Federal Register

Thursday,
December 30, 2010

Part III

Department of Commerce

Bureau of Industry and Security

Yuri I. Montgomery, Respondent; Final Decision and Order; Notice

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 08–BIS–0004]

Yuri I. Montgomery, Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order ("RDO") issued by the Administrative Law Judge ("ALJ"), and a settlement proposal subsequently submitted by the parties.

In a charging letter filed on July 1, 2008, the Bureau of Industry and Security ("BIS") alleged that Respondent Yuri I. Montgomery ("Respondent" or "Montgomery") [1] had committed fourteen violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2010) ("Regulations")), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (the "EAA" or "Act"),[2] by participating in transactions involving the export or attempted export from the United States of items subject to the Regulations, while knowing that he was subject to a BIS order denying his export privileges. On January 15, 2010, BIS unilaterally withdrew Charge 10, leaving thirteen charges for consideration by the ALJ.

Charges 1–7 of the Charging Letter allege that:

As described in further detail in the attached schedule of violations, which is incorporated herein by reference, on seven occasions between on or about July 2, 2003, and on or about October 8, 2003, Montgomery took actions prohibited by a BIS order denying export privileges under § 766.25 of the Regulations (Denial Order). Specifically, Montgomery carried on negotiations concerning, ordered, bought, sold and/or financed various items exported or to be exported from the United States that are subject to the Regulations, and/or benefited from transactions involving items exported or to be exported from the United States that are subject to the Regulations. At the time Montgomery engaged in the described actions, his export privileges had been denied under the Regulations by a Denial Order dated September 11, 2000, and published in the **Federal Register** on September 22, 2000 (65 FR 57,313). Under the terms of the Denial Order, Montgomery "may not directly or indirectly, participate in any way in any transaction involving any [item] exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including * * * [c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or * * * [b]enefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations." That Denial Order is effective until January 22, 2009, and continued in force at the time of the aforementioned actions taken by Montgomery. In so doing, Montgomery committed seven violations of Section 764.2(k) of the Regulations.

Charges 8–9, and 11–14 allege that Montgomery acted with knowledge of violations of the Denial Order in connection with the items exported or to be exported from the United States to Macedonia, as follows:

As described in further detail in the attached schedule of violations, on seven occasions between on or about July 2, 2003, and or about October 8, 2003, Montgomery carried on negotiations concerning, ordered, bought, sold and on or financed various items subject to the Regulations with knowledge that a violation of an Order issued under the Regulations had occurred, was about to occur, or was intended to occur in connection with the items. Specifically, Montgomery carried on negotiations concerning, ordered, bought, sold and/or financed various items that were exported from the United States to a Macedonian company with knowledge that he was or would be violating a Denial Order imposed against him dated September 11, 2000, and published in the **Federal Register** on September 22, 2000 (65 FR 57,313). Montgomery knew that he was the subject of the Denial Order because, inter alia, he had been provided notice of the Denial Order when it issued in September 2000, and he had on October 24, 2000, written to then-BIS Under Secretary for Export Enforcement Reinsch to request reinstatement of his "export privileges denied on September 11, 2000 * * *." That request for reinstatement had been denied by the Under Secretary on December 21, 2000, and the Denial Order continued in force at the time of aforementioned actions taken by Montgomery. In so doing, Montgomery committed seven violations of § 764.2(e) of the Regulations.

The schedule of violations attached to the Charging Letter provided additional detail as to each of the seven transactions involved, including the dates of the transactions, the items involved and their values, and the consignee.

On October 28, 2010, the ALJ issued an RDO in accordance with § 766.17 of the Regulations. The RDO provides a detailed summary of the procedural background and pre-RDO case activity, including the seven stays or extensions of time sought or stipulated to by Respondent during the course of the litigation below. Montgomery filed his answer to the Charging Letter on April 2, 2009, and pursuant to part 766 of the Regulations was permitted to take discovery during the litigation and to present evidence and rebuttal evidence concerning the charges and the defenses he raised. Because no party had demanded a hearing as provided in § 766.6(c) of the Regulations, the RDO issued on the record by the ALJ in accordance with § 766.6(c) and § 766.15.

