No. 22-5280

ORIGINAL

In The United States Supreme Court

RAJ K. PATEL,
from all capacities,

Plaintiff-Appellant-Petitioner

v.

UNITED STATES,

Defendant-Appellee-Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit in No. 22-1131.

PETITION FOR A WRIT OF CERTIORARI

T.E., T.E. Raj K. Patel (*pro se*)
Indiana | Georgia | New Jersey
6850 East 21st Street
Indianapolis, IN 46219
Marion County
rajp2010@gmail.com
www.rajpatel.live
317-450-6651

33 pages

July 13, 2022

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Federal Circuit abused its discretion or erroneously reasoned and concluded that the claim of breach of United States-Presidential-express-not-written-oral-and-memorialized-contract-in-fact-at-hand, which directly serves as the substantive source of law for the substantial Big Tucker Act, Subsection 1491(a) of Title 28 of the United States Code, claims, cannot "fairly be interpreted as mandating compensation...by the Federal Government" under *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009) *accord United States v. Mitchell* ("*Mitchell II*"), 463 U.S. 206 (1983) (damages "naturally follows") quoted in *Villars v. United States*, No. 2014-5124 * 7, 590 F. App'x 962 * 7 (Fed. Cir. Nov. 7, 2014) quoting *Holmes v. United States*, 657 F.3d 1303, 1314 (Fed. Cir. 2011)? ECF 31. Due Process Cl.-Prejudice, U.S. const. amend. v.
2. Whether the Court of Appeals for the Federal Circuit abused its discretion and maladministered justice when it interpreted the fair inference test or refused to overturn the Court of Federal Claims for calling the United States-Presidential-contract-at-hand frivolous rather than dismissing it for failure to state a claim upon which relief can be granted or to allow the complaint or aiding Appellant-Petitioner (*pro se*) in curing the ambiguities of the Big Tucker Act, Subsection 1491(a) of Title 28 of the United States Code, pleadings? Due Process Cl.-Prejudice, U.S. const. amend. v.
3. Whether the Court of Federal Claims and Court of Appeals for the Federal Circuit abused their discretions when not allowing the complaint or the contract-at-hand under the Big Tucker Act, Subsection 1491(a) of Title 28 of the United States Code, "for liquidated or unliquidated damages," as the case-at-hand is "not sounding in tort?" 28 U.S.C. § 1491(a).

4. Did Senior Judge Loren A. Smith not follow judicial review by not cautiously honoring the federal common law presumptions of validness and fairness to be money mandating for Big Tucker Act, Subsection 1491(a) of Title 28 of the United States Code, -complementing contracts, especially when the United States-President is directly the Promisor on behalf of the United States, which also constitutes the basis for jurisdiction and basis for relief, as in the contract-and-case-at-hand?
5. Did Court of Federal Claims Senior Judge Loren A. Smith in Order at Dkt. 10 or the panel or *en banc* Court of Appeals for the Federal Circuit in Op. & Order at ECF 31 violate judicial review or either abused its discretion or make a clear error when each court deemed the judicially-noticeable fact of the Presidential-contract-at-hand as "factually frivolous" or "clearly baseless," inconsistent with *Fischer v. United States*, 402 F.3d 1167, 1172 (*en banc*) and *Denton v. Hernandez*, 504 U.S. 25, 32-3 (1992)?
6. Did the Court of Federal Claims error when it opined under R.C.F.C. 12(h)(3) before it received the United States-President-Promisor-Defendant's answer to the complaint, which based on the President's demonstration would not have challenged the breach of contract claim (i.e. "efficient breach"), and much prior to the expiration of the sixty (60)-day time requirement under R.C.F.C. 12(a)(1)(A) causing prejudice to me and not consistent with the Court of Appeals for the Federal Circuit's opinion in *Wood-Ivey Systems Corp. v. United States*, 4 F.3d 961, 965 (Fed. Cir. 1993)?[1]

1. *Wood-Ivey Systems Corporation v. United States*, 4 F.3d 961, 965 (Fed. Cir. 1993) ("A court may not change a jurisdictional time period because the statute grants the court no power to act over the matter. This type of time period is mandatory and immutable.").

LIST OF PARTIES

1. Raj K. Patel, Appellant-Petitioner.
2. United States, Appellee-Respondent.
3. United States Court of Appeals for the Federal Circuit.
4. United States Court of Federal Claims.
5. The Honorable Loren A. Smith, Senior Judge of the C.F.C.
6. The President of the United States.
7. President Joseph R. Biden, Jr.
8. President Barack H. Obama, Jr.
9. President George W. Bush, Jr.
10. President Donald J. Trump.
11. Elizabeth B. Prelogar, Solicitor General of the United States.
12. Marina M. Kozmycz, Associate General Counsel, Office of Administration, the Executive Office of the President, The White House.
13. Robert Kiepura, Trial Attorney, United States Department of Justice.

RULE 29.6 CORPORATE DISCLOSURE

Not applicable. Raj Patel has no parent corporation and no publicly held company owns 10% or more of their stock.

CERTIFICATE OF INTEREST

I, THE EXCELLENT, THE EXCELLENT Raj K. Patel (pro se), am appearing without counsel, like I did in the courts below. Giving Full Faith to the United States Constitution, I use the Authority of my omnipresent Styles and Office in these proceedings into which I avail myself. U.S. const. art. IV, § 1 & amend. XIV, & art. VI, § 1 referring to the Treaty of Paris (1783) & Paris Peace Treaty – Cong. Proclamation of Jan. 14, 1784.

I have completed five (5) out of the six (6) semesters of my juris dr. candidacy at the U. of Notre Dame L. Sch. in South Bend, IN., where I was enrolled from August 2015 to November 2017, and I have completed sixty-eight (68) out of the ninety (90) credit hours for a juris dr. candidacy at the Notre Dame L. Sch.

Such, I have completed the minimum number of credit hours required by the accrediting Am. B. Ass'n ("A.B.A.") to allow a law school to accredit me a juris dr. degree.

Amongst the grades in my juris dr. academic courses I received at the Notre Dame L. Sch., I received an A-/A in contracts law, an A-/A in civil procedure, and a B/A in constitutional law, while under Weapon S. In the summer of 2016, I worked as summer associate with the City of Atlanta Law Department in Atlanta, GA. In the summer of 2017, I worked as a summer associate at Barnes & Thornburg LLP in Indianapolis, IN.

And, I hold a Bachelor of Arts in Poli. Sci. and *cum laude* in Religion from Emory U., Inc. of Atlanta, Georgia, and I attended both Oxford College and Emory College, and graduated, in 2014, with a 3.718/4.0 grade point average with no pass/fail grades.

Emory U., Inc. is ranked as a top-20 or top-25 *U.S. News* Tier 1 best national university, and the Notre Dame L. Sch. is ranked as a *U.S. News* Top 25 best law school in the United States.

I was Student Body President of the Brownsburg Cmty. Sch. Corp. from 2009-2010 and Student Body President of Emory U., Inc. from 2013-2014. I was also the Notre Dame L. Sch. Student B. Ass'n Rep. to the Ind. State B. Ass'n from September 2017 to November 2017. All jurisdictions are "local" and with an "international" constituency.

Each time I was elected Student Body President, I attained thenceforth omnipresent Styles ("THE EXCELLENT" for each election) which are protected by both the Privileges & Immunities Clause and Privileges or Immunities Clause of the United States Constitution. U.S. const. art. IV, § 2, cl. 1 & amend. XIV, § 1, cl. 2. *See generally* Federalist 80 & *Printz v. United States*, 521 U.S. 898, 918 (1997) quoting *Principality of Monaco v. Mississippi*, 292 U.S. 313, 322 (1934).

I am well read in the material law. I have not received legal advice or counsel from anyone else for this case.

RELATED CASES

FEDERAL CASES

1. *Patel v. United States*, No. 2022-1131 (Fed. Cir. May 19/June 2, 2022), *pending this cert.*, No. _____ (U.S. 202_) (expected July 20th service) (due Aug. 17, 2022)
    2. *T.E., T.E. Raj K. Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. Nov. 5, 2021).
3. *Patel v. Biden et al.*, No. 2022-5057 (D.C. Cir. June 8, 2022).
    4. *Patel v. Biden et al.*, No. 1:22-cv-00394-UNA (D.D.C. Mar. 9, 2022).
5. *Patel v. Chief of Staff, The Executive Offices of the President of the United States*, No. 2022-1962 (Fed. Cir. 202_) (mot. for stay) (filed June 29, 2022).
    6. *Patel v. The Executive Offices of the President*, No. 7419 (CBCA June 24, 2022).
7. *Patel v. Biden et al.*, No. 1:22-cv-01658-DLF (D.D.C. June 29, 2022) (pet. for writ of mandamus § 1361), *pending appeal*, No. _____ (D.C. Cir. 202_) (due Aug. 28, 2022).
8. *Patel v. Biden et al.*, No. _____ (N.D. Ga. 202_) (pet for. writ of mandamus § 1361).
9. *Patel v. United States*, No. 1:22-cv-00734-LAS (C.F.C. 202_) (pet. for writ of mandamus § 1651).
10. *Patel v. United States*, No. 2:22-cv-02624-WB (E.D. Pa. 202_) (pet. for writ of mandamus § 1361).

Federal Courts Without Subject-Matter Jurisdiction for Big Tucker Act Claims

11. *Patel v. Trump Corp.*, No. 20-1513, 141 S. Ct. 2761 (June 14, 2021), *reh'g denied*, 141 S.Ct. 2887 (U.S. Aug. 2, 2021).
    12. *Doe v. Trump Corp.*, No. 20-1706, 2020 WL 10054085 (2d Cir. Oct. 9, 2020).
    13. *Doe et al. v. The Trump Corp. et al.*, No. 1:18-cv-9936-LGS (S.D.N.Y. May 26, 2020), Dkt. 272.
14. *Patel v. F.B.I. et al.*, No. 1:18-cv-3441-RLY-DML (S.D.I.N. Nov. 13, 2018).
15. *Patel v. F.B.I. et al.*, No. 1:18-cv-3442-WTL-DML (S.D.I.N. Nov. 13, 2018).
16. *Patel v. F.B.I. et al.*, No. 1:18-cv-3443-TWP-MJD (S.D.I.N. Nov. 13, 2018).
17. *Patel v. Trump et al.*, No. 1:20-cv-454-SEB-DML (S.D.I.N. Feb. 19, 2020).
18. *Patel v. Trump et al.*, No. 1:20-cv-758-RLY-MJD (S.D.I.N. Apr. 14, 2020).
19. *Trump v. Vance, Jr. et al.*, No. 1:19-cv-8694-VM (S.D.N.Y. July 9, 2020), Dkt. 45.
20. *Patel v. Patel et al.*, No. 20-2713 (7th Cir. Jan. 21, 2021).

21. *Patel v. Patel et al.*, No. 1:20-cv-1772-TWP-MPB (S.D.I.N. Sept. 1, 2020).

22. *Carroll v. Trump*, No. 1:20-cv-7311-LAK (S.D.N.Y. Oct. 28, 2020), Dkt. 36.

23. *Patel v. Martinez et al.*, No. 3:21-cv-241 RLM-JPK (N.D.I.N. Apr. 8, 2021).

24. *Patel v. The President of the United States Joe Biden et al.*, No. 2:21-cv-01345-APG-EJY (D. Nev. Aug. 9, 2021).

25. *Patel v. United States*, No. 1:21-cv-22729-BB (S.D. Fla. Aug. 12, 2021).

26. *Patel v. United States et al.*, No. 1:21-cv-2219-JMS-TAB (S.D.I.N. Aug. 20, 2021).

27. *Patel v. United States et al.*, No. 1:21-cv-2263-UNA (D.D.C. Sept. 8, 2021).

28. *Patel v. United States et al.*, No. 2:21-cv-4160-NKL (W.D. Mo. Sept. 13, 2021).

29. *Patel v. United States et al.*, No. 2:21-cv-16029-SDW-CLW (D.N.J. Sept. 20, 2021).

30. *Patel v. The United States et al.*, No. 1:21-cv-6553-LTS (S.D.N.Y. Sept. 20, 2021).

31. *Patel v. The United States et al.*, No. 1:21-cv-2250-RLY-MG (S.D.I.N. Sept. 21, 2021).

32. *Patel v. United States et al.*, No. 1:21-cv-11429-LTS (D. Mass. Sept. 24, 2021).

33. *Patel v. Biden et al.*, No. 21-5155 (D.C. Cir. Sept. 27, 2021).

34. *In Re Raj K. Patel*, No. 21-5153 (D.C. Cir. Aug. 6, 2021).

35. *Patel v. Biden et al.*, No. 1:21-cv-1076-TSC (D.D.C. July 2, 2021).

36. *The Excellent Raj Patel v. The United States et al.*, No. 1:21-cv-3335-MLB (N.D. Ga. Oct. 5, 2021).

37. *The Excellent Raj Patel v. The United States et al.*, No. 1:21-cv-3376-MLB (N.D. Ga. Oct. 5, 2021).

38. *Patel v. United States et al.*, No. 3:21-cv-628-RLM-APR (N.D.I.N. Oct. 7, 2021).

39. *Patel v. Biden et al.*, No. 22-cv-465-JMS-MG (S.D.I.N. Mar. 24, 2022).

40. *In Re Raj Patel*, No. 22-mc-00024-TWP (S.D.I.N. Mar. 28, 2022) (2 yr. prejudice from filing before the S.D.I.N.). *Contra.* ECF 31, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022).

41. *Patel v. The University of Notre Dame du Lac*, No. 1:22-cv-01329-JPH-MG (S.D.I.N. July 8, 2022) (notice of removal) (dismissed) (*see infra* #43).

STATE CASE

42. *Patel v. Patel*, No. 32D05-1808-PO-000372 (Ind. Super. Ct. Aug. 21, 2018).

43. *Patel v. The University of Notre Dame du Lac*, No. 49D05-2206-CC-019517 (Ind. Super. Ct., Marion Cnty. 5 202_).

TABLE OF CONTENTS

TABLE OF AUTHORTIES

CASES

UNITED STATES CONSTITUTION

STATUTES

FEDERALIST PAPERS

RULES

RESTATEMENT (SECOND) OF CONTRACT (1981)

SECONDARY SOURCES

TABLE OF ADDENDUMS, APPENDICES, INDEXES, AND EXHIBITS

ADDENDUMS

APPENDICIES

INDEXES

EXHIBITS

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1491 – Claims against United States generally

(a)

(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States,[2] or for liquidated or unliquidated damages in cases not sounding in tort...

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

[underline added]

28 U.S.C. § 2517 – Payment of judgments

(a) Except as provided by chapter 71 of title 41, every final judgment rendered by the United States Court of Federal Claims against the United States shall be paid out of any general appropriation therefor, on presentation to the Secretary

---

2. "The United States, as sovereign, is immune from suit save as it consents to be sued." *United States v. Sherwood*, 312 U.S. 584, 586 (1941). The waiver of immunity "must be 'unequivocally expressed.'" *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003) (quoting *United States v. Mitchell*, 445 U.S. 535, 538 (1980)). The Big Tucker Act, 28 U.S.C. § 1491(a), the principal statute governing the jurisdiction of this case originating in the Court of Federal Claims, waives sovereign immunity for claims against the United States, not sounding in tort, that are founded upon the United States Constitution, a federal statute or regulation, or an express or implied contract with the United States. *Schneiter v. The United States*, No. 21-1876C (C.F.C. Apr. 7, 2022), Doc. 30; 28 U.S.C. § 1491(a)(1); *White Mountain Apache*, 537 U.S. at 472. However, the Big Tucker Act is merely a jurisdictional statute and "does not create any substantive right enforceable against the United States for money damages." *United States v. Testan*, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, including but not limited to "an express or implied-in-fact contract" or a money-mandating...statute. *Loveladies Harbor, Inc. v. United States*, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (*en banc*). *Cf. Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. Nov. 5, 2021), *aff'd on other grounds*, No. 22-1131 (Fed. Cir. 2022), *pending cert.*, No. _____ (U.S. 202_) citing *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009) (applicable to contracts under money-mandating statutes).

of the Treasury of a certification of the judgment by the clerk and chief judge of the court.

(b) Payment of any such judgment and of interest thereon shall be a full discharge to the United States of all claims and demands arising out of the matters involved in the case or controversy, unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged.

[underline added]

28 U.S.C. § 1651 – Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

42 U.S.C. § 2000bb–1 – Free exercise of religion protected

(a) IN GENERAL - Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability,[3] except as provided in subsection (b).

(b) EXCEPTION - Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) JUDICIAL RELIEF

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

---

3. "Failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny, under which the government must demonstrate its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy v. Bremerton School Dist.*, No. 21-418 * 12 (U.S. June 27, 2022) (internal citations omitted) (Gorsuch, J., majority). "The Free Exercise Clause and Establishment Clause are equally integral in protecting religious freedom in our society. The first serves as "a promise from our government," while the second erects a "backstop that disables our government from breaking it" and "start[ing] us down the path to the past, when [the right to free exercise] was routinely abridged." *Id.* * 34-35 (Sotomayor, J., dissenting) quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. ___, ___ (2017) (Sotomayor, J., dissenting) (slip op., at 26).

42 U.S.C. § 2000bb–3 – Applicability

(a) IN GENERAL
This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) RULE OF CONSTRUCTION
Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) RELIGIOUS BELIEF UNAFFECTED
Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

[underline added]

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[underline added]

Article IV, Section 2 – Privileges & Immunities Clause

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Article IV, Section 1 – Full Faith & Credit Clause

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

[underline added]

42 U.S.C. § 1981 – Equal rights under the law

(a) STATEMENT OF EQUAL RIGHTS
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white

citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "MAKE AND ENFORCE CONTRACTS" DEFINED
For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) PROTECTION AGAINST IMPAIRMENT
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

[underline added]

STATEMENT OF THE CASE

Raj K. Patel, from all capacities, pro se, as Petitioner. A simple filing of a grievance before the Court of Federal Claims ("C.F.C.") has turned into an unusual matter in judicial proceedings and jumped over a material question of law, as to violate the separation of powers, and presumptions set by this United States Supreme Court. Sup. Ct. R. 10(a) & (c). *United States v. King*, 395 U.S. 1, 3 (1969); *Maine Cmty. Health Options v. United States*, 590 U.S. ___, 140 S. Ct. 1308, 1329 & 1333 (2020); and *Patel v. United States*, No. 21-cv-2004-LAS (Fed. Cl. Nov. 5, 2021), *rev'd in part and aff'd in part*, No. 22-1131 (Fed. Cir. May 19, 2022), *pending this cert.*, No. _____ (U.S. 202_).

