APPENDIX A-1

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5281 **September Term, 2021**

1:21-cv-02422-UNA

Filed On: June 15, 2022

Larry E. Starks, Jr.,

Appellant

v.

United States Sentencing Commission and
United States of America,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Katsas and Rao, Circuit Judges, and Sentelle, Senior Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's September 27, 2021 dismissal order and November 30, 2021 order denying the motion to alter or amend the judgment be affirmed. The Declaratory Judgment Act is not an independent source of jurisdiction. C&E Servs., Inc. of Washington v. D.C. Water & Sewer Auth., 310 F.3d 197, 201 (D.C. Cir. 2002). Additionally, the Administrative Procedure Act ("APA") waives sovereign immunity only for challenges to a "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. The Sentencing Commission's action does not constitute an agency action because the Sentencing Commission is not an "agency" within the meaning of the APA. See Wash. Legal Found. v. U.S. Sentencing Comm'n, 17 F.3d 1446, 1450 (D.C. Cir. 1994).

No. 21-5281 **September Term, 2021**

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

APPENDIX A-2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY E. STARKS, JR.,)
)
Plaintiff,)
)
v.) Civil Action No. 1:21-cv-02422 (UNA)
)
U.S. SENTENCING COMMISSION, *et al.*,)
)
)
Defendants.)

MEMORANDUM OPINION

This matter is before the court on its initial review of plaintiff's *pro se* complaint ("Compl."), ECF No. 1, and application for leave to proceed *in forma pauperis*, ECF No. 2. The court will grant the *in forma pauperis* application and dismiss the case for failure to state a claim, *see* 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1), and for want of subject matter jurisdiction, *see* Fed. R. Civ. P. 12(h)(3) (requiring the court to dismiss an action "at any time" if it determines that the subject matter jurisdiction is wanting).

Plaintiff is a federal inmate currently designated to FCI Ashland. Compl. ¶ 10. In December 2009, he pled guilty to one count of knowingly and intentionally attempting to manufacture methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B). *United States v. Larry Starks*, 3:09-cr-30070-SEM-TSH-1 (C.D. Ill. 2009) at ECF No. 14 (Plea Agreement Dec. 18, 2009). On July 26, 2010, Starks was sentenced to a term of imprisonment of 236 months. *Id.* at ECF No. 23 (Judgment).

In this matter, plaintiff has sued the United States and the United States Sentencing Commission, pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–06, and the Declaratory Judgment Act, 28 U.S.C. § 2201. Compl. ¶¶ 1–2, 5–7, 13, 15. He contends that

is entitled to declaratory and injunctive relief from his sentence because the sentencing court applied the Career Offender sentencing enhancement available under the U.S. Sentencing Guidelines, specifically U.S.S.G. § 4B1.2(b). Plaintiff contends that the enhancement violates the separation of powers principles of the Constitution and his Fifth Amendment rights. *Id.* ¶¶ 3, 9, 17–21, 27–8, 32, 34. He argues that "the sentencing Court invoked the Career Offender Enhancement on the basis that his instant offense for attempted manufacture of methamphetamine qualified as a Controlled Substance Offense under § 4B1.2(b)." *Id.* ¶ 22. He then submits that a "controlled substance offense" for purposes of the Career Offender provisions of the Sentencing Guidelines does not include "attempted" crimes, and therefore, the sentencing enhancement is inapplicable to his conviction of *attempting* to manufacture methamphetamine. *See id.* ¶¶ 19–24.

The first question before the Court at this stage, though, is whether it has jurisdiction to take up this question. When a case is brought against a governmental entity, an essential aspect of the jurisdictional analysis is whether that entity may be sued at all. "It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell*, 463 U.S. 206, 212 (1983). The United States and its agencies are immune from suit in their official capacities unless Congress has expressly waived the defense of sovereign immunity by statute. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *Albrecht v. Comm. on Emp. Benefits of Fed. Rsrv. Emp. Benefits Sys.*, 357 F.3d 62, 67 (D.C. Cir. 2004) ("[f]ederal agencies or instrumentalities performing federal functions always fall on the 'sovereign' side of [the] fault line; that is why they possess immunity that requires waiver."). Consent may not be implied; it must be "unequivocally expressed." *United States v. 116 Nordic Vill., Inc.*, 503 U.S. 30, 33–34 (1992). And a plaintiff bears the burden of establishing that

sovereign immunity has been abrogated. *See Jackson v. Bush*, 448 F. Supp. 2d 198, 200 (D.D.C. 2006), citing *Tri–State Hosp. Supply Corp. v. United States*, 341 F.3d 571, 575 (D.C. Cir. 2003).

