Kenya L. Patton Law
Union county, city of Blairsville
Georgia state

IN THE MATTER OF THE ARBITRATION BETWEEN

BRADLEY CHRISTOPHER STARK;
SHAWN MICHAEL RIDEOUT,

Claimants,

and

UNITED STATES OF AMERICA,

Respondent.

No. 0:15 CC 00522 A KP

Pre-Award Ruling

9 U.S.C. § 2
D.C. Code § 16-4408
D.C. Code § 16-4414
D.C. Code § 16-4415

SEALED

OPINION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRE-AWARD RULING OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with Article 6.1 of the arbitration clause in the Stipulation and Settlement Agreement of May 22, 2015 ("Agreement"), and the addendums ("Addendums") thereto, entered into between the above-named Parties and having been duly sworn, and having duly heard the proofs, admissions, and stipulations of the Parties, the Arbitrator hereby issues the following opinion, findings of fact, conclusions of law, and pre-award ruling:

I. INTRODUCTION

These cases, consolidated by the Agreement and Addendums, came before the Arbitrator for resolution of the Claimants' contractual, equitable, statutory, and constitutional claims against respondent, the United States of America ("United States"), arising out of the United States failure to perform on its promises to release certain claimants from their unlawful federal convictions and other equitable relief according to the admissions, stipulations, terms, and

obligations as expressed and agreed to in the Agreement and Addendums thereto. Upon consideration of the admissions, evidence, stipulations of the parties, the parties' proposed findings of fact and conclusions of law, the Agreement and Addendums, and the relevant legal authorities, the Arbitrator now issues the following Findings of Fact and Conclusions of Law in accordance with Rule 58 of the Federal Rules of Civil Procedure, in support of the Arbitrator's Interim Award, attached as a separate document hereto.

II. PROCEDURAL BACKGROUND

The Arbitrator notes that the background of the alleged consolidated criminal cases have been described at some length in prior related proceedings, and will therefore limit the discussion to the relevant issues to this matter accordingly. See, *United States v. Stark,* 482 F. App'x 462 (5th Cir. 2014), *United States v. Stark,* No. 3:08-cr-00258-M-1 (N.D. Tex. 2008); *United States v. Rideout,* No. 1:08-cr-00332-DAP-1 (N.D. Ohio 2008).

Stark was seemingly indicted on August 20, 2008, and brought into the geographic area of the Northern District of Texas pursuant to a writ of habeas corpus ad prosequendum to answer accusations pertaining to wire fraud in violation of 18 U.S.C. § 1343, and securities fraud in violation of 15 U.S.C. §§ 77q(a) and 77x.

On December 14, 2009, Stark communicated a firm offer to enter into a binding agreement with the United States in order to request discovery of all material and exculpatory evidence required to be produced pursuant to Rule 16(a) and (c) of the Federal Rules of Criminal Procedure, and further operated as a petition for redress of grievance under the First article in amendment to the Constitution of the United States of America, as a direct inquiry challenging the subject matter and personal jurisdiction of the alleged federal criminal action with the overall goal of testing the legality of both the proceedings and incarceration of Stark in the aforesaid cause of action. The offer was styled as a Conditional Acceptance for Value for Proof of Claim, No. 917092-B1/USAG ("Contract").

According to the express, clear, and unambiguous terms therein, the United States accepted and ratified the Contract on April 16, 2010, while concurrently admitting and stipulating to all of the facts within as they operated in favor of Stark. The United States admitted that it lacked subject matter and personal jurisdiction to prosecute the criminal matter, as well as unconditionally stipulating to numerous fatal defects infecting all stages of the investigation, prosecution, and related matters. On or about October 20, 2010, a private administrative hearing officer held a hearing on the matters established under the Contract. Sufficient notice was provided to the United States Attorney General ("Attorney General") to attend the administrative hearing. The Attorney General elected to not attend the hearing, and further opted to not have any representative attend either. A default Administrative Judgment was issued on October 20, 2010, establishing the summarized facts contained in the Contract. A copy of the Administrative Judgment was delivered to the Attorney General by Federal Express Courier on October 21, 2010. No objections or appeals were made by the United States. A detailed procedural history as to the formation and attempts to enforce the terms of the Contract are recited in full in the June 9, 2014 Award of the Arbitrator ("Award") and is incorporated by reference in this opinion and pre-award ruling.

Stark filed a petition to confirm the Award in the United States District Court for the Northern District of Texas ("NDTX Court") on August 14, 2014. The NDTX Court construed Stark's pro se pleading as a general civil complaint instead of a petition to confirm the Award, and dismissed the complaint as procedurally barred until the factors under *Heck v. Humphrey,* 512 US 477, 129 L Ed 2d 383, 114 S Ct 2364 (1994), have been met. See *Stark v. Holder, et al.,* No. 3:14-cv-02420-B-BH (N.D. Tex 2014), 5th Circuit No. 14-11139 (5th Cir. 2015)(appeal dismissed).

Under to the terms of the Contract, the arbitration agreement, and the Award, Stark filed an application to confirm the Award in the United States District Court for the District of Columbia ("DC Court"), on February 5, 2015. See *Stark v. Holder, et al.,* No. 1:15-cv-00202-ABJ (D.D.C. 2015). Prior to the filing in the DC Court confirmation proceedings, on January 29, 2015, Stark communicated a faxed Notice of Offer of Settlement and Proposed Judgment on Arbitration Award 917092-B1/USAG June 9, 2014 ("Offer of Settlement"), to the Attorney General, the Deputy Attorney General, the Associate Attorney General, and the Dispute Resolution Office of the Department of Justice (all functions of the Dispute Resolution Office have since been transferred to the Department of Justice Office of Legal Policy). The faxed Offer of Settlement was subsequently delivered via certified mailed to the Attorney General's Office at the Department of Justice and to the Civil Process Clerk at the United States Attorney's Office for the District of Columbia on February 25, 2015; and a copy was filed with the Clerk of the DC Court on February 23, 2015. Leave to file was granted by the presiding United States District Judge, Amy Berman Jackson. The Offer of Settlement operated as a sub-contract to the Contract for the purposes of enforcing its terms and resolving all matters between Stark and the United States. Further, as consideration for the waiver of the awarded punitive damages, Stark sought a quid pro quo arrangement to add Shawn M. Rideout ("Rideout") to the Contract and the Award.

The Offer of Settlement contained a default provision that permitted Stark to sign on behalf of the Attorney General on a self-executing irrevocable special power of attorney coupled with interest ("Special Power of Attorney") limiting such authority to the resolution of these matters and no other. The United States defaulted and Stark executed the signature of the Office of Attorney General on the Special Power of Attorney document. Stark then filed the Special Power of Attorney on the record of the DC Court proceedings on February 23, 2015, and submitted a true and correct copy to the Attorney General by certified mail. The Attorney General accepted the document and has raised no objections or challenges to the Special Power of Attorney at any time.

The DC Court pre-emptively dismissed the application to confirm the Award on March 13, 2015, making the finding that the NDTX Court's decision operated as *res judicata,* and thus barring the relief that Stark sought in the DC Court. Stark immediately filed a motion for relief from the order of dismissal pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. On June 23, 2015, the DC Court dismissed Stark's motion for relief from the order of dismissal stating that he failed to demonstrate how the Award operated to void his criminal conviction.

Prior to the denial of the motion for relief from order of dismissal; Stark, Rideout, and the United States entered into a binding Stipulation and Settlement Agreement on May 22, 2015,

("Agreement") for final resolution of all matters between the parties. A true and correct copy of the Agreement was delivered to the Attorney General's Office by certified mail. The Agreement included a dispute resolution provision specifying that binding arbitration was the parties sole remedy for the resolution of all disputes under the Agreement. The Agreement further contained third-party beneficiaries entitled to various rights and remedies thereunder due to their circumstances being similarly situated under common consolidated redressable claims.

The original agreed upon arbitrator became unavailable due to scheduling congestion, and on or about July 10, 2015, in conformance with Article 6.1 of the Agreement, Section 5 of title 9 of the United States Code; and Sections 16-4411(a) & (b); and 16-4415(e) of the D.C. Code, Stark and Rideout selected the undersigned to be the Arbitrator in this matter and communicated their selection by certified mail to the Attorney General. The United States and the Attorney General accepted the selection of the undersigned Arbitrator without challenge or objection in accord with the terms of the Agreement.

On August 7, 2015; October 8, 2015; and again on November 11, 2015, the parties amended the Agreement in accordance with Article 7.5 thereto by way of three respective addendums that varied, expanded, and clarified certain portions of the Agreement. The addendums incorporated *de bene esse* admissions and stipulations to matters relevant to the parties, both collectively and individually.

The parties have consented and agreed to proceed to arbitration of the Agreement and the addendums thereto for resolution of these matters and all matters related thereto, known or unknown. These consolidated matters therefore are now ripe for determination.

The Arbitrator has reviewed the Contract, Agreement, Addendums, all relevant and material evidence, documents, admissions, and stipulations of the parties, having been admitted into evidence by the Arbitrator, and has made credibility findings as necessary and appropriate to resolve any material disputes in these matters. The Arbitrator admits into the record all the admissions and stipulations of the parties in the Agreement, the Addendum, and exhibits requested in their joint proposal. No objections have been raised to any evidence, documents, exhibits, testimony, the Agreement, or the Addendums, and no counterclaims have been presented by the United States. Based on the Agreement and its Addendums, the totality of the evidence and its conclusive proof, the claims of the Claimants' must of necessity succeed. The Arbitrator finds that because of the nature and circumstances relating to the equitable phase of the arbitration proceedings, Article 7.16 of the Agreement shall not be enforced in order to meet the standards of proof required for the relief sought under the Agreement. A protective order will issue to prevent disclosure of these findings in the interests of the United States.

In accordance with Rule 58 of the Federal Rules of Civil Procedure, the undersigned Arbitrator makes the following findings of fact, conclusions of law, and pre-award ruling. See D.C. Code § 16-4408(b)(1) ("The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy[.]"); and see D.C. Code § 16-4415(a), (b)(1) & (2), and (c)(3).

III. FINDINGS OF FACT

A. Common Claims Apply to All Claimants

1. Universal Application of Law and Facts to Claimants and Third-Party Beneficiaries

a. The facts and law common to Claimants. After reviewing the Agreement and corresponding Addendums, it is apparent that the law and facts common to the Claimants are common to the majority of the Third Party Beneficiaries, and the claims or defenses of the Claimants are typical of the claims or defenses of the Third Party Beneficiaries. The law and facts common to both the Claimants and Third Party Beneficiaries predominate over any questions affecting individual parties, and these arbitration proceedings are superior to other available methods (if any exist) for the fair and efficient resolution of the controversy.

b. The fundamental claim. The fundamental claim is that despite any other fact regarding the details of any given claimant party is such that said party was charged with a violation of federal criminal law, when the court into which said party was taken did not have any such general criminal jurisdiction. The other details regarding any given claimant party are irrelevant to the proper disposition of his or her case: The nature of the crime alleged, the locus of the crime alleged, the party's prior criminal record, or any other factor. This situation is precisely the kind amenable for use of the arbitration vehicle pursuant to the Agreement. The relief sought (i.e., complete release, with complete expungement of criminal records, etc.) is identical for all claimant parties.

c. Identification of Claimants and Third-Party Beneficiaries. The fundamental claim is applicable to the following parties under the Agreement: (i) Bradley Christopher Stark; (ii) Shawn Michael Rideout; (iii) Jason Carl Thomas; (iv) Charles Elliot Hill, II; (v) John Scot Snuggs; (vi) Charles David Johnson, Jr.; (vii) Lulummba Clay Travis; (viii) Bryan Samuel Coffman; (ix) Joseph Anthony Dibruno, Jr.; (x) William Scott Hames; (xi) Mike Tsalickis; (xii) Balldev Naidu Ragavan; (xiii) Hendrick Ezell Tunstall; (xiv) William Michael Cain; (xv) Jason Wesley Tate; (xvi) Jerry Garwood Mitchell; (xvii) Shane Reed Wilson; and to the following organizations: (xviii) JP Morgan Chase Bank; (xix) Morgan Stanley; (xx) HSBC; (xxi) Citigroup/Citibank; (xxii) Bank of America; (xxiii) Wells Fargo; (xxiv) Barclays Bank; (xxv) Royal Bank of Scotland; (xxvi) Goldman Sachs; (xxvii) Deutsche Bank; (xxviii) Union Bank of Switzerland ("UBS"); (xxix) CreditSuisse; (xxx) BNP Paribas; (xxxi) British Petroleum ("BP"); (xxxii) Transocean; (xxxiii) GlaxoSmithKline; and (xxxiv) VolksWagon.

B. General Claim Findings

1. Lack of Subject Matter Jurisdiction

a. Arbitrability of the Issues in Dispute. The Agreement of the parties and the Addendums thereto establish certain agreed stipulations and admissions of facts with regard to the related alleged criminal actions that pertain to the parties and to certain third-party beneficiaries. Under normal operations of law, an arbitrator cannot decide upon the constitutionality of federal statutes or laws. However, when the Agreement and its Addendums

clearly articulate the admissions of the parties with regard to such matters, and further establish the conclusiveness of the evidence in support of those admissions, and a valid arbitration agreement appoints an arbitrator to resolve any disputes under the Agreement, then can an arbitrator look to the relevant evidence, documents, admissions, and testimony in support of the terms of the Agreement to determine rights of the parties thereunder. The Arbitrator hereby finds that for the purposes of establishing the factual basis as to the rights of the parties under the terms of the Agreement and its Addendums, that the undersigned Arbitrator is contractually empowered to make a fair and appropriate determination as to said terms and fashion appropriate remedies for resolution of the issues in accordance with the intent of the parties to the Agreement.

b. Invalidity of Public Law 80-772 and 18 U.S.C. § 3231. Numerous federal criminal statutes supposedly existing since 1948 in Title 18 of the United States Code did not and do not exist in that Title due to a defect in the passage of a congressional bill, H.R. 3190, in 1947-48. The same defective passage resulted in the non-existence of the statute 18 U.S.C. § 3231, which purportedly gives federal courts jurisdiction over criminal statutes in each Title, not merely Title 18. The non-existence of 18 U.S.C. § 3231 establishes that federal courts do not possess general criminal jurisdiction over any federal criminal statute.

The law recodifying Title 18, known as Public Law 80-772, and bill H.R. 3190 (1948) were not legally enacted because the Hall of the House of Representatives did not have a constitutional quorum of 218 members present for the 44 member vote to do legislative business, and was not identically passed by both the House of Representatives and the Senate, as is required by the Constitution of the United States. U.S.Cons Art.I, § 5, cl 1; § 7, cl 2. 18 U.S.C. § 3231 does not exist as a valid statute: Neither the United States District Courts nor the United States Courts of Appeals have any subject-matter jurisdiction over federal criminal statutes.

The purpose of H.R. 3190 (80th Congress, 1947-48) was to "recodify" (reorganize) Title 18, United States Code. If passed correctly it would have re-numbered and thus re-ordered every then-existing Title 18 crime, jurisdictional statute, procedural statute, and rule. Because H.R. 3190 was not validly passed, Public Law 80-772 was not validly enacted, along with 18 U.S.C. § 3231. These statutes do not now legally exist, despite a widespread misperception that they do. Without 18 U.S.C. § 3231, the United States District Courts do not have subject-matter jurisdiction over crimes in Titles 8, 15, 18, 21, 26, and others. Charges of violations of those statutes are legally defective. They do not state a crime against the laws of the United States. The Arbitrator admits the following copies of government records; papers; and Congressional Journals into evidence in these proceedings as conclusive proof in support of the fundamental claim that the United States District and Appeals Courts lack subject matter jurisdiction over federal criminal statutes. 28 U.S.C. §§ 1733; 1736; and Rule 901(a), (b)(7)(A) & (B) of the Federal Rules of Evidence.

The two Houses of the 80th Congress did not pass identical versions of bill H.R. 3190. The House of Representatives introduced the bill on April 24, 1947. See H.R. Rep. No. 304, 80th Cong., 1st Sess., 100 app. (1947). Congress voted to amend it, 93 Cong. Rec. 5048-49, 5121, and then voted on the newly-amended bill, and voted "for" that bill on May 12, 1947. 93 Cong. Rec. 5049. However, that vote was legally meaningless, because the House of

Representatives did not have the 218 Members required to have a quorum present at this 44 member voice vote (38 yeas to 6 nays), which is a constitutional requirement for Congress to do legislative business. A quorum is defined by the Constitution as a majority of the members of the House (or Senate). The bill was not "passed" within the meaning of the Constitution of the United States of America. See U.S.Cons Art.I, § 5, cl 1; § 7, cl 2. The Clerk of the House of Representatives admitted that the May 12, 1947 vote was a "voice vote." The Parliamentarian of the House of Representatives admitted that a "voice vote" is only valid when the journal shows a quorum is present. The Clerk of the House of Representatives; the Parliamentarian of the House of Representatives; the National Archives; and the U.S. Department of Justice Office of Legal Counsel admitted that no quorum was present in the Hall of the House of Representatives on May 12, 1947, for the 44 Member "voice vote" on H.R. 3190 to be legal and valid.

