

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES OF AMERICA

UNITED STATES OF AMERICA
Plaintiff - Respondent,

v.

LOGAN BAILEY LAWRENCE
Defendant - Petitioner.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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QUESTIONS PRESENTED FOR REVIEW

Where the Government strenuously argues for below-Guidelines sentencing, but the District Court refuses, should the Government be estopped from precluding appellate review of the District Court's refusal by invoking a waiver of appeal?

LIST OF PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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(unpublished)

Judgment from the United States District Court for the Northern
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Magistrate’s Report and Recommendation regarding the petitioner’s
guilty plea (unpublished)

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES OF AMERICA

UNITED STATES OF AMERICA
Plaintiff - Respondent,

v.

LOGAN BAILEY LAWRENCE
Defendant - Petitioner.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Fifth Circuit Court of Appeals.

STATEMENT OF THE BASIS OF JURISDICTION

1. The petitioner pled guilty in the United States District for the Northern District of Texas on October 13, 2020, and was sentenced on February 23, 2021. She filed a notice of appeal on March 2, 2021.

2. On August 24, 2021, the Fifth Circuit granted a Government motion to dismiss the appeal.

3. On August 26, 2021, the petitioner filed a motion for reconsideration of the dismissal, but on September 20, 2021, the Fifth Circuit summarily denied the petitioner's motion.

4. No motion for extension of time was filed to file this Petition.

5. No reliance on Rule 12.5 is made.

6. The Court can review cases from the courts of appeals by "writ of certiorari granted upon the petition of any party to any civil or criminal case." 28 U.S.C. § 1254(1).

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

None.

STATEMENT OF THE CASE

The petitioner was convicted of distribution and intent to distribute 500 grams or more of methamphetamine. Her issue here turns on two arguments the Government made in the District Court for a sentence below the Guidelines and the contrary arguments the Government made on appeal.

In the District Court

The petitioner pled guilty to a plea bargain and waived most appellate rights – she could appeal only a sentence in excess of the statutory maximum, an arithmetic mistake at sentencing, claims of involuntariness, and issues of ineffective assistance. (ROA 219-220).

The first argument in question was made in a Joint Sentencing Memorandum the petitioner and the Government filed some four weeks before sentencing. (ROA 291-6). There the parties first noted the petitioner had served more than 20 months of a state sentence – from October 12, 2018 to June 30, 2020 – after being arrested on the federal charges adjudicated here, but that the Attorney General could not grant her that time toward the instant sentence. The parties agreed that a downward departure of 20 months was accordingly warranted, since the

petitioner had served that amount of time in state custody “for conduct arising out of and a part of the instant offense.” (ROA 293). At sentencing the government told the Court that the BOP definitely would *not* credit the 20 months toward the petitioner’s sentence: “That period of time will not be credited because she was in state custody from October 12, 2018 until June 30 of 2020, Your Honor.” (ROA 157).

The downward departure was especially warranted, the Government said, because Texas authorities had wanted to grant parole again but the Government “requested that the state continue to hold her, because we believed her to be a danger to the community and that she would be involved in further conduct if released.” (ROA 157-8). She “entered federal custody, that time, from June 30th until today, she’ll be credited from the Bureau of Prisons, but the time before, she won’t ... She was solely in state custody.” (ROA 158-9).

The second factor prompting the Government to ask for a sentence below the Guidelines was the petitioner’s substantial assistance to the Government. At sentencing the petitioner’s counsel presented a great deal of argument, including details of the miserable circumstances to which the petitioner was subjected as a child. But the Government’s

arguments were even more poignant. The prosecutor had expected the petitioner to be “a monster ... quite frankly horrible.” (ROA 169-70). But an agent spoke with the Appellant and found her to be remorseful and “very polite and forthcoming.” (ROA 170). The prosecutor herself determined that the petitioner is not the run-of-the-mill criminal. The downward variance was proposed because, as the Government told the District Court, the petitioner’s assistance was considerable, leading to the conviction of a kingpin in the trade of the most serious drugs:

And, importantly, for the Government’s recommendation for this Court to consider some level of downward departure, she did agree – Ms. Lawrence did agree to testify against one of her suppliers. He is still pending trial before this Court. And yesterday, Your Honor, I finally transmitted plea papers to his counsel, and he will enter a plea in this case in large part because Ms. Lawrence agreed to testify against him, and she was the person who knew the most. Had she not agreed to testify, Your Honor, and if -- had she not been very, very truthful, I don't know that he would have pled, and I think we would have been heading for a trial...