As the matter-at-hand stands, the Court of Appeals for the Federal Circuit has found a Big Tucker Act, 28 U.S.C. § 1491(a), but it has not overturned the C.F.C. for failure to state a claim upon which relief can be granted and for further stating and equivocating that the United States-Presidential-contract with me is frivolous. Dkt. 10. Thus, I am asking this Supreme Court to find a breach of the contract claim upon which relief can be granted. ECF 31 and Dkt. 10; and *but cf.* RCFC 12(b)(6).

Unlike in the litigation material in the lower courts below, because the following material was not required in those proceedings as a *pro se* plaintiff, I found law that discusses the law of causation, foreseeability, and damages within. My argument is enclosed herein that the harm would not have followed but for the breach of legal responsibility via the contract-at-hand or the breach played a substantial casual factor in damages accumulated. The United States, because of its behemoth size and influence within the environs of United States, is proximately the cause, especially because the Defendant-Appellee-Respondent-United States offered no other explanation. Nonetheless, the C.F.C. and Senior Judge Smith abused its discretion and erroneously concluded.

Amongst the many constructions of the contract, in the C.F.C., it is alleged as a breach of a Big Tucker Act complementing cases. The case-at-hand can also be construed by the Civilian Board of Contracts Appeals and the United States federal district courts. Because the contract created federal protection, terminating the security over me was also a property right interfered with and Taken by the Federal Government.

My contract with the United States, authorized by President George W. Bush, is that I would like under a stress weapon used by the "Hindu Terrorist Witch Goddess," while the United States observes, frees United States citizens who are similarly situated, learn about the Hindu Terrorist Witch Goddess' objective, and pay me with money for the harm done on me by the Hindu Terrorist Witch God with her stress weapon (Weapon S), similar to the recent Presidential Finding of the Havana Syndrome. Ex. E at 1061. As pay, I would make at least $1 per American or more than my fellow classmate, who at the time might make it into major league sports, G.H., and who now plays for a National Basketball Association team, whichever is greater. App. A at 23 & 26. The United States would use the science of identity politics and demographics to undo and prevent harm caused by lawless discrimination, including but not limited to, United States citizens based on ancestry, i.e. South Asian descendent. I mastered the offer not only to serve the United States but also to ensure that I am able to recover for my academic and social harm and prevent any more from becoming.

As this method proved helpful, I am assuming, the United States approached me in May 2014, through Dr. Ajay Nair as delegate, and offered me $1 million per pound of fat mass gained due to this stress weapon, and I agree with the condition that if the weight gain will cause excessive skin, then the United States is to neutralize the stress weapon immediately. All ambiguities of offer and acceptance were cured by President Trump's ratification. App. A at 45. The Hindu Witch Goddess has caused me to become obese by

making me gain over 200 pounds of fat mass (India is the world's fattest country) using a lawless stress weapon. The contract applauds President Bush, Obama, Trump, and Biden for their efforts to prevent the imminent harm, and it should pressure the C.F.C., Federal Circuit, and Supreme Court to find the anti-terrorist, pro-development contract as fair and valid, especially since the damages usually awarded are expectation or reliance. Remedies demanded include the ratification of academic records and standardized test scores, whether its proper on remand to the C.F.C. or a district court.

In addition to induced stress from the stress weapon, I believe that these efforts can be specific lawless targeting to influence pacts and agreements such as AUKUS, an agreement including for the development of workforce and exchange for intelligence. Ex. J at 1623. *See* Prof. George Friedman, Ph.D., The World in 2050: Characteristics of New Rising Powers, World Government Summit 2022. Interestingly, I have also discovered that an upcoming change in the common rule might be include unconstitutional advice to harm United States citizens, Washington, D.C., and its allies.

New facts to the case unexpected financial hardship because I thought my parents would be much more financially supportive, causing additional symptoms of stress, and permanent denial for re-admissions into the University of Notre Dame du Lac (although there is pending state court litigation) in South Bend, Indiana. Further, Jackee Patel, my pet dog Lhatese (a mix of a Lhasa Apso and a Maltese), died on February 21, 2022 just shy of 20 years of age, who was a material figure in the case-at-hand since he and I both saw white-rings, a stress weapon bullet, fly into his eyes (and another set fly into my eyes). App. A at 46. Recently, my family has recently purchased a new puppy of the Morkie breed (a mix of a Maltese and a Yorkshire Terrier), and he is named Alro Patel.

On June 29, I filed a petition for a writ of mandamus to the United States to deflect the stress weapon, which was also assigned to Senior Judge Loren A. Smith. *TE TE Patel v. United States*, No. 1:22-cv-000734 (C.F.C. 202_).

PROCEDURAL HISTORY

For the first time in a court with subject-matter jurisdiction, on October 7, 2021, I filed a complaint which alleged many claims, including a violation of the Big Tucker Act, 28 U.S.C. § 1491(a), complemented by the substantive source of law of a contract with the United States formed by the United States-President, in the Court of Federal Claims, which has concurrent jurisdiction with the United States Civilian Board of Contracts Appeals for the complaint-at-hand. Compl., *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021), Dkt. 1. *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. Nov. 5, 2021), *aff'd on other grounds*, No. 22-1131 (Fed. Cir. 2022) (overturning Related Cases #10-41, *see supra* vi-vii)[4]. *Patel v. The Executive Offices of the President*, CBCA 7419 (2022) (filed Jun. 1, 2022).

On October 18, Senior Judge Smith ordered me to show cause. Order to Show Cause, *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021), Dkt. 7.

On October 19, Mr. Robert Keipura of the United States Department of Justice appeared to represent the United States. *TE, TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021), Dkt. 8.

On the same day, on October 19, I submitted my response to the Order to Show Cause at Dkt. 7. Response, *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021), Dkt. 9.

On November 5, Senior Judge Smith dismissed the case for "lack of [subject-matter] jurisdiction" while citing R.C.F.C. 12(h)(3) and reasoned (1) that the United States-Presidential-contract-at-hand was "factually frivolous" and (2) that the complaint claiming breach(es) of the contract-at-hand was "frivolous," even though under contracts law,

4. *United States v. Hohri*, 482 U.S. 64 (1987) (the Court of Appeals for the Federal Circuit has jurisdiction over mixed cases).

which serves idiosyncratic private and public needs, was substantial and non-frivolous, per its presumption making breaches of contract claims money mandating. Order & Op., *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021), Dkt. 10, *aff'd on other grounds*, No. 22-1131 (Fed. Cir. 2022). Then, the Clerk of Court of Federal Claims entered judgement. Judgement, *Id.*, Dkt. 11.

Out of fear of missing the deadline to submit a Notice of Appeal to the Court of Appeals for the Federal Circuit, I did not submit a Motion to Reconsider before the Court of Federal Claims. *See generally TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021).

On the same day, on November 5, I submitted a notice of appeal to the Court of Federal Claims for *de novo* review, without presumptions of correctness or deference, before the Court of Appeals for the Federal Circuit. Not. of Appeal, *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021), Dkt. 12.

On November 8, the appeal was docketed in the Court of Appeals for the Federal Circuit. *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 1.

On November 22, Mr. Robert Kiepura appeared again for the United States. *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 11.

On November 24, I submitted my corrected informal brief with appendices. Appellant's Informal Br., *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 15. *See also* ECF 3 (Nov. 9, 2021).

On November 29, Mr. Kiepura submitted a motion for summary affirmation, in which Mr. Kiepura sought to further Senior Judge Smith's opinion at Dkt. 10 rather than the United States-President-Promisor's. Mot. for Summ. Affirmance, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 16.

On November 30, I submitted my compliant response to Mr. Kiepura's motion for summary affirmance. Appellant's Resp., *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 19.

On December 3, Mr. Kiepura submitted his reply to my response to his motion for summary affirmation. Appellee's Reply, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 21.

On January 25, 2022, I submitted an amended motion amending appellant's briefs and replies. Am. Mot., *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 27.

On February 9, 2022, I submitted a motion to correct my opening brief. Appellant's Corrected Opening Br., *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 30.

On February 9, I served a copy of a petition writ of mandamus filed with this Supreme Court to decide the case. *See Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 32. Nonetheless, the filing with the Supreme Court was rejected for being non-compliant; a corrected version was not filed with the Supreme Court. *See* Letter, *Id.*, ECF 41. *See also* Pet. for Mandamus, *Patel v. Biden et al.*, No. 1:22-cv-394-UNA (D.D.C. Mar. 9, 2022) (filed Feb. 11, 2022) (28 U.S.C. § 1368, *mandamus denied*), *aff'd*, No. 22-5057 (D.C. Cir. Jun. 8, 2022) (*vacat'g* argument for mandamus under Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.*).

On February 11, the Court of Appeals for the Federal Circuit granted Mr. Kiepura's motion for summary affirmance but stated that the Court of Federal Claims concluded correctly only because the Court of Federal Claims has "jurisdiction to claims for money damages against the United States based on sources of substantive law that" 'can fairly be interpreted as mandating compensation by the Federal Government.'" *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009) ("*Navajo Nation II*") (citation and internal quotation marks omitted) cited in Op. & Order, *Patel v. United States*, No. 22-1131 (Fed. Cir.

2022), ECF 31, *aff'd*, ECF 44. *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. Nov. 5, 2021), Dkt. 10, *modified*, No. 22-1131 (Fed. Cir. 2022), ECF 31. *Cf. Holmes v. United States*, 657 F.3d 1303, 1313-14 (Fed. Cir. 2011) (distinguishing Tucker Act claims) & *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1364 & 1367 (Fed. Cir. Apr. 16, 2021) (discussing distinguishments of Tucker Act claims).

On March 8, I filed a Combined Petition for Panel Re-hearing and Petition for Re-hearing En Banc. Combined Pet. for Panel Reh'g & Reh'g En Banc, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 40.

On April 11, I filed a letter indicating that Internal Operating Procedure #12 of the Court of Appeals for the Federal Circuit was violated because my Petition at ECF 40 was not "promptly" forwarded to the judges yet. ECF 42. Due Process Cl., U.S. const. amend. v.

On May 19, the Court of Appeals for the Federal Circuit panel and the Court of Appeals for the Federal Circuit en banc denied my combined petition for panel re-hearing and petition for re-hearing en banc, and it issued a non-argument-based opinion. Op. & Order Denying Combined Pet. for Panel Reh'g & Reh'g En Banc, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 44, *aff'g*, ECF 31.

On May 25, I submitted a motion to reconsider the order and opinion denying my combined petition for panel re-hearing and petition for re-hearing en banc. Mot. to Reconsider Combined Pet. for Panel Reh'g & Reh'g En Banc, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 46.

On May 31, the Clerk of the Court of Appeals for the Federal Circuit issued the mandate to conclude the case. Mandate, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 47.

On May 31, I filed a notice of appeal with the Oval Office of President of the United States as a "deemed denial" for the contract-at-hand. *Patel v. The White House*, CBCA 7419 (202_).

On June 1, I filed a complaint against the President of United States in the United States Civilian Board of Contract Appeals, which argues that the Court of Appeals for the Federal Circuit in fact found a contract, as it conducted a fairness inquiry, an analysis which happens only if the court finds a contract under its four (4) factors, and Judge Lester was assigned for this complaint. *Patel v. The Executive Offices of the President*, CBCA 7419 (202_).

On June 2, an order from the Court of Appeals for the Federal Circuit panel and Court of Appeals for the Federal Circuit en banc was issued denying the motion for re-consideration. Order, *Patel v. United States*, No. 22-1131 (Fed. Cir. 2022), ECF 48. The PACER electronic filing notice e-mail subject line read "22-1131-ZZ Patel v. US "Court Order Filed no action taken RECONSIDER ORDER." *See* App. P (underline added).

On June 12, I filed a complaint in the State of Indiana Superior Court against the. University of Notre Dame for discriminating against me for re-admissions into its law school; the University and some of its personnel who were tapped by the Hindu Terrorist Witch Goddess[5] to use Weapon S crafted their own ruthless artifice, for their own emotional amusement, with the Weapon S. *Patel v. The University of Notre Dame du Lac*, No. 49D05-2206-CC-019517 (Ind. Super. Ct., Marion Cnty. 5 202_).

On June 23, the United States-President Biden's Administration said that it will compensate federal officials who assumed risk and were infected with the mysterious

5. Interpretation of religion must "'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'" *Kennedy v. Bremerton School Dist.*, No. 21-418 * 23 (U.S. June 27, 2022) (internal citations omitted) (Gorsuch, J., majority) (internal citations omitted).

Havana Syndrome anywhere from $100,000 to $200,000; in the terms of public health, the Havana Syndrome possibly is either the same disease or sister disease I have been infected with and is caused by either the same weapon or a sister weapon. *See* Ex. I at 1607-11. *See generally* Compl., *TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. 2021).

On June 28th, I submitted a petition of review to the Civilian Board of Contract Appeals and motion to stay Rules of Civilian Board of Contract Appeals time for a motion to reconsider before the Court of Appeals for the Federal Circuit because I am working on this petition of a writ of certiorari. *Patel v. The Executive Offices of the President*, CBCA 7419 (202_), *pending mot. for stay, Patel v. The Chief of Staff*, No. 22-1962 (Fed. Cir. 202_).

Overall, the Big Tucker Act, 28 U.S.C. § 1491(a), contract-at-hand is a United States-Presidential-express-oral-not-written-and-memorialized-contract-in-fact. *See generally TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. Nov. 5, 2021), *rev'd in part and aff'd in part*, No. 22-1131 (Fed. Cir. 2022), *pending this cert.*, No. ____ (U.S. 202_).

This petition for a writ of certiorari follows.

FACTUAL BACKGROUND

I. SUMMARY

The contract-at-hand does not use the necessary express language to overcome the sufficient, judicially-imposed presumption that all claims for breach of contract against the United States, like for private agreements, are strongly implied/assumed to be interpretable as being fairly mandating of compensation, in the form of money, from the Federal Government; thus, per the armed presumption that money damages naturally follows upon a breach of contract, each contracts claim is money mandating. *See generally* App. A at 9-92; Dkt. 10; *Holmes*, 657 F.3d at 1313-14; *Higbie v. United States*, 778 F.3d 990, 992-93, 996, & 1000 (Fed. Cir. 2015); *Boaz Hous. Auth.*, 994 F.3d at 1364-66 (Fed. Cir. Apr. 16, 2021); *Franconia Associates v. United States*, 536 U.S. 129, 141-43 (2002); and *San Carlos Irrigation & Drainage Dist. v. United States*, 877 F.2d 957, 960-61 (Fed. Cir. 1989). Therefore, the lower courts abused their discretions when holding otherwise.[6] Dkt. 10 & ECF 31.

Accordingly, I argue to reverse and remand to the Court of Federal Claims and the Court of Appeals for the Federal Circuit with the instructions to enter summary judgement in favor of me, the Plaintiff-Appellant-Petitioner, or order the United States, Defendant-Appellee-Respondent, to show why summary judgement should not enter and begin the civil litigation process, which will include, but will not be limited to, necessary depositions of the Presidents George W. Bush, Barack H. Obama, Donald J. Trump, and President Joe Biden, or enter into settlement with the demands for relief. As an alternative, this Supreme Court might find proper for the C.F.C. courts to reform or re-make the contract rather than invalidly dismissing it and disrespect both contractual intent and undertaking and principle of *stare decisis* as applied to the contract-at-hand. Prof. Larry

6 According to *Holmes*, court cases are not clear about the fair interpretation and fair inference tests. *Holmes*, 657 F.3d at 1313 n. 6

A. DiMatteo, *The Norms of Contract: The Fairness Inquiry and the "Law of Satisfaction"—A Nonunified Theory*, 24 Hofstra L. Rev. 349, 390 & 436-48 (1995). *See generally Refaei v. United States*, No. 2017-1399 (Fed. Cir. Feb. 23, 2018) (Due Process Policy within a contract, separate from the Fifth Amendment). *Cf. United States v. United Cont'l Tuna Corp.*, 425 U.S. 164, 182 (1976).

II. RULES

There is no requirement that an express contract-in-fact contain terms that are money mandating or mandating of compensation under the Big Tucker Act or judicial opinions. *United States v. Testan*, 424 U.S. 392, 398 (1976); *Loveladies Harbor, Inc. v. United States*, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (*en banc*). *Cf. TE TE Patel v. United States*, No. 1:21-cv-02004-LAS (C.F.C. Nov. 5, 2021), *aff'd on other grounds*, No. 22-1131 (Fed. Cir. 2022), *pending this cert.*, No. ____ (U.S. 202_). It is a "judicially-imposed requirement that [contracts] in question be money-mandating." *Higbie*, 778 F.3d at 992. *Villars v. United States*, 590 F. App'x 962 * 6-7 (Fed. Cir. 2014) ("The claim must, however, seek money damages to come within the Tucker Act, though not necessarily only money damages. *See Lee v. Thornton*, 420 U.S. 139, 140 (1975)"). *See Schneiter v. United States*, 159 Fed.Cl. 356, 368 n. 7 (C.F.C. Apr. 7, 2022) (allowing restitution and equity in formulating money damages) quoting *Pauley Petroleum Inc. v. United States*, 591 F.2d 1308, 1316 (Ct. Cl. 1979) (noting that the Tucker Act has always permitted the use of "equity doctrines to arrive at a pecuniary judgment"). Restatement (Second) of Contracts of Law § 345.