The House of Representatives then sent that bill to the Senate, and Congress adjourned. S. Con. Res. 33, 93 Cong. Rec. 10439, 10522, July 26, 1947. The Senate never voted on that version of the bill.

The Senate introduced the bill June 14, 1948. 94 Cong. Rec. 8075. On June 18, 1948, the Senate first voted to add its own amendments to the text of the House's bill, see S. Rep. 1620, 80th Cong., 2d Sess., 2430 (1948), and then (separately) voted and passed that newly-amended version, presumably with a quorum, on June 18, 1948. 94 Cong. Rec. 8721-22. The Senate then sent the amended bill to the House of Representatives. 94 Cong. Rec. 8864. See Daily Digest, 94 Cong. Rec. D556-557, 80th Congress.

However, the same day, June 18, 1948, the House merely voted to "concur" with the Senate's amendments. 94 Cong. Rec. 8864-65; and see S. Rept. 1620, 80th Cong., 2d Sess., 2430 (1948); and 94 Cong. Rec. 9158. The House did not go further and vote on the final passage of the as-amended bill.

Despite these omissions and errors, the bill was "examined" and "signed" by the House and Senate leaders on June 19, 1948. 94 Cong. Rec. 9354, 9464. The Parliamentarian of the House of Representatives admitted that it is unlawful for the Speaker of the House of Representatives to sign any Enrolled Bill in the absence of a quorum. The bill was then presented to then President Truman, 94 Cong. Rec. 9365, who signed the measure on June 25, 1948, 94 Cong. Rec. 9367, seemingly making it a valid law. It was labeled "Public Law 80-772."

*c. **Effect of Lack of Passage.*** Pub. L. 80-772, in addition to ostensibly recodifying Title 18 and also initiating 18 U.S.C. § 3231 (among hundreds of other statutes), also purportedly repealed the Title 18 predecessor statutes that had made up the previous federal criminal statutory law. See, Pub. L. 80-772, 21 (Schedule of Laws Repealed)(available at 1948 U.S.C.C.A.N., Vol. I, p. A562 et seq.). But Pub. L. 80-772 was not properly passed, so the earlier statutes were never repealed.

The Historical and Statutory Note accompanying 18 U.S.C. § 3231 reflects that section 3231 was "formed by combining sections 546 and 547 of Title 18, U.S.C.[.]" (18 U.S.C. § 3231, Historical and Statutory Note). However, the prior statute, 18 U.S.C. § 546 (1940) only provided

federal courts jurisdiction over violations of statutes in Title 18, and not statutes in other titles, such as Titles 8, 15, 21, 26, etc.

18 U.S.C. § 546 (1940) stated:

> The crimes and offenses defined in this title [Title 18] shall be cognizable in the district courts of the United States, as prescribed in section 41 of Title 28.

18 U.S.C. § 547 (1940) stated:

> Nothing in this title [Title 18] shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof.

12 U.S.C. § 588d (1940) stated:

> Jurisdiction over any offense defined by sections 588b and 588c of this title [Title 12] shall not be reserved exclusively to the courts of the United States.

In contrast, 18 U.S.C. § 3231 (1948), as it ostensibly has read since 1948, asserts:

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

It is clear that 18 U.S.C. §3231 purported to assign federal courts with jurisdiction over *all* federal crimes, while its predecessor statutes--which it was supposed to replace--only provided federal courts jurisdiction over crimes in Title 18 alone.

d. Similar Argument Invalid. The findings of the Arbitrator in this matter upon interpretation of the parties Agreement and Addendums as to the Claimants' primary claim, can be readily distinguished from a similar "defective" argument advanced in the United States District Courts and Courts of Appeals in or around 2006 and 2007, with its ultimate claim similar to the one recited *supra.* They claim the invalidity of Title 18 due to errors in the passage of H.R. 3190 and Pub. L. 80-772. The instant claim under the Agreement is not that argument.

Nevertheless, some courts have come to erroneous conclusions, even about the other "defective" argument, that clearly conflict with the decisions of the Supreme Court of the United States on the topic discussed hereinabove. See, e.g., *United States v. Harbin,* 2007 U.S. Dist. LEXIS 45932 (June 25, 2007):

> Moreover, as noted by Judge Kazen and other courts, see, e.g., *United States v. Risquet,* 426 F.Supp.2d 310, 311-312 (E.D. Pa. 2006), even if the 1948 amendment to Title 18 were defective, this Court would nonetheless retain jurisdiction over Harbin's case because the predecessor 'statute to § 3231' also provides for such jurisdiction.

To clarify why the *Harbin* and the *Risquet* decisions are faulty: (i) Contrary to their very brief assumption, the "predecessor statute" doesn't provide for jurisdiction over crimes in Titles 8, 15, 21, 26, etc.; and (ii) even if the "predecessor statute" would supply general criminal jurisdiction over crimes in Title 18, any such Title 18 criminal statute ostensibly existing in 1948 was *not* recodified, and any charges citing such a statute after June 25, 1948 were fatally defective. See, U.S.Cons Amends. 4, 5, and 6.

Risquet's (erroneous) conclusion, supra, has also been cited by *United States v. Felipe,* 2007 U.S. Dist LEXIS 43520 (E.D. Pa. June 14, 2007); *United States v. Irizarry,* 2007 U.S. Dist. LEXIS 42050 (June 8, 2007); *Little v. Levi,* 2007 U.S. Dist. LEXIS 88019 (E.D. Pa. Nov. 29, 2007); *United States v. McCuiston,* 2007 U.S. Dist. LEXIS 67467 (S.D. Tex. Sep. 12, 2007), and other cases.

Put another way, the petitioners bringing those cases blindly copied defective arguments, and in turn, it appears that the courts have been citing defective opinions in response. As discussed *infra,* the undersigned Arbitrator must follow the guidance and teachings of the Supreme Court of the United States as the paramount authority over the decisions of the district and appellate courts. The United States has admitted to the cases that control this issue and the parties have stipulated in the Agreement and Addendums as to how this issue is to be interpreted with respect to the Claimants and Third-Party Beneficiaries, therefore, the Arbitrator has made the findings in accordance with clear and unambiguous terms of the Agreement and Addendums, the Constitution of the United States of America, and the decisions of the Supreme Court.

e. Individual criminal statutes not recodified. The non-identical passage of H.R. 3190 is a major defect of constitutional proportions. To become law, the bill was required to complete three procedural steps: (i) a bill containing its exact text must be approved by a majority of the members of the House of Representatives; (ii) the Senate must approve precisely the same text; (iii) that text must be signed into law by the President. The Constitution explicitly requires that each of those three steps be taken before a bill may "become a law." U.S.Cons Art.I, § 7. When one paragraph of that text is omitted at any one of those three stages, then the Public Law would not have been validly enacted.

As found hereinabove, the Senate voted on their own as-amended version of the bill, which it called "H.R. 3190," and the President apparently signed the Senate's as-amended version of the bill. However, in 1947 the House of Representatives only voted on its original pre-Senate-amendment version of the bill (which the Senate never voted on), and it did so without the constitutionally-required quorum being present. A year later the House of Representatives voted solely to "concur" with the amendments.

The Arbitrator can easily verify that on June 18, 1948, the House of Representatives only voted on the amendments. House rules required that any bill to be voted on be read prior to the vote: The text that is being read is what is to be voted on. While that reading may be waived by consent of the chamber (on long bills, for instance), in the case of the House of Representatives voting on the amendments to H.R. 3190, that was not done.

f. ***Enrolled Bill Rule does not control this case.*** The facts under *Marshall Field v. Clark,* 143 US 649, 36 L Ed 294, 12 S Ct 495 (1892) involved a revenue bill, H.R. 9416 (1890), that promulgated what is referred to as the "Enrolled Bill Rule." The House of Representatives and the Senate passed identical versions of the bill: For purposes of illustration, the bill as voted on contained two joined blocks of text, call them "(A)" and "(B)." Both the House and the Senate voted for the *entire* bill, "(A)+(B)." However, and presumably due to an oversight, the House and Senate leadership "examined" and "signed" (certified) only a portion of this text: "(A)," *not* "(A)+(B)." The bill was then sent to the U.S. President as "(A)," not "(A)+(B)," and he signed it, apparently into law, as "(A)," and not "(A)+(B)."

Congress had not actually voted on *just* "(A)," alone. They had voted for every portion of "(A)," albeit only in combination with part "(B)." Thus, *Marshall Field* did not involve facts in which an allegedly-passed bill contained parts never approved by both chambers of Congress.

For example, suppose the Senate votes for a bill, "(C)+(D)," and the House votes solely for "(C)." Suppose it is examined and signed by the House of Representatives and Senate leadership, as "(C)," and is delivered to the U.S. President as "(C)" and signed by him as such. This fits the facts of *Marshall Field,* and until recently, (1990), *Marshall Field* would presumably have controlled those similar fact situations.

Suppose, instead, the Senate voted for a bill, "(C)+(D)," and the House of Representatives votes solely for "(C)," but the House and Senate leadership examine and sign it as "(C)+(D)." It is then delivered to the U.S. President as "(C)+(D)," and signed as such. In *that* situation, the resulting alleged law contains a portion, "(D)," which was never approved by the House of Representatives, even as a portion of a bill. *Marshall Field* simply does not apply to the latter situation. As stated in *Marshall Field* itself, *id.* 143 US, at 673 (emphasis supplied):

> It is said that, under any other view, it becomes possible for the Speaker of the House of Representatives and the President of the Senate to impose upon the people as a law a bill that was never passed by Congress. But this possibility is too remote to be seriously considered *in the present inquiry.*

A search of Supreme Court cases shows that the term, "present inquiry" means the instant case. In other words, in *Marshall Field* the Supreme Court specifically disclaimed addressing such a possibility, the possibility that a bill would become a law that had not been passed by both the House of Representatives and the Senate. Thus, that opinion cannot control a situation where the alleged law contains portions of text not agreed to by *both* the House and Senate. The Arbitrator notes, importantly, that *Marshall Field* never expressed approval of, and it specifically disapproved, the possibility of a bill containing parts not approved by *both* houses of Congress. *Id.* 143 US, at 673. Therefore, *Marshall Field* is at best dicta regarding the larger question of whether the certification of a bill by the Senate and House of Representatives leadership can avoid the scrutiny of courts if that purportedly-passed bill contains portions never approved by both the House and Senate.

g. ***The Supreme Court's controlling decisions on this claim.*** To understand this, it is merely necessary to apply the three-part test in *Clinton v. City of New York,* 524 US 417, 448,

141 L Ed 2d 393, 420, 118 S Ct 2091 (1998) and determine how the *Marshall Field* original facts would be treated. In the facts of *Marshall Field:*

The House of Representatives passed a given text: "(A)+(B)."

The Senate passed the identical text: "(A)+(B)."

However, the U.S. President signed a *different* bill, text "(A)," and not text "(A)+(B)."

In 1892, in *Marshall Field v. Clark,* the Supreme Court declared that this discrepancy was acceptable: "(A)" was law. Conversely, in *United States v. Ballin, Joseph & Co.,* 144 US 1, 36 L Ed 321 12 S Ct 507 (1892); and later in 1998, by the combination of *Clinton v. City of New York, supra,* and *United States v. Munoz-Flores,* 495 US 385, 109 L Ed 2d 384, 110 S Ct 1964 (1990), the Supreme Court declared those events to be *unacceptable,* and incompatible with a validly-passed law.

In other words, later in that same year, on *Marshall Field's* own facts, the Supreme Court changed its mind, and 106-years later, it reaffirmed this change of mind. This overturn does not mean, and does not require, that *Marshall Field* be considered totally defunct. In fact, even though *Marshall Field* was overturned *on its own original facts,* some of its dicta appears to live on in regards to bills passed in Congress where the passage is flawed by *non*-constitutional errors. See footnote 4 in *Munoz-Flores, supra.* But, as that footnote states, if the error *is* of constitutional magnitude, then "*Marshall Field* does not apply."

The Supreme Court expresses a principle that it reserves for itself the power to overturn its own precedents. *Rodriguez de Quijas v. Shearson/Am. Exp.,* 490 US 477, 484, 104 L Ed 2d 256, 536-37, 109 S Ct 1917 (1989). Given that the Supreme Court has made over 10,000 decisions, it cannot be expected that the Supreme Court will anticipate every possible fact combination and circumstance, and explicitly list all potentially-overturned or limited precedents. The Supreme Court directs the lower courts to employ *all* its decisions, simultaneously, unless in a given fact situation a later decision cannot be reconciled with a former decision. In that case, the lower courts must accept the later decision as having overturned the former, on those facts.

Accordingly, *Ballin, Joseph & Co.*; *Munoz-Flores*; and *Clinton v. City of New York,* together, overturned *Marshall Field,* on *Field's* own facts, and thereby limited its application to error not of constitutional magnitude.

h. Fundamental claim requires application of Ballin, Munoz-Flores, and Clinton v. City of N.Y. The House of Representatives May 12, 1947 sub-quorum voice vote "for" a bill that which they had just amended and labeled "H.R. 3190," was constitutionally meaningless, because a constitutional quorum was not present. It is incorrect to say the House of Representatives "passed" H.R. 3190, at that point, since without a quorum the Congress cannot do legislative business. For purposes of this discussion, the Arbitrator will label the House's sub-quorum voted "for" text "(A)."

Over a year later, on June 18, 1948, the Senate took what was presumably the same text, "(A)," and without voting on its final passage, voted first to amend it: The Arbitrator will label the as-Senate-amended text: "(B)." The Senate then voted for final passage of the bill (which the Senate still labeled as H.R. 3190) containing text "(B)."

That same day, June 18, 1948, the House of Representatives took its 1947 version of the bill, containing text "(A)," which it still labeled as H.R. 3190, and also took the Senate's amendments of that day, and the House voted to "concur with the [Senate's] amendments:" In other words, the House agreed that it would amend its own version of H.R. 3190, "(A)," to conform exactly to text "(B)," the text identical to the version the Senate had just formed and passed that day.

But critically, the House of Representatives did not take the necessary next step, and vote to approve the newly-created version, containing text "(B)," for final passage. Nor had the House ever approved, as a bill for final passage, and *with* a quorum, for final passage the text of "(B)."

The requirement that Congress must have a quorum present to do legislative business comes from the Constitution of the United States. Similarly, as held by *Clinton v. City of New York, supra,* the Constitution requires that to be properly enacted into law, a bill be identically passed by both the House of Representatives and the Senate, and then signed in identical form by the U.S. President. Since the requirement comes from the Constitution, and not merely Congress's rules, *Munoz-Flores, note 4,* held that "*Marshall Field* does not apply." Neither this Arbitrator, nor any United States District Court or Courts of Appeals, can refuse to address this fault by application of *Marshall Field.*

Marshall Field v. Clark would not have controlled the question as to the validity of the passage of H.R. 3190 in 1947-48, even prior to *Clinton v. City of New York* and *Munoz-Flores.* Since the House of Representatives never voted for final passage, *with* a quorum, of either text "(A)" or text "(B)," *Marshall Field* would have been inapposite.

To be sure, those who would have argued (pre-*Clinton v. NYC* and *Munoz-Flores*) 'for' the valid passage of H.R. 3190 (1948) would have noted the dicta of *Marshall Field,* and they would have mechanistically applied the "rule" that what the leadership certifies is presumed valid, and they would declare that the U.S. President signed bill "(B)" after the House of Representatives and the Senate leadership certified text "(B)." That was mere dicta in the facts of H.R. 3190.

A more careful and *complete* study of the rest of the dicta of *Marshall Field* would show that *Marshall Field* did not involve a situation where the final, as-ostensibly-passed, law contained any parts not passed by both the House and the Senate. So, *Marshall Field* could not "control" the issue, and in fact the full dicta would militate *against* the conclusion that H.R. 3190 had been approved in 1948, in any form. It would have been an "issue of first impression," between 1948 and 1998, and the appeals courts would have had to decide how to treat an error which was *unlike* that of *Marshall Field's* facts.

After 1998, that was no longer possible. As a product of *Munoz-Flores* and *Clinton v. City of New York*, the Supreme Court has explicitly declared that for a bill to become valid law, it must be identically passed by the House of Representatives and the Senate, and signed in identical form by the U.S. President: "H.R. 3190" was never passed by the House of Representatives, in *any* form; that error was of constitutional magnitude; and the courts are unable to employ *Marshall Field* to refuse to decide the question. The lack of a House of Representatives approval, *with* a quorum, means that H.R. 3190 was never validly passed by Congress, and it did not become law with President Truman's signature.

C. Additional Claims

1. Claims Ancillary or Derivative to General Lack of Jurisdiction Claim

a. Universal Additional Claims to Stark; Rideout; and Third Party Beneficiaries. The United States has failed to provide constitutionally sufficient notice in its accusatory instruments against Stark; Rideout; and the Third Party Beneficiaries due to the invalidity of Pub. L. 80-772 and the lack of recodification. This further resulted in the United States failing to provide constitutional authority or to substantiate the authority; validity; accuracy of the search warrants; arrest warrants; informations; indictments; and failed to produce bases upon which any claim operates against Stark; Rideout; and the Third Party Beneficiaries.

