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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE MIDDLE DISTICT OF ALABAMA**

**DALLAS DIVISION**

**IN THE MATTER OF:**

**Demetriues Jermaine Hawkins § Contract Item No. 511328 - DK**

 **§ Ex re nata UNITED STATES OF AMERICA**

**PLAINTIFF § v. DEMETRIUES JERMAINE HAWKINS §**

**v. § CASE No. 2:14 – CV – 01150 – MHT - SRW**

**§ (M.D. Ala. 2014 Eleventh Circuit)**

 **§**

**The United States of America; § RE: ARBITRATION AWARD**

**Eric H. Holder, Jr., §**

**United States Attorney General; §**

**Kent B. Brunson, U.S. Attorney §**

**Northern District of Alabama; §**

 **§**

**DEFENDANT §**

**MOTION FOR RECONSIDERATION AND VACATUR OF OPINION AND ORDER IN THE NATURE OF A WRIT OF CORAM NON JUDICE**

**INTRODUCTION AND BACKGROUND**

**COMES NOW** PLAINTIFF, Demetriues Jermaine Hawkins, a natural person and tenders this Coram Non Judice in concert with, but not limited to Rule 60 of the FRCP regarding the opinion and order given on \_\_\_\_\_. This Federal court in its judicial capacity did not have the delegation of authority nor jurisdiction within this venue to convert and construe the arbitration award confirmation, granted by Meagan E. Russell, a duly licensed arbitrator in the state of Alabama as a *Habeas Corpus Post Conviction Relief Petition*. Such a divergent from the rule(s) is a miscarriage of justice, disrepute upon the cloth and craft and may be construed as a *mens rea* act of despotism and contempt of Congress. This Case is about the binding contract agreement Congress determined was binding on all related parties thru an arbitration awarded on September 4, 2014 by Meagan E. Russell as to the non-responses and other defaults by the United States, et al. On November 10, 2014 PLAINTIFF presented the Arbitration Award (Exhibit “3”) to this court for confirmation not for *Habeas Corpus Post Conviction Relief Petition*. The court took it upon itself against the intentions of Congress to construe the award as a *Habeas Corpus Post Conviction Relief Petition*. The court did not and currently does not have the right or jurisdiction to interfere or impair the right of contract nor the right to impair or usurp Congressional Authority. This award is consistent with the intentions of Congress, Congressional findings, and the outlined statute. This petition to confirm award was filed on Nov. 10, 2014, over a year after the final judgment on September 4, 2014. With respect to the time in which such a motion may be brought, Rule 60(b) provides it “shall be made within a reasonable time and for reasons (1), (2), and (3) not more than one year after the judgment . . . was entered . . . .” See *United States v. Buck*, 281 F.3d 1336, 1344 (10th Cir. 2002), citing *Orner v. Shalala,* 30 F.3d 1307, 1310 (10th Cir. 1994).

The Petitioner is not a lawyer and his pleadings cannot be treated as such. In fact, according to *Haines v. Kerner*, 404 U.S. 519 (1972), a complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520-521, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). “[A] pro se petitioner’s pleadings should be liberally construed to do substantial justice.” *United States v. Garth*, 188 F.3d 99, 108 (3d Cir.1999). Coram non judice, “In the presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non judice, and the judgment is void.” (See Black’s Law Dictionary, Sixth Edition, 13th Reprint (1998)).