Thus, upon a breach of contract, there is a "presumption that a 'money' damages remedy is available for breach of contract." *Higbie*, 778 F.3d at 992-93. *United States v. Winstar Corp.*, 518 U.S. 839, 885, (plurality opinion) (citing, e.g., Restatement (Second) of Contracts § 346, cmt. a (1981)). *Higbie*, 778 F.3d at 995-1000 (Taranto, J., dissenting) ("strong presumption"). "This is true, even when 'there [was] no language in the

agreements indicating that the parties did not intend for money damages to be available in the event of breach.'" *Labatte v. United States*, 899 F.3d 1373, 1379 (Fed. Cir. 2018) quoting *Holmes*, 657 F.3d at 1316. The Court of Federal Claims or the Court of Appeals for the Federal Circuit "[shall] require a showing that the contract can be fairly read to contemplate monetary damages before it may exercise jurisdiction under the Tucker Act...[only]...[w]here" all the remedies are "purely" and "entirely...non-monetary." *Higbie*, 778 F.3d at 992-95 (underline added); *accord Holmes* 657 F.3d at 1314-16 (no further inquiry needed or necessary); *Villars*, 590 F. App'x 962 * 6-9 (underline added). Otherwise, the presumption of money damages also satisfies the requirement that the substantive source of law of contract has term which are reasonable amenable to mandate money compensation or that the parties "contemplated monetary damages," especially because money damages is the default rule for breach of contract claims. *Villars*, 590 F. App'x 962 * 6-9 (underline added). *See Holmes*, 657 F.3d at 1314-16 quoted in *Bullock v. United States*, 10 F.4th 1317 (Fed. Cir. Aug. 26, 2021), *Boaz Hous. Auth.*, 994 F.3d at 1364-65, and *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc*). *But cf.* Dkt. 7, Dkt. 9, Dkt. 10, and ECF 31. *Labatte*, 899 F.3d at 1379 (allegations of Big Tucker Act breach of contract, and...prayer for monetary relief, are more than sufficient to establish [subject-matter] jurisdiction in the [C.F.C.].").[7]

Nevertheless, generally only money damages are available in a Big Tucker Act claim arising from the C.F.C. *King*, 395 U.S. at 1 & 3. *Holmes*, 657 F.3d at 1314. *Villars*, 590 F. App'x 962 * 3 (immigrant-F.B.I. informant formed contract via Attorney General for the consideration of "(a) arrange for him to obtain lawful permanent residence [based

7. *Morton v. Mancari*, 417 U.S. 535, 549 (1974) ("A statute may be repealed by implication only when two statutes are irreconcilable..."when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.") quoted in *Hanlin v. United States*, 214 F.3d 1319, 1321 (Fed. Cir. 2000).

on a particular visa], (b) reimburse him for expenses incurred during his work as an informant, (c) pay him for his work, at least $5,000 per case or a lump sum (perhaps a percentage) in case of a big seizure, and compensate him for any loss he incurred in his work, and (d) assist him to relocate and change his identity in the event his safety was compromised") quoting *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 (2002) ("'suits seeking...to compel the *defendant to pay a sum of money to the plaintiff are suits for "money damages"'* are "enough" to satisfy the jurisdiction requirement) (italics added) (quoting *Bowen v. Massachusetts*, 487 U.S. 879, 918-19 (1988) (Scalia, J., dissenting)).

"The principal remedy available in contract disputes before the CFC" are "expectation or reliance damages"..."in the form of"..."money damages." Michael J. Schaengold & Robert S. Brams, *Choice of Forum for Government Contract Claims: Court of Federal Claims vs. Board of Contract Appeals*, 17 The Fed. Cir. B.J. 279, 305 n. 191, 305-310 (2008) (internal citations omitted) citing *S. Cal. Fed. Sav. & Loan Ass'n v. United States*, 422 F.3d 1319, 1334 (Fed. Cir. 2005). The damages remedy is "'limited to actual, presently due money damages from the United States.'" *Todd v. United States*, 386 F.3d 1091, 1093-94 (Fed. Cir. 2004) quoting *Testan*, 424 U.S. at 398 (quoting *King*, 395 U.S. at 3). *Schneiter*, 159 Fed.Cl. at 368 n. 7 (C.F.C. Apr. 7, 2022) (allowing restitution and equity in formulating money damages).

"[C]ontracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force." Federalist 81 (Hamilton). The Big Tucker Act prohibits the United States from claiming sovereign immunity after a breach of contract. *Fisher*, 402 F.3d at 1172-73 (*en banc*); *Navajo Nation II*, 556 U.S. at 290 quoting *Testan*, 424 U.S. at 400; *Slattery v. United States*, 635 F.3d 1298, 1321 (Fed. Cir. 2011) (*en banc*); *Minesen Co. v. McHugh*, 671 F.3d 1332, 1334 (Fed. Cir. 2012); *Maine*

Cmty. Health Options v. United States, 590 U.S. ___, 140 S. Ct. 1308, 1332 (Sotomayor, J., opinion); and *Schneiter v. United States*, No. 21-1876C * 6 (C.F.C. Apr. 7, 2022).

"[T]he [Big] Tucker Act...[does not] create...substantive rights; [it is] simply [a] jurisdictional provision...that operate[s] to waive sovereign immunity for claims premised on other [qualified] sources of law (e.g., statutes or contracts). *Navajo Nation II*, 556 U.S. at 290.[8] *See Alston-Bullock v. United States*, 122 Fed.Cl. 38, 40 (2015); *see also Spengler v. United States*, 688 F. App'x 917, 920 (Fed. Cir. 2017) (preponderance of evidence to

---

8. *But cf. Holmes*, 657 F.3d at 1313 (Fed. Cir. 2011):

> In *Eastport Steamship Corp. v. United States*, 372 F.2d 1002 (Ct.Cl.1967), the Court of Claims drew a distinction between claims arising under the Constitution, a statute, or a regulation and those stemming from a contract. In *Eastport*, the court stated that "[u]nder Section 1491 what one must always ask is whether the constitutional clause or the legislation which the claimant cites can fairly be interpreted as mandating compensation by the [f]ederal [g]overnment for the damage sustained." 372 F.2d at 1009. The court exempted from the money-mandating requirement claims "which...fall under another head of jurisdiction, such as a contract with the United States." *Id.* at 1008 n. 7. The Supreme Court subsequently adopted this distinction in *Testan*, stating that where a plaintiff does not "rest [its] claim[ ] upon a contract...[or] seek the return of money paid by [it] to the [g]overnment[, i]t follows that the asserted entitlement to money damages depends upon whether any federal statute 'can fairly be interpreted as mandating compensation by the [f]ederal [g]overnment for the damages sustained.'" 424 U.S. at 400...(quoting *Eastport*, 372 F.2d at 1009). The Supreme Court has shown continued support for this distinction by excluding contract claims from its subsequent discussion of the money-mandating requirement. *See, e.g., [United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003)].
>
> In our view, when referencing the money-mandating inquiry for Tucker Act jurisdiction, the cases logically put to one side contract-based claims. To begin with, "[n]ormally contracts do not contain provisions specifying the basis for the award of damages in case of breach...." *San Juan City Coll. v. United States*, 391 F.3d 1357, 1361 (Fed. Cir. 2004). Moreover, we have stated: [I]n the area of government contracts, as with private agreements, there is a presumption in the civil context that a damages remedy will be available upon the breach of an agreement. Indeed, as a plurality of the Supreme Court noted in [*Winstar Corp.*, 518 U.S. at 839], "damages are always the default remedy for breach of contract." *Id.* at 885, 116 S.Ct. 2432 (plurality opinion) (citing, e.g., Restatement (Second) of Contracts § 346, cmt. a (1981))....Thus, when a breach of contract claim is brought in the Court of Federal Claims under the Tucker Act, the plaintiff comes armed with the presumption that money damages are available, so that normally no further inquiry is required. We view this presumption as forming the likely basis for the disparate discussion of claims arising under the Constitution, a statute, or a regulation and those stemming from a contract. Put another way, in a contract case, the money-mandating requirement for Tucker Act jurisdiction normally is satisfied by the presumption that money damages are available for breach of contract, with no further inquiry being necessary.

establish jurisdiction of the Court of Federal Claims). *Minehan v. United States*, 75 Fed.Cl. 249, 253 (2007); *accord Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (ambiguities of pro se parties do devast Big Tucker Act jurisdiction). *Todd*, 386 F.3d at 1094 ("Thus, jurisdiction under the Tucker Act requires the litigant to identify a substantive right for money damages against the United States separate from the Tucker Act itself.") (internal citations omitted). *Alvarado Hosp., LLC v. Price*, 868 F.3d 983, 992 (Fed. Cir. 2017) ("There is a [logical] distinction between such non-contractual claims arising under the Constitution, a statute, or a regulation and those stemming from a contract."). *Holmes*, 657 F.3d at 1313. Restatement (Second) of Contracts of Law §§ 2 & 313.

III. VAGUENESS

"The other source of law need not *explicitly* provide that the right or duty it creates is enforceable through a suit for damages, but it triggers liability only if it "can fairly be interpreted as mandating compensation by the Federal Government." *Navajo Nation II*, 556 U.S. at 290 (internal citations omitted) (italics in original); *Id.* quoted in ECF 31 at 2; *Fisher*, 402 F.3d at 1171-72, 1174-76; and *Holmes*, 657 F.3d at 1319 (internal citations omitted). *Contra. DDS Holdings, Inc. v. United States*, 158 Fed.Cl. 431, 435-36 (C.F.C. Mar. 9, 2022) *and Schaeffer v. United States*, 2021 WL 3642356 * 5 (C.F.C. Aug. 17, 2021) quoting *Ransom v. United States*, 900 F.2d 242, 244 (Fed. Cir. 1990) ("the contract must be between the plaintiff and the Government and entitle the plaintiff to money damages in the event of the Government's breach of that contract.") and *Id.* quoted in Michael J. Schaengold & Robert S. Brams, 17 The Fed. Cir. B.J. at 298 n. 141; and *Id.* at 305 n. 191 (expectation and reliance damages are the most common remedy). *Todd*, 386 F.3d at 1094 quoted in *Smith v. United States*, 709 F.3d 1114, 1116 (Fed. Cir. 2013), *cert. denied*, 571 U.S. 945 (2013) ("To be cognizable under the Tucker Act, the claim must be for money damages against the United States, and the substantive law[/"contract"] must be money-mandating.").

On the one hand, "[t]o determine whether a statutory claim falls within the [Big] Tucker Act's immunity waiver, [the Supreme Court] typically employ[s] a "fair interpretation" test. *Maine Cmty. Health Options*, 140 S. Ct. at 1327-28.

The Supreme Court is silent, however, on whether to conduct a fair interpretation test when the source of law is a contract. *Maine Cmty. Health Options*, 140 S. Ct. at 1327-28. *But cf. White Mountain Apache Tribe*, 537 U.S. at 472-73 (suggesting that the "fair interpretation rule" is a lower standard than an initial waiver of sovereign immunity, applicable to statutes and regulations..."It is enough that a statute creating a Tucker Act right be reasonably amenable to the reading that it mandates a right of recovery in damages...While the premise to a Tucker Act claim will not be 'lightly inferred,'...a fair inference will do.) and *Id.* quoted in *Holmes*, 657 F.3d at 1309. *See also Fisher*, 402 F.3d at 1174 (discussing *United States v. Navajo Nation*, 537 U.S. 488 (2003) (*"Navajo Nation I"*) and *White Mountain*, 537 U.S. at 479). *Holmes*, 657 F.3d at 1313 n. 6 ("fair inference" [cause & effect of breach and damages, relating back to the background at contract formation] and "fair interpretation" test are different) citing both *Fisher*, 402 F.3d at 1173-74 and *see generally White Mountain*, 537 U.S. at 465-83.

Thus, on the other hand, by opinion of the Court of Appeals for the Federal Circuit, contracts claims are determinately "presumed" to fall within the [Big] Tucker Act's immunity waiver and "presumed" to be money mandating, and the judiciary is estopped from performing a "fair interpretation" test and the opposing side may move to overcome the presumption clearly and convincingly. *Fisher*, 402 F.3d a 1173-74; *Holmes*, 657 F.3d at 1309-10 & 1313; and *Higbie*, 778 F.3d at 991-93. *Cf. Maine Cmty. Health Options*, 140 S. Ct. at 1327-28. *Contra.* ECF 31. *Labatte*, 899 F.3d at 1381 ("We are confident that if, after further proceedings, the Claims Court finds that there was a breach, the court will be able to decide on an appropriate remedy to provide [plaintiff]...").

IV. R.C.F.C. 12(b)(1) & R.C.F.C. 12(b)(6)

"A court's jurisdiction and a claim's merits are generally distinct inquiries." *Boaz Hous. Auth.*, 994 F.3d at 1370-71 referring to *Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin.*, 525 F.3d 1299, 1306-07 (Fed. Cir. 2008) (explaining that the Supreme Court in *White Mountain Apache Tribe* "made clear that the merits of the claim were not pertinent to the jurisdictional inquiry"). *See Alford v. United States*, No. 1:22-cv-00040-LAS * 1-2 (C.F.C. Apr. 7, 2022), *pending appeal*, No. 2022-1783 (Fed. Cir. 202_) (quoting *Columbus Reg'l Hosp. v. United States*, 990 F.3d 1330, 1341 (Fed. Cir. 2021) ("As a general rule, if a plaintiff alleges breach of a contract with the government, the allegation itself confers power on the Claims Court to decide whether the claim has merit."). *Compare Alford v. United States*, No. 1:22-cv-00040-LAS * 2 (C.F.C. Apr. 7, 2022) *with* Dkt. 10 *and* ECF 31 *rev'g in part* Dkt. 10. "In [the Big] Tucker Act jurisprudence, however, this neat division between jurisdiction and merits has not proved to be so neat. In...suits against the United States for money damages, the question of the court's jurisdictional grant blends with the merits of the claim. This mixture has been a source of confusion for litigants and a struggle for courts." *Fisher*, 402 F.3d at 1171-72 & 1884-85. Nonetheless, *Boaz Hous. Auth.*, 994 F.3d at 1370-71, explains the leading authority for these tests and consequences of their results:

> On one hand, in Tucker Act cases, the jurisdictional inquiry is whether the plaintiff's well-pleaded complaint is grounded on a money-mandating source. See Fisher v. United States, 402 F.3d 1167, 1173 & 1176 (Fed. Cir. 2005) (en banc)...In other words, 'all that is required is a determination that the claim is founded upon a money-mandating source and the plaintiff has made a nonfrivolous allegation that it is within the class of plaintiffs entitled to recover under the money-mandating source." *Jan's*, 525 F.3d at 1309...
>
> On the other hand, the merits inquiry considers whether the plaintiff has established all elements of its cause of action. Fisher, 402 F.3d at 1175. Therefore, "the consequence of a ruling by the court on the merits, that plaintiff's case does not fit within the scope of the source, is simply this: plaintiff loses on the merits

> for failing to state a claim on which relief can be granted." Id. at 1175–76 (internal citations omitted). Id. (italics in original).

Compare Boaz Hous. Auth., 994 F.3d at 1371 n. 8 quoting *St. Bernard Par. Gov't v. United States*, 916 F.3d 987, 991 & 998 n. 5 (Fed. Cir. 2019) ("we noted that the [C.F.C.] incorrectly characterized its dismissal as jurisdictional in nature, rather than as a dismissal for failure to state a claim on which relief can be granted.") *with* Dkt. 10 (incorrectly dismissing for failing both inquires: jurisdictional and merits) (citing R.C.F.C. 12(h)(3) for both R.C.F.C. 12(b)(1) and 12(b)(6)) *rev'd by* ECF 31 (opposing R.C.F.C. 12(b)(1): contract is not interpretable as fairly mandating money).

V. RUBRIC OF ELEMENTS & BREACH OF CONTRACT

"To recover for breach of contract, [on the merits,] a party 'must allege and establish' [all four (4) elements]: (1) a valid contract between the parties, (2) an obligation or duty arising out of the contract, (3) a breach of that duty, and (4) damages caused by the breach." *San Carlos Irrigation & Drainage Dist.*, 877 F.2d at 959.

"Satisfying this rubric is...both necessary and sufficient to permit a [Big] Tucker Act suit for damages in the [C.F.C.]," unless "when the obligation-creating statute provides its own detailed remedies, or when the Administrative Procedure Act, 60 Stat. 237, provides an avenue for relief." *Maine Cmty. Health Options*, 140 S. Ct. at 1328. *Fisher*, 402 F.3d at 1171-72.[9] Here, there is neither an obligation-creating statute nor is the Administrative Procedure Act applicable. *But cf. Maine Cmty. Health Options*, 140 S. Ct. at 1328.

---

9. "Separating the question of a federal court's subject matter jurisdiction over a cause from the question of what a plaintiff must prove in order to prevail in the cause is, in many areas of the law, not a difficult matter...[i]n Tucker Act jurisprudence, however, [it is]." *Fisher*, 402 F.3d at 1171-72. *Compare Fisher*, 402 F.3d at 1172-73 quoting *Banks v. Garrett*, 901 F.2d 1084, 1087-88 (Fed. Cir. 1990) *with* Dkt. 10, ECF 31, & ECF ___[Appellant's Brief]. *See also Fisher*, 402 F.3d at 1172-73 *overruling Gollehon Farming v. United States*, 207 F.3d 1373, 1378-80 (Fed. Cir. 2000) (old two-step inquiry).

Fisher, 402 F.3d at 1172-73 (new rules for "a Constitutional provision, statute, or regulation" for jurisdiction and on the merits).