The United States had full knowledge that Pub. L. 80-772 had not passed; that H.R. 3190 was not validly enacted; and that 18 U.S.C. § 3231 did not exist and therefore provided no general criminal jurisdiction to the United States District Courts and the United States Courts of Appeals to issue warrants; preventatively detain; conduct trials; accept pleas and plea agreements; enter final judgments and sentences; and admitted these facts as early as July 27, 2009, in an email to "All Department Heads" by Harley G. Lappin, *former* Director of the Bureau of Prisons. The contents of this email stated that the Parliamentarian of the House of Representatives; the Clerk of the House of Representatives; the National Archives; and the Department of Justice Office of Legal Counsel all had knowledge of the invalidity of Pub. L. 80-772, and admitted this to Mr. Lappin; and despite this knowledge continued to prosecute; convict; and punish Stark; Rideout; and the Third Party Beneficiaries.

The United States admitted and unconditionally stipulated that it did commit: fraudulent concealment; denied Stark, Rideout, and the Third Party Beneficiaries, both substantive and procedural due process; due process of law; a mutual conspiracy to engage in a scheme of unjust enrichment; violations of the rights and protections secured to Stark, Rideout, and the Third Party Beneficiaries under the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, and Fourteenth articles in amendment to the Constitution for the United States of America; violations of Article 6 of the American Convention on Human Rights; denied Stark, Rideout, and the Third Party Beneficiaries rights under color of law; and entering into a conspiracy to deny said rights.

The United States admitted and unconditionally stipulated that it unlawfully arrested; indicted; convicted; adjudged; sentenced; and imprisoned Stark, Rideout, and the Third Party Beneficiaries in violation of the Constitution of the United States of America and the Laws of the United States, entitling Stark, Rideout, and the Third Party Beneficiaries to the immediate

issuance of the writs of habeas corpus (or any and all redressable remedies analogous thereto) setting them at liberty immediately and without delay.

The United States admitted and unconditionally stipulated that it lacks subject matter over the alleged commercial-criminal statutes to charge; prosecute; convict; adjudicate; sentence and imprison Stark, Rideout, and the Third Party Beneficiaries. This caused Stark to seek redress with the Attorney General directly under the provisions of the First article in amendment to the Constitution that ultimately resulted in the formation of the Agreement and Addendums thereto, and this consent arbitration proceeding.

D. Individualized Admissions by United States as to Claimants.

1. Prejudicial Factual and Procedural Errors in Alleged Prosecutions

a. Admissions by the United States as to Stark's alleged criminal case. The United States admitted the following with respect to the alleged prosecution of Stark: that the Joint Venture and Profit Sharing Agreement ("JVA") between Stark's company, Sardaukar Holdings, IBC ("Sardaukar"), and James Allen Rumpf's ("Rumpf") company, CILAK, was a genuine and valid contract between the parties entered into on or about August 5, 2004. The United States further admitted that Rumpf hired a private investigator to investigate Stark and thereby obtained full knowledge of Stark's criminal history and communicated said results of the investigation to Stark, to which Stark admitted his status as a felon, and that Article 16 of the JVA was curative as to any alleged fraudulent misrepresentation or omission by Stark to induce Rumpf and CILAK to enter into the JVA. Article 16 provided, in part, that:

> 16. Agreements/Amendments. This agreement constitutes the entire agreement of the Parties with respect to the subject matter herein, and *supersedes any prior proposals, understandings, commitments or representations whatsoever, written or oral. (emphasis supplied).*

Article 15 of the JVA, further stated:

> 15. No Partnership or Agency. The Parties are not and shall not be construed or deemed in any way to be agents, partners or fiduciaries of each other as a result of the relationship created pursuant to this agreement. *No Party shall be bound by or liable for any representations made by other Parties with respect to a proposed or actual transaction. (emphasis supplied).*

Any part or portion of the JVA that was unenforceable was deemed to be severed by the parties to the JVA under Article 19. The Mediation-Arbitration clause under Article 11 of the JVA was the sole method provided to resolve all disputes as to matters contemplated under the JVA and the governing law invoked the Federal Arbitration Act ("FAA").

The United States admitted that Stark did not, at any time, cause Stanley Leitner ("Leitner") or Megafund to participate in any agreements or contracts with Rumpf or any entity

or individual associated with Rumpf or under Rumpf's direction; and neither did Stark at any time cause Leitner to wire funds, monies, or goods to Rumpf; CIG, Ltd.; or CILAK.

The United States admitted that Rumpf was not and has not at any time acted under the color of law when making either aural or telephonic recordings, or both, involving Stark; and further admitted that said recordings were made in violation of both Federal and California state law.

The United States admitted that Paul Lee Yanowitch, and Assistant United States Attorney, during the trial phase of Stark's alleged criminal case, did suborn the perjury of material testimony involving the sale and ownership of common stock shares, by the shareholders of Sardauker, by Michael J. Quilling ("Quilling"), wherein Quilling falsely testified that during the time period of his appointment as receiver of Stark and Sardaukar that he never found any evidence of any shares being sold or issued as to Sardaukar's common stock. Said testimony being material to Stark's rebuttal of false allegations and that he did factually conduct proper shareholder meetings rather than solicitations to potential investors.

The United States admitted that on three separate occasions between July of 2011, and April of 2012, Stark directly, and through stand-by counsel, David J. Pire, requested Assistant United States Attorney, Paul Lee Yanowitch ("AUSA Yanowitch") to provide the congressional records for the 80th Congress as noted herein, *ante;* and that AUSA Yanowitch affirmatively stated to both Stark and his stand-by counsel that he would provide the requested records. The United States further admits that AUSA Yanowitch never provided or attempted to provide the requested records of the 80th Congress, thereby directly withholding material exculpatory evidence necessary to support Stark's jurisdictional defense at trial.

The United States admitted and stipulated that it unlawfully seized and is continuing to maintain custody of two computer systems belonging to Stark that consist of: (i) one Apple MacBook Pro S/N G87072DEUPZ; and (ii) one Hewlett Packard Pavilion Laptop S/N CNF72447BM. Stark admitted that he has at no time abandoned said property.

b. Admissions by the United States as to Rideout's alleged criminal case. The United States admitted that it illegally performed an unlawful search and unconstitutional intrusion on Rideout's privacy and property rights in order to obtain what purported to be alleged evidence. The Federal Bureau of Investigation ("FBI") used undisclosed methods to surreptitiously intrude upon Rideout's in home computer network as an unlawful investigatory pretext to obtain a consent to seize and search Rideout's computer for alleged illegal commercial electronic products. The United States admitted that this common pattern of practice by the FBI is unconstitutional and violated Rideout's secured protections under the Fourth and Fifth articles in amendment to the Constitution of the United States of America.

The United States admitted and stipulated that it unlawfully seized and is continuing to maintain custody of the following personal property of Rideout listed in FBI File No. 305A-CV-74672 consisting of: (i) E-Machine CPU, S/N CA149P0024380; (ii) Dell Latitude Laptop S/N ZPNSW; (iii) SanDisk 128 Memory Card S/N 0353500; (iv) Generic Thumb Drive (gray in color); (v) Seven (7) VHS Cassettes, with titles in French/Dutch; (vi) 2 Wire Modem S/N

240714006350; (vii) Lexar 64MB memory card; (viii) Toshiba 80GB Hard Drive S/N 65BP3655T; (ix) 1 CD-ROMs on Spindle, One (1) CD-ROM, blue in color in jewel box case.

*c. **Admissions by the United States as to Charles Elliot Hill, II.*** The United States admitted that it combined, conspired, actively and passively assist, cooperate with the State of Georgia to target Charles Elliot Hill, II ("Hill"), by and through Special Agent Ken Howard ("S.A. Howard") of the Georgia Bureau of Investigation ("GBI"), in or around 2007, and continuing until Hill's alleged criminal case was ostensibly concluded. After an initial investigation of Hill's ex-wife, Joy Hill ("Mrs. Hill"), by GBI S.A. Howard, resulted in an improper relationship with Mrs. Hill during the time period of Hill and Mrs. Hill's divorce proceedings: S.A. Howard destroyed recorded interviews and evidence of Mrs. Hill and subsequently engaged in a willful, wanton, and malicious pattern of practice to investigate and prosecute Hill for profitable financial gain. The investigation was conducted under false pretenses, instituted a selective, malicious, and vindictive prosecution by filing falsified and malicious indictments and informations in both State and Federal courts. The United States admits the actions of the GBI and S.A. Howard were in reckless disregard of the laws, and operated to deny Hill's rights under color of law. The United States further admits that it worked in conjunction with the GBI and S.A. Howard to secure an alleged conviction in the United States District Court for the Northern District of Georgia.

The United States admitted that it actively and passively conspired to deny Hill's rights, and affirmatively acted to do so when it received knowledge that the State of Georgia; the GBI; and S.A. Howard to secure protected records and evidence in violation of the Fourth article in amendment to the Constitution of the United States of America from United Community Bank and its employees, located in Blairsville, Georgia, in or about 2007.

The United States admitted that it actively and passively conspired with the State of Georgia; the GBI; and S.A. Ken Howard to unlawfully indict Hill in the State of Georgia courts under false pretenses, using manufactured evidence and perjured testimony, so as to place travel restrictions on Hill confining him to the territorial jurisdiction of the Northern District of Georgia in order to prevent him from the active management of his companies, Millennium Metals, LLC, and Hill & Hill Petroleum, LLC.

The United States admitted that Hill's company Millennium Metals, LLC, conducted its operations in the States of Nevada, Utah, Texas, and elsewhere; and further admitted that Hill's company, Hill & Hill Petroleum, LLC, conducted its oil drilling operations in the State of Texas; and that as a direct result of the active and passive conspiracy by the United States and the State of Georgia against Hill, that Hill was forced to file bankruptcy and act upon the advice of constitutionally ineffective counsel that caused Hill's alleged federal criminal case.

*d. **Admissions by the United States as to John Scot Snuggs.*** The United States admitted and stipulated that it unlawfully seized and continues to maintain custody of the following personal property as to John Scot Snuggs ("Snuggs"): (i) $7,321.00 in United States currency; and (ii) a 1995 Jeep Grand Cherokee Laredo (valued at $4,000.00).

e. ***Admissions by the United States as to Bryan Samuel Coffman.*** The United States admitted that Bryan Samuel Coffman ("Coffman") was a practicing lawyer in Lexington, Kentucky, in good standing with the Kentucky State Bar Association, and was unlawfully subjected to a coordinated malicious and vindictive prosecution for profit, without authority and under the color of law. The United States admitted that it acted with willful and wanton negligence in prosecuting Coffman for the alleged criminal case and actions.

The United States admitted and stipulated that it unlawfully seized and continues to maintain custody of the following personal and real property of Coffman *(all figures rounded):* (i) two (2) Wachovia Bank account no.'s ending with 4179 and 2871, totaling $390,000 on deposit; (ii) Raymond James brokerage account no. ending with 2266, having a mark-to-market value of $4,000,000; (iii) ten (10) other bank accounts with total deposits of $2,500,000; (iv) two (2) HSBC (Panama) accounts totaling $180,000 on deposit; (v) 75' Azimut Motor Yacht having a total value of (including taxes, customs and duties) $6,840,000; (vi) eight (8) real properties situated in or around Lexington, Kentucky, at the following addresses: (vi-a) 2556 Ash Brook Drive, (vi-b)3200 Mammoth Drive, (vi-c) 3152 Highridge Drive, (vi-d) 4752 Firebrook Boulevard, (vi-e) 3805 Arrowhead Drive, (vi-f) 873 Forest Green Drive, (vi-g) 4200 Steamboat Drive, and (vi-h) 4816 Chaffey Lane; (vii) one (1) 2004 Mercedes R500 valued at $32,000; (viii) one (1) 1996 Dodge Viper GTS valued at $45,000: All having a grand total of $13,987,000.

Coffman's Kentucky Bar membership was suspended for disciplinary reasons due to the malicious, vindictive and unlawful prosecution by the United States which would otherwise be in good standing but for the United States alleged criminal action.

2. Foreign and Interstate Commerce Affected

a. ***Facts in alleged criminal statutes involve foreign or interstate commerce.*** The federal statutes providing the foundation for the alleged criminal cases that Claimants and Third Party Beneficiaries were accused of violating *all* relate in some manner or form to the Federal Constitution's commerce clause *(U.S.Cons Art.I, § 8, cl 3)* that are identified by three broad categories of activity that Congress may properly regulate and protect under Congress' commerce power. The three categories Congress may regulate are (i) use of the channels of interstate commerce, (ii) instrumentalities of interstate commerce--or persons or things in interstate commerce--even though threat may come from only intrastate activities, and (iii) those activities having substantial relation to interstate commerce, that is, those activities that substantially affect interstate commerce.

Without the Congress' findings that the use of the channels; instrumentalities; or activities having substantial relations to interstate commerce, the *jurisdictional hook* of the "criminal" statutes would be unconstitutional and unable to be enforced in the federal venue. That is to say, the statutes would cease to be deemed regulatory in nature and would ostensibly attempt to attain a *police* power forbidden by the Federal Constitution. It can be conclusively proven without citation to the individual federal "criminal" statutes attributable to each alleged criminal case of the Claimants and Third Party Beneficiaries, that all said statutes and the facts related to each case assert that the one of the three broad categories of interstate commerce activity was either used or substantially affected.

The interstate commercial character of the alleged criminal statutes has been admitted by the United States and stipulated to by the parties. The Agreement and the Addendums are substantially involved with, either directly or indirectly, foreign or interstate commerce.

E. The Stipulation and Settlement Agreement

1. The Offer and Acceptance

a. Notice of Offer of Settlement and Judgment. On or about January 29, 2015, Stark communicated a Notice of Offer of Settlement on Arbitration Award 917092-B1/USAG June 9, 2014 ("Offer of Settlement") by facsimile transmission to the offices of the United States Attorney General; the Deputy Attorney General; the Associate Attorney General; and the Dispute Resolution Office *(now located in the Office of Legal Policy).* The Offer of Settlement stated clearly expressed terms for acceptance, to wit:

> This Offer of Settlement and Stipulation Agreement is open for voluntary acceptance and agreement by signature (original and/or facsimile is permitted and considered binding by law) a full 72 hours from the date of communication of said Offer and this Notice by successful facsimile transmission to any or all of the number(s) noted hereinabove. Upon expiry of the 72 hour time-limit you will be considered to be in default and subject to all conditions of default set forth hereinbelow. Your strict compliance and adherence to these terms is required and appreciated.

The United States went into default and the curative provisions within the Offer of Settlement became enforceable. The United States accepted the Offer of Settlement and Stark executed the signature of the Attorney General in a representative capacity on a self-executing Irrevocable Special Power of Attorney Coupled with Interest document ("Special Power Of Attorney") under Notary seal that empowered Stark or his legal representative(s) to act on behalf of the United States and the Attorney General as an agent or designee with respect to claims and litigation on the subject matter of the Agreement and Addendums the third party beneficiaries and all matters related hereto and no other matters. A certified copy of the Special Power Of Attorney and Offer of Settlement was sent to the Office of the Attorney General at the Department of Justice and to the Civil Process Clerk at the United States Attorney's Office for the District of Columbia by certified mail on February 25, 2015. Stark also filed a copy of the Special Power Of Attorney and Offer of Settlement in the public record of the United States District Court for the District of Columbia. See, *Stark v. Holder, et al.,* 1:15-cv-00202-ABJ (D.D.C. March 9, 2015)(Dkt. 4, pp. 25-27). The United States admitted that the Special Power Of Attorney is a lawful, genuine, and authentic document empowering Stark or his legal representative to bind the United States under the laws of agency within its limited scope of authority, and the United States further agreed to be so bound. The Attorney General further ratified and confirmed all that Stark (as agent) shall lawfully do or cause to be done under the Special Power Of Attorney and the rights and powers granted therein.

b. ***The Stipulation and Settlement Agreement.*** The Stipulation and Settlement Agreement was accepted according to its terms by executing the signatures and initials of the parties or their authorized agents or designees on May 22, 2015. To maintain fair dealings, good faith, and clean hands, and to provide the principal an opportunity to object, withdraw, or rescind from the Agreement, Stark delivered an executed original of the Agreement to the Attorney General by certified United States postal mail on June 2, 2015. The United States and the Attorney General accepted and ratified the Agreement.

c. ***The Addendums to the Stipulation and Settlement Agreement.*** The Addendums to the Agreement were accepted according to the terms contained therein and in the Agreement by executing the signatures and initials of the parties or their authorized agents or designees on August 7, 2015 (as to the first Addendum), and on October 8, 2015 (as to the second Addendum) and on November 11, 2015 (as to the third Addendum). Copies of the Addendums were transmitted to the Attorney General by successful facsimile transmission on October 6, 2015; and again on October 14, 2015. The United States and the Attorney General accepted and ratified the Addendums.