Plaintiff has based his claim in part on the Declaratory Judgment Act, but that statute does not provide a waiver of sovereign immunity. *See Stone v. HUD*, 859 F. Supp. 2d 59, 64 (D.D.C. 2012), citing *Walton v. Fed. Bureau of Prisons*, 533 F. Supp. 2d 107, 114 (D.D.C. 2008). **If there is a DC Cir case that says that, I'd cite it and not these.** While the APA does provide a limited waiver of sovereign immunity in suits seeking relief other than money damages, 5 U.S.C. § 702, the statute only permits review of agency action "for which there is no other adequate remedy in a court[,]" *id.* § 704. Here, the habeas corpus statute, 28 U.S.C. § 2255, provides an adequate and appropriate remedy for prisoners seeking attack federal convictions and sentences, and plaintiff has sought to attack his sentence collaterally through that means before.[1] Thus, as another court in this district noted in a case before it, the instant lawsuit is merely a "thinly veiled and improper attempt[] to collaterally attack" a sentence imposed by the Central District of Illinois. *See Stone*, 859 F. Supp. 2d at 63, *id.* n.2, 64 (finding that the court lacked subject matter jurisdiction over plaintiff's attempted APA challenge, and request for relief under the Declaratory Judgment Act, as to his conviction, sentence, and other terms of his plea agreement, because plaintiff could, and already did – albeit unsuccessfully – raise those claims pursuant to section 2255).

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[1] The court takes judicial notice of plaintiff's previous unsuccessful challenges to his conviction, sentence, and even the very same sentencing enhancement. *See, e.g., Starks, Jr. v. United States*, 3:10-cv-3323-RM (C.D. Ill. 2010) at ECF No.1 (28 U.S.C. § 2255 Pet. filed Dec. 8, 2010) (challenging conviction and sentence), ECF No. 19 (dismissed on May 11, 2021), *cert. of appealability denied*, No. 12-3493 (7th Cir. Aug. 12, 2013) at ECF No. 39 (Mandate); *Starks v. Beard*, No. 20-cv-00055-GFVT (E.D. Ky. 2020) at ECF No. 1, (28 U.S.C. § 2241 Pet. filed May 18, 2020) (alleging that the Section 4B1.2(b) sentencing enhancement violated the separation of powers doctrine), ECF No. 8 (dismissed on August 31, 2020), *appeal dismissed*, No. 20-6254 (6th Cir. Feb. 10, 2021) at ECF No. 15 (USCA Dismissal Order). A successive Section 2255 motion can only be brought with the certification of a "panel of the appropriate court of appeals," 28 U.S.C. § 2255(h), which in this case is the Seventh Circuit.

✳ Plaintiff contends that he has no adequate alternative avenue of relief under section 2255 because that route has already proved to be unsuccessful. *See* Compl. ¶¶ 22–24, 30. But "[a] petitioner may not complain that the remedies provided him by [§ 2255] are inadequate merely because he was unsuccessful when he invoked them." *Wilson v. Office of the Chairperson*, 892 F. Supp. 277, 280 (D.D.C. 1995); *see also Boyer v. Conaboy*, 983 F. Supp. 4, 7 (D.D.C. 1997) ("federal courts have been virtually unanimous that when a prisoner claims his § 2255 proceeding is inefficacious, '[l]ack of success in the sentencing court does not render his remedy inadequate or ineffective.' "), quoting *Boyden v. United States*, 463 F.2d 229, 230 (9th Cir.1972) and collecting cases.

Furthermore, plaintiff is barred from raising this claim pursuant to the explicit terms of his plea agreement. The relevant portion of the plea agreement states that plaintiff agreed to plead guilty and to knowingly and voluntarily waive "his right to challenge any and all issues relating to his plea agreement, conviction and sentence...*in any collateral attack*[,]" including any allegation that his sentence "was imposed in violation of the Constitution or laws of the United States[.]" *Starks*, 3:10-cv-3323-RM at ECF No. 19 (Dismissal Order), quoting the Plea Agreement (ECF No. 14) in *Starks*, 3:09-cr-30070-SEM-TSH-1 (emphasis added); *see also Starks*, No. 20-cv-00055-GFVT at ECF No. 8 (Memorandum & Order dismissing case).

A challenge under the APA is considered a collateral attack "if, in some fashion, it would overrule a previous judgment." *Stone*, 859 F. Supp. 2d at 64, quoting *37 Associates, Tr. for the 37 Forrester St., SW Trust v. REO Const. Consultants, Inc.*, 409 F. Supp. 2d 10, 14 (D.D.C. 2006). "Unlike a direct appeal, a collateral attack questions the validity of a judgment or order in a separate proceeding that is not intended to obtain relief from the judgment." *REO Const. Consultants, Inc.*, 409 F. Supp. 2d at 14, quoting *In re Am. Basketball League, Inc.*, 317 B.R. 121,

128 (2004). The instant matter satisfies this standard because plaintiff intends to use this litigation for exactly that purpose. He seeks to vacate the application of the sentencing enhancement through the APA and the Declaratory Judgment Act, *see, e.g.*, Compl. ¶ 28 (noting that he and others "would be allowed to be resentenced" and "obtain a reduced supervised release sentence"), when his "remedies, which the Court notes he has already pursued, are [instead] found in 28 U.S.C. § 2255 or the appellate process[,]" *Stone*, 859 F. Supp. 2d at 65.