VI. REMAND

I argue that while the contract-at-hand is fair under the presumed tests, Federal interests will be better served if this Supreme Court adopts a new rule for the policy of the unique modern Federal common law, contracts law regime, *see e.g. Maine Cmty. Health Options*, 140 S. Ct. at 1334 (Alito, J., dissenting) (internal citations omitted) & *King*, 395 U.S. at 3. I propose the is rule:

> When there is a sufficient offer, acceptance, consideration, mutuality of intent, and actual authority, which is the status quo of elements of a contract within the Court of Federal Claims, compensation will be now be presumed and assumed; when the breaching party is the Federal Government the Fifth Amendment Due Process Clause requires that compensation will be even more strongly presumed than when the breaching party is not the Federal Government or a governmental entity; one way to establish bad faith is to show that the contractor Unduly played the authorizing party of the contract; due to the nature of statecraft and governmental contracts, liability for breach of contract by the government will also cause damages to be fairly assumed, even nominal damages which are not preferred, but the greater of the objective test of compensation and other remedies under law or equity and convergence of wills or the meeting of minds shall prevail when the breaching party is the Federal Government; if the authorizing party of the contract can reasonably authorize the terms of the contract, then compensation must be assumed when the breaching party is the Federal Government; or, otherwise, if compensation is foreseeable than compensation will be assumed for liability of a breach of contract by the Federal Government and partial or complete compensation in the form of money will be assumed unless the contractor and the Federal Government can agree otherwise, including through a mediation led by the Court of Federal Claims; this rule applies even the Federal Government enters into a contract with a person who will not be able to meaningfully or completely compensate, in the form of money, even after liquating the person's own assets or declaring bankruptcy, as required by the Fifth Amendment Due Process Clause. Lack of fairness in the remedy is not a reason for a court to devast itself of jurisdiction; the court must remake the contract if it believes that terms are not fairly mandating of compensation from the Federal Government after the opposing side successfully overcomes the presumption of fairness; because fairness maybe subjective and returns to the point when the interpretating court found mutual assent, convergence of wills, or meeting of the minds, at no time is the interpreting court to initiate a fairness inquiry without a motion from the party question fairness; and, doing so

> otherwise, is an abuse of discretion. Based on the current rules, it logically follows that relief can always be granted when the substantive source of law is a contract; R.C.F.C. 12(b)(1) and 12(b)(6) are not applicable for claims premised on a contract where the court found that it has sufficient consideration, offer, acceptance, mutuality of intent, and actually authorized.
>
> Now, because of the sensitive nature of governmental contracts and the risk of exposing intellectual and development, including social, matters, claims breaches of contracts against the United States by an individual or a politician, former or incumbent, at the time of filing the claim within the C.F.C., are to be filed confidentially; likewise, claims of breaches of contracts filed by the United States, a head of agency, or an agent may be elected to be filed confidentially and under seal. A letter is to be served to the President of the United States and the Chief Justice of the United States for these filings confidential by the respective clerk of each court, who should also include the cause number on the letter.

Further, here, the contract-at-hand also gives Big Tucker Act jurisdiction to the Court of Federal Claims for damages, "liquidated or unliquidated," as the contract-at-hand does not sound in tort and "in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty." *Glidden Co. v. Zdanok*, 370 U.S. 530, 556 (1962). 28 U.S.C. § 1491(a). 42 U.S.C. §§ 2000bb-1 & 2000bb-3; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736-37 (2014) (Kennedy, J., concurring)[10]; and Privileges or Immunities Cl., U.S. const. art. IV, § 2. *See also* 42 U.S.C. §§ 1981-1985. *Ex parte Bakelite Corp.*, 279 U.S. 438, 451-52 (1929) (Van Devanter, J., opinion)

---

10. *Burwell*, 573 U.S. at 736-37 (2014) (Kennedy, J., concurring) (defining Free Exercise of Religion Cl.):

> In our constitutional tradition, freedom means that all persons have the right to believe or strive to believe in a divine creator and a divine law. For those who choose this course, free exercise is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts. Free exercise in this sense implicates more than just freedom of belief. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). It means, too, the right to express those beliefs and to establish one's religious (or nonreligious) self-definition in the political, civic, and economic life of our larger community. But in a complex society and an era of pervasive governmental regulation, defining the proper realm for free exercise can be difficult. In these cases, the plaintiffs deem it necessary to exercise their religious beliefs within the context of their own closely held, for-profit corporations. They claim protection under RFRA, the federal statute discussed with care and in detail in the Court's opinion.

(the C.F.C. is a not-willed rubber-stamp court to oversee Congress' pursue powers under the execution of the Executive Branch).

REASONS TO GRANT THE PETITION

Only "[r]arely has the Court" granted a writ of certiorari to determine the application of whether a Tucker Act, codified mainly in sections 1346(a) and 1491 of Title 28 of the United States Code, complementing substantive sources of law can "fairly be interpreted as mandating compensation by the Federal Government.'" *Maine Cmty. Health Options*, 140 S. Ct. at 1308, 1329, & 1333; *accord Navajo Nation II*, 556 U.S. at 290[11] quoted in ECF 31. *Fisher*, 402 F.3d a 1174 & *Holmes*, 657 F.3d at 1309. *Cf. Maine Cmty. Health Options*, 140 S. Ct. at 1329 & 1333 (interpreting statutes). U.S. const. art. III. This case, stipulated on a claim of breach of contract, giving a substantive right to recovery under the Big Tucker Act, section 1491 of Title 28 of the United States Code, is ripe. Petitions for a writ of certiorari drafted by pro se petitioners "are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The lower courts' understandings are reviewed *de novo* by this Supreme Court. *Winstar Corp.*, 518 U.S. at 860-61 (internal citations omitted).

I. CONTRACT IS FAIRLY MANDATING OF COMPENSATION WITH MONEY

In order to apply the *Navajo Nation II* fairness test, i.e., whether the contract is fairly interpretable to be demanding of compensation from the Federal Government, courts have devised a two-part inquiry: (1) the fair interpretation inquiry and (2) the fair inference inquiry. *Navajo Nation II*, 556 U.S. at 290 quoted in ECF 31 and *Holmes*, 657 F.3d at 1313 n. 6. When applying both tests, a court must return back to the point of or at contract formation, at the "convergence of wills" or at the "meeting of the minds," understood

11. *Compare Navajo Nation II*, 556 U.S. at 290 (internal citation omitted) ("'can fairly be interpreted as mandating compensation by the Federal Government.'") *with Higbie*, 778 F.3d at 993 ("...fairly be interpreted as contemplating monetary damages in the event of breach.") *and Ortiz v. United States*, No. 22-248C (C.F.C. June 27, 2022) ("Stated differently, the plaintiff must state a claim that is based on a provision that 'can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained[.]'" *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) ("*Mitchell II*") (citing *United States v. Testan*, 424 U.S. 392, 400 (1976))).

objectively through "mutual assent." Jonathan Steffanoni, *Consensus ad idem Objectivity in Contract*, Medium.com (Nov. 16, 2016); Prof. DiMatteo, 24 Hofstra L. Rev. at 384; and *Id.* at 383 n. 192 citing *Franklin Tel. Co. v. Harrison*, 145 U.S. 459, 473 (1892) (internal quotations removed). "[T]he law is clear that, for the [C.F.C.] to have jurisdiction, a valid contract must only be *pleaded*, not ultimately proven." *Total Med. Mgmt., Inc. v. United States*, 104 F.3d 1314, 1319 (Fed. Cir. 1997) and *Oliva v. United States*, 961 F.3d 1359, 1363-64 (Fed. Cir. 2020). *Boaz Hous. Auth.*, 994 F.3d at 1371 ("*Fisher*, 402 F.3d at 1173 ("[T]he determination that the source is money-mandating shall be determinative...as to the question of whether, on the merits, plaintiff has a money-mandating source on which to base his cause of action.").). The fairness inquiries are help avoid "perverse consequences" to either party. *US Airways, Inc. v. McCutchen*, 569 U.S. ——, 133 S.Ct. 1537, 1549 (2013) (citations omitted) quoted in *Higbie*, 778 F.3d at 996. Therefore, understanding the elements of contract formation is first important in order to apply the fair interpretation inquiry; recently, on April 7, 2022, the C.F.C. described these elements of contract formation in *Schneiter*, 159 Fed.Cl. at 368-369:

> Generally, a contract with the federal government must meet the following requirements: [1] "mutual intent to contract [2] including an offer and acceptance, [3] consideration, and [4] a Government representative who had actual authority to bind the Government." *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1326 (Fed. Cir. 1997). Of particular importance in this case is the concept of mutuality of intent to contract. "As a threshold condition for contract formation, there must be an objective manifestation of voluntary, mutual assent." *Turping v. United States*, 913 F.3d 1060, 1065 (Fed. Cir. 2019) (quoting *Anderson v. United States*, 344 F.3d 1343, 1353 (Fed. Cir. 2003)). "To satisfy its burden to prove such a mutuality of intent, a plaintiff must show, by objective evidence, the existence of an offer and a reciprocal acceptance." *Id.* (quoting *Anderson*, 344 F.3d at 1353). The requisite mutuality of intent, in the case of an implied-in-fact contract, is referred to as a meeting of the minds. *See id.* ("An implied-in-fact contract is one founded upon a meeting of minds and is inferred, as a fact, from the conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding."

> (quoting *Hanlin v. United States*, 316 F.3d 1325, 1328 (Fed. Cir. 2003)). For an express contract to be formed, there must be a "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Chattler v. United States*, 632 F.3d 1324, 1330 (Fed. Cir. 2011) (quoting *Cutler-Hammer, Inc. v. United States*, 441 F.2d 1179, 1183 (Ct. Cl. 1971)); *see also Columbus Reg'l Hosp. v. United States*, 990 F.3d 1330, 1339 (Fed. Cir. 2021) (holding that offer and acceptance were established where the documents authored by the federal government showed its "willingness to enter into a bargain and justified [the state's] understanding that its assent would consummate the bargain"). Plaintiff bears the burden to show that an implied-in-fact contract or an express contract was formed and, although the evidence will differ, each type of contract requires evidence of mutuality of intent to contract. *See Turping*, 913 F.3d at 1065. *Id.*

See ECF 31 (not disputing the existence of an agreement or contract assumed as enforceable). *Brawley v. United States*, 96 U.S. 168, 173 (1877) (an executed contract "merge[s] all previous negotiations, and is presumed, in law, to express the final understanding of the parties"). *See Tiburzi v. Department of Justice*, 269 F.3d 1346, 1335 (Fed. Cir. 2001) (oral agreement rules) quoting 1 Arthur L. Corbin, Corbin on Contracts § 30, at 110 (1963) ("After-thoughts cannot be brought into the contract except by mutual assent; and the informal contract stands as made.").

The other fairness test, the "fair inference" test, is simply asking whether there is a legal cause from the United States' breach to the effectuated harm; the harm liability can be paid monetarily in the construction of expectation, reliance, consequential, etc. *See also Cal. Fed. Bank v. United States*, 395 F.3d 1263, 1267-68 (Fed. Cir. 2005) (but-for or proximate causation test) quoting *Oliva*, 961 F.3d at 1363. *SGS-92-X003 v. The United States*, No. 1:97-cv-00579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 (United States responsible for Princess' kidnapping because of breach of contract; stress; emotional pain; financial hardship). *See San Carlos Irrigation & Drainage Dist.*, 877 F.2d at 959 (cause liability). *Alvarado Hosp., LLC*, 868 F.3d at 994 n. 2 ("'Jurisdiction...is not defeated...by the possibility that

the averments might fail to state a cause of action on which petitioners could actually recover." (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946))..."As frequently happens where jurisdiction depends on subject matter, the question whether jurisdiction exists has been confused with the question whether the complaint states a cause of action." *Montana-Dakota Utils. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 249 (1951). Yet, as this court has recognized, "[t]he distinction between lack of jurisdiction [R.C.F.C. 12(a)(1) & (h)(3)] and failure to state a claim upon which relief can be granted [R.C.F.C. 12(b)(6)], is an important one."). *Boaz Hous. Auth.*, 994 F.3d at 1370-71 ("A court's jurisdiction and a claim's merits are generally distinct inquiries. *See Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin.*, 525 F.3d 1299, 1306-07 (Fed. Cir. 2008) (explaining that the Supreme Court in *White Mountain Apache Tribe* "made clear that the merits of the claim were not pertinent to the jurisdictional inquiry"). *Boaz Hous. Auth.*, 994 F.3d at 1371 ("On the other hand, the merits inquiry considers whether the plaintiff has established all elements of its cause of action. Therefore, 'the consequence of a ruling by the court on the merits, that plaintiff's case does not fit within the scope of the source, is simply this: plaintiff loses on the merits for failing to state a claim on which relief can be granted.'") (citing *Fisher*, 402 F.3d at 1175-76). Restatement (Second) of Contracts (1981) §§ 33(2), 33 cmt b., 236 cmt. a, 346(2), & 346 cmt. b (nominal damages should at least be awarded). *Compare Boaz Hous. Auth.*, 994 F.3d at 1371 n. 8 ("In *St. Bernard Parish*, we noted that the Claims Court incorrectly characterized its dismissal as jurisdictional in nature, rather than as a dismissal for failure to state a claim on which relief can be granted. 916 F.3d at 998 n.5.") *with* Dkt. 10 *&* ECF 31.

Overall, outside the strong presumption of fairness, damages are fair simply on the principle that the Federal Government took on a "contractual obligation[]," "undertaking," or "relation" and contributed to the monetary harm. *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014); *Boaz Hous. Auth.*, 994 F.3d 1359, 1366 & 1369; and *San*

Carlos Irr. & Drainage Dist., 877 F.2d at 960. *Compare* ECF 15, 16 & 21 *with* ECF 31. *San Carlos Irr. & Drainage Dist.*, 877 F.2d at 960 ("An action arising "primarily from a contractual undertaking," however, may be maintained in the Claims Court "regardless of the fact that the loss resulted from the negligent manner in which defendant performed its contract." *H.F. Allen Orchards v. United States*, 749 F.2d 1571, 1576 (Fed. Cir. 1984) (quoting *Bird Sons, Inc. v. United States*, 420 F.2d 1051, 1054, 190 Ct.Cl. 426 (Ct.Cl. 1970)), *cert. denied*, 474 U.S. 818 (1985)...*See Fountain v. United States*, 427 F.2d 759, 761, 192 Ct.Cl. 495 (Ct.Cl. 1970) (stating that "[i]f contractual relations exist, the fact that the alleged breach is also tortious does not foreclose Tucker Act jurisdiction"), *cert. denied*, 404 U.S. 839 (1971).").

Further, the "purpose" or "only purpose" of a contract cannot fairly erase the express terms of the contract, and purpose is usually irrelevant in determining fairness, especially because both Fair Play and Fair Dealing do not require full disclosure to other party.[12] *Villars*, 590 F. App'x 962 * 9 & 7 ("Even the part of the request that would cover compensation promised but not paid is a request for money damages. *See Great-W. Life & Annuity Ins. Co.*, 534 U.S. at 211 ("money damages," as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty.'") (quoting *Bowen*, 487 U.S. at 918-19 (Scalia, J., dissenting)).").

A. FAIR

"[A contract] is money-mandating for jurisdictional purposes if it 'can fairly be interpreted as mandating compensation for damages sustained as a result of the breach

12. *See infra*, § I(A)(3) at p. 59 for discussion and application on the covenant of good faith and fair dealing.

of the duties [it] impose[s].'"[13] *Fisher*, 402 F.3d at 1173 quoting in *United States v. Mitchell ("Mitchell II")*, 463 U.S. 206, 218 (1983) and *United States v. Navajo Nation*, 537 U.S. 488 (2003) (*"Navajo Nation I"*) & ECF 31 at 2 *accord Navajo Nation II*, 556 U.S. at 290[14] quoting *Mitchell II*, 463 U.S. at 218 and *Navajo Nation I*, 537 U.S. at 488. "This 'fair interpretation' rule demands a showing demonstrably lower than the standard for the initial waiver of sovereign immunity," including via the Tucker Act or the money-mandating presumption. *Fisher*, 402 F.3d at 1173. *United States v. Winstar Corp.*, 64 F.3d 1531, 1542 (*en banc*), *cert. granted*, 518 U.S. 839 (1996) (contract breaches due to change in government are fairly money-mandating, including for efficient breaches). *Minesen*, 671 F.3d at 1334 & 1336-8 quoting *Slattery*, 685 F.3d at 1320-21 (*en banc*) (whether earmarked or from the general appropriation fund, 28 U.S.C. § 2517, the fairness cannot be challenged on this part). *See Holmes*, 657 F.3d at 1313 n. 6 (The 'fair interpretation' test and the 'fair inference' test are not always different.).

The C.F.C. will not lightly infer the premise of a Tucker Act claim, but "a fair inference will do" and, thus, is sufficiently enough. *Holmes*, 657 F.3d at 1309 (internal citations omitted) quoting *Mitchell II*, 463 U.S. at 218. Further, for breach of contracts claims, the fair inference test may be satisfied by the armed "presumptive remedy for breach of contract," which is "money." *Holmes*, 657 F.3d at 1310.

Prof. DiMatteo argues that the modern contract regime has returned to the beginning of contracts law, which unlike prior to the nineteenth century when "a legally enforceable contract had to be fair," the fairness inquiry is seen to compromise judicial

---

13. *Ortiz*, No. 22-248C (C.F.C. June 27, 2022) ("a pro se plaintiff still "bears the burden of establishing the Court's jurisdiction by a preponderance of the evidence."...*Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002)) (internal citations omitted).

14. *See* App. M at 316 & 332-34 at applying the *Navajo Nation II* and other United States Supreme Court factors applicable to statutes and their subsidiary contracts.

impartiality and individuals' idiosyncratic needs. Prof. DiMatteo, 24 Hofstra L. Rev. at 383 & Restatement (Second) of the Law of Contracts § Introductory Note. Therefore, Professor Randy Kozel, a former law clerk of the United States Supreme Court, argues that the courts can do away with the risk and create elemental "Fairness" by applying *stare decisis*. Prof. Randy J. Kozel, Stare Decisis *as Judicial Doctrine*, 67 Wash. & Lee L. Rev. 411, 454 n. 252 (2010). *US Airways, Inc.*, 133 S.Ct. at 1549 (citations omitted) (fair means no "perverse consequences") quoted in *Higbie*, 778 F.3d at 996. Nonetheless, when the Supreme Court or another court deems a contract lacking in fairness, unfair, or want of modification, it can reduce or increase the damages to be paid for a breach of the contract. Prof. Kozel, 67 Wash. & Lee L. Rev. at 454 n. 252.