2. Parties Intent to be Bound

a. ***Mutual Intent to Contract.*** The United States admitted and the parties unconditionally stipulated that they had a mutual intent to enter into and be bound by the promises and terms of the Agreement. All parties performed affirmative acts to establish and bind themselves under the Agreement and there is no genuine dispute between the parties as to this fact.

3. Consideration

a. ***Forbearance of Punitive Damages Enforcement.*** The June 9, 2014 Award of the Arbitrator awarded punitive damages set at 200 times the amount of actual damages to Stark if the United States failed to voluntarily comply with the award. The United States did in-fact fail to voluntarily comply with the Award, and the punitive damage award became enforceable. As consideration to induce the United States to enter into and accept the Agreement, add Rideout as co-party to the Agreement, and to add the third party beneficiaries thereto, Stark offered to forbear enforcement of the punitive damages.

Stark further agreed to forebear attempting to independently secure an agreement, admissions, stipulations, and seek to bind the United States to an arbitration agreement and secure an award on behalf of Rideout as consideration for joining Rideout as co-party to the Agreement.

b. ***Non-disclosure of Subject Matter and Procedures.*** Stark; Rideout; and the third party beneficiaries agreed to cease and desist with any and all discussions and assistance to anyone not covered by the terms of the Agreement or the Exhibit A exemption list, as to the arbitration of criminal matters in the federal venue utilizing the processes, in exchange for the immunization from prosecution in any and all matters, criminal, civil, and administrative, at the local, State, or Federal levels.

c. ***Rideout Waives Liability Claims.*** Rideout, in exchange for being added as co-party to the Agreement and Addendums, agreed to waive any and all claims against the United States, it's officers, agents, employees, and contractors, in relation to the underlying void criminal action brought against him. This waiver was strictly limited to those parties directly involved in the investigation and prosecution of the alleged criminal cause, and did not restrict Rideout from seeking legal damages against the United States for breach of the Agreement, or any physical or psychological harm suffered while unlawfully incarcerated.

d. ***Sealing and Unpublishing of Cases.*** Stark; Rideout; and the third party beneficiaries agreed to the sealing and unpublishing of the cases and all matters related to these proceedings in the interest of the United States so that no non-party individuals or entities may discover and utilize the facts or procedures for relief.

e. ***Settlement of All Claims.*** All parties to the Agreement, including the third party beneficiaries, promised to extinguish all direct and related claims, known or unknown, relating to the these matters upon entry of final judgment as to these matters.

4. Attorney General Bound the Government to the Agreement

a. ***Assent of the Attorney General to the Special Power of Attorney.*** Eric H. Holder, Jr., under the authority and official power of his Office as Attorney General of the United States, manifested his intent to have Stark act in his name and the Office of Attorney General by conduct and terms articulated in the Offer of Settlement. Stark was authorized to execute the Attorney General's name on the Irrevocable Special Power of Attorney Coupled with Interest document, in a representative capacity, on February 10, 2015. As noted, *supra*, by both express terms and conduct, the Attorney General intended to enter into the agency agreement with Stark and fully empowered Stark to bind the United States and the Attorney General's Office for the matters specifically represented therein, including this instant arbitration, and no other matters. The Special Power of Attorney is sufficiently limited to the specific acts and matters articulated therein as they relate to Stark; Rideout; and the Third Party Beneficiaries. The Special Power of Attorney has been ratified and affirmed as noted hereinabove. At no time has the Attorney General; the United States; or any Officer; Agent; Employee, or the like, ever objected to or challenged the Special Power of Attorney.

b. ***Agency continues through change of Office of Attorney General.*** Eric H. Holder, Jr., resigned as the United States Attorney General and Loretta Lynch was subsequently appointed and confirmed to the Office of Attorney General. The change of office had no limiting effect on the Special Power of Attorney as it was delegated from the powers of the Office itself and not from the individual occupying said Office of Attorney General. Loretta Lynch assumed all responsibilities and liabilities of the Office upon confirmation and appointment, and further affirmatively acted to not repeal or attempt in any way to challenge the Special Power of Attorney.

c. ***Authority to bind the United States under agency.*** Having been empowered to act in all matters described within the Special Power of Attorney, Stark executed the signature of the

Attorney General on behalf of the United States of America to bind the government to the terms and obligations under the Agreement and the Addendums. The Attorney General has full authority and is vested with all functions and powers of the Department of Justice, amongst other powers, and is authorized to bind the United States accordingly. Through the acts of the agent, including the sufficient notices provided to the principal from the agent in each instance so that the agent may affirm that he is acting within the scope of his authority, the Attorney General has continued manifesting her intent to bind the United States to the Agreement and Addendums, to perform to the terms and obligations as directed therein. Moreover, the Attorney General has specifically and conclusively admitted that the United States has ratified and affirmed the Agreement and Addendums between the parties and further admitted and stipulated to the authenticity and legality of the Agreement and the Addendums, *in toto*.

Though the Attorney General's statutory and executive authority is plenary in representing the United States; the Attorney General's authority to settle litigation for the United States stops at the walls of illegality. All powers of agency granted to Stark by the Attorney General are firmly within the four corners of black letter law. Thus, the United States has entered into a legal and binding private settlement agreement with Stark; Rideout; and the Third Party Beneficiaries, and cannot therefore evade or fail to perform what it is bound by law to do.

F. The United States Breaches Agreement and Fails to Perform

1. United States has Obligation of Good Faith to Perform on Promises

*a. **Mandate to release prisoners from confinement immediately.*** The parties have admitted and stipulated that no subject matter jurisdiction existed and there was no repeal of the statutes in the pre-1948 Title 18 of the United States Code, and that the investigations, warrants, indictments or informations, prosecutions, convictions, judgments, and sentences of Stark; Rideout; and the Third Party Beneficiaries were and are void *ab initio*. The United States agreed to and contractually obligated itself to immediately and without delay, release by whatever means necessary or possible: Stark; Rideout; Hill; Snuggs; Coffman; Jason Carl Thomas; Baldev Naidu Ragavan; Lulummba Clay Travis; Charles David Johnson, Jr.; William Scott Hames; Hendrick Ezell Tunstall; Joseph Anthony DiBruno, Jr.; Jerry Garwood Mitchell; Shane Reed Wilson; William Michael Cain; and Jason Wesley Tate. These Claimants and Third Party Beneficiaries have not been released from incarceration at the time of this pre-award ruling and no apparent effort or attempt to release has been made by the United States to release. The United States is in breach and provisional remedies for specific performance is now required to secure the parties rights under the Agreement and cure the breach.

*b. **United States fails to move any court to vacate the criminal cases as void.*** The United States admitted that Stark; Rideout; and the Third Party Beneficiaries are entitled to have the entirety of their federal convictions vacated, set aside, and voided so that the Claimants and Third Parties may be restored to the same position that they were in prior to their investigations and arrests. The United States impliedly agreed under the terms and obligations of the contract to file or move the trial and sentencing courts to vacate the sentences, convictions, and dismiss the indictments as being void for lack of subject matter jurisdiction, et al., and was bound to perform to the terms of this agreement. At the time of this pre-award ruling, the United States

has failed to perform this obligation on any level and a provisional remedy requiring specific performance must be made to secure the Claimants and Third Party Beneficiaries rights under the Agreement and cure the breach.

c. ***Unlawfully seized property has not been returned to the rightful owners.*** The properties listed in Part D., *ante,* was unlawfully seized; confiscated; forfeited; taken; or obtained in violation of the law and has not been returned to the respective and rightful owners as required by the terms under the Agreement. The United States has no authority to deprive any Claimant or Third Party Beneficiary's rights to their property without due process of law. The United States admitted and stipulated that it has no right to said property and had no lawful or legal authority to seize any property contemplated herein with respect to the Claimants and Third Party Beneficiaries. Failure to return said properties, both real and personal, by the United States is a breach of the terms of the Agreement and its Addendums, and a provisional remedy requiring specific performance must be made to secure the Claimants and Third Party Beneficiaries property rights under the Agreement and its Addendums in order to cure the breach.

d. ***The United States failed to expunge records.*** Given the totality of the circumstances embraced within the terms of the Agreement and its Addendums, the United States expressly agreed and was obligated to expunge all: designations; classifications; records; system of records; publications; postings; library catalogs; investigation files; Criminal Justice Information System files and records; CODIS records and files; and the like, in their entirety that reference the Claimants and Third Party Beneficiaries within sixty (60) days of entering into the Agreement. The United States failed to perform its obligations and promises under the Agreement and its Addendums and a provisional remedy requiring specific performance must be made to secure the Claimants and Third Party Beneficiaries rights thereunder and cure the breach of Agreement.

e. ***Immunity and protection from litigation has not been provided.*** The United States agreed to register Stark; Rideout; and the Third Party Beneficiaries listed in Group A of Exhibit A to the Agreement on the *"Blue List"* with the United States Secretary of State and provide absolute immunity by extending diplomatic privileges and immunities analagous to the terms expressed in the Vienna Convention on Diplomatic Relations, April 18, 1961, entered into force with respect to the United States, December 13, 1971; and the Convention on Privileges and Immunities of the United Nations, February 3, 1946, entered into force with respect to the United States, April 29, 1970. The United States has failed to perform to the obligations and promises it agreed to with respect to extending absolute immunity in conformance with the Agreement and its Addendums, and a provisional remedy requiring specific performance must be made to secure the rights of the Claimants and Third Party Beneficiaries listed in Group A of Exhibit A to the Agreement, in order to cure the breach of the United States.

The above facts have the presumption of validity and the United States carried the burden of rebutting any of the said facts. The United States waived its rebuttal, admitted, and stipulated to all of the above as statements of fact by the United States, and are conclusive as to the matters described herein and related thereto. Moreover, the United States stipulated that it would not contest or appeal these matters in any manner, and consented to the entry of any and all rulings,

interim awards, final awards, confirmation of award proceedings, and judgments in favor of the Claimants and Third Party Beneficiaries.

IV. CONCLUSIONS OF LAW

A. Standard of Proof

Claimants bear the burden of establishing each element of their claims by a preponderance of the evidence. See *Lozinsky v. Georgia Res. Mgmt., LLC,* 734 F. Supp. 2d 150, 155 (D.D.C. 2010) (evaluating unjust enrichment claim "under the preponderance of the evidence standard"); *Building Servs. Co. v. National R.R. Passenger Corp.*, 305 F. Supp. 2d 85, 92 (D.D.C. 2004) (referring to the preponderance of the evidence standard as the burden for a promissory estoppel claim); *Robinson v. Nussbaum,* 11 F. Supp. 2d 10, 15 (D.D.C. 1997) (evaluating contract claim under a preponderance of the evidence standard); see also *Grogan v. Garner,* 498 US 279, 286, 112 L Ed 2d 755, 111 S Ct 654 (1991); *Tamayo-Reyes v. Keeney,* 926 F.2d 1492, 1502 (9th Cir. 1991), *rev'd on other grounds,* 504 US 1 (1992) ("[P]etitioner need only prove his constitutional claim by a preponderance of the evidence"). See generally *2 Kenneth S. Broun, George E. Dix, Edward Imwinkelreid, D.H. Kaye, Robert O. Mosteller, E.F. Roberts, John W. Strong & Eleanor Swift, McCormick on Evidence* § 339, at 483 (6th ed. 2006 & Supp. 2010) ("party who has the burden of persuasion of a fact must prove it [. . .] in certain exceptional controversies in civil cases, 'by clear, strong and convincing evidence,' but on the general run of issues in civil cases 'by a preponderance of evidence'" (citations omitted)); see, e.g., *Silva v. Woodford,* 279 F.3d 825, 835 (9th Cir.), *cert. denied,* 537 US 942 (2002) (petitioner's burden of proving "'his custody is in violation of the Constitution, laws or treaties of the United States' [. . .] must be carried by a preponderance of the evidence").

Keeping in mind that the Claimants bear the ultimate burden of proving the elements of a federal law violation and that the burden will be by a preponderance of the evidence, the Claimants should consult the rules governing each claim. For general civil practice, see, *e.g.,* Fed. R. Civ. P. 12 (2010); *Fleming James, Jr., Geoffrey C. Hazard, Jr., & John Leubsdorf, Civil Procedure* § 3.11 (4th ed. 1992); *2 McCormick on Evidence, supra* note 7, § 337, at 473 ("In most cases, the party who has the burden of pleading a fact will have the burdens of producing evidence and of persuading the [trier] of its existence as well."); *2 James Wm. Moore et al., Moore's Federal Practice* § 8.07[3] (3d ed. 2000 & Supp. 2010); *5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil* § 1270 (3d ed. 2004 & Supp. 2010).

A preponderance of the evidence standard requires "that the fact-finder believe that the existence of a fact is more probable than the non-existence of that fact." *United States v. Smith,* 267 F.3d 1154, 1161, 347 U.S. App. D.C. 392 (D.C. Cir. 2001); see also *Hill v. Republic of Iraq,* 328 F.3d 680, 684, 356 U.S. App. D.C. 142 (D.C. Cir. 2003). The Arbitrator must "believe that the existence of a fact is more probable than its nonexistence before [it] may find in favor of the party who has the burden to persuade the [Arbitrator] of the fact's existence." *Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 US 602, 622, 124 L Ed 2d 539, 113 S Ct 2264 (1993).

The Agreement is to be governed and construed according to the laws of the District of Columbia and the United States of America as it relates to contracts and common law interpretations, as well as statutory interpretations without regard to any principles or conflicts of law and any disputes that should arise under the Agreement shall be resolved by arbitration. Agreement § 7.9, p. 11.

B. Contract Claims

Claimants assert the existence of an express contract or agreement with the United States. See generally, Addendum Oct. 8, 2015, § 2.17, p. 18. "The party asserting the existence of an enforceable contract [. . .] bears the burden of proof on the issue of contract formation." *Virtual Def. & Dev. Int'l, Inc. v. Rep. of Moldova*, 133 F. Supp. 2d 9, 17 (D.D.C. 2001). "A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." *Restatement (Second) of Contracts (1979)* § 1; see *1 Williston, Contracts* §§ 1, 18 (3d ed. 1957). A contract has certain essential elements, to wit, competent parties, lawful subject matter, legal consideration, mutuality of assent and mutuality of obligation. *1 Williston, Contracts* § 1:1 (4th ed. 1990) (discussing "classic concept of contract"); see *Black's Law Dictionary* 322 (6th ed. 1990); see also *Farrington v. Tennessee*, 95 US 679, 685, 24 L Ed 558 (1878) (discussing *Trustees of Dartmouth College v. Woodward*, 17 US (4 Wheat) 518, 4 L Ed 629 (1819).

Settlement agreements are governed by principals of contract law. *Green v. AFL-CIO*, 657 F. Supp. 2d 161, 165 (D.D.C. 2009). A party to a settlement agreement may waive his or her rights to litigate claims in court. *Id.* at 165-66; *Johnson v. Venemen*, 569 F. Supp. 2d 148, 154-55 (D.D.C. 2008) (holding that waiver of claims must be "knowing and voluntary"). Congress has waived sovereign immunity with respect to "any claim against the United States founded [. . .] upon any express or implied contract with the United States." 28 U.S.C. § 1346(a)(1). Settlement agreements with agencies of the United States constitute contracts. *Shaffer v. Veneman*, 325 F.3d 370, 372, 355 U.S. App. D.C. 470 (D.C. Cir. 2003); see also *Massie v. United States*, 166 F.3d 1184, 1188 (Fed. Cir. 1999) ("[A]ny agreement can be a contract [. . .], provided that it meets the requirements for a contract with the Government, specifically: mutual intent to contract including an offer and acceptance, consideration, and a Government representative who had actual authority to bind the Government.") (citation omitted). In an express contract, the parties manifest their agreement by their words, whether written or spoken. See *Brunner v. United States*, 70 Fed. Cl. 623, 626-27 (Fed. Cl. 2006) ("The difference between an express and an implied-in-fact contract is that the lack of ambiguity in offer and acceptance, [. . .] or meeting of the minds [. . .] is inferred, as a fact, from conduct of the parties showing, in light of the surrounding circumstances, their tacit understanding.")(internal quotations and citation omitted).

In assessing whether a contract or agreement exists, the Arbitrator applies an objective standard to the words or actions that allegedly gave rise to an agreement. See *Northland Capital Corp. v. Silver*, 735 F.2d 1421, 1427 n.7, 236 U.S. App. D.C. 390 (D.C. Cir. 1984) ("The principal that objective manifestation of intent is controlling in contract formation is very well established.") "'[T]he formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.'" *Bank of Am., FSB v. United States*, 55

Fed. Cl. 670, 674 (Fed. Cl. 2003) (quoting *Restatement (Second) of Contracts* § 17(a) (1979)). Thus, a contract "is an agreement characterized by 'an exchange of promises - through commitments to act or refrain from acting in a specified way - that are evidenced in a writing or are inferable from conduct.'" *Id.* (quoting *Maher v. United States,* 314 F.3d 600, 603 (Fed. Cir. 2002)); see *Fifth Third Bank of W. Ohio v. United States*, 52 Fed. Cl. 264, 270 (Fed. Cl. 2002). "Such promises generally are expressed in the form of an offer and acceptance, in which each promise serves as the inducement for the other." *Bank of Am., FSB v. United States,* 55 Fed. Cl. 670, 674-75. A promise may be express or implied "but it is to be distinguished from mere statements of intention, opinion, or prediction." *Fifth Third Bank of W. Ohio v. United States,* 52 Fed. Cl. at 270; *Cutler-Hammer, Inc. v. United States,* 441 F.2d 1179, 1182, 194 Ct. Cl. 788 (Ct. Cl. 1971) ("In general, the obligation of the Government, if it is to be held liable, must be stated in the form of an undertaking, not as a mere prediction or statement of opinion or intention.").