There is no judicial courts according to *FRC vs. GE* 281 U.S. 464, Keller vs. PE 261 U.S. 428, 1 Stat. 138-178) “Judges do not enforce statutes and codes. Executive Administrators enforce statutes and codes. There have not been any judges in America since 1789. There have just been administrators.” “When acting to enforce a statue and its subsequent amendments to the present date, the judge of the municipal court is acting as an administrative officer and not in a judicial capacity; courts in administering or enforcing statues do not act judicially, but merely ministerially.” (See *Thompson vs. Smith*, 154 SE 583.). “Without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered, in law, as trespasser.” (See *Elliot vs. Piersol*, 1 pet. 328, 340, 26 U.S. 328) “When a judge acts when he or she does not have jurisdiction to act, the judge is engaged in an act or acts of treason.” (See *US vs. Will*, 449 U.S. 200, 216, 101 S. ct, 471, 66 L. Ed. 2nd 392, 406 (1980) *Cohen vs. Virginia*, 19 U.S. (6wheat) 264, 404 5 L. Ed. 257 (1821)). “Dismissal of charges is warranted, because of fraud placed on the court.” (See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238 (1944)).

**PARTIES**

PLAINTIFF, Demetriues Jermaine Hawkins is a Texas resident and currently resides at 300 N. Akard Street, Apt 2613, Dallas Texas 75201. DEFENDANT, the United States is a Corporation doing business in the U.S., U.S.A., UNITED STATES, et al; and may be served with process through its registered agent, Jeff Sessions, Attorney General of the United States at U.S. Department of Justice, 950 Pennsylvania Avenue, Washington DC 20530-0001.

**JURISDICTION AND VENUE**

This court has subject matter, personam and In Rem jurisdiction over this matter pursuant to 28 USC §1331 because PLAINTIFF asserts claims arising under the laws of the United States. Venue is proper in this district under 28 USC §1391 because defendant’s reside or have a principal place of business in this district, and (b) all or a substantial part of the events giving rise to PLAINTFF’s claims occurred in this district.

**PROOF OF CLAIMS AND FACTS**

PLAINTIFF brings forth the following allegations supporting this cause of action:

On September 4, 2014 Meagan E. Russell did arbitrate or caused to arbitrate an administrative proceeding between the parties and The United States of America, et al.

On September 4, 2014 Meagan E. Russell found or she caused to find the proceedings were binding on all parties listed in the pleadings.

On NOVEMBER 5, 2016 Congress found, agreed and determined that the contract was a binding agreement between the parties and the United States.

The court lacked the jurisdiction to construe the award and/or the contract as a plea of habeas corpus due to the fact that habeas corpus was not the argument or the controversy presented to the court. - … Its action (the court) must be confined to the particular cases, controversies, and parties over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is *CORAM NON JUDICE,* and its action a nullity; and whether the want or the excess of power is objected by a party or is apparent to the Court, it must surcease its action or proceed extrajudicially.

Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on the case before a court, their action is judicial or extra-judicial; with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it. 6 Peters, 709; 4 Russell, 415; 3 Peters, 203-7″ Cited by *State of Rhode Island v. Com. of Massachusetts*, 37 U.S. 657, 718 (1838).

There was no claim before the court to bring forth the body. Under fed statute habeas corpus 28 USC §2255 there are prerequisites that must be met or entertained and due to the fact that not only were no facts brought forth for such an entertainment it wasn’t the intent of the moving party to raise such federal question moreover this court did not have the capacity to sit and make determinations judicially as the Federal Arbitration Act is part of the Administrative Procedures Act which makes the arbitration subject to admin jurisdiction not judicial jurisdiction. It shall also be noted that never in the history of arbitration and seeking judicial confirmation of an award arbitrator has called for construing such as a writ of any form, and particularly habeas corpus.

The court at the time of its converting the petition for confirmation of arbitrator award was not in the correct capacity when it converted the petition for clarification of arbitrator award to a petition for habeas corpus, rendering a determination under oath denying the parties their right to due process and their right to alternative administrative remedies per the doctrine, denying them their fundamental right to redress and petition government.

 **POINT OF REFERENCE**

In 1946 the United States Congress amended the arbitration statute for the United States, that statute, being duly enacted by Congress is a part of the federal registry making such statute law.