And so whatever sentence the Court deems appropriate, I would ask the Court to downwardly depart 40 months for consideration for Ms. Lawrence's cooperation with the Government and the substantial assistance in securing the plea that will soon be had, Your Honor, from Mr. Sergio Herrera-Duarte, who was a major supplier for Ms. Lawrence.

(ROA 170-2). Also, although the Joint Sentencing Memorandum noted that “several individuals died as a result of” the “distribution of China White Heroin” by the clique with which the petitioner was associated,

(ROA 295), the prosecutor told the District Court the petitioner “really was only familiar with methamphetamine” – when “Mr. Herrera-Duarte provided her with this China White Heroin, she didn’t even have anybody to sell it to. She knew nothing really about China White Heroin,” to the prosecutor’s understanding, so two co-conspirators “took it and went on to distribute it to some people” on their own. (ROA 175). The petitioner was not involved in that side of the business.

But the District Court refused both of the Government’s requests for a sentence below the Guidelines. (ROA 154-5, 162-4, 191, 195).

At the Court of Appeals

The petitioner appealed both refusals, anticipating that the Government’s arguments in the District Court would lead it to act honorably by disregarding the waiver of appeal so her claims could be heard on their merits.

But instead the Government invoked the waiver despite the position it had taken in the District Court, and moved to dismiss the appeal. The Fifth Circuit granted the request. This appeal ensued.

ARGUMENT

In deciding whether to grant certiorari, the Court particularly considers whether a federal court of appeals “has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power.”¹

A court of appeals may reach the merits of a claim on which one party has waived review if the other party refuses to invoke the waiver. *United States v. Wiese*, 896 F.3d 720, 722, fn. 1 (5th Cir. 2018) (“the Government must invoke an appeal waiver to enforce it”).

Why the Government chose to invoke the waiver of appeal here is curious. The Government cannot afford to be seen as repudiating the very contentions it has itself repeatedly and clearly raised. At the District Court the Government several times argued *in support* of precisely the same issues that the petitioner raised on appeal. Invocation of the waiver – and thus *opposing* the claims – meant taking a position diametrically opposed to its stance below. This is improper on appeal. See *e.g. Hunn v. Dan Wilson Homes, Inc.*, 789 F.3d 573, 588

¹ Sup. Ct. Rule 10(a).

(5th Cir. 2015) (“We highly doubt that Hunn may raise this argument on appeal, given that he advanced the contrary argument in the district court”); *Schindler v. Dravo Basic Materials Company, Incorporated*, 790 Fed.Appx. 621, 626 (5th Cir. 2019) (unpublished) (“We will not consider an argument on appeal that contradicts Schindler's position in the district court”); *United States v. Cornelius*, 696 F.2d 1307, 1319 (8th Cir. 1992) (“Under the invited error doctrine, this Court will not engage in appellate review when a defendant has waived his right to challenge a jury instruction by affirmatively approving it at trial”). The doctrine of estoppel, on which invited error is based, has long been used in federal criminal cases. See *United States v. Gray*, 626 F.2d 694, 501 (5th Cir. 1980) (“a defendant who asks for an instruction will not be heard to complain about the instruction on appeal”).