Where, as here, the Claimants assert the existence of a contract with the United States and the U.S. Department of Justice ("DOJ"), a federal agency, the Claimants must establish the following elements: "a mutual intent to contract including offer, acceptance, and consideration; and authority on the part of the government representative who entered or ratified the agreement to bind [the United States and DOJ] in contract." *Hoag v. United States*, 99 Fed. Cl. 246, 253 (Fed. Cl. 2011) (quotations omitted); see *BioFunction, LLC v. United States,* 92 Fed. Cl. 167, 172-73 (Fed. Cl. 2010). A contract must "be sufficiently definite as to its material terms," which include, among other things, subject matter, payment terms, and duration. *Mero v. City Segway Tours of Washington DC, LLC.,* 826 F. Supp. 2d 100, 105 (D.D.C. 2011) (quotations omitted); see *LanQuest Corp. v. McManus & Darden, LLP*, 796 F. Supp. 2d 98, 102 (D.D.C. 2011). All terms of the agreement "need not be fixed with complete and perfect certainty for a contract to [be enforceable]." *LanQuest Corp. v. McManus & Darden*, 796 F. Supp. 2d at 102 (quotations omitted) (alteration in the original). "To be enforceable, however, the contract terms must be sufficiently definite so that the parties can be reasonably certain as to how they are to perform." *Id.* (quotations omitted).

As the Supreme Court has established, the government can and does make promises and enter into contracts regarding its regulatory function. See *United States v. Winstar Corp.*, 518 US 839, 871-72, 894-95, 135 L Ed 2d 964, 116 S Ct 2432 (1996). "Ordinary principles for contract construction and breach that would be applicable to any contract between private parties" are applied to claims regarding the existence and breach of contract with the government. *Id.;* see *Fifth Third Bank of W. Ohio v. United States*, 52 Fed. Cl. at 270.

1. Valid Stipulation and Settlement Agreement Entered and Ratified

a. Offer and acceptance as mutual manifestation of intent to enter into Agreement. Stark communicated the notice of offer to enter into the Stipulation and Settlement Agreement with the United States by successful facsimile transmission to the Office of the Attorney General; Deputy Attorney General; Assistant Attorney General; and the former Dispute Resolution Office, on January 29, 2015. The United States, by and through the Attorney General, was put on notice as to the express and specific terms of accepting the offer within 72 hours of receipt or a default would occur. Notice of Offer, p. 2-3. To cure the default, Stark was

given actual authority to execute the signature of the Attorney General in a representative capacity on an Irrevocable Special Power of Attorney Coupled with Interest, should the Attorney General, by his conduct, remain silent and inactive and persist in the default. Notice of Offer, p. 3. The District of Columbia has adopted the doctrine of acceptance by silence as set forth in the *Restatement (Second) of Contracts. Klingensmith, Inc. v. District of Columbia*, 370 A.2d 1341, 1343 (D.C. 1977). "Where an offeree fails to reply to an offer, his silence and inaction operate as an acceptance in the following cases only: [. . .] (b) Where the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer. (c) Where because of previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he does not intend to accept." *Capitol Hill Group v. Shaw Pittman LLP (In re Capitol Hill Group)*, 313 B.R. 344, 355 (D.D.C.B.R. 2004).

Principals of agency are employed to determine whether an actor has actual or apparent authority to bind a principal to a contract. *Makins v. District of Columbia,* 861 A.2d 590, 593 (D.C. 2004) (en banc). "Whether an agency relationship exists in a given situation depends on the particular facts of each case." *Judah v. Reiner,* 744 A.2d 1037, 1040 (D.C. 2000). "An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, *in accordance with the principal's manifestations to the agent,* that the principal wishes the agent to so act." *Restatement (Third) of Agency: Actual Authority* § 2.01 (2006) (emphasis added). Actual authority can be created expressly or by implication through "written or spoken words or *other conduct* of the principal, which reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account." *Evans v. Skinner*, 742 F. Supp. 30, 32 (D.D.C. 1990) (quoting *Restatement (Second) of Agency* § 26 (1958)); see also *Sigal Constr. Corp. v. Stanbury*, 586 A.2d 1204, 1217-18 (D.C. 1991) ("Implied authority is actual authority inferred from the circumstances, such as the relationship between the parties and conduct of the principal toward the agent manifesting the principal's consent to have the agent act for him.") (quoting *Lewis v. Washington Metro. Area Transit Auth.*, 463 A.2d 666, 669 (D.C. 1983)).

On February 10, 2015, Stark executed the signature of the Attorney General in a representative capacity, in accordance with the terms and manifestations expressed under the default provisions in the Notice of Offer, to the Special Power of Attorney document. An employee and notary working for the DOJ notarized Stark's signature in representative capacity to the Special Power of Attorney document. On February 23, 2015, Stark recorded the Special Power of Attorney along with the Notice of Offer into the public record at the Clerk's Office of the United States District Court for the District of Columbia, where after review by the Court, the documents were granted leave to be filed, and were so filed on March 9, 2015. *Stark v. Holder, et al.*, No. 1:15-cv-00202-ABJ (D.D.C. Mar. 9, 2015), Dkt. 4, pp. 25-27. True and correct copies of the original were sent to the Office of the Attorney General and to the Civil Process Clerk at the United States Attorney's Office for the District of Columbia, both by certified United States mail. Neither the United States, the Attorney General, nor any government official, ever objected, protested, or challenged the Special Power of Attorney or Stark's authority to sign the document on behalf of the Attorney General. The United States admitted, and ratified, that the Special Power of Attorney document is lawful and genuine, and that the United States agreed to be bound in settlements made thereunder. Agreement, §§ 1.3.9, 3.5, 7.3; pp. 4, 6, 10; and Oct. 8,

2015 Addendum § 1.1.25, p. 2. The Arbitrator finds no reason, and no objections have ever been made, to reach a different conclusion from that of the parties and the Claimants have met their burden of persuasion by conclusive evidence as to the legality of the Special Power of Attorney and the limited agency bestowed on Stark for the purposes clearly expressed therein. Stark may bind the United States and the Attorney General, *ex officio*, on all matters related to these proceedings, the subject matter thereto, and *no other matters*. This includes, but is not limited to, the resolution of the alleged criminal cases as to the parties of these proceedings. As the agent of the Attorney General, Stark's scope of authority as defined in the Special Power of Attorney document (at § 4, p. 2), is expressly stated:

> My agent shall have the authority customarily granted in a Power of Attorney Coupled with Interest, limited to the following purposes: a. Settle, prosecute, defend, and/or initiate all claims and litigation strictly limited to the enforcement of obligations under Contract No. 917092-B1/USAG; the arbitration Award; the Offer of Settlement and Stipulation Agreement; and/or any ancillary matters directly related thereto and no other; and b. Sign and execute any and all contracts, agreements, settlements, and stipulations directly relating to the enforcement of obligations under Contract No. 917092-B1/USAG; the arbitration Award; the Offer of Settlement and Stipulation Agreement; and/or any and all ancillary matters directly related thereto and no other.

Intent of the United States and the Attorney General to ratify the default provision in the Notice of Offer, and the Special Power of Attorney, was expressed in words and found in the subsequent conduct indicating the intention to ratify. The following conditions must be satisfied for the intention to take effect as ratification: (i) the agent must have purported to act on behalf of or as agent for the identified principal; (ii) the principal must have been capable of authorizing the act both at the time of the act and at the time it was ratified; and (iii) the principal must have full knowledge of all material facts.

Stark has met the burden of two of three elements thus far, and the Arbitrator looks to the principal's capability of authorizing the act both at the time of the act and at the time it was ratified.

The Attorney General is the chief legal officer of the United States and the head of the DOJ. As to any case referred to the DOJ for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, exercised by any agency or officer, is transferred to the Department of Justice. All functions of the Department of Justice are vested in the Attorney General. 28 U.S.C. § 509. The Attorney General's statutory and executive authority is plenary. See, e.g., *Confiscation Cases*, 74 US (7 Wall.) 454, 458-59, 19 L Ed 196 (1868); *United States v. Newport News Shipbuilding & Dry Dock Co.*, 571 F.2d 1283, 1286-87 (4th Cir.), *cert. denied*, 439 US 875, 58 L Ed 2d 189, 99 S Ct 212 (1978). The Arbitrator has no quarrel with that conclusion. Plenary power means absolute authority to pursue *legitimate* objectives, but does not include license to agree to settlement terms that would violate the civil laws governing the agency. The United States conceded that the authority of Attorney General in appointing Stark as a limited attorney-in-fact, *ex officio*, is not "boundless" and can be diminished by "a clear and

unambiguous directive from Congress." *United States v. Hercules, Inc.*, 961 F.2d 796, 798 (8th Cir. 1992). Article II, § 3 of the Constitution (executive's duty to "take Care that the Laws be faithfully executed") give legitimate authority to delegate certain powers, limited in scope, in conformance with the Attorney General's plenary settlement authority to authorize Stark to act as an agent coupled with interest for the United States and the Attorney General to these specific matters. See, e.g., *Opinion of the Office Legal Counsel: Authority of the United States to Enter Settlement Agreements Limiting the Future Exercise of Executive Branch Discretion*, 23 Op. O.L.C. 126, 1999 OLC LEXIS 45 (Jun. 15, 1999) (Fn. 1 "For purposes of this memorandum, the term 'settlements' is employed to refer to both settlement agreements and consent decrees. [. . .] Settlement agreements are simply private contracts, which may be enforced upon breach." (citing *United States v. Swift & Co.*, 286 US 106 (1932); Timothy Stoltzfus Jost, *Commentary-The Attorney Generals Policy on Consent Decrees and Settlement Agreements*, 39 Admin. L. Rev. 101, 109-10 (1987)).

The third element of ratification has been met and the Attorney General's capability to authorize Stark to act at both the time of executing the Attorney General's signature in representative capacity to act and at the time it was later ratified is squarely within the bounds of the law.

Alternatively, estoppel may bar a principal from denying the authority of an agent when the principal is responsible for a third party's belief in the agent's authority, although the principal has made no manifestation in support. See *Restatement (Third) of Agency: Estoppel to Deny Existence of Agency Relationship* § 2.05. "Most often the person estopped will be responsible for the third party's erroneous belief as a consequence of a failure to use reasonable care, either to prevent circumstances that foreseeably led to the belief, or to correct the belief once on notice of it." *Id.* cmt. c. Thus, estoppel allows for a more attenuated connection between a principal's actions or inactions and a third party's perception of the actor's agency. However, as with apparent authority, if "the third party is unreasonable in believing that an agency relationship exists and that the actor has authority, the third party should not recover." See *id.* § 2.05 cmt. d. The Claimants prevail under the alternative analysis of estoppel to deny existence of agency relationship, and again, Stark is the agent exercising limited powers of the Attorney General under the Special Power of Attorney document.

It is black-letter law that "[a]n agent may bind the principal to a contract if the agent entered into a contract while acting within the scope of his or her actual authority." See, e.g., *Uhar & Co., Inc. v. Jacob*, 840 F. Supp. 2d 287, 291 (D.D.C. 2012); see also *Restatement (Third) of Agency* § 6.01, cmt. b. Here, there is no dispute that Stark had "actual authority" to enter into a binding contract as agent on behalf of the United States and the Attorney General. Only actual authority, express or implied, can bind the government. *Jumah v. United States,* 90 Fed. Cl. 603, 612 (Fed. Cl. 2009); see *Doe v. United States*, 95 Fed. Cl. 546, 583 (Fed. Cl. 2010) (stating that "apparent authority will not suffice to hold the [g]overnment bound by the acts of its agents") (quotations omitted). "Absent a showing of fraud or duress, parties are bound by the agreements that they sign, without regard to whether they regret their decisions after the fact." *Johnson v. Penn Camera Exchange,* 583 F. Supp. 2d 81, 86 (D.D.C. 2006) ("In the District of Columbia (and as a general rule of contract law), a party's signature on a contract binds the party to the terms of the contract, even if the party is ignorant of the terms of the contract.")

Thus, Stark's signature on the Agreement and the Addendums as the authorized agent for the Attorney General represents actual authority to bind the United States, including Stark's signature in his own capacity, along with that of Rideout's signature, clearly manifest the parties intent to enter into and be bound by the mutual exchange of promises and obligations in accordance with the terms of the Agreement and Addendums. The United States further admitted that the Stipulation and Settlement Agreement, Exhibit A, and the Addendums thereto are genuine and authentic documents. Oct. 8, 2015 Addendum §§ 1.1.26, 1.1.27, and 1.1.28; pp. 2-3. The United States agreed to be bound to all the terms to the Agreement and the Addendums. Agreement §§ 1.3.8 and 3.5; pp. 4, 6; Oct 8, 2015 Addendum § 2.17, p. 18.

b. Sufficient consideration for valid contract with United States. The parties stipulated that the consideration contemplated by their mutual promises and obligations are well within the law and sufficient to sustain the objectives of the Agreement. See Agreement §§ 2.1-2.6; 3.1-3.8; 4.1 and 8.2, pp. 5-7, 12:

> The Parties agree that this Agreement and the terms of the proposed Judgment, as set out below, constitute a full and fair settlement of all claims and issues raised in this matter and that could be raised in this matter and should be entered as the Judgment in this matter by the Court. This Judgment is intended to and will extinguish all claims that may exist between the parties to it, known or unknown, as of the date that this Agreement is signed.

The Claimants and Third Party Beneficiaries have fulfilled and continue to fulfill their agreed obligation of promises in accordance with the letter and spirit of the Agreement and Addendums, to wit: Stark has expressly waived his right to enforce the punitive damages awarded under point 8 of the June 9, 2014. The Claimants and Third Party Beneficiaries: have agreed and maintained the intent to have these proceedings and any enforcement proceedings in any court be sealed and unpublished; cease and desisted from any and all discussions, assistance, preparations, in whatever manner and form relating to arbitration of criminal statutes, processes, and procedures for any other persons, entities, corporations, partnerships, trusts, etc., with the exception of the agreed exclusions; have not sought any more funds, monies, etc. above and beyond what has been mutually agreed upon; waived *all* claims of liability, in both their official and personal capacity, as to the parties listed in the Agreement at § 2.5. Rideout expressly waived all claims of monetary liability with respect to his alleged criminal case, and has reserved the right to receive monetary compensation to cure any breach of the Agreement by the United States. Good faith performance has been exercised at all times by the Claimants and Third Party Beneficiaries, and the United States has received the full benefits of the Claimants promises and obligations.

Contract law provides that forbearance from the exercise of the rights of one of the parties and the receipt of benefits by the other party function as consideration. See *Mel Dar Corporation v. Commissioner of Internal Revenue,* 309 F.2d 525, 531 (9th Cir. 1962), *cert. denied,* 372 US 941, 9 L Ed 2d 967, 83 S Ct 933 (1963). As fully set forth herein, *ante,* the obligations articulated under III.E.3.a---e; and III.F.1.a---e, are fully within the bounds of the law and do not exceed the authority of any party to the contract to perform. Unfortunately, the United

States has been either unwilling or unable to comply with its obligations and accordingly, this matter went to consent arbitration for enforcement of specific performance against the United States.