"[F]air" turns to the social status of the one harmed by the alleged breach of contract and of the contracting parties, broadly construed. *Villars*, 590 F. App'x 962 * 3-4, 6 & 9 (Fed. Cir. 2014). *See also* 28 U.S.C. § 1491(a); 42 U.S.C. § 1981; and Privileges &/or Immunities Cl., U.S. const. art. IV, § 2 & amend. XIV, §§ 1 & 5. *See Villars*, 590 F. App'x 962 * 3, 4, 6 & 9. *See generally Vargas v. United States*, 114 Fed.Cl. 226, 226-36 (C.F.C. Jan. 27, 2014) (confidential informant for money laundering in Columbia and New York; total protection from United States; attorney's fees). For the United States courts, a Government, for and by its own People, already includes that the Federal Government might be headed by persons from different its sub-societies, encompassing of sub-classes, of its natural-born Community, with their notices of standards of decency, reasonableness, and fairness enshrined and protected by the United States Constitution. *See* Ex. G-G-2 [Madison, Madison, and Yates] at 1222-56; Federalist 39; and Prof. DiMatteo, 24 Hofstra L. Rev. at 390. And, current notable sub-societies include royalty, aristocrats, upper caste-wealthy, upper caste-others, Top 1%, intellectuals, billionaires, models, celebrities, athletes, fitness trainers, elite gays, porn stars, other elites, laborers, and social outcasts. *See*

Ex. G-G-2 [Madison, Madison, and Yates] at 1222-56; and Prof. Philip Bond, MA, Ph.D., *Contracting in the Presence of Judicial Agency*, 9 The B.E. J. of Theoretical Econ. 1, 1, 3-4, & 24 (2009). Prof. Noah A. Rosenberg, Ph.D., Prof. Trevor J. Pemberton, D.Phil., Prof. Pragna I. Patel, Ph.D. et al., *Impact of Restricted Marital Practices on Genetic Variation in an Endogamous Gujarati Group*, 149 Am. J. of Physical Anthropology 92, 92-103, Fig. 1 (2012). Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications*, (Mark Sainsburg et al. eds., 2nd ed. 1980). Prof. DiMatteo, 24 Hofstra L. Rev. at 390. Federalist 39.

To avoid a motion to dismiss for failure to state a claim, R.C.F.C. 12(b)(6), the plaintiff must make sure that claim is plausible on its face by allowing the court to "draw reasonable inferences that the [United States-Federal Government] is liable for the misconduct alleged." *Vargas*, 114 Fed.Cl. 226, 232-33 (C.F.C. 2014) quoting both *Sommers Oil Co. v. United States*, 241 F.3d 1375, 1378 (Fed. Cir. 2001) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). *Compare* "lack of fairness" (no consequences, loss of some or all equitable remedies, or reduction/increase in money damages) with "unfairness" (i.e. unconscionability, incapacity, duress, etc.) (makes a contract voidable). Prof. DiMatteo, 24 Hofstra L. Rev. at 383 & 354. R.C.F.C. 8(c)(1). Restatement (Second) Cont. §§ 364 & 78.

1. Fair Interpretation Test

The fair interpretation inquiry of whether a contract which directly serves as the substantive source of law for a Big Tucker Act claim is *"fairly"* mandating of compensation returns to the point in time when contract formation occurred – the "convergence of wills" occurred, at the moment of the "meeting of the minds," or at "mutual assent" – and, if the court can interpret, under an objective or subjective standard, that the parties to the contract knew that compensation, including in the form of money, would be required upon a breach of the contract, then the contract is to be interpreted as being fairly mandating of compensation. *Schneiter*, No. 21-1876C (C.F.C. Apr. 7, 2022), Doc. 30 at 10.

Franklin Tel. Co., 145 U.S. at 473 ("The question of the want of equality and fairness, and of the hardship of the contract, should, as a general rule, be judged of in relation to the time of the contract, and not by subsequent events. [However, w]e do not intend to say that the court will never pay any attention to hardships produced by a change of circumstances...") quoted in Prof. DiMatteo, 24 Hofstra L. Rev. at 383 n. 193. *United States v. Bormes*, 568 U.S. 6, 9 (2012) (Scalia, J., opinion) ("fair interpretation" rule "satisfied" because does not discriminate against the government, i.e. party in power) (Srinivasan, now-C.J. of the D.C. Cir., for the pet'r); and *Winstar Corp.*, 64 F.3d at 1542 (contract breaches due to change in government are fairly money-mandating, including for efficient breaches). Courts have selected from or used only a few questions when deciding whether the contract can be fairly money mandating, and of all of the following questions, the first question is the most important:

(1) Does the court on *sua sponte* review of the complaint find that the breach of contract claims contains language where the relief could be *entirely and purely non-monetary*? If so, then the party claiming breach should be ordered to show cause why relief cannot entirely and purely be non-monetary. *See generally Bullock*, 10 F.4th at 1317-21 & 1325 (Fed. Cir. Aug. 26, 2021) (7/10 claims were nonmonetary; 3/10 claims were monetary).

(2) Did party to the contract contemplate that money damages would be the way to resolve a breach of contract, either themselves or expected belief of another party?

(3) Do the terms of the contract offer a reading that is reasonably amenable to show that money would be used to satisfy compensation upon a breach of the contract?

(4) Based on the type of contract alleged to be breached, is it inherent for the breach of type of contract-at-issue to be compensated with money?

(5) Whether there is an express or implied contract is a show of a "tactic understanding" between the parties? *Vargas v. United States*, 114 Fed.Cl. 226, 229, 233, & 234 (C.F.C. Jan. 27, 2014) quoting *Balt. & Ohio R.R. Co. v. United States*, 261 U.S. 592, 597 (1923). *See also* Restatement (Second) of Contracts § 202(1) (1979).

(6) What is the clear and convincing reason(s) to overcome the strong, armed presumption that a breach of contract with the government is to be satisfied with money damages? *Boaz Hous. Auth.*, 994 F.3d 1365-66 quoting *Higbie*, 778 F.3d at 994-95.

Here, the Court of Appeal for the Federal Circuit construed a contract and said that the claims were "baseless," implying there is a failure to state claim upon which relief can be granted, and not a jurisdictional deficit. ECF 31. *Contra.* Dkt. 10. Thus, it was clear to the appellate court that the relief could not be entirely and purely non-monetary and that the parties contemplated money damages at the formation of contract and/or the contract contains reasonably amenable terms which are money mandating; thus, the Court of Appeals for the Federal Circuit had no reason to order to show cause why the presumption of money damages should or should not be overcome, and it properly reinforced the presumption of money damages rather than challenge Congress' waiver of sovereign immunity. ECF 31. *Contra.* Dkt. 10. And, the contract-at-hand is fairly and undisputedly apathetic towards the Administration in power. The Court of Appeals for the Federal Circuit was correct in finding an abuse of discretion and reversing in part the C.F.C., but it should have overturned wholly, especially because Senior Judge Smith

equivocated in calling the United States-Presidential-matter-at-hand frivolous and not worthy of his honor's time.[15]

i. Lack of Fairness

Keeping with the modern contracting states' policy of freedom to contract, only inquiries of "procedural" (how the terms come to being) and "systematic" fairness are valid, and question about "substantive" fairness, i.e., sufficient consideration or mutual inducement, are not appropriate for a court to ask when determining whether a not-standardized contract, like the contract-at-hand, is interpretable as fairly mandating of money compensation. Due Process Cl.-Lenity, U.S. const. amend. v.; Grievance 20, Decl. of Indep. (1776) ("For abolishing the free System of English Laws...) referred in U.S. const. art. VI, § 1; Prof. DiMatteo, 24 Hofstra L. Rev. at 379-82 & 379 nn. 174 & 176; and *Refaei*, No. 2017-1399 * 2-6 & 11 (Fed. Cir. Feb. 23, 2018). *Cf. Maxima Corp. v. United States*, 847 F.2d 1549, 1556 (Fed. Cir. 1988) ("The need for mutual fair dealing is no less required in contracts to which the government is a party, than in any other commercial arrangement."). With that being said, violations of substantive fairness are also less likely than procedural fairness because both parties have willing agreed to the contract. Prof. DiMatteo, 24 Hofstra L. Rev. at 386-87 & 390; *cf. Refaei*, No. 2017-1399; *United States v. Hopkins*, 427 U.S. 123, 130 (1976); and, Due Process Cl.-Lenity, U.S. const. amend. v.

Substantive analysis of fairness in the element of consideration in a not-standardized-form contract is not permissive because the modern contract regime respects the individuals' freedom to contract, even when judged from inside the "fact[s]" of the contract, or from the "terms" of the contract, even when the terms of the contract might have been oppressive under a standardized-form contract. Prof. DiMatteo, 24 Hofstra L. Rev. at

15. *Harlow v. Fitzgerald*, 457 U.S. 800, 811 n. 17 (1982).

379-82 & 379 nn. 174 (intrinsic and extrinsic fairness turns to justice rather than fairness) & 176. The strong presumption of implied fairness of Big Tucker Act contract is also due to evidentiary findings that inquires of "fair" and "unfair" have been decided on "feelings" rather than jurisprudential science. Prof. DiMatteo, 24 Hofstra L. Rev. at 380. *See also Id.* at 380 n. 182 (fairness based on fundamental human values).

When the inquiry of fairness may happen on the terms, courts do not focus on the past meanings of the contract but rather the rights and obligations of the parties. Prof. DiMatteo, 24 Hofstra L. Rev. at 380 n. 183 & 381 n. 189. Most importantly, the inquiry of fairness, including when it enters the element of consideration, only demands that the consideration be neither a sham nor too nominal and sometime adequate; the Restatement (Second) of Contract and contracts law demands neither "equality of consideration" nor "near-equality" of consideration, especially since consideration has no "reliable external standard of value." Prof. DiMatteo, 24 Hofstra L. Rev. at 382, 382 n. 190, & 383 quoting Restatement (Second) of Contracts §§ 17, 71, and 79.

Whether a contract will be deemed not fairly interpretable as mandating money compensation from the Federal Government, per unfairness factors to the status, broadly construed, of the parties of the contract. *See also* 28 U.S.C. § 1491(a); 42 U.S.C. § 1981; and Privileges &/or Immunities Cl., U.S. const. art. IV, § 2 & amend. XIV, §§ 1 & 5. *See Villars*, 590 F. App'x 962 * 3, 4, 6 & 9. *See generally Vargas*, 114 Fed.Cl. at 226-36. Prof. Bond, 9 The B.E. J. of Theoretical Econ. at 1, 3-4, & 24. Prof. Noah A. Rosenberg, Ph.D. et al., 149 Am. J. of Physical Anthropology at 92-103 & Fig. 1. Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications*, (Mark Sainsburg et al. eds., 2nd ed. 1980). Prof. DiMatteo, 24 Hofstra L. Rev. at 390. Federalist 39. Because of the idiosyncrasies of fairness, including what comports with the Loyalists, the Founding Fathers, and the Framers of the Constitution with notions of fairness supremely protected, courts should apply *stare*

decisis for as much as possible for the substantive law of contract of question for lack of fairness. U.S. const. amend. v.; Prof. DiMatteo, 24 Hofstra L. Rev. at 390 & 436-38. *Cf.* Prof. Kozel, 67 Wash. & Lee L. Rev. at 454 ("By respecting individuals' and groups' reliance...the Court promotes something simple and elemental: Fairness.").[16]

Here, the contract is made by the United States-Presidency-President directly and me in my person capacity. *See generally* App A. The contract was also elaborated on the same meeting of the minds years later upon approach and offer by the United States-Presidency-President; or, if the court construed, a new parallel, contract was formed. ECF 31 & App. A at 33-6. The consideration is sufficient and adequate for the reasons stated in the complaint and not challenged by the Court of Appeals of the Federal Circuit, and the contract was of "mutual advantage." Prof. DiMatteo, 24 Hofstra L. Rev. at 379 n. 176, 382 n. 190, & 388. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) ("fundamental fairness" inquiry when reviewing standard form contracts) quoted in *Id.* at 382. *Id.* at 380 (balancing test between freedom to contract and substantive fairness of consideration in non-standard form contract is thus disfavored). *See Id.* at 383 n. 193 citing *Franklin Tel. Co.*, 145 U.S. at 473 (internal quotations removed). Further, the contract-at-hand is also fair because of the values of the sub-societies would interpret the contract to be fair for each Reasoning and rationale actor within it, as the Goodness of Humanism so favors.

---

16. Prof. Kozel, 67 Wash. & Lee L. Rev. at 454 n. 253 quoting (noting that the upsetting of settled expectations "is inconsistent with a central purpose of law in a civilized society, which is to preserve the expectations of individuals that are formed in light of existing laws, as well as actions taken in reliance on those laws"). *Compare* Prof. Kozel, 67 Wash. & Lee L. Rev. at 462 (*stare decisis* "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals[/judges], and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.") *with* Prof. DiMatteo, 24 Hofstra L. Rev. at 380 (*stare decisis* will avoid "feelings" of fact finder and will create and cause fairness). Prof. Kozel, 67 Wash. & Lee L. Rev. at 454 n. 252 quoting *See, e.g., Citizens United v. FEC*, 130 S. Ct. 876, 921 (2010) (Roberts, C.J., concurring) (stating that *stare decisis*'s greatest purpose is to serve a constitutional ideal--the rule of law"); *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989) ("[S]tare decisis is a basic self-governing principle within the judicial branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon, an arbitrary discretion.'") (quoting The Federalist No. 78) (internal citations omitted).

For instance, the parties to the contract, the contractees and contractors, are from and a part of the aforementioned elite sub-societies, who agreed upon consideration in order for it to be deemed fair. Therefore, the Court of Appeals for the Federal Circuit correctly applied *stare decisis*, as the internal questions of fact require public, newsworthy gathering of facts to understand the consideration and the intricacies of a contract truly and ethically, for an argument-based opinion. ECF 31.

Next, when the promisor of the contract is involved with the United States-President, the judiciary must be cognizant of ensuring that the separation of powers are at the threshold, unlike with other executives in contracts. *Harlow*, 457 U.S. at 811 n. 17 ("Suits against other officials — including Presidential aides — generally do not invoke separation-of-powers considerations to the same extent as suits against the President himself."). Therefore, the Court of Appeals for the Federal Circuit was correct in overturning the C.F.C. at Dkt. 10. ECF 31.

Next, since the fairness inquiry turns to the "wealth [in] society," the judiciary should take "no active" role in resolving any lack of fairness, unless the Constitution demands. Prof. DiMatteo, 24 Hofstra L. Rev. at 380 n. 178; Federalist 78; and U.S. const. amend. v. Therefore, here, for this reason, the Court of Appeals for the Federal Circuit was correct in overturning the C.F.C. in part and this court should overturn the lower courts and apply *stare decisis* to the contractual breach terms. ECF 31. Prof. Kozel, 67 Wash. & Lee L. Rev. at 454 n. 253.

ii. Unfairness

Under the modern contract regimes, the unfairness inquiry is only proper when a party initiates to label a contract as "unfair." Prof. DiMatteo, 24 Hofstra L. Rev. at 383 (three grounds of unfairness) & 384 (unfairness triggers reformation or change in equitable remedy or reduction/increase of monies). When a court, upon a motion of one of the

parties, finds unfairness, the court retains jurisdiction to "reform" the "overall imbalance" of unfairness or "modify" terms. Prof. DiMatteo, 24 Hofstra L. Rev. at 385 & 42 U.S.C. § 1981. The judiciary can also "modify" a term that it may deem to be unfair based on grounds on public policy. Prof. DiMatteo, 24 Hofstra L. Rev. at 385 & Restatement (Second) Contracts § 365. The more sophisticated the party is the less likely it can successfully claim unfairness. *Id.* at 384. Prof. Kozel, 67 Wash. & Lee L. Rev. at 454 n. 253.

Absent a lawfully enacted statute under Congress' vested powers that would allow a court to conduct an unfairness inquiry to hold someone liable for damages or substantive unfairness of consideration, the courts can ask what else did the parties reasonably believe would be the liability for breach of contracts? Prof. DiMatteo, 24 Hofstra L. Rev. at 384 & 386. "Courts have no right to remake contracts to comport with some unspecified notion of fairness nor to refuse enforcement on that ground." Prof. DiMatteo, 24 Hofstra L. Rev. at 380, 389, 390 & 389, nn. 237-43 quoting *McDonald's Corp. v. Barnes*, No. 92-36552, 1993 U.S. App. LEXIS 23513 * 13 (9th Cir. Sept. 14, 1993) (quoting *Villegas v. Transamercia Fin. Servs., Inc.*, 708 P.2d 781, 784 (Ariz. Ct. App. 1985)). *Contra.* Prof. DiMatteo, 24 Hofstra L. Rev. at 386 (courts may void a contract for reasons based on public policy for the public welfare). Pmbl., U.S. const. *Cf.* 42 U.S.C. § 1981 (contract modification). §§ 9, 14, & 19, Indian Contract Act, 1872 (Sept. 1, 1872).

In other words, the contract, along with the parties, must live on to continue Fairly Playing. *County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (not-Fair Play "when Conscience-shocking behavior is 'so 'brutal' and 'offensive' that it [does] not comport with traditional ideas of fair play and decency.'"). Thus, upon a finding of unfairness in a contract, a contract is still interpretable as fairly-mandating compensation, but a court may only either deny any and all equitable remedies or use its inherent powers to reform

or modify the contract. Prof. DiMatteo, 24 Hofstra L. Rev. at 384. *But cf. Id.* at 385 (for some types of convents, courts can void terms, to promote free-and-fair Market).

The status of a party can make a contract void, i.e., minors, disabled, incapacitated, upon motion of the court *sua sponte* or another party. Prof. DiMatteo, 24 Hofstra L. Rev. at 390. *Villars*, 590 F. App'x 962 * 3-4, 6 & 9.[17] Even construed broadly, the contract-at-hand has no elements which will make the contract void. *See also* 28 U.S.C. § 1491(a); 42 U.S.C. § 1981; and Privileges &/or Immunities Cl., U.S. const. art. IV, § 2 & amend. XIV, §§ 1 & 5. *See Villars*, 590 F. App'x 962 * 3, 4, 6 & 9.