The petitioner acknowledges that the Government’s invocation of such a waiver was upheld in *United States v. Chaudhari*, 795 Fed.Appx. 297 (5th Cir.) (unpublished), *cert. denied*, 141 S.Ct. 426, 208 L.Ed.2d 125 (2020), even though the Government had filed what was evidently an everyday sort of motion for downward departure. There the Fifth Circuit ruled that the Government’s “invocation of the waiver-of-appeal

provision is not clearly inconsistent with its having filed” the § 5K1.1 motion. *Id.* at 299. But here the Government’s position below was not a matter of the filing of a routine motion for downward departure. Here the Government, both orally and in the Joint Sentencing Memorandum, affirmatively and *strenuously* asked for a below-Guidelines sentence., (ROA 157-9, 169-72), particularly stressing that the district court would err by refusing one of the requested departures – the approximately 20 months of pre-sentence jail time “will not be credited because she was in state custody from October 12, 2018 until June 30 of 2020, Your Honor.” (ROA 157).

Ultimately, the sort of treachery the Government showed here cannot be allowed to occur again. In upholding the waiver the Court of Appeals has “so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court’s supervisory power.”² If not reversed, defendants will justifiably doubt whether the Government’s attorneys can be trusted to keep their word. The consequences are too unpleasant to imagine.

² Rule 10(a), *supra*.

PRAYER

Petitioner Logan Bailey Lawrence therefore prays, on this the 22nd day of November 2021, that the Court grant certiorari and, on hearing the case, remand the cause to the Fifth Circuit to consider her claims on its merits, or order all relief the Court may deem appropriate.

Respectfully submitted,

/s/ John Bennett

John Bennett

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Texas State Bar No. 00785691

Attorney for the Petitioner

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above **Petition** for Writ of Certiorari and attached **Motion for Leave to Proceed *In Forma Pauperis*** was served by email on Leigha Amy Simonton, Assistant U.S. Attorney, to her at leigha.simonton@usdoj.gov.

/s/ John Bennett

John Bennett

**United States Court of Appeals
for the Fifth Circuit**

No. 21-10195

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LOGAN BAILEY LAWRENCE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CR-14-1

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

This panel previously GRANTED Appellee's opposed motion to dismiss the appeal. The panel has considered Appellant's opposed motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

United States Court of Appeals
for the Fifth Circuit

No. 21-10195

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2021

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

LOGAN BAILEY LAWRENCE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CR-14-1

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED.

IT IS FURTHER ORDERED that Appellee's alternative unopposed motion to extend time to file the brief 30 days from the denial of the motion to dismiss is DENIED AS MOOT.

IT IS FURTHER ORDERED that Appellant's opposed motion to continue the appeal is DENIED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Amarillo Division

UNITED STATES OF AMERICA

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

FEB 24 2021

JUDGMENT IN A CRIMINAL CASE

v.

LOGAN BAILEY LAWRENCE

CLERK, U.S. DISTRICT COURT

By

Deputy

Case Number: 2:20-CR-14-Z-BR-(1)

U.S. Marshal's No.: 29463-078

Anna Marie Bell, Assistant U.S. Attorney

Mark L Packard, Attorney for the Defendant

On October 13, 2020 the defendant, LOGAN BAILEY LAWRENCE, entered a plea of guilty as to Count Two of the Indictment filed on February 27, 2020. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

Title & Section

21 U.S.C. §§ 841(a)(1) and
841(b)(1)(A)(viii)

Nature of Offense

DISTRIBUTION AND POSSESSION WITH INTENT TO
DISTRIBUTE 500 GRAMS OR MORE OF METHAMPHETAMINE

Offense Ended

10/13/2018

Count

Two

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count Two of the Indictment filed on February 27, 2020.

Upon Motion of the government, all remaining Courts are dismissed, as to this defendant only.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed February 23, 2021.



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

Signed February 24, 2021.

APPENDIX C

Judgment in a Criminal Case
Defendant: LOGAN BAILEY LAWRENCE
Case Number: 2:20-CR-14-Z-BR-(1)

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IMPRISONMENT

The defendant, LOGAN BAILEY LAWRENCE, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Three Hundred Sixty (360) months as to Count Two** of the Indictment filed on February 27, 2020. The sentence shall *run consecutively* to any future parole revocation sentence which may be imposed in Case No. 60484D, 320th District Court, in Potter County, Texas.