The evidence shows that the United States made clear and definite promises to the Claimants, to wit: (i) immediate release from unlawful incarceration; (ii) absolute immunization of the Claimants and their family members analagous to diplomatic privileges and immunities; (iii) return of all property seized under color of law or otherwise by the United States to the Claimants; (iv) total and complete exemption from federal, State, and local taxation; (v) conveyence of land patent and fee simple absolute title in any estate(s) upon purchase by the Claimants or ceded by the United States to the Claimants upon conveyence of title; (vi) legal damages awarded to Stark for unlawful prosecution and conviction under the June 9, 2014 Award; (vii) legal damages to Rideout and the Third Party Beneficiaries for breach of contract by failure to perform; (viii) payment of sum certain dollar amounts on a *quid pro quo* basis in order to compel Claimants and Third Party Beneficiaries and other specific named persons from discussing the subject matter and processes of these proceedings and prevent their being made public; (ix) waiver of all rights to vacate, modify, directly or collaterally attack, or appeal any pre-award rulings, provisional remedies, interim awards, or final awards, including, but not limited to, the enforcement of any remedies in any court of competent jurisdiction; (x) to provide timely, fair and just compensation for any and all real or personal property seized by the United States that it is unable to return without infringing on the rights of others; (xi) vacate, void, and expunge Stark's criminal convictions, sentences, and records in the State of Colorado and the State of California; and (xii) issue a Certificate of Actual Innocence as to Stark, Rideout, and the Third Party Beneficiaries.

c. Authority of the Attorney General to enter the United States into a binding Settlement Agreement. As discussed at some length, *supra,* the Attorney General has full and plenary authority to enter the United States into the terms of the Agreement, so long as those terms do not violate the civil laws. 28 U.S.C. §§ 516, 518 & 519; *Scanwell Lab., Inc. v. Shaffer,* 424 F.2d 859, 874, 137 U.S. App. D.C. 371 (D.C. Cir. 1970); *DOJ Opinion of Legal Counsel, re: Settlements, supra,* 23 Op. O.L.C. 126; 1999 OLC LEXIS 45 (June 15, 1999). The Attorney General has the authority to delegate any powers necessary to achieve the ends of justice and enter into private settlement agreements by and through an agency relationship. 5 U.S.C. § 500(d)(4); 28 U.S.C. § 510. No law exists under the Statutes at Large, United States Code, or Code of Federal Regulations, that limit or prohibit the Attorney General from appointing Stark as a special Attorney-in-Fact coupled with an interest. Where no laws or statutes exist prohibiting the rights of the parties to enter into an agency relationship, such rights are retained by Stark and the Attorney General. U.S.Cons Amends.IX and X.

The United States does not dispute, and did stipulate to, the fact that the Attorney General can enter into private settlement agreements and contracts on behalf of the United States generally with private parties. 28 U.S.C. §§ 516; 518; 519; 1346(a)(2) & (b); 2677; and 2679(e). Concurrently, the Attorney General, by virtue and power of the office, can enter into a contractual agency relationship in order to exercise plenary settlement authority. 5 U.S.C. § 500(d)(4); 28 U.S.C. § 510. Thus, authority exists with the Attorney General's office to bind the

United States to the Agreement as exercised on behalf thereof by Stark acting under actual authority as an agent coupled with interest.

Claimants have met their burden of persuasion on all four elements to establish the existence of a valid and binding contract with the United States by a preponderance of the evidence. The evidence clearly shows the Claimants communicated an unambiguous offer promising to forebear the enforcement of vested rights under the Award of June 9, 2014, and to further forebear the exercise of fundamental constitutional rights secured under the Bill of Rights, *i.e.,* to refrain from the exercise of their First Amendment rights to freedom of speech; expression; and communication to the press as to the subject matter of the Agreement and Addendums; refrain from further petitions to redress grievances with relation to the all matters contemplated by the Agreement and its Addendums (with the exception of enforcing specific performance thereunder), specifically as to the egregious violation of their rights and fundamental liberty interests under the Fourth, Fifth, Sixth and Eighth Amendments; as well as waiving any and all civil and criminal claims against specific persons and employees of the United States in their personal and professional capacities; and to waive Claimants' rights to trial under the Seventh article in amendment to the Constitution of the United States, and submit any and all disputes under the Agreement and Addendums to binding arbitration. U.S.Cons Amends.I, IV, V, VI, VII, VIII; 18 U.S.C. (1934) §§ 741 and 753e.

The United States accepted the Claimants offer under actual authority and entered into a private Stipulation and Settlement Agreement with Addendums, and waived its sovereign immunity when it did so as clearly evidenced by Congressional intent. 28 U.S.C. §§ 1346(a)(2), (b); 2674; and *United States v. Mitchell*, 445 US 535, 538, 63 L Ed 2d 607, 100 S Ct 1349 (1980). The Arbitrator finds and concludes that the Agreement and the Addendums thereto, clearly and convincingly satisfy all the necessary elements of an express written agreement, that the terms of the Agreement and Addendums are set forth in such a manner that the parties are fully aware of what they are required to perform, and that each party has manifested their mutual intent to be bound thereto. All parties have, and are vested with, full legal and lawful authority to perform their obligations under the terms of the conditions of the Agreement and its Addendums.

Further, the Arbitrator finds that there was no fraud in the inducement to enter into the Agreement and Addendums. Agreement § 7.15; p. 11. Claimants had vested and "adjudicated" rights in the original Contract and the Award of the arbitrator, and in "good faith" offered to forebear the exercise of those rights in addition to specific paramount and fundamental protections afforded by the Constitution's Bill of Rights as discussed, *supra.* The United States accepted the obligation of promises from the Claimants, and has fully received the benefits of those promises. Concurrently, the Claimants accepted the obligated promises of performance by the United States, but has not received or benefitted from any of the United States promises thus far. Accurate and complete originals and copies of the Agreement and its Addendums were communicated to the United States by and through the Attorney General. No evidence exists and the United States does not contend that there has been any fraud in the factum. The United States has unconditionally admitted to these facts and does not dispute them, therefore, the Arbitrator concludes that the Agreement and its Addendums are not voidable or susceptible to

being declared void, and are valid, irrevocable, and enforceable. Addendum, Oct. 8, 2015 § 2.17; p. 18.

2. The Agreement to Arbitrate

a. Agreement to Arbitrate subject to principals of contract law. The parties mutually manifested their intent to have any and all disputes arising under the Agreement and the Addendums to be settled by arbitration. The parties agreed to be bound by the arbitration clause and the decisions of the arbitrator. Agreement, Art. 6, pp. 8-9. The Agreement further declared that arbitration was the sole remedy of the parties for any disputes arising under its terms. Agreement, §§ 6.1, 7.9, p. 8, 11. The validity of the arbitration clause, if challenged, is the only provision subject to review by a court under the terms of the Agreement and the Federal Arbitration Act ("FAA"). The FAA provides:

> "A written provision in any [. . .] contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction [. . .] shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

This text reflects the overarching principle that arbitration is a matter of contract. See *Rent-A-Center, West, Inc. v. Jackson,* 561 US ____, ____, 177 L Ed 2d 403, 130 S Ct 2772 (2010). Consistent with that text, courts must "rigorously enforce" arbitration agreements according to their terms, *Dean Witter Reynolds Inc. v. Byrd,* 470 US 213, 221, 84 L Ed 2d 158, 105 S Ct 1238 (1985), including terms that "specify with whom [the parties] choose to arbitrate their disputes," *Stolt-Nielson S.A. v. AnimalFeeds International Corp.,* 559 US 662, 683, 176 L Ed 2d 605, 130 S Ct 1758 (2010), and "the rules under which that arbitration will be conducted," *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 US 468, 479, 103 L Ed 2d 488, 109 S Ct 1248 (1989). That holds true for claims that allege a violation of a federal statute, unless the FAA's mandate has been "'overridden by a contrary congressional command.'" *CompuCredit Corp. v. Greenwood,* 565 US ____, ____ - ____, 181 L Ed 2d 586, 132 S Ct 665 (2012) (quoting *Shearson/American Express Inc. v. McMahon,* 482 US 220, 226, 96 L Ed 2d 185, 107 S Ct 2332 (1987)).

There is no contrary congressional command requiring any portion of these Arbitration proceedings to be terminated and removed to the judicial forum. The parties agreed to settle their disputes under the Agreement, even those arising under federal statutes, by arbitration, and it would be remarkable for the Arbitrator to erase that expectation. "[T]he FAA requires that an agreement to arbitrate be enforced unless a party successfully challenges the formation of the arbitration agreement, such as by proving fraud or duress." *AT&T Mobility LLC v. Concepcion,* 563 US ____, ____, 179 L Ed 2d 742, 131 S Ct 1740 (2011) (Thomas, J., concurring). Because the United States has neither raised nor furnished any "grounds [. . .] for the revocation of any contract," 9 U.S.C. § 2, the arbitration agreement must be enforced. The parties voluntarily entered into an agreement containing a bilateral arbitration provision and they are obligated settle any and all disputes thereunder.

Having found the Agreement and Addendums to be valid and lawful contracts in the first instance, and devoid of any fraud, the Arbitrator looks to the circumstances in forming the Agreement to see if duress may be evident to make the Agreement voidable. Conditions of fraud or duress merely render the Agreement voidable. "[A] contract is voidable at the option of the innocent party if that party's assent was induced by a misrepresentation, whether fraudulent or innocent." *Weaver v. Bratt,* 421 F. Supp. 2d 25, 32 (D.D.C. 2006); *Restatement (Second) of Contracts* § 164 ("If a party's manifestation of assent was induced by either a fraudulent or material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recepient.") Similarly, "if a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim." *Restatement (Second) of Contracts* § 175 (1981); see also 17A C.J.S. Contracts § 185 ("[A] contract made under duress is ordinarily voidable and not void, for the consent is present, although not such a free consent as the law requires."). A voidable contract is one under which a party may elect to avoid any legal obligations under the contract. *United States ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc.*, 214 F.3d 1372, 1377-78, 341 U.S. App. D.C. 459 (D.C. Cir. 2000) (citing *Restatement (Second) of Contracts* § 7). None of the parties contend or raise any allegations of fraud or duress in the making of the Agreement.

Even assuming *arguendo* that such allegations can be made to establish fraud or duress, these conditions would merely render the Agreement voidable. A party's power to avoid a contract due to fraud or duress is lost, if, after the circumstances that made the contract voidable have ceased to exist, the party "manifests to the other party his intention to affirm it or acts with respect to anything that he has received in a manner inconsistent with disaffirmance." *Restatement (Second) of Contracts* § 380; *see id.* cmt. *a* ("A party who has the power of avoidance may lose it by action that manifests a willingness to go on with the contract. Such action is known as 'affirmance' and has the effect of ratifying the contract.") "[I]t is [. . .] well-established that a victim of duress may be held to have ratified the agreement by accepting its benefits." *Wright,* 503 F. Supp. 2d at 174-75 (citation and quotation marks omitted); see also *Goldstein v. S & A Restaurant Corp.*, 622 F. Supp. 139, 145 (D.D.C. 1985) ("[T]he acceptance of benefits under the contract necessarily bars the denial of its validity."); *Jacobson v. Jacobson,* 277 A.2d 280, 283 (D.C. 1971) ("Ratification results if the party who executed the contract under duress accepts the benefits flowing from it or remains silent or acquiesces in the contract for any considerable length of time after opportunity is afforded to annul or void it.") (quotation marks omitted). "In other words, because economic duress merely renders a contract voidable--as opposed to void--a [party] who accepts the benefits of the contract entered into under economic duress cannot later seek to have the contract rescinded." *Wright,* 503 F. Supp. 2d at 175. The same is true for contract rendered voidable for misrepresentation. See *Restatement (Second) of Contracts* § 380(2). The outcome is also supported by principles of equitable estoppel. See *Bennett v. U.S. Chess Fed'n*, 468 F. Supp. 2d 79, 85 (D.D.C. 2006); *Asberry v. U.S. Postal Serv.*, 692 F.2d 1378, 1382 (Fed. Cir. 1982) ("Having voluntarily accepted the settlement and its benefits, [the party] is equitably estopped to attack it.") The parties, by their own admissions and stipulations, are in a binding Agreement and neither side can now avoid it.

Looking to the final factor that could render the agreement to arbitrate unenforceable under the final phrase of 9 U.S.C. § 2, "upon such grounds as exist at law or in equity for the revocation of any contract." This saving clause permits agreements to arbitrate to be invalidated

by "generally applicable contract defenses, such as fraud, duress, or unconscionability," but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue. *Doctor's Associates, Inc. v. Casarotto*, 517 US 681, 687, 134 L Ed 2d 902, 116 S Ct 1652 (1996); see also *Perry v. Thomas*, 482 US 483, 492-493, n. 9, 96 L Ed 2d 426, 107 S Ct 2520 (1987). Courts may refuse to enforce any contract found to have been unconscionable at the time it was made, or may limit the application of any unconscionable clause. A finding of unconscionability requires "a 'procedural' and a 'substantive' element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results." *AT&T Mobility v. Concepcion*, 563 US ____, ____, 179 L Ed 2d 742, 751, 131 S Ct ____ (2011) (quoting Cal. Civ. Code Ann. § 1670.5(a) (west 1985); and *Armendariz v. Foundation Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 114, 6 P.3d 669, 690 (2000)) But the inquiry becomes more complex when a doctrine thought to be generally applicable, such as unconscionability, is applied in a fashion that disfavors arbitration. In *Perry v. Thomas*, 482 US 483, 96 L Ed 2d 426, 107 S Ct 2520 (1987), for example, it was noted that the FAA's preemptive effect might extend even to grounds traditionally thought to exist "'at law or in equity for the revocation of any contract.'" *Id.*, at 492, n. 9, 96 L Ed 2d 426, 107 S Ct 2520 (emphasis deleted). The Supreme Court stated that a court may not "rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what [. . .] the state legislature cannot." *Id.*, at 493, n. 9, 96 L Ed 2d 426, 107 S Ct 2520. The effect would be the same when applying the FAA to federal statutes, absent a clear and unambiguous congressional command to the contrary.

Some examples of this are easy to imagine. An argument might apply to a ruling made by a court that classifies "as unconscionable arbitration agreements that fail to abide by the Federal Rules of Evidence, or that disallow an ultimate disposition by a jury (perhaps termed 'a panel of twelve lay arbitrators' to help avoid preemption). Such examples are not fanciful, since the judicial hostility towards arbitration that prompted the FAA had manifested itself in 'a great variety' of 'devices and formulas' declaring arbitration against public policy. *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 406 (2d Cir. 1959)." *AT&T Mobility LLC v. Concepcion*, 563 US ____, ____, 179 L Ed 2d 742, 752, 131 S Ct ____ (2011). As the Supreme Court has clearly said, a federal statute's saving clause "'cannot in reason be construed as [allowing] a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself.'" *American Telephone & Telegraph Co. v. Central Office Telephone, Inc.*, 524 US 214, 227-228, 141 L Ed 2d 222, 118 S Ct 1956 (1998) (quoting *Texas & Pacific R. Co. v. Abilene Cotton Oil Co.*, 204 US 426, 446, 51 L Ed 553, 27 S Ct 350 (1907)).

Neither the Claimants or the United States allege any claims of "surprise," "oppression," "overly harsh," or "one-sided" results. Nor has the prospect been raised that the Agreement was induced or susceptible to avoidance by claims of fraud or duress. Should a challenge under the saving clause of 9 U.S.C. § 2 ever arise in this matter, then a court will more than likely review the validity of the arbitration clause once more. However, at this stage of the proceedings, the Arbitrator is clearly convinced that the agreement of the parties to settle their disputes by arbitration is valid, having found no evidence to support a challenge to the contract as a whole and the arbitration clause in particular under fraud, duress, or unconscionability, and that

authority rests with the Arbitrator to make such a determination thereunder. The arbitration agreement provides, "[i]f the [p]arties cannot resolve a [d]ispute through negotiations, the [p]arties agree and consent to submit *any and all* [d]isputes, which could otherwise be submitted to a court of competent jurisdiction, to arbitration. [. . .] *Any* disputes that arise under this Agreement *shall* be resolved by arbitration." Agreement §§ 6.1, 7.9; pp. 8, 11.

3. Arbitration Procedure

a. Negotiations have failed to resolve the disputes of the parties. The Agreement establishes that should a dispute between the parties arise, they are to attempt to resolve the dispute through negotiations. Agreement §§ 5.1, 5.2; p. 7. The United States accepted the Claimants promises and continues to benefit therefrom. Concurrently, the Claimants have not received the benefits from the obligation of promises by the United States. The United States is equitably estopped from challenging the Agreement, and the Claimants elected to attempt negotiations in order to have the United States voluntarily fulfill what was promised. The negotiations failed to resolve the matters in dispute. Consequently, the Claimants were obliged to invoke the dispute resolution provision of their Agreement and moved the parties into arbitration in order to seek remedy by enforcement of specific performance on the United States to fulfill its obligations. The United States has consented to enter into arbitration.

b. Arbitrability of the issues under the Agreement. "[P]arties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Rent-A-Center West, Inc. v. Jackson,* 561 US 63, 68-69, 177 L Ed 2d 403, 130 S Ct 2772 (2010). "[T]he question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter. Did the parties agree to submit the arbitrability question itself to arbitration?" *First Options of Chicago, Inc. v. Kaplan,* 514 US 938, 943, 131 L Ed 2d 985, 115 S Ct 1920 (1995). "The question whether the parties have submitted a particular dispute to arbitration, *i.e.*, the *'question of arbitrability,'* is 'an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise.'" *Howsam v. Dean Witter Reynolds, Inc.,* 537 US 79, 83, 154 L Ed 2d 491, 123 S Ct 588 (2002) (quoting *AT&T Technologies, Inc. v. Communication Workers,* 475 US 643, 649, 89 L Ed 2d 648, 106 S Ct 1415 (1986); *First Options*, 514 US at 944) (emphasis in original)).