Here, consequently, the Court of Appeals for the Federal Circuit did not find that the contract to be unfair, because it stated that the contract was clearly baseless due to pleading a failure upon which breach can be granted rather than lacking jurisdiction due to voidness. ECF 31. First, I did not assert an affirmative defense to seek to dismiss this case. Dkt. 1 & 10. Second, there is adequate consideration, both objectively and subjectively, and if it was unfair, the court is entitled to increase the amount of money damages by contract modification and still award the equitable relief once the pleading will be deemed, either by this Supreme Court or a court below, to be sufficient to grant relief rather than dismissal.[18] 42 U.S.C. § 1981. Prof. DiMatteo, 24 Hofstra L. Rev. at 388-89.

Overall, the parties entered a contract because they thought it would be of "mutual advantage," probably because of mutual benefits, reliance, or expectations, and imposing the rights and obligations of the undertaking and obligation in the form of compensation

---

17. For instance, a minor might be able to declare incapacity of an unratified contract.

18. Because of the American jurisprudence of implied-in-fact contracts law, where the source of power of a contract is the "*convergence of wills*," and not "*inherent justice*" nor "*fairness in exchange*," "judicial intervention" should be minimal and support *stare decisis*. Prof. DiMatteo, 24 Hofstra L. Rev. at 380, 387, 390, 436-38, & 387 n. 228 (italics in original). "A number of arguments have been posed against the use of fairness inquiry as a factor in the interpretation and enforceability of contract." Prof. DiMatteo, 24 Hofstra L. Rev. at 387.

should not be found to lack fairness or unfair or surprising in anyway. Prof. DiMatteo, 24 Hofstra L. Rev. at 388. *San Carlos Irr. & Drainage Dist.*, 877 F.2d at 960-61. 42 U.S.C. § 1981.

2. Fair Inference Test

After satisfying the jurisdictional requirement for a Big Tucker Act claim, that the complaint allege a breach of contract and is money demanding, although the fair interpretation test also happens in the jurisdictional test, i.e. lack of fairness in contract formation or unfairness due to incapacity, etc., the party alleging breach must state a claim upon which relief can be given. *Vargas*, 114 Fed.Cl. at 232-34 quoting *San Carlos Irrigation & Drainage Dist.*, 877 F.2d at 959. Nonetheless, while the court might modify the relief, remedy, or damages, due to lack of fairness or unfairness, it is a maladministration of justice to revisit and modify, reform, or remake the bargain and reconstruct contract formation at mutual assent, the meeting of the minds, or convergence of wills. Prof. DiMatteo, 24 Hofstra L. Rev. at 391. *Cf.* 42 U.S.C. § 1981. *See also Villars*, 590 F. App'x 962 * 9. *Oliva*, 961 F.3d at 1364 quoting 24 Williston on Contracts § 64:16 (4th ed.) ("With respect to...[pleading] general damages, no allegation describing the elements of those damages ordinarily need be made."). R.C.F.C. 8(e). *Willems Industries, Inc. v. United States*, 295 F.2d 822, 831 (Ct. Cl. 1961) ("The claimant bears the burden of proving the fact of loss with certainty, as well as the burden of proving the amount of loss with sufficient certainty so that the determination of the amount of damages will be more than mere speculation.")). *Holmes*, 657 F.3d at 1309-10 & 1315 (clear "err[or]" for inquiry). *Brashear v. United States*, No. 2018-2405 * 3 (Fed. Cir. Jun. 10, 2019) (these pleadings of *pro se* plaintiff must continually be "interpret[ed]...liberally") (internal citations omitted).

Here, Senior Judge Smith abused his discretion when his honor called the United States-Presidential-contract-at-hand frivolous, and the Court of Appeals for the Federal

Circuit abused its discretion (1) for not overturning the C.F.C. for calling the contract-at-hand frivolous and (2) for not overturning the C.F.C.'s clear error of the order to show cause and going forward with an inquiry. Dkt. 7 & 10 and ECF 31. Both courts abused their discretions by not allowing for the guided "opportunity" to specifically plead fair inference.[19]

iii. Fair inference / Lightly infer

The "fair inference"[20] inquiry demonstrates that the parties to the contract expected to use money as compensation to assuage a breach liability. *Holmes*, 657 F.3d at 1313 quoting *Eastport Steamship Corp. v. United States*, 372 F.2d 1002, 1009 (Ct.Cl.1967) (*en banc*). The C.F.C. has, according to my research, only requires satisfying one of the following questions in a fairly thought:

(1) Did the parties of at contract formation contemplate that they would use money for compensation for breach? This test is satisfied if one of the parties communicated "such belief" to the Government. *Higbie*, 778 F.3d at 994 (Fed. Cir. 2015). *San Carlos Irrigation & Drainage Dist.*, 877 F.2d at 959.

(2) Are the terms of the contract reasonably amenable to the reading that breach would result in compensation of money, either partially or entirely? *Holmes*, 657 F.3d at 1309-10.

---

19. *Minehan v. United States*, 75 Fed.Cl. 249, 253 (2007), *accord, Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) quoted in *Ray v. Proxmire*, 581 F.2d 998, 1003-04 (D.C. Cir. 1978). *Poindexter v. F.B.I.*, 737 F.2d 1173, 1190-91 (D.C. Cir. 1984). *Roche v. U.S. Postal Serv.*, 828 F.2d 1555, 1558 (Fed. Cir. 1987). *1-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913 (Generally, the C.B.C.A. gives greater procedural latitude to self-represented litigants than to parties represented by attorneys.). *Refaei v. United States*, 2017-1399 * 11 (Fed. Cir. Feb. 23, 2018). *Demes v. United States*, 52 Fed.Cl. 365, 369 (C.F.C. 2002) cited in *Vaeth v. United States*, 110 Fed.Cl. 425, 429-30 (C.F.C. 2013).

20. *Vet4U, LLC v. Department of Veterans Affairs*, CBCA 5387, 19-1 BCA ¶ 37,336. *Id.* (citing *Douglas P. Fleming, LLC v. Department of Veterans Affairs*, CBCA 3655, et al., 16-1 BCA ¶ 36,509) (fair is more than "mere speculation").

(3) Does the type of contract, such as an employment contract for services or information, which is "inherently relate to monetary compensation?" *Holmes*, 657 F.3d at 1318.

(4) Any "language" in the contract that the parties "indicating that the parties did not intend for [any] money damages to be available in the event of breach?" *Holmes*, 657 F.3d at 1316.

Brashear, No. 2018-2405 * 3 (Fed. Cir. Jun. 10, 2019). *Contra. Fischer*, 402 F.3d at 1172 (en banc) (frivolity inquiry is limited to statutes or regulations; a court is to stop its inquiry whether a substantive source of law of contract "can fairly be interpreted as mandating compensation by the Federal Government"); *accord Higbie*, 778 F.3d at 994 ("as a threshold issue"). Overall, this inquiry is only worried about whether there is a link between the contract formation and each relief sought. Prof. DiMatteo, 24 Hofstra L. Rev. at 384. *Oliva*, 961 F.3d at 1364 ("But-for or proximate causation requires 'that the causal connection between the breach and the loss...be [legally] definitively established.'") (quoting *Cal. Fed. Bank*, 395 F.3d at 1267-68 (internal quotation marks and citations omitted)). *Higbie*, 778 F.3d at 994. *Holmes*, 657 F.3d at 1309-10 & 1315.

Here, not only has the general rule of inference apply, but the general fair inference test is buttressed by the Federal Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1(c). Senior Judge Smith was abusively or erroneously prejudicial in requiring me to show cause, as the method of inquiring why something presumptively money mandating is money mandating. Due Process Cl.-Prejudice, U.S. const. amend. v.

a. General Inference

A failure to satisfy either one of these questions might require a transfer to a district court or dismissal on the merits rather than jurisdiction. 28 U.S.C. § 1346(a)(2). *6601 Dorchester Investment Group, LLC v. United States*, 154 Fed.Cl. 685, 691 (C.F.C. July 27, 2021)

quoting *Carr v. Tillery*, 591 F.3d 909, 917 (7th Cir. 2010) ("The presumption...is that the dismissal of even a very weak case should be on the merits rather than because it was too weak even to engage...jurisdiction."). *Winstar Corp.*, 518 U.S. at 911. At the pleading stage, the specifics of the harm alleged may be *prima facie* or *res ipsa loquitur*. And, a legal injury to social status is never frivolous. Federalist 80. *Villars*, 590 F. App'x 962 * 3-4, 6 & 9 (Fed. Cir. 2014).

Here, there is a fair general inference between the United States undisputedly breaching the contract-at-hand, which was preventing the Hindu Terrorist Goddess from being wholly successful in this "battle" or while in the supply chain, and me not receiving my pay for services to the United States and harm as defined within the terms of the contract. ECF 31. The Court of Appeals for the Federal Circuit abused its discretion when it did not overturn the C.F.C. for the dismissing the claim for failure to a state a claim upon which relief can be granted. ECF 31. As the following sections for causation show, there is no other explanation offered by me or the Defendant-Respondent-Appellee, who has the burden, to explain the injuries for failure to deflect the stress weapon and failure to pay for services and accrued harm upon breach.

b. Special Inference: Federal RFRA of 1993

Failure for the United States' keeping of the contractual obligation and breach is also subject to statutory inference under the Religious Freedom Restoration Act of 1993, as intended by Congress, and is able to aid in determining whether a breach of contract claim can fairly be interpreted to mandating compensation for resultant injuries of a breach of contract with the Federal Government and from the Federal Government. 42 U.S.C. § 2000bb-1(c); *Navajo Nation II*, 556 U.S. at 290; *Burwell*, 573 U.S. at 736-37 (Kennedy, J., concurring); and *Kennedy v. Bremerton School Dist.*, No. 21-418 * 23 (U.S. June 27, 2022)

(internal citations omitted) (Gorsuch, J., majority) (internal citations omitted). *But see* ECFs 15 & 31. This section especially applies to this when someone is wanting to exercise religion within the boundaries of Constitution, one of the disclosed purposes was to allow me to be freely religious from the stress weapon. *Burwell*, 573 U.S. at 736-37; U.S. const. amends. I & IX; and 42 U.S.C. § 2000bb-1(c).

Here, the Court of Appeals for the Federal Circuit and the Court of Federal Claims abused its discretion when it did not find a fair inference based on this special statutory inference which applies to breach of contract and may even give rise to independent RFRA claims or other Big Tucker Act claims, such as strategic Taking of agreed-upon security, liquidated and unliquidated damages. U.S. const. amends. I & IX. 42 U.S.C. § 2000bb–1(c). 28 U.S.C. § 1491. *Todd*, 386 F.3d at 1094-95 (The *Todd* court found that the contract provision had an enforcement provision which was entirely non-monetary, and thus the contract was not mandating of money and even precluded the parties from the C.F.C.).

iv. "But for" or "substantial causal factor" and "proximate cause"

In order to recover for a breach of contract, plaintiff must allege: "a breach of contractual duty" and "damages caused by the breach." *San Carlos Irrigation & Drainage Dist.*, 877 F.2d at 959. At the pleading standard, since specific claim construction is not necessary, alleging the terms of the contract and breaches and duties only generally is permissible. *Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538, 1547 (Fed. Cir. 1995). *San Carlos Irr. & Drainage Dist.*, 877 F.2d at 959-90 (duties may be specific or general duty may have specifics for performance and is freely interpretable by the court). *See also Oliva*, 961 F.3d at 1364 quoting 5A C. Wright & A. Miller, Federal Practice and Procedure § 1310 (4th ed.) (noting that "[g]eneral damages[, which] typically are those elements of injury that are

proximate and foreseeable consequences of the defendant's conduct" and "can be alleged without particularity under [R.C.F.C.] 8(a)").

Of the important inquiries within the fair inference test is whether the damages caused by the respective breach of duty would not have happened "but for" the breach and that damages flow "inevitably and naturally" from the breach or whether the damages caused by the respective breach of duty was a "substantial factor" amongst other possible multiple casual factors for the claimed injury or harm to be compensated by money. *SGS-92-X003 v. United States*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 41 (*See, e.g., Kan. Gas & Elec. Co. v. United States*, 685 F.3d 1361, 1369 (Fed. Cir. 2012); *Citizens Fed. Bank v. United States*, 474 F.3d 1314, 1319 (Fed. Cir. 2007)) (other internal citations omitted) & 47; and *Mitchell II*, 463 U.S. at 225. After satisfying either the "but for" causation test or the "substantial factor" causation test, the court must ask whether the breach of duty was a "proximate cause" of the damages incurred and "proximate cause" may be duly and fairly assumed if no other cause can be proven from those the Defendant has stated. *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 47. Due Process Cl.-Lenity, U.S. const. amend. v. At the pleading stage, causation may be *prima facie* or *res ipsa loquitur*. Federalist 80.

Here, Court of Appeals for the Federal Circuit abused its discretion when it reviewed *de novo* to determine whether there was causation in order for the C.F.C. to have a satisfactory claim upon which relief can be granted. ECF 31. *Winstar Corp.*, 64 F.3d at 1539. First, the complaint properly alleged a money-demanding, thus money-mandating, breach of contract claim with both general duties and specific duties which the United States breached which is compliant with requirements of the pleading rules for a Big Tucker Act contracts claim in the C.F.C. *See generally* Dkts. 1 & 7. The Court of Appeals

for the Federal Circuit and the C.F.C. should have applied both the but for test and the substantial factor test and the proximate cause test:

(1) *but for causal test* because all the harm "naturally follows" if the United States breaches the contract-at-hand, *Mitchell II*, 463 U.S. at 225 ("naturally follows") & *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 41 & 47; and (lenity becomes useless).

(2) *the substantial casual factor test* because the breach of contract is one explanation of why the stress weapon took over and caused me to gain over 200 pounds of fat mass which is something that the contract must prevent; and,

(3) *the proximate causation test* because there is no other reasonable explanation the Defendant has offered, and the United States may be assumed as the proximate cause because of its behemoth influence in the environs.

See ECF 31. The but for casual test should also have been applied for the pay for services and the reliance or actual harm which the United States took responsibility for, including living under the stress weapon, loss of pleasure from living the academic and social desires, i.e. grades and academic standardized scores, and loss of chances in political succession. For the but for injury, the proximate cause remains the United States because there is no other explanation offered. On remand and at discovery, the Defendant would be able to offer another fair explanation, if there is one. *Compare* Indexes A-C *with* Dkt. 10 *and* ECF 31.

v. Foreseeability

Damages must be "reasonably foreseeable by the breaching party at the time of contracting." *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 47 quoting *Vt. Yankee Nuclear Power Corp. v. Entergy Nuclear Vt. Yankee, LLC*, 683 F.3d 1330, 1344 (Fed. Cir. 2012) (citing Williston on Contracts § 64:29). "Loss may be foreseeable as

a probable result of a breach because it follows from the breach (a) in the ordinary course of events, or (b) as a result of special circumstances, beyond the ordinary course of events, that the party in breach had reason to know." *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 47 quoting Restatement (Second) of Contracts § 351 (1981); *see Bluebonnet Sav. Bank, F.S.B. v. United States*, 266 F.3d 1348, 1355 (Fed. Cir. 2001). "Foreseeability 'requires only reason to foresee, not actual foresight.'" *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 47 quoting *First Fed. Sav. & Loan Ass'n. v. United States*, 76 Fed.Cl. 106, 122 (2007) (quoting *Anchor Sav. Bank, FSB*, 59 Fed.Cl. at 146), *aff'd*, 290 Fed. App'x. 349 (Fed. Cir. 2008)); *see* 11 Corbin on Contracts § 56.7 ("What is required is merely that the injury actually suffered must be one of a kind that the defendant had reason to foresee and of an amount that is not beyond the bounds of reasonable prediction."). "The foreseeability requirement reflects the principle that a breaching party should not be liable for damages that 'it did not at the time of contracting have reason to foresee as a probable result of such a breach.'" *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 47 quoting *Citizens Fed.*, 474 F.3d at 1321 (quoting Restatement (Second) of Contracts § 351 cmt. a (1981)). *San Carlos Irr. & Drainage Dist.*, 877 F.2d at 959. Overall, foreseeability assures that the liable party is held liable to compensate the injured party fairly and without surprise.

Here, the complaint and negotiations contained exactly the value of the consideration, which is a large sum of the damages, and the other harm which will follow, which a court could reasonably interpret to be a part of the contract. App. A at 9-93. As this became a higher-powered contract, once I was elected as student body president of Brownsburg Community School Corporation or once we elaborated on the terms of the contract, based on the initial contract formation, once I was omnipresent already styled student body president of Emory University, Inc., the United States should have legally

foreseen that other conflicting contracts will become lesser precedential or not enforceable or even void for public policy. Prof. Bond, 9 The B.E. J. of Theoretical Econ. at 1, 3-4, & 24. Nonetheless, the United States knew that a pay was expected which includes the academic and social harm in the form of actual or expectation or reliance damages, which total over billions itself; the other amount of recover comes from the weight gain. App. A at 76. The United States knew that a human person without arms, as I could not get them on the free and fair market, would stand no chance against the stress weapon and the weight gain would follow. Further, this breach happened in the ordinary course of business for the United States-Promisor, which is another reason why money damages and compensation from the Federal Government is fairly interpretable in a court of law. *But see* Ex. I at 1607-11 (White House paying for more than risky attack for known risk; possibly not the same but similar weapon).

vi. Certainty

Certainty interpretation extends either to the terms of the contract or calculations of damages, or both. The element of certainty is only fairly inferred but sways towards light inference because certainty is more properly accessed once the C.F.C. begins interpreting damages on remand as "causation, foreseeability, and proof of damages are issues of fact." *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 41 (*see Anchor Sav. Bank, FSB v. United States*, 597 F.3d 1356, 1361 (Fed. Cir. 2010)). *See* Compl. at Dkt 1. Only damages which can be proven with reasonable certainty rather than on speculation are recoverable. *Vet4U, LLC v. Department of Veterans Affairs*, No. 5387 * 4 (CBCA May 14, 2019). However, the value of the consideration, subjective value of the injuries, and the pay of services are all recoverable, as the parties contemplated these values at contract formation and breach of contract would foreseeably cause an injury-in-fact of the same or greater value. *Holmes v. United States*, No. 1:09-cv-00208-EDK (C.F.C.