The Court makes the following recommendations to the Bureau of Prisons:

1. that the Defendant be allowed to participate in any and all substance abuse treatment and rehabilitation programs, including the Residential Drug Abuse Program; be allowed to participate in a full medical diagnostic evaluation with special attention to PSR paragraphs 91-94 to ascertain necessary treatment for bipolar and schizophrenia and if necessary, assignment to a FMC facility; and be allowed to participate in any and all mental health treatment and rehabilitation, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to participate in any and all educational and vocational training, if possible, administrative training and any collegiate course work, if eligible, if consistent with security classification; and
3. that the Defendant be assigned to FCI – Tallahassee or FCI – Danbury, if possible, if consistent with security classification.

The Defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Five (5) years** as to Count Two of the Indictment filed on February 27, 2020.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.

Judgment in a Criminal Case

Page 3 of 5

Defendant: LOGAN BAILEY LAWRENCE

Case Number: 2:20-CR-14-Z-BR-(1)

5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated February 23, 2021, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense (*see* 18 U.S.C. § 3583(d)).

Judgment in a Criminal Case
Defendant: LOGAN BAILEY LAWRENCE
Case Number: 2:20-CR-14-Z-BR-(1)

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2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).
3. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (*see* 18 U.S.C. § 3583(d)).
4. If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (*see* 18 U.S.C. § 3624(e)).
5. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.
6. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).
7. You shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. You shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.
8. The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$20 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Pursuant to 21 U.S.C. § 853(a), it is hereby ordered that Defendant's interest in the following property is condemned and forfeited to the United States: **Any property constituting or derived from any proceeds the Defendant obtained, directly or indirectly, as a result of the offense, and any of the property used or intended to be used in any manner or part, by the Defendant to commit or to facilitate the commission of the offense.**

Judgment in a Criminal Case

Defendant: LOGAN BAILEY LAWRENCE

Case Number: 2:20-CR-14-Z-BR-(1)

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RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

United States Marshal

BY _____

Deputy Marshal

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA

v.

LOGAN BAILEY LAWRENCE

§
§
§
§
§

2:20-cr-014-Z-BR-1

REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY

LOGAN BAILEY LAWRENCE, by consent, under authority of *United States v. Dees*, 125 F.3d 261 (5th Cir. 1997), has appeared before me pursuant to FED. R. CRIM. P. 11, and has entered a plea of guilty to Count 2 of the Indictment. After cautioning and examining LOGAN BAILEY LAWRENCE under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty plea was knowledgeable and voluntary and that the offense charged is supported by an independent basis in fact containing each of the essential elements of such offense. I therefore recommend that the plea of guilty be accepted, and that LOGAN BAILEY LAWRENCE be adjudged guilty of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii) - DISTRIBUTION AND POSSESSION WITH INTENT TO DISTRIBUTE 500 GRAMS OR MORE OF METHAMPHETAMINE and have sentence imposed accordingly. After being found guilty of the offense by the District Judge,

- ☒ The defendant is currently in custody and should be ordered to remain in custody.
- ☐ The defendant must be ordered detained pursuant to 18 U.S.C. § 3143(a)(1) unless the Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community if released.
- ☐ The Government does not oppose release.
- ☐ The defendant has been compliant with the current conditions of release.
- ☐ I find by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community if released and should therefore be released under § 3142(b) or (c).
- ☐ The Government opposes release.
- ☐ The defendant has not been compliant with the conditions of release.
- ☐ If the Court accepts this recommendation, this matter should be set for hearing upon motion of the Government.
- ☐ The defendant must be ordered detained pursuant to 18 U.S.C. § 3143(a)(2) unless (1)(a) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted, or (b) the Government has recommended that no sentence of imprisonment be imposed, or (c) exceptional circumstances are clearly shown under § 3145(c) why the defendant should not be detained, and (2) the Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community if released.

Date: October 13, 2020


UNITED STATES MAGISTRATE JUDGE

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

APPENDIX D