As noted herein, the Parties agreed to "submit *any and all [d]isputes,* which could otherwise be submitted to a court of competent jurisdiction, *to arbitration[;]"* and "[i]n the event of any conflict of laws or rules for arbitration of this Agreement, the provisions of this Agreement shall govern." Agreement § 6.1; p. 8. The parties have clearly expressed an agreement to delegate the question of arbitrability to the Arbitrator. The parties have not raised any challenges to the delegation of the arbitrability question to the Arbitrator at any time.

c. Parties choice of law to govern interpretation of their Agreement and arbitration proceedings. Under Articles 6.3, 6.4 and 7.9 of the Agreement, the parties agreed that the following laws shall govern their Agreement:

> Arbitration proceedings shall be conducted according to the Federal Arbitration Act and the Revised Uniform Arbitration Act as codified in the D.C. Code. Any conflicts of law as to the proceedings shall be resolved in favor of the FAA. Agreement § 6.3.
>
> All Disputes shall be decided in accordance with the governing law provisions set forth in this Agreement. Agreement § 6.4.
>
> This Agreement shall be governed and construed according to the laws of the District of Columbia and the United States of America as it relates to contracts and common law interpretations, as well as statutory interpretations, without regard to any principals or conflicts of law. Any disputes that arise under this Agreement shall be resolved by arbitration.

The District of Columbia Arbitration Act ("DCAA") *(i.e., The Revised Uniform Arbitration Act)*, in conjunction with the FAA is to govern the conduct of the arbitration proceedings and the scope of the arbitrability of the issues. It is paramount that the Arbitrator must abide by the FAA: first, because this is what the parties agreed upon; and second, because the FAA is the "supreme Law of the Land," U.S.Cons Art.VI, cl 2. The DCAA's statutes come next in the order of guiding the conduct of these proceedings, and for the purposes of the parties Agreement, are considered federal statutes. Fed.Rules Civ.P. 81(d)(4). Finally, the Arbitrator must abide by the opinions of the Supreme Court of the United States interpreting that law. "It is th[e] [Supreme] Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *Rivers v. Roadway Express, Inc.*, 511 US 298, 312, 128 L Ed 2d 274, 114 S Ct 1510 (1994). The Supreme Court's cases hold that the FAA forecloses any type of "judicial hostility towards arbitration." *AT&T Mobility LLC v. Concepcion*, 563 US ____, ____, 179 L Ed 2d 742, 131 S Ct 1740 (2011).

d. Scope of arbitrability of the issues in dispute. The DCAA does not limit the matters that may be subject to arbitration, referring broadly to agreements to arbitrate "*any* existing controversy" or "*any* controversy thereafter arising," so long as it is in writing. D.C. Code § 16-4301 (2005) (emphasis added). The legislative history of the DCAA indicates that its purpose, in part, was: "to provide citizens with an additional remedy for resolving disputes, i.e., voluntary arbitration," and "to provide for the validity and enforceability of agreements to arbitrate existing or future disputes." COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON JUDICIARY AND CRIMINAL LAW, COMMITTEE REPORT ON BILL NO. 1-140, THE UNIFORM ARBITRATION ACT, at 1 (November 9, 1976). The Committee Report on the DCAA described its potential benefits as making "possible speedy resolution of disputes without suffering or adding to crowded court calendars for civil suits." *Id.* at 3. Similarly, the Arbitrator looks to the FAA for guidance in interpreting the DCAA, see generally *Hercules & Co. v. Beltway Carpet Serv., Inc.*, 592 A.2d 1069, 1072-73 (D.C. 1991) (holding that federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying corresponding provisions of the District of Columbia Arbitration Act), where the only "limitations" placed upon the applicability of the FAA is that the contract must evidence a transaction involving commerce. 9 U.S.C. § 2. Section

2 of the FAA "create[s] a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act." *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 US 1, 24, 74 L Ed 2d 765, 103 S Ct 927 (1983). That also holds true for claims that allege a violation of a federal statute, unless the FAA's mandate has been "'overridden by a contrary congressional command.'" *CompuCredit Corp. v. Greenwood*, 565 US ____, ____ - ____, 181 L Ed 2d 586, 132 S Ct 665 (2012) (quoting *Shearson/American Express Inc. v. McMahon,* 482 US, at 226). The Arbitrator can find no "contrary congressional command" forbidding the arbitration of facts, elements, and procedures of the federal statutes applicable to the Claimants and Third Party Beneficiaries underlying the Agreement. Nor can the Arbitrator find any instances invoking judge-made exceptions to the applicability of the FAA that have not been overturned by direct commands of the Supreme Court. Congress enacted the FAA in response to widespread judicial hostility to arbitration. See AT&T Mobility, ante, at ____, 179 L Ed 2d 742, 131 S Ct 1740. As the Supreme Court put it bluntly, "The FAA does not sanction such [] judicially created superstructure[s]." *American Express Company v. Italian Colors Restaurant,* 570 US ____, 186 L Ed 2d 417, 428, 133 S Ct ____ (2013). Nothing in the statutory language suggests that any of the alleged criminal statutes are to be excluded from the dictates of the FAA. Additionally, there is no legislative history suggesting that Congress ever considered whether the alleged criminal statutes should be arbitrated. Because Congress failed to comment on arbitrability, and therefore failed to state a strong, clear, and unambiguous directive excluding said statutes from coverage under the FAA, then the overriding national policy favoring arbitration, and the Supreme Court's guidance command that said statutes are arbitrable. See *CompuCredit v. Greenwood*, 565 US at ____ - ____.

e. ***The parties Agreement involves or affects commerce.*** The facts surrounding each of the alleged criminal convictions as to the Claimants and Third Party Beneficiaries involves the analysis of activity to determine if such activity substantially affects interstate commerce. The Arbitrator is bound to inquire with respect to the following: (i) whether the statute relates to an activity that has something to do with "commerce" or any sort of economic enterprise, however broadly one might define those terms; (ii) whether the statute contains an "express jurisdictional element which might limit its reach" to activities having "an explicit connection with or effect on interstate commerce;" (iii) whether congressional findings in the statute or its legislative history support the judgment that the activity in question has a substantial effect on interstate commerce; and (iv) whether the link between the activity and a substantial effect on interstate commerce is attenuated. See *United States v. Morrison*, 529 US 598, 610-13, 146 L Ed 2d 658, 120 S Ct 1740 (2000).

The alleged criminal statutes and underlying facts that represent the subject matter of the United States' attempts to convict the Claimants and Third Party Beneficiaries are conclusively within the sphere of, or related to, commercial activity. In determining whether a particular claim falls within the scope of the parties' arbitration agreement, the focus must be on the factual allegations rather than the legal causes of action asserted. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, 473 US 614, 87 L Ed 2d 444, 105 S Ct 3346, 3352 n. 9, 3353 n. 13 (1985). If the allegations underlying the claims "touch matters" covered by the parties' Agreement, then those claims must be arbitrated, whatever the legal labels attached to them. See *id.* at 3353 n. 13. The Agreement and its Addendums clearly agree upon this, and the parties do not contest this or raise any claims to the contrary. Agreement § 1.3.10, p. 4; Addendum Oct. 8,

2015 § 2.18, p. 18. The FAA and the DCAA apply to the full letter and spirit of the alleged criminal statutes attributable to the Claimants and Third Party beneficiaries and permit disputes thereunder to be settled by arbitration under the terms of the arbitration clause in the parties Agreement. See, e.g., *Genesco, Inc. v. Kakiuchi & Co., Ltd.*, 815 F.2d 840, 847-48, 1987 U.S. App. LEXIS 4393, 1987-1 Trade Cas. (CCH) P67,512 (2d Cir. 1987) (finding that arbitration clause encompassing wire, mail, and transportation fraud allegations which form the predicate acts of RICO are arbitrable); *Shearson/American Express Inc. v. McMahon*, 482 US, at 227 (claims under the antifraud provisions of § 10(b) of the Securities Exchange Act [15 U.S.C. § 78j(b)] are arbitrable under provisions of 9 U.S.C. § 2.); and see *Green Tree Fin. Corp. v. Randolph*, 531 US 79, 90, 148 L Ed 2d 373, 121 S Ct 513 (2000) (even claims "arising under a statute designed to further important social policies" may be arbitrated provided that "the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum.").

f. ***Procedure to arbitrate the disputes.*** It appears that the Claimants seek both equitable relief and money damages from the United States under the Agreement and Addendums with respect to the underlying dispute in question. The Supreme Court's decision in *Heck v. Humphrey*, 512 US 477, 129, L Ed 2d 383, 114 S Ct 2364 (1994), may have the effect of establishing a procedural method for awarding monetary damages remedies for unlawful incarceration. Accordingly, the Arbitrator, in an effort to comport with the courts' general reliance on *Heck v. Humphrey*, and to establish the most efficient method to provide the relief sought by the parties under the Agreement, will bifurcate the arbitration proceedings. Phase 1 will address the equitable performances sought under provisional remedies, and any interim awards as necessary. Phase 2 will address the money damage claims in the final award. Additionally, due to the unique nature of the issues involved and the taking into account the safety and security of the Claimants and Third Party Beneficiaries; and their paramount liberty interests in being free from unlawful incarceration, these proceedings will be conducted as a *fast-track arbitration.*

C. The Dispute

1. Alleged Criminal Judgments are Void

a. ***Admissions of the United States.*** Every matter that is the subject of a request for admission is deemed admitted if the answer to the request is an express admission or if a *timely* written answer or objection to the request is not served on the party making the request. The matter is admitted conclusively for the purposes of the litigation. Fed.Rules Civ.P. 36(b); see, e.g., *In re Kendrick*, 314 B.R. 468, 473 (Bankr. N.D. Ga. 2004) (matters admitted under Rule 36 of the Federal Rules of Civil Procedure are "conclusively established" unless [arbitrator] permits withdrawal or amendment). No further proof of the matter is required, and no evidence will be admitted to rebut the matter conclusively established, even if the evidence would otherwise be convincing. *American Auto Ass'n v. AAA Legal Clinic*, 930 F.2d 1117, 1120 (5th Cir. 1991).

The United States admitted that H.R. 3190 was not validly passed, Pub. L. 80-772 was not validly enacted, and that 18 U.S.C. § 3231 does not provide general subject matter jurisdiction for the United States District Courts or the United States Courts of Appeals to

address criminal statutes rendering the prosecutions, convictions, and sentences void *ab initio.* Agreement §§ 1.2.1, 1.2.5-1.2.6, 1.2.12, 1.3.1-1.3.2, pp. 2-3; Addendum Oct. 8, 2015 §§ 1.1.1-1.1.12, 1.2.1-1.2.21, pp. 1-4. The United States further admitted that the criminal statutes fail to state an offense against the United States, and do not meet the standards of notice under the Sixth Amendment, or the necessary due process requirements under the Fifth Amendment. U.S.Cons Amends.V, VI; Agreement §§ 1.2.12-1.2.13, p. 3; Addendum §§ 1.2.20-1.2.22, pp. 5-6. The United States has not requested to amend or withdraw any of its admissions and the Arbitrator accepts and admits all of the admissions of the United States into the record of this matter.

b. Voluntary stipulations of the parties, admissions, and consent arbitration function as agreed case. The agreed case procedure is most often used in civil litigation, but in some federal criminal proceedings, prosecutions arising from violations of regulatory statutes, after an indictment has been filed, have been submitted to the [courts] on agreed statements of facts. *H. Hackfield & Co. v. United States*, 197 US 442, 49 L Ed 826, 25 S Ct 456 (1905). The agreed statement of facts by the parties and the United States admissions under the Agreement and its Addendums as established therein, in which the ultimate facts necessary to a determination of the controversy are set forth, take the place of either the Arbitrator's [or a Court's] findings of fact and is tantamount, in legal effect, to a special verdict. *McCarthy v. Employers' Fire Ins. Co.*, 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); and see *U.S. Trust Co. of New York v. New Mexico,* 183 US 535, 46 L Ed 315, 22 S Ct 172 (1902).

Under federal law, stipulations of fact entered into are controlling and conclusive, and arbitrators, as well as courts, are bound to enforce them, unless manifest injustice would result therefrom or evidence contrary to a stipulation is substantial. *Quest Medical, Inc. v. Apprill,* 90 F.3d 1080 (5th Cir. 1996). Each party that is competent to enter into the Agreement, is bound by the statement of facts agreed upon. The submission of such facts precludes the parties from denying them, and any evidence to contradict or qualify such facts is inadmissible. This rule applies in all stages of litigation, including appeal. See generally, *3 Am Jur 2d, Agreed Case* § 14, pp. 739-40 (and cases cited).

The admissions and stipulations in the Agreement and its Addendums cures irregularities in the institution of the action, the pleadings, and the proceedings thereon, and a waiver of objections to such objections is implied in the submission itself. *Saltonstall v. Russell,* 152 US 628, 38 L Ed 576, 14 S Ct 733 (1894). This waiver extends to all irregularities in the pleadings and to a lack of pleadings, including failure to file an answer. *Saltonstall, supra.* A stipulation in the Agreement itself that pleadings proper to the case are on file, constitutes an express waiver of defects in the pleadings, or of a lack of pleadings, and establishes for the purpose of the controversy the proposition that the pleadings present the case as stated. *Wayne County Sup'rs v. Kennicott*, 103 US 554, 26 L Ed 486 (1880); *3 Am Jur, Agreed Case* § 16, pp. 741-42. To be sufficient to enable the Arbitrator [or a court] to pass on the controversy submitted in the Agreement, the agreed statements must contain all the facts necessary to support a valid judgment on the law of the case. *Glenn v. Fant*, 130 US 398, 33 L Ed 969, 10 S Ct 583 (1890). Addendum Oct. 8, 2015 § 2.11, p. 16.

c. Claimants satisfy all elements to obtain equitable relief. The parties stipulated and the United States admitted that the Claimants and Third Party Beneficiaries alleged criminal

cases are void *ab initio*. The parties supported the admissions and stipulations with conclusive evidence. To expressly preserve the rights of the parties and award the appropriate remedies, the Arbitrator looks to Rule 60(b)(4) and (d)(1) & (3) to establish the elements necessary to a successful independent action in equity to set a judgment aside. Recognizing that the historical remedy of an independent action is extremely limited, the totality of the circumstances surrounding parties' Agreement and these arbitration proceedings fit precisely into the "extremely limited" circumstances exception. Because the relief is sought on the basis that the alleged criminal judgments are void for lack of subject matter jurisdiction, and not merely voidable, relief cannot be denied. Fed. Rules Civ. P. 60(b)(4) and (d)(1) provide the Claimants and Third Party Beneficiaries with appropriate relief. This subsection makes clear that Rule 60 "does not limit a court's [or arbitrator's] power to [. . .] entertain an independent action to relieve a party from a judgment, order, or proceeding[.]" Fed. Rules Civ. P. 60(d)(1). The Supreme Court has made clear that such "[i]ndependent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of 'injustices which, in certain instances, are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata." *United States v. Beggerly*, 524 US 38, 46, 141 L Ed 2d 32, 118 S Ct 1862 (1998) (internal citation omitted). "Rule 60(d)(1) relief is only available if relief is required to prevent a grave miscarriage of justice." *Id.* (internal citation and punctuation omitted). The Claimants must meet these elements to obtain Rule 60(d)(1) relief:

> (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any remedy at law. *Id.* (citing *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1551 (11th Cir. 1985); and 11 C. Wright & A. Miller, *Federal Practice & Procedure* § 2868, at 238 (1973)). The test is conjunctive.

The task of the Arbitrator in the present case, then, is to evaluate the Claimants' allegations with the United States' admissions, and the parties stipulations, in light of the five "indisputable elements" of an independent action under Rule 60(d). In conducting this review, the Arbitrator must review the elements through the lens of the stringent "grave miscarriage of justice" standard that the Supreme Court set out in *Beggerly* for Rule 60 independent actions. Relief is only appropriate in "unusual and exceptional circumstances." After conducting such a review, the Arbitrator finds that the Claimants, with the United States consent and agreed upon facts, met the stringent standards and have proven all five of the elements of Rule 60(d)(1), and are therefore entitled to the relief that they seek. The Arbitrator will discuss each element *seriatim*.

i. Element One

Claimants have supplied the necessary evidence to sufficiently meet the first element required for an independent action under Rule 60(d)(1). In analyzing the first element - "a judgment which ought not, in equity and good conscience, to be enforced" - the Arbitrator examines the facts on which Claimants seek to overturn their alleged criminal convictions

underlying the Agreement and this arbitration. This element, which is broadly focused on equity, particularly must be considered in light of the "grave miscarriage of justice" standard. The Claimants assert, and the United States admits, that the district and appeals courts did not possess jurisdiction over the merits of their alleged criminal cases. H.R. 3190 was never passed with a constitutional quorum present, Public Law 80-772 was never enacted, and 18 U.S.C. § 3231 does not exist. See *United States v. Ballin, Joseph & Co.*, 144 US 1, 5, 9, 36 L Ed 321, 324-26, 12 S Ct 507 (1892); *United States v. Munoz-Flores*, 495 US 385, 109 L Ed 2d 384, 395 n. 4, 110 S Ct 1964 (1990); and *Clinton v. City of New York*, 524 US 417, 448, 141 L Ed 2d 393, 420, 118 S Ct 2091 (1998).