The ALJ served the RDO on the parties as required in § 766.17(b)(2). On November 10, 2010, however, the ALJ issued a Supplemental Certificate of Service, stating that the RDO initially served on the Respondent on October 28, 2010, via overnight carrier, had been returned as undeliverable, and that he was attempting service of the RDO a second time. On November 17, 2010, I received a delivery confirmation from the ALJ showing that Respondent received a copy of the RDO on November 11, 2010.

The delivery confirmation that I received on November 17, 2010, demonstrated that the ALJ had fulfilled his obligation under Section 766.17(b)(2) of the Regulations to certify the full record for my review in accordance with Section 766.22. As such, and in the interest of avoiding confusion and ensuring that the parties had the full time allotted to them by the Regulations to make any submissions, I ordered that the deadlines for the parties' various filings be established using the November 17, 2010 date as the date the RDO was issued. Thereafter, Respondent Montgomery retained new legal counsel and subsequently filed, and I granted, three unopposed motions seeking a stay of the proceedings to allow the parties to conduct settlement negotiations.

As part of the settlement agreement, Respondent Montgomery admits to the violations of the Regulations alleged in Charges 1–9 and 11–14 of the Charging Letter. In addition, Montgomery has consented to my affirming the RDO, as modified with regard to the RDO's Recommended Sanction in order, instead, to impose the sanctions agreed

[1] Montgomery is also known as "Yuri Malinkovski."

[2] Since August 21, 2001, the Act has been in lapse, and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010 (75 FR 50681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)). The unlawful conduct at issue here occurred in 2003. The Regulations governing the violations at issue are found in the 2003 version of the Code of Federal Regulations (15 CFR parts 730–774 (2003)). The 2010 Regulations govern the procedural aspects of this case.

to by Montgomery and set forth in the parties' settlement proposal.

I have the authority, pursuant to § 766.22(c) of the Regulations, to affirm, modify or vacate the RDO. Where a case is pending before me pursuant to § 766.22, I also have the authority, under § 766.18(b)(2), to approve or reject a settlement proposal submitted to me by the parties.

Based on my review of the record, including the RDO and the settlement proposal submitted by the parties, I hereby affirm the RDO, including its findings of fact and conclusions of law concerning Respondent Montgomery's seven violations of Section 764.2(k) of the Regulations and his six violations of Section 764.2(e); except that I hereby modify the RDO's recommended sanctions such that the sanctions imposed against Montgomery are consistent with the parties' settlement proposal, which I hereby approve.

Accordingly, it is therefore ordered:

First, that a civil penalty of $340,000.00 is assessed against Montgomery. Of this civil penalty, $17,500 shall be paid by Montgomery to the U.S. Department of Commerce in 12 installments as follows: $1,458 no later than January 1, 2011; $1,458 no later than the first day of each month from February, 2011 through and including November, 2011; and $1,462 shall be due no later than December 1, 2011. Payment of the remaining $322,500 shall be suspended for a period of ten (10) years from the date of this Order, provided that during the period of suspension, Montgomery has committed no violation of the Act, or any regulation, order, or license issued thereunder, and has made full and timely payment of the $17,500 as set forth above. If any of the twelve installment payments is not fully and timely made, any remaining scheduled installment payments and the remaining $322,500 shall become due and owing immediately.

Second, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due dates specified herein, Montgomery will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

Third, for a period of thirty (30) years from the date of this Order, Yuri I. Montgomery, a/k/a Yuri Malinkovski, with a last known address of 2912 10th Place West, Seattle, WA 98119, and when acting for or on behalf of Montgomery, his representatives, assigns, agents or employees (hereinafter collectively referred to as "Denied Person"), may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that Montgomery shall have an opportunity to request that the Under Secretary reinstate his export privileges after a period of ten (10) years from the date of the Order, provided that Montgomery has committed no violation of the Act, or any regulation, order, or license issued thereunder prior to the submission of his request for reinstatement. BIS shall in its sole unreviewable discretion determine whether to grant, or deny, in whole or in part Montgomery's request for reinstatement of his export privileges.