Finally, courts have generally and routinely "upheld the [Sentencing] Commission's powers against a separation of powers challenge." *United States v. Williams*, 953 F. Supp. 2d 68, 73–4 (D.D.C. 2013), quoting *United States v. Anderson*, 686 F.3d 585, 590 (8th Cir.2012) (other citation omitted) (collecting cases). There can be no such "constitutional problem" in the Sentencing Commission's issuance of either a policy statement or a guideline, because the Commission "does not act as a court and is not controlled by the judiciary." *Id.*, quoting *Anderson*, 686 F.3d at 590–91 (other citation omitted).

For all of these reasons discussed, this matter is dismissed in full and without prejudice to refiling only as to any habeas action brought in the appropriate court. An order consistent with this memorandum opinion is issued separately.

Date: September 27, 2021

/s/
AMY BERMAN JACKSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY E. STARKS, JR.,

Plaintiff,

v. Civil Action No. 1:21-cv-02422 (UNA)

U.S. SENTENCING COMMISSION, *et al.*,

Defendants.

ORDER

For the reasons stated in the accompanying memorandum opinion, it is

ORDERED that plaintiff's application for leave to proceed *in forma pauperis*, ECF No. 2, is **GRANTED**, and it is further

ORDERED that the complaint, ECF No. 1, and this civil action are **DISMISSED** in full and without prejudice to refiling only as to any habeas action brought in the appropriate court.

This is a final appealable order. *See* Fed. R. App. P. 4(a).

SO ORDERED.

/s/
AMY BERMAN JACKSON
United States District Judge

Date: September 27, 2021

APPENDIX B-1

991. United States Sentencing Commission; establishment and purposes

(a) There is established as an independent commission in the judicial branch of the United States a United States Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process, shall appoint the voting members of the Commission, by and with the advice and consent of the Senate, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chair and three of whom shall be designated by the President as Vice Chairs. At least 3 of the members shall be Federal judges selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States. Not more than four of the members of the Commission shall be members of the same political party, and of the three Vice Chairs, no more than two shall be members of the same political party. The Attorney General, or the Attorney General's designee, shall be an ex officio, nonvoting member of the Commission. The Chair, Vice Chairs, and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown.

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

HISTORY:

Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 217(a), 98 Stat. 2017; April 15, 1985, P. L. 99-22, § 1(1), 99 Stat. 46; Sept. 13, 1994, P. L. 103-322, Title XXVIII, § 280005(a), (c)(1), (2), 108 Stat. 2096, 2097; Oct. 11, 1996, P. L. 104-294, Title VI, § 604(b)(11), 110 Stat. 3507; April 30, 2003, P. L. 108-21, Title IV, § 401(n)(1), 117 Stat. 676; Oct. 13, 2008, P. L. 110-406, § 16, 122 Stat. 4295.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect on enactment, pursuant to § 235(a)(1)(B)(i) of Act Oct. 12, 1984, P. L. 98-473, which appears as 18 USCS § 3551 note.

Amendment Notes

APPENDIX B-2

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title [5 USCS §§ 556 and 557] apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

HISTORY:
Added Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 383.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title [5 USCS § 553 or 554] to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title [5 USCS § 3105].

This subchapter [5 USCS §§ 551 et seq.] does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title [5 USCS § 557] shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter [5 USCS §§ 581 et seq.];

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title [5 USCS § 557]; and

(11) take other action authorized by agency rule consistent with this subchapter [5 USCS §§ 551 et seq.].

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title [5 USCS § 557(d)] sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross- examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title [5 USCS § 557] and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

HISTORY:

Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 386; Sept. 13, 1976, P. L. 94-409, § 4(c), 90 Stat. 1247; March 27, 1978, P. L. 95-251, § 2(a)(1), 92 Stat. 183; Nov. 15, 1990, P. L. 101-552, §

4(a), 104 Stat. 2737.

557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title [5 USCS § 556].

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title [5 USCS § 554(d)], an employee qualified to preside at hearings pursuant to section 556 of this title [5 USCS § 556], shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title [5 USCS § 556] shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has

knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

HISTORY:

Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 387; Sept. 13, 1976, P. L. 94-409, § 4(a), 90 Stat. 1246.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

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In subsection (b), the word "employee" is substituted for "office

§ 581. Judicial Review [review]

(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter [5 USCS §§ 571 et seq.] may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(b) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter [5 USCS §§ 571 et seq.] shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b) of title 9.

HISTORY:

Added Nov. 15, 1990, P. L. 101-552, § 4(b), 104 Stat. 2744; Aug. 26, 1992, P. L. 102-354, § 3(b)(2), (4), 106 Stat. 944; Oct. 19, 1996, P. L. 104-320, § 8(b), 110 Stat. 3872.