An examination of the underlying facts reveals that good conscience and equity weigh heavily in favor of precluding the enforcement of the alleged criminal prosecutions, judgments and sentence, for a couple of reasons. First, a "conviction" based on an invalid statute is void. *Ex Parte Siebold*, 100 US 371, 374, 25 L Ed 717, 718 (1880) ("An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but it is illegal and void and cannot be a legal cause of imprisonment."); *Ex Parte Yarbrough*, 110 US 651, 653, 28 L Ed 274, 4 S Ct 152 (1884) ("when a prisoner is held under the sentence of any court of the United States in regard to a matter wholly beyond or without the jurisdiction of that court [. . .] it is the duty to [. . .] discharge the prisoner from confinement."). The Arbitrator finds by conclusive evidence that the district and appeals courts lacked subject matter jurisdiction over these alleged criminal cases.

Second, a void judgment is a legal nullity. *Valley v. Northern F. & M. Ins. Co.*, 254 US 348, 353-54, 65 L Ed 297, 300, 41 S Ct 116 (1920) ("[c]ourts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."); *Old Wayne Mut. Life Assoc. v. McDonough*, 204 US 8, 16, 51 L Ed 345, 348, 27 S Ct 236 (1907) (subject matter jurisdiction in *any* court "may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party[.]"); *Long v. Shorebank Development Corp.*, 182 F.3d 548, 561 (7th Cir. 1999) ("A void judgment [includes] judgment entered into by a court which lacks jurisdiction over [. . .] the subject matter [. . .] [and] can be attacked *at any time, in any court,* either directly or collaterally[.]"). A "void judgment" cannot become "final," as it is a legal nullity. A judgment which is void can be (wrongly) *believed* to be "final," for a time, but that does not protect that judgment from attack based on its voidness. To conclude otherwise would amount to declaring that a courts' mere belief that the statute is valid makes that statute valid, which amounts to a self-fulfilling prophecy. A void judgment is one which, *from its inception*, was a complete nullity and without legal effect. *Holstein v. City of Chicago*, 803 F. Supp. 205 (N.D. Ill. 1992) *affirmed*, 29 F.3d 1145 (7th Cir. 1994).

The district and appeals courts lacking subject matter jurisdiction based on an invalid statute and unconstitutional law, is void and cannot be enforced. The Claimants, along with the evidence presented and the United States admissions and statements of fact, demonstrate that equity and good conscience weigh in favor of the Arbitrator voiding the alleged criminal judgments of conviction and sentences.

ii. Elements Two and Three

Element two of an independent action under Rule 60(d)(1) asks whether the Claimants have a good defense to the alleged cause of action on which the judgment is founded. *Fritts v. Krugh*, 92 N.W.2d 604, 354 Mich 97, stating:

> A "void" judgment, as well all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to *any manner* of collateral attack. No statute of limitations or repose runs on its holdings, and the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though the trial and adjudication had never been. (emphasis supplied).

An invalid statute, unenacted law, and lack of subject matter jurisdiction is a complete and affirmative defense. A decision is void on the face of the judgment roll when from the four corners of that roll, it may be determined that jurisdiction over the subject matter was absent. See *B & C Investments, Inc. v. F & M Nat. Bank and Trust,* 903 P.2d 339 (Okla App. Div. 3 1995). Claimants have sufficiently supported, proven and plead element two.

Element three asks whether fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense. Here, too, Claimants sufficiently plead element three through the admissions of the United States that Stark, on several occasions between March 11, 2011 and October 9, 2012, requested the necessary Congressional Records to establish a defense and claim as to the district court's lack of subject matter jurisdiction, and the United States Attorney's Office for the Northern District of Texas refused or failed to provide Stark with the requested documents. Stark had no other means of obtaining the Congressional Records and was therefore prevented from instituting his defense. Rideout and the Third Party Beneficiaries could not have known of the defect in the lack of passage of H.R. 3190 and the invalidity of Pub. L. 80-772 because the Congressional Records are neither physically or electronically available in the prison law libraries, or for those not incarcerated, the Congressional Records are not readily available electronically.

Moreover, the United States admitted that DOJ Office of Legal Counsel advised the former Director of the Federal Bureau of Prisons ("BOP"), sometime around July 27, 2009, to obfuscate and obstruct the acquisition of the Congressional Records in question in the interest of *"public safety,"* advising the Bureau of Prisons to refer any requests for administrative remedies to the courts or to Congress. Claimants have met the first three elements and now the Arbitrator examines the final two of the five elements of the conjunctive test.

iii. Element Four

Element four of an independent action requires Claimants to plead adequately "the absence of fault or negligence." Claimants pleadings, reviewed in the light of public court proceedings properly considered by this Arbitrator, meet the facts of element four. The Claimants cannot be found to have been negligent or at fault due to the United States having

custody of the necessary Congressional Records and deliberately *not* providing them on request. Additionally, an examination of the public court proceedings as to Stark's alleged criminal case show repeated complaints, attempts at administrative remedies, communications and requests to the district court about the DOJ's constant seizing of his legal work, work product, evidence, papers, as well as confinement in the Special Housing Unit with severely restricted access to said papers and evidence that created a deliberate and willful impediment by the United States to Stark's presentation of his defense while confined during his pretrial and presentence phase.

Additionally, the facts on which this claim is founded are located in the pages of the 1947-48 Congressional Record. Only there would one discover that the House of Representatives had no quorum on May 12, 1947, and that they merely "concurred" with the amendments to bill H.R. 3190, yet did not vote on the full, as-amended bill. These facts are not present in the books available in the law libraries in the prisons of the BOP, and the United States admitted to this fact. To the contrary, these facts are contradicted by false assertions in law books, such as:

"18 U.S.C. § 1:" (Falsely asserts that Title 18 was recodified, and includes a long table of correspondence between old and new statute numbers: "TABLE OF DISPOSITIONS. This table indicates where former Title 18 sections were incorporated in Title 18, as revised by Act June 25, 1948, ch 645, 62 Stat. 683, or in other Code provisions, or, if omitted, the reason therefore");

"18 U.S.C. § 3231:" (Falsely asserts that "This section was formed by combining former 18 U.S.C. §§ 546 and 547 with former 12 U.S.C. § 588d, with no change of substance.");

Any person depending on these ostensibly authoritative law books for accurate information would be dissuaded from proceeding further, and would never find the error. Federal prison libraries do not stock the Congressional Record. The necessary facts are also not accessible through the LEXIS law computer system that displaced the books in the federal prison libraries. Unfortunately, the federal government, the BOP, and therefore the prison library staff have an uncompromising and hostile attitude towards obtaining legal materials beyond what the library carried in the 1900's. This attitude, and the complete lack of the Congressional Record, effectively blocked the ability of Claimants and Third Party Beneficiaries to detect (or independently confirm) the existence of faults in the passage of bills in Congress that initiate or amend federal criminal (or civil) laws. It is virtually impossible for Claimants to have detected these kinds of legal defects in their alleged convictions. Claimants have satisfied the stringent standards required under Rule 60(d)(1) to maintain an independent action as to element four, having successfully demonstrated an absence of their fault or negligence.

iv. Element Five

Element five requires that Claimants sufficiently plead "the absence of any adequate remedy at law." In this case, with respect to element five, the district and appeals courts did not possess jurisdiction over the merits of the underlying alleged criminal cases. Therefore, the cases never became "final" for the purposes of 28 U.S.C. § 2255(1), and no other adequate remedy at law exists to relieve the Claimants of their illegal and void judgments. While

remaining cognizant of the Supreme Court's findings in *United States v. Hayman*, 342 US 205, 219, 96 L Ed 232, 241, 72 S Ct 263, stating that the purpose of 28 U.S.C. § 2255 was "to meet practical difficulties" in the administration of federal habeas corpus jurisdiction. Adding that: "Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions." The Supreme Court having found nothing in the legislative history that indicated a different conclusion. Relief sought under the Agreement and Addendums operates as an optimal vehicle for all parties thereto. Even to the extent that arbitration may be necessary to resolve the disputes to the Agreement, such a proceeding does not set precedent and cannot be used by any other non-parties except for those whose rights are vested under the Agreement. The fifth and final conjunctive element has been sufficiently pleaded by the Claimants and agreed to by the United States. The Claimants have successfully met all five elements of an independent action under Rule 60(d)(1).

The Claimants, having met the standards under Rule 60(d)(1), requiring "unusual and exceptional circumstances" and a "grave miscarriage of justice" to maintain an independent action in equity, are entitled to the equitable relief they seek under the terms and obligations of their Agreement and its corresponding Addendums. Rule 60(d)(1) permits the parties to obtain relief by some of the procedural means that predate the existence of the rule by way of an independent action in equity to set a judgment aside. The Agreement and its provisions, along with this arbitration proceeding, are sufficiently analogous to such an independent action.

d. Alleged criminal judgments are void and must be set aside. The alleged criminal judgments against the Claimants and Third Party Beneficiaries related to this matter must be set aside because the district and appeals courts lacked subject matter jurisdiction to render them. There is no subject matter jurisdiction for the entire category of post-1948 criminal statutes, and this is not a situation in which the courts merely made an erroneous factual determination of the jurisdictional basis for the alleged criminal actions. Because relief is sought on the basis that the judgments are void for lack of subject matter jurisdiction, not merely voidable, relief may not be denied.

"When the rule providing for relief from a void judgment is applicable, relief is not discretionary, but is mandatory." *Orner v. Shalala*, 30 F.3d 1307 (10th Cir. 1994). "Judgments entered where courts lack either subject matter jurisdiction, or that were otherwise entered in violation of due process of law, *must* be set aside." *Jaffe v. Van Brunt*, 158 F.R.D. 278 (S.D.N.Y. 1994).

Even assuming *arguendo*, that the "predecessor statute" to 18 U.S.C. § 3231 (18 U.S.C., 1940 ed., §§ 546, 547) provides for such jurisdiction over crimes in Title 18, any such Title 18 criminal statute ostensibly existing in 1948 was *not* recodified, and charges citing any such statute after June 25, 1948 are fatally defective. An accused has the right to fair warning, in language that the common world will understand, of what the law intends to do if the line is passed; under fair-warning requirement, (1) vagueness doctrine bars enforcement of statute which forbids or requires doing of act in terms so vague that persons of common intelligence must necessarily guess at statute's meaning and differ as to its application, (2) rule of lenity so resolves ambiguity as to apply statute to only conduct covered, and (3) due process bars courts from applying novel construction of criminal statute to conduct that neither statute nor prior

judicial decision fairly disclosed to be within statute's scope; touchstone is whether statute, alone or as construed, made it reasonably clear at relevant time that conduct was criminal. *United States v. Lanier,* 520 US 259, 137 L Ed 2d 432, 117 S Ct 1219, 97 CDOS 2350, 97 Daily Journal DAR 4168, 10 FLW Fed S 388 (1997). The statutes promulgated after 1948 do not establish a criminal offense against the United States.

Additionally, the "predecessor statute" to 18 U.S.C. § 3231 does not provide for jurisdiction of crimes in Titles 8, 15, 21, 26, etc. The law states clearly and unambiguously that no citizen shall be imprisoned or detained by the United States except pursuant to an Act of Congress, and that the control and management of the Federal penal and correctional institutions shall be vested in the Attorney General. 18 U.S.C., 1934 ed., §§ 741, 753e. See *Lono v. Fenton,* 581 F.2d 645, 648 (7th Cir. 1978) ("Congress has forbidden non-statutory confinement in federal prisons. 'No citizen shall be imprisoned or detained by the United States except pursuant to an Act of Congress.' 18 U.S.C. § 4001(a)").

Accordingly, the Arbitrator finds that the Attorney General has plenary authority to release a persons confined, imprisoned, or detained in a Federal penal or correctional institution, where such confinement is in violation of the Constitution of the United States of America, and the Laws of the United States.

2. Arbitrator's Authority to Award Provisional Remedy

a. Arbitrator's authority to award is derived from essence of Agreement. The constitutionality as to the passage of a bill, the enactment of Public Law, or the invalidity of a statute, is a matter for courts to decide. However, a decision on such a matter was made by the parties in their Agreement, voluntary stipulations, and in the admissions of the United States. This was presented to the Arbitrator as conclusive evidence so strong as to overbear a finding of fact to the contrary. The evidence presented in support of the parties agreed matter fully comported with the admissions and stipulations, as well as the Supreme Court of the United States decisions on such matters. As such, the Arbitrator accepts the stipulations, agreed matters, and the admissions of the United States, and now looks to the law authorizing the award of provisional remedies to the parties.

"Although adjudication of the constitutionality of congressional enactments has generally been thought to be beyond the jurisdiction of federal administrative agencies, this rule is not mandatory." *Thunder Basin Coal Co. v. Reich,* 510 US 200, 215, 127 L Ed 2d 29, 114 S Ct 771 (1994).

Section 6.5 under the arbitration clause of the Agreement establishes that "[t]he arbitrator shall be empowered to resolve all [d]isputes, whether in contract, equity, law, or in tort, and to award any remedies authorized by this Agreement and any applicable statute or common law." Agreement § 6.5, p. 8. As noted herein, section 6.1 states: "the arbitrator is empowered under this Agreement to make any or all necessary and appropriate order(s), pre-award ruling(s), and award(s) granting both legal and equitable remedies to enforce the terms and obligations of this Agreement, including all matters relating hereto and arising therefrom."

Further, the Arbitrator's authority to award appropriate provisional remedies is found under sections 16-4408(b)(1) and 16-4421(c) of the DCAA. D.C. Code §§ 16-4408(b)(1), 16-4421(c). Section 16-4421(c) declares that: "As to all other remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy *could not* or *would not* be granted by a court is not a ground for refusing to confirm an award [. . .] or for vacating an award[.]" (emphasis supplied). *United Steelworkers of America v. United States Gypsum Co.*, 492 F.2d 713 (5th Cir. 1974), demonstrates an arbitrator's wide latitude in fashioning a remedy. Accord, *Minute Maid Co. v. Citrus Workers, Local 444*, 331 F.2d 280, 281 (5th Cir. 1964). See also *Sherrock Bros., Inc. v. DaimlerChrysler Motors Co., LLC*, 260 Fed. App'x 497, 502 (3d Cir. 2008) ("Moreover, '[e]xcept where prohibited by the plain and express terms of the submission, an arbitrator is empowered to grant *any* relief reasonably fitting and necessary to a final determination of the matter submitted to him, including legal and equitable relief.'" (quoting *Bd. of Educ. v. Dover-Wingdale Teachers' Ass'n*, 95 A.D.2d 497, 502, 467 N.Y.S.2d 270 (N.Y.A.D. 2 Dept. 1983) (emphasis supplied)); and see *College Hall Fashions, Inc. v. Philadelphia Joint Bd. Amalgamated Clothing Workers of America*, 408 F. Supp. 722, 728 (E.D. Pa. 1976) (arbitrator has "wide latitude" in fashioning appropriate remedy). So long as an arbitrator's awarded remedy draws its essence from the contract, it is enforceable.

b. ***Waiver of United States to vacate or modify the interim and final awards.*** The United States has made a conscious and knowing waiver of its rights to move to modify or vacate any pre-award rulings, interim awards, or final awards of the Arbitrator. Accordingly, the Arbitrator will exercise the necessary care in preserving the rights and interests of the United States that have not been waived, along with those of the Claimants and Third Party Beneficiaries.

IV. CONCLUSION

For the foregoing reasons, the Arbitrator will enter the necessary pre-award rulings for provisional remedies in favor of the Claimants and Third Party Beneficiaries, as well as to the United States, in order to protect the effectiveness of this arbitration proceeding and to promote the fair and expeditious resolution of the controversy. The Arbitrator will make a record of the Interim Award containing all the necessary Orders and Remedies in a separate document, consistent with this Opinion, Findings of Fact, Conclusions of Law and Pre-Award Ruling of the Arbitrator that will issue this same day.

SO ORDERED

This Pre-Award Ruling is a provisional remedy for equitable relief necessary to protect this arbitration proceeding and the fair and expeditious resolution of the controversy as to the relevant claims and counterclaims submitted to this arbitration.

I hereby certify that, for the purposes of Sections 16-4408(b)(1); 16-4418; and 16-4421(c) of the District of Columbia Code of 2008, this Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling was made in Blairsville, Georgia.

2-5-16
Date

Kenya L. Patton, Arbitrator

State of Georgia)
)ss.
County of Union)

I, Kenya L. Patton, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Opinion, Findings of Fact, Conclusions of Law, and Pre-Award Ruling.

2-5-16
Date

Kenya L. Patton, Arbitrator

BEFORE ME, Carol Mason, a Notary Public in and for the State of Georgia, came Kenya L. Patton, the duly appointed Arbitrator to these proceedings, and having furnished adequate proof of her identity and status of appointment as Arbitrator, did subscribe and attest to the validity and authenticity of the contents herein on this 5th day of February, 2016.

WITNESS MY HAND AND SEAL:

Carol L Mason
Notary Public
My commission expires: 7/02/2018.

CAROL L. MASON NOTARY PUBLIC UNION COUNTY, GA EXPIRES GEORGIA 7/2/18

[SEAL]