Eighth, that the final Decision and Order shall be served on Montgomery and on BIS and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall also be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: December 21, 2010.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

Certificate of Service

I hereby certify that, on this 21st day of December, 2010, I have served the foregoing DECISION AND ORDER signed by Eric L. Hirschhorn, Under Secretary of Commerce for Industry and Security, in the matter of Yuri I. Montgomery (Docket No: 08–BIS–0004) to be sent via United Parcel Service postage pre-paid to:

Douglas N. Jacobson, Esq., Law Offices of Douglas N. Jacobson, PLLC, 1725 I Street, NW., Suite 300, Washington, DC 20006. Facsimile: 202–688–2782.

(By Facsimile and United Parcel Service.)

Eric Clark, Joseph Jest, John Masterson, Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room HCHB 3839, 14th Street and Constitution Ave., NW., Washington, DC 20230. Facsimile: 202–482–0085. (Served via hand delivery.)

ALJ Docketing Center, Attention: Hearing Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, MD 20212–4022. (By United Parcel Service.)

A copy of this Order has also been sent via United Parcel Service to:

Yuri I. Montgomery, 2912 10th Place West, Seattle, WA 98119. (By United Parcel Service.)

Andrea A. Monroe,

Office of the Under Secretary for Industry and Security.

Recommended Decision and Order [3]

Issued by: Hon. Walter J. Brudzinski, Administrative Law Judge.

Issued: October 28, 2010.

On behalf of Bureau of Industry and Security:

John T. Masterson, Esq., Chief Counsel for Industry and Security, Joseph V. Jest, Esq., Chief of Enforcement and Litigation, Parvin R. Huda, Esq., Senior Counsel, Eric Clark, Esq., Attorney Advisor, Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, United States Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

On behalf of Respondent:

Yuri I. Montgomery, *Pro se*, 2912 10th Place West, Seattle, WA 98119.

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Preliminary Statement

On July 1, 2008, the Bureau of Industry and Security (BIS) charged Respondent, Yuri Montgomery, with 14 counts of violating two (2) separate code sections of the Export Administration Regulations (EAR).[4] The EAR is issued under the authority of the Export Administration Act (EAA) of 1979.[5]

Charging Letter

The fourteen (14) Count Charging Letter alleges seven (7) violations of EAR code section 764.2(k), "Acting Contrary to the Terms of a Denial Order," and seven (7) violations of EAR code section 764.2(c), "Acting with Knowledge of a Violation" as follows:

Charges 1–7, 15 CFR 764.2(k): Acting Contrary to the Terms of a Denial Order

As described in further detail in the attached schedule of violations, which is incorporated herein by reference, on seven occasions between on or about July 2, 2003, and on or about October 8, 2003, Montgomery took actions prohibited by a BIS order denying export privileges under Section 766.25 of the Regulations (Denial Order). Specifically, Montgomery carried on negotiations concerning, ordered, bought, sold and/or financed various items exported or to be exported from the United States that are subject to the Regulations, and/or benefitted from transactions involving items exported or to be exported from the United States that are subject to the Regulations. At the time Montgomery engaged in the described actions, his export privileges had been denied under the Regulations by a Denial order dated September 11, 2000, and published in the **Federal Register** on September 22, 2000 (65 FR 57,313). Under the terms of the Denial Order, Montgomery: May not directly or indirectly, participate in any way in any transaction involving an (item) exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including * * * [c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations; or * * * [b]enefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations." That Denial Order is effective until January 22, 2009, and continued in force at the time of the aforementioned actions taken by Montgomery. In so doing, Montgomery committed seven violations of Section 764.2(k) of the Regulations.