Federal courts have original subject matter jurisdiction over arbitral awards governed by the New York and Panama Conventions pursuant to 9 U.S.C. §§ 203, 302. The Federal Arbitration Act (“FAA”) 9 U.S.C. §§ 1-16, 201-208, 301-307; governs the confirmation of arbitral awards in federal court. Chapter 1 of the FAA governs the enforcement of domestic arbitral awards rendered pursuant to a written contract that evidences a transaction involving interstate or foreign commerce or maritime transactions, 9 U.S.C. §§ 1, 2.

The instant record demonstrates that the Petition to Confirm was properly and timely presented the court and that, confirmation of an arbitral award usually is requested by filing a petition to confirm (or motion to confirm). For domestic arbitral awards, 9 U.S.C. §13 specifies the supporting documents that must be filed with the petition, e.g., a copy of the arbitration agreement and a copy of the award. For international arbitral awards, the court should refer to Chapters 2 and 3 of the FAA for what supporting documents are required. For example, in the case of awards subject to the New York Convention, a petition to confirm must also attach a duly authenticated original or certified copy of the award and the original arbitration agreement. That the petitioner has established the prerequisites of diversity jurisdiction and that the arbitration “arises under” or involved an interpretation of federal law.

The Federal Arbitration Act, FAA – provides the following procedure for confirmation of arbitrator award-

Congress, in reading the very same contract read by this administrative body determined and concluded that it was a binding contract, not a petition for habeas corpus. Federal Question of Habeas Corpus were not raised nor were any requirements of Habeas met as outlined in 28 USC §2255 for federal and §2254 for state. Moreover, the court did not possess the discretionary capacity respecting jurisdiction to construe a petition to certify arbitration award with a petition for writ of Habeas corpus, as one is a judicial remedy and the other an administrative remedy. That the record is clear as to the petitioner’s, that they were seeking specifically a confirmation of the award which is an alternative administrative relief, and not judicial. And as per The Administrative Procedures Act Title 5 section 553 (to include other sections of the very same act), the court was bound by administrative procedure, and the act requires strict adherence to set procedure. And although the administrative procedures act is said not to apply to the United States courts, that is not the case at present, for when the courts are reviewing an administrative procedure such as the Federal Arbitration Act, it sits in an administrative capacity thus coming within the jurisdiction of the administrative procedures act in particular the administrative procedures act section dealing specifically with federal arbitration.

How is it that this body can construe a thing that is not inconsistent with the intent of the parties as construed by congress? The court cannot interfere with the contracts of the United States, however this court was granted authority to certify the findings i.e. the arbitration award and the federal arbitration act gives them a Statute of Limitations for domestic awards, a petition to confirm “may” be filed “at any time within one year after the award is made,” 9 U.S.C. § 9 and the contract as well as petition to federal courts having jurisdiction and the application for such a certificate was timely in the matter at bar, and the court must recognize not only the incarceration but the other restraints on the liberties of the petitioner so as to employ the principal of the statute of limitations not being tolled until those constraints and/or restraints and/or the last overt act has been accomplished.

 **VENUE AND JURISDICTION**

Proper venue, personal jurisdiction, and subject matter jurisdiction must each be established to successfully confirm an award, (The contract with the parties was specific with reference to the venue whereby the arbitration award was to be confirmed, this court was the proper venue, and as per the terms of the contract and agreement by the parties, this court had not only personal jurisdiction, subject matter jurisdiction but also in rem jurisdiction satisfying the prerequisites) 9 U.S.C. §§ 207, 302.

For domestic awards, a petition to confirm may be filed in any court specified in the arbitral agreement or, the district where the arbitral award was made. In addition to establishing proper venue, filing in any of these courts establishes personal jurisdiction over the parties. 9 U.S.C. §§ 9, 11, 204, 302;

Federal courts have original subject matter jurisdiction over arbitral awards governed by the New York and Panama Conventions pursuant to 9 U.S.C. §§ 203, 302. However, for domestic awards, Chapter 1 of the FAA does not create an independent basis for subject matter jurisdiction. Instead, the petitioner must establish either diversity jurisdiction or that the arbitration “arises under” or involved an interpretation of federal law.

