in an arbitration case that is bifurcated into liability and damages phases, the arbitration panel's award with respect to liability is a final award under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.*, that is subject to review by the courts. [. . .] [A]n arbitration award on the issue of habihty in a bifurcated

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[7] *Referenced at* https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=77263 *(last accessed January 19, 2017).*

proceeding is a final partial award reviewable by a district court. [. . .] [A] 'final' arbitral award is one that resolves all of the claims submitted to the panel. Here, the parties asked the arbiters to determine the issue of liability as well as damages; since the award at issue in this appeal resolved only one of these issues, it was akin to an interlocutory decision. [. . .] We now hold that the FAA permits a district court to confirm [. . .] a partial award.")

60. The Agreement and the interim awards strictly limit relief to the parties named therein and it cannot be used as a precedent in any other non-related matter. A protective order was issued on all the evidence and an order sealing and unpublishing all matters relating to the Agreement and the arbitration proceedings, including court enforcement proceedmgs (except for the actual court judgments) was issued to protect the interests of the United States and the Department of Justice. Put another way, a non-party is unable to utilize the terms of the Agreement, the arbitrator's decisions and awards, nor the Court's confirmation and judgment thereon to secure any remedy or relief, or compel any court to act in their favor based upon the arbitrator's rulings and this Court's enforcement.

61. This matter is ripe for enforcement and this Court has jurisdiction to confirm the interim awards; enter a judgment in conformance thereon; and issue any and all writs or orders necessary for carrying out the expedient enforcement of the awarded remedies: 5 U.S.C. §§ 580(c), 702; 9 U.S.C. §§ 9, 13; 28 U.S.C. §§ 1331, 1651(a), and 2241-2243. This Court would maintain an original jurisdiction action notwithstanding the FAA, pursuant to 28 U.S.C.

§ 2241, along with supplemental jurisdiction under the All Writs Act (28 U.S.C. § 1651(a)) granting the Court the authority to provide the necessary equitable relief fashioned by the arbitrator in her awards. Congress has expressly waived the sovereign immunity of the United States under 5 U.S.C. §§ 580(c), 702, and 28 U.S.C. § 1331, as it relates to the substance of this matter, permitting the plaintiffs to obtain the relief sought through arbitration of their Agreement with the United States, and enforcement of the remedies of the arbitration awards in this Court. The Court should look to the plain text of 28 U.S.C. § 2243, in conjunction with the mandates of the FAA, and issue the necessary relief forthwith. No good cause exists, and the United States has specifically waived consideration of any such cause, if one did exist, by its failure to give notice to vacate or modify the awards in the three-month time period prescribed under Section 12 of the FAA (9 U.S.C. § 12), as well as the expressed waivers of defense to enforcement within the Agreement itself.

62. This application is timely because it is filed within one (1) year after the award was made.

Conclusion

The expressed intent of the Agreement has always been to resolve all litigation and claims between the parties thereto, be it criminal, civil, or administrative. Settlement agreements have the effect in law of amending the judgment of a court and are not considered to be void as against public policy. The United States routinely enters such agreements with criminal defendants that are outside the supervision of the judiciary. The Supreme Court has declared such agreements to be enforceable when voluntarily entered

into. This is the case with the parties Agreement in this matter.

Where the parties Agreement differs from most other settlement agreements or release-dismissal agreements is that it was not drafted by attorneys for the government, it was in an omnibus format that included resolution of potential liability and damage claims against the government along with affirmative relief of dismissal of the criminal cases. It was, in short, a one-stop solution to alleviate any future litigation between these parties and the United States. The final unique feature was the inclusion of an arbitration clause that operated as the exclusive remedy on disputes under the agreement. The arbitrator made her decision and awarded the remedies on the affirmative relief in Phase 1; and, the statute law, Executive Orders of the President, Department of Justice Opinions of the Office of Legal Counsel, and this Court's bright-line decisions all command the mandatory enforcement of these awards through confirmation by the Court.

An Order of this Court confirming the awards and entering a judgment in conformance therewith serves to vindicate the rule of law on enforcement of arbitration awards. Any other disposition would leave the courts, as well as the bar, in uncertainty and confusion, causing a "chilling effect" on arbitration proceedings in general. Moreover, an adverse ruling would be antithetical to the law as written and would only serve to crowd the district court dockets with frivolous litigation as parties would lose faith in the enforceability of their arbitration clauses and run to the courts for resolution and remedy. A confirmatory

order and entry of judgment on the awards would serve the ends of justice and serve to offer new options for resolution of a multitude of agreements serving the criminal justice system without excessive judicial intervention and free the court calendars to address the litigation that necessitates court involvement.

For the reasons set forth hereinabove, this application to confirm the interim awards of the arbitrator should be granted.

Prayer

Wherefore, Plaintiffs pray that:

A. This Court make an order confirming the interim awards of the arbitrator, as authorized by Section 9 of the Federal Arbitration Act;

B. This Court enter a judgment that conforms to the interim awards of the arbitrator;

C. Claimants be awarded their costs and disbursements in this proceeding; and

D. Claimants have any and all other relief the Court deems just and proper.

Dated: February 3, 2017

Respectfully submitted,

/s/ James A. Satcher, Jr.
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[APPENDIX FOLLOWS THIS DOCUMENT]