June 17, 2014), Dkt. 78 (entered settlement; stipulated at $300,000,000). Op. & Order, *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Doc. 243 at 52 ($1,145,161.47 settlement awarded) (substantial factor, proximate cause, and foreseeability). 28 U.S.C. § 2517. Further, the lesser the ambiguity of a contract, the more likely a contract is going to fairly interpretable, as there will not be a whole of lot gaps and gores. *San Carlos Irr. & Drainage Dist.*, 877 F.2d at 960 (internal citations omitted). *Id.* at 960 quoting *Palumbo v. Don-Joy Co.*, 762 F.2d 969, 976 n. 5, 226 USPQ 5, 8 n. 5 (Fed. Cir. 1985) (ruling that "legal errors made by the district court...require reversal of its grant of summary judgment"). *Todd*, 386 F.3d at 1094 (contract with own enforcement provision was deemed an equitable remedy). *Brashear*, No. 2018-2405 * 4-6 (Fed. Cir. Jun. 10, 2019) (constitution can require a fair damages remedy, i.e., Fifth Amendment, "just compensation").

At this stage in the civil litigation, the plaintiff must only plead and, not prove, that damages are calculatable under at least one theory of a substantive right giving rise to Big Tucker Act jurisdiction, such as breach of contract, Taking of property, etc. *Vargas*, 114 Fed.Cl. at 224/234 quoting *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. 2012); *Oliva*, 961 F.3d at 1365; and 28 U.S.C. § 1491(a). Multiple recovery is also appropriate for different resultant injuries (money-mandating and not-money-mandating breaches, i.e. breach of contract, breach of not-procurement contract and breach of procurement contract[21]; breach of property right[22]; breach of statute; tort claims;[23] etc.) even when the different theories are applied to the findings and

21. *See, e.g., Texas Health Choice, L.C. v. Office of Personnel Mgmt.*, 400 F.3d 895, 898-99 (Fed. Cir. 2005); *see* USAM 4-4.420.

22. *Cf. Janowsky v. United States*, 133 F.3d 888, 892 (Fed. Cir. 1998) (protection is a property right entitled to Fifth Amendment "just compensation" when there is finite resources) (but here, was part of services and compensation rendered).

23. *United States v. Yellow Cab Co.*, 340 U.S. 543 (1951) (here, contract can create a right to recover as tortfeasor by taking responsibility for claim). *See Nat'l Bank v. Republic of China*, 348 U.S. 356, 362 (1955) (the state cannot claim sovereign immunity due to covenant of good faith and fair dealing).

interpretations of the "same operative facts" or the same transaction or occurrence. *Cf. Minesen*, 671 F.3d at 1336-8; and *cf. Oliva*, 961 F.3d at 1365. *Cf. McAbee Construction v. United States*, 97 F.3d 1431, 1434 (Fed. Cir. 1996) (*see e.g., Campbell v. United States*, 661 F.2d 209, 218 (Ct.Cl. 1981)). *SGS-92-X003*, No. 1:97-cv-579-MCW (C.F.C. Sept. 26, 2014), Docs. 161 at 19 & 26 and 122 at 16 & 18-19 (memorialization); and *see also SGS-92-X003*, 74 Fed.Cl. at 647 (memorialization). *Todd*, 386 F.3d at 1094-95. *Cf. Janowsky v. United States*, 133 F.3d 888, 892 (Fed. Cir. 1998). *Oliva*, 961 F.3d at 1362-63 quoting *Cal. Fed. Bank*, 395 F.3d at 1267 ("the measure of damages must be reasonably certain, although if "a reasonable probability of damage can be clearly established, uncertainty as to the amount will not preclude recovery.") (internal citations omitted).

Damages may be construed in any available under law and equity, including but not limited to punitive when contracted for, such as expectations, incidental, reliance, restitution, special, specific, consequential, actual, exemplary, punitive, not-liquidated, specific performance, compensation, etc.[24] *San Carlos Irr. & Drainage Dist.*, 877 F.2d at 959 quoting *Prudential Ins. Co. of Am. v. United States*, 801 F.2d 1295, 1300 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987); *Villars*, 590 F. App'x 962 * 7 (Fed. Cir. 2014); *Boaz Hous. Auth.*, 994 F.3d at 1367; Prof. DiMatteo, 24 Hofstra L. Rev. at 384, 388 & 388 n. 230 (internal quoting Horwitz), 389 (italics in original) (there is a greater mutuality of intent and certainty of terms, including for damages, in not-standardized contracts than standardized contracts). Restatement (Second) of Contracts §§ 33 & 205. *Villars*, 590 F. App'x 962 * 7 (Fed. Cir. 2014) ("The complaint expressly and repeatedly asks for monetary relief.") (*see Great-W. Life & Annuity Ins. Co.*, 534 U.S. at 211). *Vet4U, LLC*, CBCA 5387, 19-1 BCA ¶

24. When the United States Federal Government is involved, Due Process Cl.-Lenity applies in calculating damages and interpretating certainty. Due Process Cl.-Lenity, U.S. const. amend. v and Prof. DiMatteo, 24 Hofstra L. Rev. at 391.

37,336. *Id.* (citing *Douglas P. Fleming, LLC v. Department of Veterans Affairs*, CBCA 3655, et al., 16-1 BCA ¶ 36,509) (when terms of a contract, including the implied presumption of money mandating and repeated assessment in terms of money, are certain that they are more than mere speculation, then the contract is fair) (citing *Willems Indus.*, 295 F.2d at 831 ("sufficient certainty" not absolute certainty that the parties could have contemplated this at the time of contract formation)). *Villars*, 590 F. App'x 962 * 9 (purpose of the bargain or the negotiation is not relevant because "the statement of an essential, even sole, motivation for entering into a contract cannot fairly be taken to erase the express allegations of what terms were part of the deal that was actually reached."). *See also Winstar Corp.*, 518 U.S. at 911 (Restatement (Second) of Contracts § 202(1) (1979) ("Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight.")). Prof. DiMatteo, 24 Hofstra L. Rev. at 390 (to complement the modern contract regime of freedom to contract, courts should apply *stare decisis* to the contract-at-hand). *See also* "frustrate the purpose." *See Schneiter*, 159 Fed.Cl. at 368 n. 7 (C.F.C. Apr. 7, 2022) (allowing restitution and equity in formulating money damages).

Here, the terms of the contract-at-hand allow both parties and the interpreting court to calculate damages certainly. For the things deemed priceless, there was a numeric value or formula for harm of the consideration or term accessed at the time of the contract. The minimum amount of pay was also agreed upon, with an on-going obligation even after breach, that I would have more money than G.H., a fellow high school schoolmate of mine, which presumed that he would make it into major league sports, and at least the value will be greater than number of Americans, per the United States census, multiplied by $1 per individual. App. A at 23-26. There was a reliance term that the United States will order, with power from the Presidency or another entity, the

appropriate academic institutions to rectify grades, standardized test score, and other necessary academic information, which is separably enforceable from the implied-in-law contract of the Privileges and Immunities Clause. U.S. const., Due Process Cl.; 18 U.S.C. §§ 241 *et seq.*; 42 U.S.C. §§ 1981 *et seq.* & 2000bb *et seq.* Further, when the United States approached me through Dr. Nair, the United States' offer implied that it knew the matters of free expression and religious expression and identity which were on the line for consideration with the $1 per pound of fat gained due to the stress weapon.[25] Earlier, the United States and I agreed that treble damages would be paid upon a breach, as it will cause the things that the stress weapon was meant to prevent with permanent marks, including upcoming marks from post-weight loss skin-removal surgery and loss of United States Presidential campaign narrative. *Cf. Janowsky*, 133 F.3d at 892 (protection by Federal Government is a property right entitled to Fifth Amendment "just compensation) (but here, was part of services and compensation rendered).[26] *Holmes*, 657 F.3d at 1313 n. 6 (any distinction of the "fair inference" and "fair interpretation" is "irrelevant in this case"). The Court of Appeals for the Federal Circuit and C.F.C. should construe the complaint correctly as the lay-mathematical language is probative to be money-mandating. Therefore, the Court of Appeals for the Federal Circuit and the C.F.C. both abused their discretions when not allowing the case is to continue on the merits per a sufficient

25. Unlike standardized contracts, where mutuality of intent is a "fiction," not-standardized contracts are entered into because the parties thought it was to their "mutual advantage;" the purpose of contracts law is to enforce the willed transactions. Prof. DiMatteo, 24 Hofstra L. Rev. at 388, 388 n. 230 (internal quoting Horwitz). *Cf. Winstar Corp.*, 518 U.S. at 911 ("Under ordinary principles of contract law, one would construe the contract in terms of the parties' intent, as revealed by language and circumstance. *See The Binghamton Bridge*, 3 Wall. 51, 74 (1866) ("All contracts are to be construed to accomplish the intention of the parties")).

26. *Rubin v. United States*, 525 U.S. 990, 990-91 (1998) (Breyer, J., dissenting from denial of certiorari) ("The physical security of [an honorable] has a special legal role to play in our constitutional system."). *Id.* at 995 (but for privileges, there would be a loss of trust in enforcement). U.S. const. art. IV, §§ 1-2. Fed. R. Civ. P. 9(d). *Cf. Wood v. Moss*, 572 U.S. 744, 134 S. Ct. 2056, 2059, 2064 & 2066-67 (2014) (rules for when regulating violence around an honorable; immunity applies).

pleading for a breach of contract claim (and other claims) upon which relief can be granted.

3. Fair Dealing

See infra, § II, Fair Dealing, p. 59.

B. MANDATING

A Big Tucker Act complementing contract "need not explicitly provide that the right or duty it creates is enforceable through a suit for damages." *Navajo Nation II*, 556 U.S. at 290; *accord Maine Cmty. Health Options*, 140 S. Ct. at 1328. *Cf. Maine Cmty. Health Options*, 140 S. Ct. at 1333 n. 2 (Alito, J., dissenting) ("grant of a right of action must be made with specificity," as there is no parallel armed presumption for statutes) (internal citations omitted). "[E]ven the "discretion[ary]" word "may" in a substantive source of law "entitle[s] to [plaintiff] compensation." *Fisher*, 402 F.3d at 1173-75 (italics in original) (internal citations omitted); *accord Maine Cmty. Health Options*, 140 S. Ct. at 1321. *See Boaz Hous. Auth.*, 994 F.3d at 1365 (Fed. Cir. Apr. 16, 2021) (*comparing Higbie*, 778 F.3d at 990 *with Holmes*, 657 F.3d at 1302). Where a contract is "reasonably amenable" to an interpretation "that it mandates a right of recovery in damages" upon a breach of it, or if the Federal Government "contemplat[ed]" that damages in the form of money would follow, then the court must allow a disbursement of funds. *Samish Indian Nation v. United States*, 419 F.3d 1355, 1364 (Fed. Cir. 2005) and *San Carlos Irrigation & Drainage Dist.*, 877 F.2d at 959. *Cherokee v. Leavitt*, 543 U.S. 631, 632 (2005) ("the Government normally cannot back out of a promise to pay"). "Satisfying this ['fair interpretation' test] is generally...sufficient to permit a [Big] Tucker Act suit for damages in the [C.F.C.]" and to entitle the Plaintiff for a disbursement from the Federal Treasury for the court-found monies compensation. *Maine Cmty. Health Options*, 140 S. Ct. at 1328 quoting *White Mountain Apache*, 537 U.S. at 472-473 and *Fisher*, 402 F.3d at 1187. *Cf. Id.* (discussing statute). "[T]he

determination that the source is money-mandating shall be determinative...as to the question of whether, on the merits, plaintiff has a money-mandating source on which to base his cause of action" has "established all elements of its cause of action." *Fisher*, 402 F.3d at 1172 & 1175. In other words, a plaintiff need not plead the elements of causation, foreseeability, and certainty, and a court may not require pleading with causation, foreseeability, and certainty from the plaintiff in order to enter discovery or entertain a motion of summary judgement from the plaintiff. *Fisher*, 402 F.3d at 1172. For "uniquely federal interests," Justice Alito has stated that his honor would keep recovering under the Tucker Act "easy," in the modern, post-*Erie* regime. *Maine Cmty. Health Options*, 140 S. Ct. at 1334 (Alito, J., dissenting) (internal citations omitted); Grievance 20, Decl. of Indep. (1776); and Indian Contract Act, 1872 (Sept. 1, 1872). *But cf. Cent. Oregon Indep. Health Services, Inc. v. State ex rel. Dep't of Hum. Services*, 156 P.3d 97, 105 (Or. Ct. App. 2007) (equitable power to remake contract for calculated fees and rates) (subject to subjective and objective understanding) (i.e. if contract is not fairly money mandating but the elements of the cause of action for a breach of contract claim are present). *Cf. Maine Cmty. Health Options*, 140 S. Ct. at 1334 (Alito, J., dissenting) (for statutes, the fair interpretation test, the Court needs to create a reasonable basis rule of applying it).

"[T]he consequence of a ruling by the court on the merits...is simply this: plaintiff loses on the merits for failing to state a claim on which relief can be granted...Certainly it does not follow that, after deciding the case on the merits, the court loses jurisdiction because plaintiff loses the case." *Fisher*, 402 F.3d at 1175-76. *Accord Boaz Hous. Auth.*, 994 F.3d at 1371 discussing *St. Bernard Par. Gov't*, 916 F.3d at 987, 991, and 998 n. 5 (the Cl. Ct. incorrectly characterized its dismissal as jurisdictional in nature, rather than as a dismissal for failure to state a claim on which relief can be granted). *Accord Ralston Steel Corp. v. United States*, 340 F.2d 663, 667-69 & 672 (Fed. Cir. 1965), *cert. denied*, 381 U.S. 590 (1965).

Kawa v. United States, No. 06-0448C * 12-13 (C.F.C. June 28, 2007) (An express or implied contract with the Government may serve "both as a basis for jurisdiction and as a basis for recovery on the favorable to the plaintiff."). It is an abuse of discretion independently on both parts of the C.F.C. and the Court of Appeals for the Federal Circuit, which reviews *de novo*, "a dismissal by the Court of Federal Claims for lack of jurisdiction" rather than failure to dismiss a claim upon which relief can be granted when maladministering this threshold issue "in the Tucker Act's heartland." *Higbie*, 778 F.3d at 993-94. *Maine Cmty. Health Options*, 140 S. Ct. at 1331. *See* Dkt. 10 & ECF 31.

Here, the Court of Appeals for the Federal Circuit and the C.F.C. abused their discretions when not taking into account the money mandating terms of the contract, including the pay for the services, amount of weight fat gain mass from the lawless stress weapon, and the aggregate minimum of the harm accrued or damages of undertaking the contractual obligation. Because both the Court of Appeals for the Federal Circuit and this Supreme Court have said this is a "threshold issue," this Supreme Court could find it proper to aid in its jurisdiction and inherent constitutional rule to support *stare decisis* and reverse and remand. 42 U.S.C. § 2000bb-1(c).

C. MONEY

The Supreme Court has set a rule that for Big Tucker Act claims compensation in the form of money damages is available as long as the armed presumptions of breach of contract is not overcome, and if a contract pleading has addressed "anything remotely monetary," then the "armed...presumption" of "money" damages will not be overcome. *Villars*, No. 2014-5124 * 2, 6 & 7 (quoting *Lee*, 420 U.S. at 140). *King*, 395 U.S. at 1 & 2-3 & *Higbie*, 778 F.3d at 993-95 quoting *Holmes*, 657 F.3d at 1314 quoting *San Juan City Coll. v. United States*, 391 F.3d 1357, 1361 (Fed. Cir. 2004). *Cf. Higibe*, 778 F.3d at 997-999 (3

exceptions) (internal citations omitted). Courts have commented on the policy of this rule, and the opining courts could not stipulate what else either party or a breaching party would expect in the event of a breach of a contractual undertaking, especially when a contract does not comprise of a breach liability "provision;" thus, the courts have set a default rule of the presumption of money damages. *Smith*, 709 F.3d at 1116; *Higbie*, 778 F.3d at 996; *Id. quoting US Airways, Inc.*, 133 S.Ct. at 1549 (citations omitted); *Holmes*, 657 F.3d at 1314; & *Higbie*, 778 F.3d at 1000 (Taranto, C.J., dissenting) (default rule of strong presumption of money mandating should prevail). Prof. DiMatteo, 24 Hofstra L. Rev. at 384 & 386. Restatement (Second) of Contracts § 205. Consequently, the rule of money damages creates the fairness consistent with national social values and the Liberty and freedom to contract allows the parties to overcome the presumption when their upcoming commitments so requires. *Smith*, 709 F.3d at 1116, *cert. denied*, 571 U.S. 945 (2013). Prof. DiMatteo, 24 Hofstra L. Rev. at 365 & 453. A failure to plead or prove that the presumption of the money damages is overcome requires an interpreting court to re-enforce and re-arm the respective presumption of money damages rather than overcome Congressional intent to waive sovereign immunity for a Tucker Act claim and raise the veil of sovereign immunity again. *See Villars*, 590 F. App'x 962 * 8 (FBI informant's contract was demanding of money from the Federal Government). *Villars*, 590 F. App'x 962 * 7 ("The complaint expressly and repeatedly asks for monetary relief...Even the part of the request that would cover compensation promised but not paid is a request for money damages."). *Vet4U, LLC*, CBCA 5387, 19-1 BCA ¶ 37,336. *Id.* (citing *Douglas P. Fleming, LLC v. Department of Veterans Affairs*, CBCA 3655, et al., 16-1 BCA ¶ 36,509) (when terms of a contract, including the implied presumption of money mandating and repeated

assessment in terms of money, are certain that they are more than mere speculation, then the contract is fair) (internal citations omitted).[27]

Here, the pleading of the breach of contract is no exception to the armed presumption which makes the breach of contract claim money-mandating. *King*, 395 U.S. at 1 & 2-3. Further, like in *Villars*, where the court found that a lawsuit for unpaid wages is a sufficient breach of contract claim under the Big Tucker Act, here, my allegations include payment for unpaid wages services of a breach of contract claim. *Villars*, 590 F. App'x 962 * 7-8. The complaint, here, like the one in *Vet4U, LLC*, shows that parties to the contract made repeated assessments in terms of money with concrete dollar figures or formulas, which shows that the parties not only contemplated monetary damages but also the contemplation of monetary damages were more than mere speculation. *Vet4U, LLC*, CBCA 5387, 19-1 BCA ¶ 37,336 (internal citations omitted). Thus, unlike the Board in *Vet4U, LLC*, here, the Court of Appeals for the Federal Circuit and the C.F.C. abused their discretions by not allowing the complaint because the breach of contract claims can "'fair[ly]' be interpreted as mandating compensation by the Federal Government.'" *Id.*; *Maine Cmty. Health Options*, 140 S. Ct. at 1329 & 1333; *accord Navajo Nation II*, 556 U.S. at 290 quoted in ECF 31. 42 U.S.C. § 2000bb–1(c). Reverse and remand.