In addition, 9 U.S.C. § 9 provides that domestic awards may be confirmed “[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration.” There is a split of authority on whether this language requires express consent to judicial confirmation in the parties’ arbitration agreement, and such language thus is often included in model arbitration clauses. *See* *Qorvis Communs., LLC v. Wilson*, 549 F.3d 303, 311 (4th Cir. 2008); *see, e.g.*, JAMS Standard Arbitration Clause for Domestic Commercial Contracts (2015), *available at*: http://www.jamsadr.com/clauses/. It is believed that the court did/should check the underlying arbitration agreement and law of the applicable jurisdiction(s) on this point.

Although the federal court has jurisdiction under the FAA, that jurisdiction comes with constraints and limitations on the court with respect to its procedural guidelines: - Scope of Judicial Review of the Award, for domestic awards which is the case at bar, a court may confirm, vacate, modify, correct or remand the award for rehearing. 9 U.S.C. §9 – §11 - Noting that there is no provision within the statute for conversion of a petition to confirm an arbitration award to a petition for WRIT of habeas corpus or any other WRIT outside of scope and/or subject matter petition.

There are four grounds for vacatur: (1) the award was obtained by corruption, fraud or undue means; (2) any of the arbitrators were partial or corrupt; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing on sufficient cause shown; refusing to hear evidence pertinent and material to the controversy; or any other behavior by which the rights of any party have been prejudiced; or (4) the arbitrators exceeded their powers or so imperfectly executed them that they did not make a mutual, final and definite award on the subject matter submitted. 9 U.S.C. § 10 - In this instance the United States Congress after review by its judiciary committee has made the legal finding that the contract and arbitration award and settlement agreement, were binding on all parties- see Congressional record with reference to private law and bill “Private Law 114-31 114th Congress An Act For the Relief of Bradley Christopher Stark, Shawn Michael Rideout, and Certain Named Beneficiaries”

A court also may modify or correct a domestic arbitral award:

(a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

(b) where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; and

(c) where the award is imperfect in matter of form not affecting the merits of the controversy. The court may also modify and correct the award, so as to effect the intent thereof and promote justice between the parties. …as noted, United States Congress came to the legal conclusion that the parties were entitled to the relief as specified in the arbitration award and the settlement agreement that resulted from the aforementioned award. And to note that because United States Congress documented that this was a contract that involve the United States which made applicable the provisions of the obligation of contract clause of the United States Constitution, the court lacked jurisdiction to make a legal determination as to the intent of the contractual obligation and/or the nature for which remedy was sought, 9 U.S.C. § 11.

Prerequisites of a Habeas Corpus Petition:

The following information is obtained from the official website for the United States courts http://www.uscourts.gov/file/rules-governing-section-2254-and-section-2255-proceedings.

These rules govern a motion filed in a United States district court under 28 U.S.C. § 2255(a)(1) – (4), (b)(1) – (4) by: Rule 2 (a)(b)(1) – (5). The Motion

The very same information was presented the United States Congress in the form of a bill on November 5, 2016. This Bill was introduced to the floor by Mr. Paul and was read twice and referred to the Committee on the Judiciary.

**FOR THE RELIEF OF BRADLEY CHRISTOPHER STARK, SHAWN MICHAEL RIDEOUT, AND CERTAIN NAMED BENEFICIARIES**

The Petitioner had comported to the proper and appropriate procedure, the arbitration act was specifically referenced in the contract, proceeding before the federal District Court was also a prerequisite within the contract. The arbitration award was in accordance with the Federal arbitration act and the terms of the contract, and the settlement and stipulation agreement was an agreement whereby the parties approved the arbitration award. The United States Congress noted the following when they reach their conclusions and findings based on the record, the very same information that was before the court:

(2) The term "Attorney General" means the office of the Attorney General of the 4 United States.

(3) The terms "Award," "Interim Awards," and "Final Award" mean, with respect 6 to the Agreement, the final binding and non-appealable decisions and remedies of the arbitrator awarded pursuant to the Agreement.