Charges 8–14, 15 CFR 764.2(e): Acting with Knowledge of a Violation

As described in further detail in the attached schedule of violations, on seven occasions between on or about July 2, 2003, and [on] or about October 8, 2003, Montgomery carried on negations concerning, ordered, bought, sold and/or financed various items subject to the Regulations with knowledge that a violation of an Order issued under the Regulations had occurred, was about to occur, or was intended to occur in connection with the items. Specifically, Montgomery carried on negotiations concerning, ordered, bought, sold and/or financed various items that were

[3] For proceedings involving violations not relating to Part 760 of the Export Enforcement Regulations, 15 CFR 766.17(b) and (b)(2) prescribe that the Administrative Law Judge's decision be a "Recommended Decision and Order." The violations alleged in this case are found in Part 764. Therefore, this is a "Recommended Decision and Order." That section also prescribes that the Administrative Law Judge make recommended findings of fact and conclusions of law that the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, must affirm, modify or vacate. 15 CFR 766.22. The Under Secretary's action is the final decision for the U.S. Commerce Department. 15 CFR 766.22(e).

[4] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2008). The violations charged occurred in 2003. The Regulations governing the violations here are found in the 2003 version of the Code of Federal Regulations (15 CFR parts 730–774 (2003)). The 2008 Regulations govern the procedural aspects of this case.

[5] Title 50 U.S.C. app. 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001) Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007, 72 FR 46137 (Aug. 16, 2007), has continued the Regulations in effect under the Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA").

exported from the United States to a Macedonian company with knowledge that he was or would be violating a Denial Order because, inter alia, he had been provided notice of the Denial Order when it issued in September 2000, and he had on October 24, 2000, written to then-BIS Under Secretary for Export Enforcement Reinsch to request reinstatement of his "export privileges denied on September 11, 2000 * * *." That request for reinstatement had been denied by the Under Secretary on December 21, 2000, and the Denial Order continued in force at the time of aforementioned actions by Montgomery. In so doing, Montgomery committed seven violations of Section 764.2(e) of the Regulations.

The Charging Letter further detailed Charges 1–7 as violations of 15 CFR 764.2(k) and Charges 8–14 as violations of 15 CFR 764.2(e) asfollows:

SCHEDULE OF VIOLATIONS—YURI MONTGOMERY

Date	Charges	Items	Value	Violation	Consignee
7/2/03	1, 8	61 prs Magnum boots	$3,355	764.2(k); 764.2(e)	Micei, Int'l
7/18/03	2, 9	2 firing range clearing Devices	$1,136	764.2(k); 764.2(e)	Micei, Int'l
8/5/03	3, 10[6]	10,800 pairs of boots	RFQ	764.2(k); 764.2(e)	Micei, Int'l
8/5/03	4, 11	45 pairs Oxford shoes, 5 Remote strobe tubes	$2,562	764.2(k); 764.2(e)	Micei, Int'l
8/13/03	5, 12	150 shirts	$1,744	764.2(k); 764.2(e)	Micei, Int'l
9/9/03	6, 13	2 load binder,1 ratchet strap, 1 binder chain, 1 safety shackle.	$147.53	764.2(k); 764.2(e)	Micei, Int'l
10/8/03	7, 14	Items in Order #25473620/017	$5,723.31	764.2(k); 764.2(e)	Micei, Int'l

The Charging Letter advised the maximum civil penalty is up to the greater of $250,000 per violation or twice the transaction value that forms the basis of the violation, plus a denial of export privileges and/or exclusion from practice before BIS. The Charging Letter concluded that failure to answer the charges within thirty (30) days will be treated as a default, and, although Respondent is entitled to an agency hearing, he must file a written demand for one with his answer.

Denial Order of September 11, 2000

The pleadings, discovery, and affidavits in the administrative record reflect that on January 22, 1999, Respondent, Yuri I. Montgomery, also known as Yuri I. Malinskovski, was convicted in U.S. District Court for the District of Columbia of knowingly and willfully exporting and causing the export of prohibited items to Macedonia and Slovenia without applying for and obtaining the required export licenses in violation of the International Emergency Economic Powers Act and the Export Administration Act of 1979.