D. COMPENSATION

When the plaintiff demands more than $10,000 of compensation from a construction of a substantive source of law under the Big Tucker Act, the Court of Federal Claim has exclusive jurisdiction, and it may afford the plaintiff a relief either in law or equity. 28 U.S.C. § 1491(a). The Federal Government may also enforce a private remedy to

27. *Cherokee*, 543 U.S. at 632 ("the Government normally cannot back out of a promise to pay on grounds of insufficient appropriations") (not applicable to appropriations from the general treasury, 28 U.S.C. § 2517).

assuage liability for a breach of contract claims. *Maine Cmty. Health Options*, 140 S. Ct. at 1334 n. 4 quoting *Testan*, 424 U.S. at 400). "[F]or the "fair interpretation" test...even the discretionary word 'may' [in a substantive source of law]...entitle[s] to [plaintiff] compensation." *Fisher*, 402 F.3d at 1173-75 (italics in original) (internal citations omitted); *accord Maine Cmty. Health Options*, 140 S. Ct. at _____. "The purpose of damages for breach of contract" and "[c]ontract remedies are designed to make the nonbreaching party whole." *Oliva*, 961 F.3d at 1362 (Fed. Cir. June 15, 2020) quoting *Cal. Fed. Bank*, 395 F.3d at 1267 and quoting *S. Cal. Fed. Sav. & Loan Ass'n*, 422 F.3d at 1332. To make the party whole, a court may deconstruct the harm by "comparison between" the rebellious and non-rebellious worlds. *Oliva*, 961 F.3d at 1363 quoting *Vt. Yankee Nuclear Power Corp.*, 683 F.3d at 1349 (quoting *Yankee Atomic Elec. Co. v. United States*, 536 F.3d 1268, 1273 (Fed. Cir. 2008)). Fragile State Index, Global Data – The United States, The Fund for Peace (FFP) (2020). *Logan v. United States*, 144 U.S. 263, 295 (1892) (The Federal Government "commands obedience" to its laws through the Privileges and Immunities Clause (and to certain Privileges and Immunities through the Full Faith and Credit Clause)) & U.S. const. art. VI, §§ 1 & 2, cl. 1 & amend. XIV, § 1, cl. 2. "Equity has been defined as '[j]ustice administered...*according to fairness* as contrasted with the strictly formulated rules of common law...The term 'equity' denotes the *spirit and habit of fairness, justness, and right dealing*...'" Prof. DiMatteo, 24 Hofstra L. Rev. at 368 & 423-424 n. 454 (italics in original). Overall, a contract that is deemed unfair will be denied equitable relief and a contract with a lack of fairness will more likely have a reasonable reduction of monies damages than no money compensation because that would be an injudicious abuse of discretion – or the re-making or reformation of a contract. *Joy v. St. Louis*, 138 U.S. 1, 44 (1891) ("fair and equitable" compensation). *Hercules, Inc. v. United States*, 516 U.S. 417, 437 (1996) (treated fairly and paid expeditiously). *See Id.* at 441 (fair assumption of risk). U.S. const.

art. III. *See Schneiter*, 159 Fed.Cl. at 368 n. 7 (C.F.C. Apr. 7, 2022) (allowing restitution and equity in formulating money damages) quoting *Pauley Petroleum Inc.*, 591 F.2d at 1316 (noting that the Tucker Act has always permitted the use of "equity doctrines to arrive at a pecuniary judgment").

Here, the compensation demanded is in the form of damages and equitable remedy. 28 U.S.C. §§ 1491(a)(1)-(2). The relief is based solely on the terms of the contract. Since the contract is already deemed to have Big Tucker Act jurisdiction and the contract does not lack fairness or is not unfair, the Court of Appeals for the Federal Circuit and the C.F.C. abused their discretions when it said that it cannot provide a relief, either from the ones claimed or after modification of contract and authorized by statute or the Federal common law, at a minimum. ECF 31; 28 U.S.C. §§ 1491(a)(1)-(2); *Maine Cmty. Health Options*, 140 S. Ct. at 1330-31; and 42 U.S.C. § 2000bb-1(c). Especially because there is no assumption of risk, the United States should have had no reason to elongate the litigation process. The compensation should have been paid expeditiously.

E. CONCLUSION – ADOPT NEW RULE; GRANT CERT.

The United States Constitution includes the Privileges and Immunities Clause and Doctrine of Comity; it is the most supreme responsibility of the Federal Government to protect each American citizens' social status. Federalist 80. No claim is frivolous when social status or a privilege has been attacked or the doctrine of comity breached. *Id.* Before Independence, the Royals of Europe sent their distant relationships to the American Colonies. During the American Revolution, the Loyalists, the Founding Fathers, and the Framers of the Constitution ensured protecting social status – which much like our three branches of government, has an underlying theme of separation of powers – of not only the elites but also the laborers, all who are created equal. The Civil War was fought over social status and perceptions of their lifestyles. The Civil War Amendments, particularly

the Fourteenth Amendment, forbids the Sister States, like it forbids the Federal Government, from turning away from when social status is attacked, either to previously freed slaves, those who are descendants of the Founding Powers of the United States, and all other United States citizens. U.S. const. art. IV, § 2 & amend. XIV. The Big Tucker Act was enacted shortly after Reconstruction to protect contractors, Washington, D.C.'s development interests, and the Federal Union from the political clout of those lawless, using both the original Constitution and section five of the Fourteenth Amendment. U.S. const. art. IV, § 2 & amend. XIV, § 5. The Privileges and Immunities Clause veils the State of Nature and creates the Constitutional Order through Comity of those natural-born citizens who are styled/titled and who have also patented Government with naturalized citizens styled/titled. U.S. const. art. IV, § 2. The Clause thus indorses the Constitutional hierarchy for the citizens of the United States, and persons within it. *Id.* The Privileges and Immunities Clause is, partially or entirely, the basic law of the United States. *Id.* & *see* Federalist 78 & 80. Three to four Presidents of the United States (as President Biden will enforce after both ratification and (efficient) breach by President Trump), the contract-at-hand complements both the President's and Executive Branch's duties to protect, preserve, and defend the United States Constitution. U.S. const. art. II, § 1-4. This petition of a writ of certiorari will allow fairness to move forward in the Federally-desired direction. *Maine Cmty. Health Options*, 140 S. Ct. at 1335 (Alito, J., dissenting).

II. FAIR DEALING

The convent of good faith and fair dealing prevents parties from "act[ing] so as to destroy the reasonable expectations of the other party regarding the fruits of the contract." *Centex Corp. v. United States*, 395 F.3d 1283, 1304 (Fed. Cir. 2005). *Maxima Corp.*, 847 F.2d at 1556 ("The need for mutual fair dealing is no less required in contracts to which the government is a party, than in any other commercial arrangement."). The

covenant "'imposes on a party...the duty...to do everything that the contract presupposes should be done by a party to accomplish the contract's purpose.'" *Stockton E. Water Dist. v. United States*, 583 F.3d 1344, 1365 (Fed. Cir. 2009) (quoting 30 Richard A. Lord, Williston on Contracts § 77.10 (4th ed. 1999)) quoting *Labatte*, 899 F.3d at 1379 (Fed. Cir. 2018); and *Villars*, 590 F. App'x 962 * 6 & 9. "The duty of good faith and fair dealing prohibits 'interference with or failure to cooperate in the other party's performance.' This is true, even if 'the actor believes his conduct to be justified.'" *Labatte*, 899 F.3d at 1379 (internal citations removed). Restatement (Second) of Contracts § 205, cmt. d (1981). Good faith and fair dealing, includes but is not limited to, modifications, revising, reforming, remaking, or updating to the contract where necessary. 42 U.S.C. § 1981; *Labatte*, 899 F.3d at 1377; and Prof. DiMatteo, 24 Hofstra L. Rev. at 442. Government contracts authorized by the United States-President are also subject to the Full Faith and Credit Clause. Full Faith & Credit Cl., U.S. const. art. IV, § 1. Overall, good faith demands that both parties to contract do not act or behave raggedy, uphold the contract, including the unusual parts of the contract, "emotional[ly] bond" to the contractual relationship, "preserve the longevity of the contractual relationship" and are ethical for the duration of the contract, especially during development, and fair dealing requires can make use of the contract, sincerely work through ambiguous terms of contracts, and make the full disclosures to the other party where necessary per the contract. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 482 (1974); *Winship et al. v. the Bank of the United States*, 30 U.S. 529, 562 (1831); Restatement (Second) of Contracts § 205, cmt. a (1981); Prof. DiMatteo, 24 Hofstra L. Rev. at 390, 390 n. 245, & 442. Only agreed upon express language can change the convent of good faith and fair dealing. *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 287 (2014). "The obligations of good faith and fair dealing extends to the assertion, settlement and litigation of contract claims and defenses." Restatement (Second) of Contracts § 205, cmt. e

(1981). Absent a need to modify, *stare decisis* should be applied to contracts. Prof. DiMatteo, 24 Hofstra L. Rev. at 390. *See* Prof. DiMatteo, 24 Hofstra L. Rev. at 419-424 (personal service contracts). *S.E. Contractors, Inc. v. United States*, 406 U.S. 1, 10 (1972) (a United States citizen can expect fair dealing from Government). *Joy*, 138 U.S. at 44 (intentions of party; "fair and equitable" compensation) and U.S. const. art. III. *Cathcart et al. v. Robinson*, 30 U.S. 264, 277 (1831) ("He ought to pay the penalty, as the equitable condition on which alone he can be permitted to resist a decree for a specific performance of the whole."). *Nat'l Bank*, 348 U.S. at 362 (the state cannot claim sovereign immunity due to covenant of good faith and fair dealing).

Here, the convent of good faith and fair dealing was only broken by the United States and not me. First, the United States failed to disclose that they will breach, and failed to pay and provide a relief upon a breach. The United States also through the Court of Federal Claims and Court of Appeals for the Federal Circuit did not give me a remedy in fair dealing. ECF 31. The United States might have breached the obligations of good faith and fair dealing in other account, by not protecting my omnipresent styles and re-interpreting the contract-at-hand with the new high-powered omnipresent styles. *See generally* Compl. & ECF 31. 42 U.S.C. § 2000bb–1(c). The United States, through the lower courts, also breached the obligations of good faith and fair dealing by elongating the judicial process, which the United States courts are bound to because the United States-President-Promisor-Head-of-State-and-Head-of-Government put this contract-claim-at-hand on the United States agenda, and because Mr. Kiepura made arguments which were in part denied by the Court of Appeals for the Federal Circuit because it found a contract. ECF 16, 21, 31, 44, & 48. Upon breach, I also could not enjoy my omnipresent privileges and immunities which should have also prevented the lawless stress weapon from working on me.

III. LIQUIDATED AND UNLIQUIDATED DAMAGES

Provisions with liquidated damages and unliquidated damages can only make a contract fairer as interpretable for money damages. Section 1491 states that it causes for liquidated and unliquidated damages can also be collected before a contract is fully breached against the United States, including on separate basis of jurisdiction, especially since every breach does not create jurisdiction to award relief for a breach of contract claim, when there is a material, concrete legal injury. *Navajo Nation II*, 566 U.S. at 290; U.S. const. art. III; and *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62 (1992). In theory, where the court finds that there is not an entire breach of contract claim and is on-going, it can still award plaintiff liquidated or unliquidated damages, either once or more, after re-forming a contract to include monetary or not-monetary liquidated or unliquidated damages to ensure that neither party is unduly and unreasonably burdened when performing the contract, which would support the Federal Government acting in good faith and fair dealing, especially in developmental contracts, and in order to prevent grave manifest injustice. *Kanarek v. United States*, 314 F.2d 802, 804 (Fed. Cir. 1963). *Crown Coat Front Co., Inc. v. United States*, 386 U.S. 503, 518-520 (1967).

Here, both of the lower courts are unclear about their opinion about a claim arising under the liquidated or unliquidated damages clause. Dkt. 10 & ECF 31. Hypothetically, one of the lower courts could find there is a still a valid, on-going contract. But, the weight gain with permanent marks of skin removal surgery safely served as the termination clause of the contract. App. A. at 34 & 48. The lower courts can also modify a contract to include to liquidated or unliquidated specifically. This Supreme Court can on remand to the C.F.C. and on district court[28] can order a finding on a contract interference by the

28. Court of Appeals for the Federal Circuit has exclusive jurisdictions. *See supra*, p. 5 n. 4.

lower district courts for not transferring the case to the C.F.C., as the contract was on-going then. 28 U.S.C. § 1651.

IV. THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT ABUSED ITS DISCRETION BY NOT ALLOWING THE MOTION FOR RECONSIDERATION

First, on appeal, the issues were two folds because Senior Judge Smith of the C.F.C. dismissed the complaint for want of jurisdiction and failure to state a claim upon which relief can be granted. Dkt. 10. Second, the Court of Appeals for the Federal Circuit properly reversed the C.F.C. on its dismissal for want of jurisdiction but did not reverse the conclusion because it agreed in part with the C.F.C. that I did not plead well-plead complaint with a claim upon which relief can be granted. ECF 31. Third, because the Court of Appeals for the Federal Circuit overturned the C.F.C. in part, it abused its discretion in granting the United States' motion for summary affirmance.[29] ECF 31. Fourth, the Clerk of the Federal Circuit did not "promptly" submit motion to reconsider as required by the Internal Operating Procedure of the Court of Appeals for the Federal Circuit. Due Process Cl., U.S. const. amend. v. Fifth, the Court of Appeals for the Federal Circuit rulings do not require a specific and detailed pleadings of causation; so, similar to Senior Judge Smith, who issued an order to show cause, the Court of Appeals for the Federal Circuit might have found it proper to order me to cure the ambiguities and stipulate the general causations. *Henke*, 60 F.3d at 799. Sixth, when I moved for a motion to reconsider my denial for a motion to reconsider, the Court of Appeals for the Federal Circuit could have cured their deficits in ruling under *Cathcart et al.* which requires the Court of Appeals for the Federal Circuit to use all its powers and rights to which it claims

29. *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (not applicable here because position of United States-C.F.C. and United States-President are in conflict and thus position of United States is unclear). *But see Motions Systems Corp. v. Bush*, 437 F.3d 1356, 1366-69 (Fed. Cir. 2006) and *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803). *United States v. Arthrex, Inc.*, 594 U.S. ___, 141 S. Ct. 1970, No. 19-1434 at 23 (2021). 28 U.S.C. § 516.

it can do to the C.F.C., as a part of the United States covenant of good faith and fair dealing. *Cathcart et al.*, 30 U.S. at 277 (Marshall, C.J., opinion) ("every principle of equity and fair dealing requires that he should do what he claims the right to do, in order to relieve himself from the still more onerous pressure of a contract into which he has voluntarily entered"). Seventh, nevertheless, the Court of Appeals for the Federal Circuit said nothing about the C.F.C. Senior Judge Smith's premature and undue decision, under R.C.F.C. 12(h)(3), because according to R.C.F.C. 12(a)(1)(A) should have waited about thirty (30) more days, to give the United States R.C.F.C.-required time to answer the complaint, which caused undue prejudice to me, including because of lack of judicial caution.[30] Due Process Cl.-Prejudice, U.S. const. amend. v; R.C.F.C. 12(a)(1)(A); Federalist No. 78; and *Winstar*, 64 F.3d at 1542.

Therefore, here, the Court of Appeals for the Federal Circuit abused its discretion by elongating the litigation process which has required the filing of this petition of a writ of certiorari. Due Process Cl.-Prejudice, U.S. const. amend. v. Senior Judge's premature decision has caused him to be overturn in part and possible further confusion on part of the Court of Appeals for the Federal Circuit. *Id.* If this Supreme Court reverses and remands to the lower courts, then the lower court must take into account these new additional facts and add it to the value of damages, including in these times of inflation.

30. *Id.*

CONCLUSION

REVERSE. I move that the petition be granted.

ALSO, I move that Supervisor Roberts, the Chief Justice or this Supreme Court order the lower courts to give argument-based opinions, if a matter is hostile to the interests of Petitioner Raj K. Patel, and to aid Petitioner Raj K. Patel in correcting ambiguities, "cured his failures of jurisdictional proof," and be given "every fair opportunity" to present his case, for the rest of the lineage of this case, to "assist" in the future of this litigation and appeals, per this Supreme Court's inherent supervisory authority.[31] *See also* 28 U.S.C. §§ 1651(a)-(b). Due Process Cl.-Prejudice, U.S. const. amend. v.

Respectfully submitted,

Raj K. Patel (*Pro se*)
6850 East 21st Street
Indianapolis, IN 46219
317-450-6651 (cell)
rajp2010@gmail.com
raj@rajpatel.live
www.rajpatel.live

Former J.D. Candidate, Notre Dame L. Sch. 2015-2017
President/Student Body President, Student Gov't Ass'n of Emory U., Inc. 2013-2014 (corp. sovereign 2013-present)
Student Body President, Brownsburg Cmty. Sch. Corp./President, Brownsburg High Sch. Student Gov't 2009-2010 (corp. sovereign 2009-present)
Rep. from the Notre Dame L. Sch. Student B. Ass'n to the Ind. St. B. Ass'n 2017
Deputy Regional Director, Young Democrats of Am.-High Sch. Caucus 2008-2009
Co-Founder & Vice Chair, Ind. High Sch. Democrats 2009-2010
Vice President of Fin. (Indep.), Oxford C. Republicans of Emory U., Inc. 2011-2012

31. *See supra*, p. 40 n 19.