(4) The term "Beneficiaries" means any one of the following beneficiaries either individually or in any combination thereof or both-…

(6) The term "FAA" means the Federal Arbitration Act as described in title 9 of 15 the United States Code [9 U.S.C. 1-16].

The United States of America is the party of the second part of the Agreement.

SECTION 2. FINDINGS OF CONGRESS.

(a) The Congress finds the following:

(1) That the United States by and through the Attorney General entered into an Agreement with the Parties.

(2) The Agreement is a valid and binding settlement agreement between the Parties and the United States that operates in the nature of a release-dismissal agreement.

(3) The Agreement contained an alternative dispute resolution clause that provided for arbitration as the exclusive remedy for relief to the Parties and the United States.

(4) The United States consented to the arbitration and the awards made thereunder for the equitable relief of the Parties and the United States are binding.

(5) Congress hereby expressly waives any defenses to the equitable relief awarded to the Parties, Beneficiaries, and Corporate Beneficiaries by the arbitrator.

(6) The parties, beneficiaries and their immediate family members, and the corporate beneficiaries are entitled to the relief established by the Agreement, the Awards, and the provisions of this Act notwithstanding any other law to the contrary. *Provided that,* Joey Brandon Kemp shall not be entitled to any relief or benefits established by the Agreement, the Awards, and this Act.

**THE UNITED STATES CONGRESS IDENTIFIES**

**THE ERR OF THE COURT**

As noted above United States Congress recognized that the issue was specifically regarding a contract that was binding between the parties and one of the parties being the United States. The Contract Clause Of The Constitution, The Treaty Clause Of The Constitution, strictly delegate to the lawmakers (as identified by the First Amendment of the Constitution, “Congress shall make no law”), the authority to determine the obligation of contracts between the United States and other parties. In this instance, Congress set as a “Legislative General Court” in General assembly and for all intents and purposes, confirm the arbitration award when it made the following findings and statement on the congressional floor:

“The United States consented to the arbitration and the awards made thereunder for the equitable relief of the Parties and the United States are binding”

The court lacked jurisdiction in either an administrative capacity and/or a judicial capacity with respects the obligation of the contract, and has by its actions and/or lack thereof impaired the aforementioned obligations that the United States Congress determined “The Agreement is a valid and binding settlement agreement between the Parties and the United States…”, and thus was prohibited by constitutional fundamental principles of the law from construing the contract under any circumstances. The court being a branch of the United States government and in the law considered one and the same, was a party to the agreement and thus lacked any ability due to the direct conflict of interest from augmenting and/or changing the terms of the contract by construing the “Motion to Certify Arbitrators Award” to be a Writ Of Habeas Corpus Post-conviction Relief Petition.

Not only is the phrase and/or legal term Habeas Corpus specifically absent from the Motion to Certify Arbitrators Award, but the petition before the court was clearly identified as applying the rules of the Administrative Procedures Act, (APA) subsection Federal Arbitration Act, (FAA).

There is no discretion within the framework of the strict statutory reading to construe the section on motion to certify arbitration award as anything other than what’s outlined in the statute. In applying the principles of statutory interpretation, the court was prohibited as a result of the limitations placed on it respecting A Petition For Writ of Habeas Corpus Habeas Corpus Post-Conviction Relief and the root requirements for said petition. The court had no delegation of authority to convert a petition for confirmation of arbitrator award to a petition for Habeas Corpus Post-Conviction Relief, and there is no legal precedent for the court’s actions.

The court has interfered with the right of the petitioner to access a lawful remedy that is recognized as an administrative alternative. The court could not mix a criminal matter with the civil matter place before it, when construing the petition for confirmation of arbitrator’s award and co-mingling it with a criminal matter strip the court of subject matter jurisdiction, making the court’s actions void ab initial and *Coram Non Judice.*

The court must therefore reconsider its decision recognizing that a void judgment may be challenged at any time, and it has been borne out by the aforementioned and the applicable laws associated thereto, that the court lacked the capacity as well as jurisdiction to convert an arbitration confirmation motion request to a Habeas Corpus Post-Conviction Relief Petition and then deny such requests based on the rules of Habeas Corpus Post-Conviction Relief statute and not the administrative rules of arbitration for and of which was the original intent of the petitioner/plaintiff, and as the United States Congress indicated, that such intent was not ambiguous.

**ATTORNEY’S FEES AND COST**

PLAINTIFF has incurred a loss of monies and has been compelled to engage counsel and file this suit pursuant to 42 USC §12205, 35 USC §285, 28 USC §1927 PLAINTIFF is entitled to recover from DEFENDANTS his reasonable and necessary attorney’s fees and cost of court at a rate of $307.00 per hour per the USAO Attorney’s Fees Matrix – 2015 – 2019 made a part hereof by reference as if fully set forth herein (see attached Bill of Cost).

**EXHAUSTION OF ADMINISTRATIVE REMEDIES CURED**

The Exhaustion-of-Remedies Doctrine requires that procedures established by statute, Common Law, contract, or custom must be initiated and followed in certain cases before an aggrieved party may seek relief from the courts. After all other available remedies have been exhausted the case may proceed. Plaintiff has performed and established such exhaustion without dishonor. A litigant should exhaust any prescribed administrative remedies available before seeking judicial review, this was the attempted with FAA confirmation attempt. Where relief is available from an administrative agency, the Plaintiff and/or Defendant is ordinarily required to pursue that avenue of redress before proceeding to the courts. Until that recourse is exhausted, the suit is premature and must be dismissed. Plaintiff has performed and established such exhaustion without dishonor. The exhaustion rule serves a legitimate state interest in requiring parties to exhaust administrative remedies before proceeding to court, thereby preventing an overworked court from considering issues and remedies that were available through administrative channels. It also encourages the use of more economical and less formal means of resolving disputes and is credited with promoting accuracy, efficiency, agency autonomy, and judicial economy. Plaintiff has performed and established such exhaustion without dishonor. Due to such exhaustion, Congress agrees with Meagan E. Russell, Arbitrator that the contract between the parties is binding on all parties and the United States, see page 5 No. 8 of Exhibit “3”, states that, “ This award is final and binding upon issuance and execution of the arbitrator’s signature below, and takes full force and effect immediately upon issuance”.

When the court made the unilateral decision to convert a motion for the confirmation of arbitration award to a petition for writ of habeas corpus post-conviction relief it denied the petitioner the right to the exhaustion of administrative remedies, constituting a denial of the right to access justice, blocking access to the court which is always to remain open, which is a substantial erosion of the petitioner’s right to due process. The remedy at bar is to reverse and/or correct the record and to “let justice be done though the heavens fall”.

**CONCLUSION**

This court is required to adhere to the federal arbitration act and we stipulate that this court certify, as it is duty bound to act, the award, the delay and or the failure of the court to recognize the right of the petitioner to have the award that was lawfully acquired by an arbitrator under the Federal Arbitration Act can only equate to a miscarriage of justice and may be construed by the public and judicial onlookers as despotism and a disrepute upon the cloth; and a disruption of this administrative proceeding, and a disregard for the sanctity of the court and institution for which it has been entrusted. The relief sought herein is proper and may be granted due to the circumstance under which the judgment was rendered was and is void due to lack of jurisdiction and authority. The petitioner is entitled to relief, the moving party has established facts within at least one of the reasons and or prerequisites enumerated in Rule 60(b), meeting the requirements associated thereto.

The aforementioned information is presented to the court as wholly accurate so help me God.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: PLAINTIFF, *Pro Se*

ACKNOWLEDGMENT

State of Texas

County of Gregg

This instrument was acknowledged before me on 8th day of NOVEMBER 2018 by DEMETRIUES JERMAINE HAWKINS

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Seal:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public, State of Texas