Pursuant to Section 11(h) of the Export Administration Act and 5 CFR 766.25 (2000) the Director, Office of Exporter Services, Bureau of Export Administration, issued an order (Denial Order) on September 11, 2000 denying Respondent export privileges effective through January 22, 2009.[7]

The Denial Order states, in pertinent part, Respondent "may not, directly or indirectly, participate in any way in any transaction involving any * * * [item] exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, or in any other activity subject to the Regulations." The Denial Order detailed non-exclusive examples of conduct included in the broad prohibition including "[c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving an item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations." (65 FR 57,313 (Sept. 22, 2000)). Paragraph IV of the Denial Order states, "[t]his Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology." (*Id.*). Respondent's pleadings claim that the exported items in question fall into this exception.

Jurisdiction of U.S. Coast Guard Administrative Law Judges

The Charging Letter states the U.S. Coast Guard is providing Administrative Law Judge services for these proceedings. Accordingly, BIS forwarded the Charging Letter to the U.S. Coast Guard Administrative Law Judge Docketing Center for adjudication. The ALJ Docketing Center subsequently issued its Notice of Docket Assignment to the Respondent and BIS. The administrative file reflects that at the time of the Charging Letter and continuing to the present, Memoranda of Agreement (MOA) and Office of Personnel Management letters issued in accordance with 5 U.S.C. 3344 and 5 CFR 930.230 authorize the detail of U.S. Coast Guard Administrative Law Judges to adjudicate BIS cases involving export control regulations on a reimbursable basis.

Pre-Decisional Motion Practice

Throughout the course of this proceeding, Respondent filed dozens of motions, including numerous motions to stay. Respondent eventually filed his Answer "under protest, duress, and compulsion of the Order Denying Respondent's Motion for More Definite Statement." Respondent's Answer included 19 affirmative defenses. Neither Respondent nor BIS demanded a hearing. Therefore, the undersigned

[6] BIS withdrew Charge Ten on January 15, 2010.

[7] Through an internal organizational order, the Department of Commerce changed the name of Bureau of Export Administration to Bureau of Industry and Security. *See,* Industry and Security Programs: Change of Name, 67 FR 20,630 (Apr. 26, 2002). Pursuant to the Savings Provision of the Order, "Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security." *Id.* at 20,631.

issued an Order stating the matter will be adjudicated on the record in accordance with 15 CFR 766.6(c). A summary of Respondent's motions, BIS' replies, and the undersigned's decisions on those motions is detailed in *Attachment A.*

Outstanding Motion

Respondent filed his Declaration in Support of Defenses on September 22, 2010, seven (7) months after the February 24, 2010 deadline for filing his evidence in support of his defenses. The Declaration included 43 attachments and a letter dated April 29, 2010 stating Respondent has suffered severe mental stress as a result of these proceedings. Respondent's Declaration explained his relationship with Micei International, summarized the events that occurred prior to the issuance of the Denial Order, and explanations of the attached exhibits. The majority of the evidence submitted supported Respondent's assertion that he did not violate the EAR because the country of origin for some of the items in question was China.

BIS filed its response on October 7, 2010, objecting to Respondent's Declaration. Specifically, the Agency argues that the submission of this Declaration along with its attachments are in direct violation of this court's discovery orders; that all exhibits except Ex. 7 are dated prior to the discovery deadline and are thus untimely and should not be considered. BIS also argues that several of the exhibits submitted by Respondent raise authenticity and accuracy concerns, including the fact that two of the e-mails sent by separate people contained identical wording and grammatical mistakes. Furthermore, the exhibits in question do not provide any probative value because the items' country of origin is not the issue because the items were exported from the United States. BIS requests the undersigned disregard Respondent's Declaration and the attached exhibits because the filling further demonstrates Respondent's refusal to comply with the ALJ's orders and the rules that govern this proceeding.

After careful review of Respondent's Declaration and BIS' response, the undersigned rejects Respondent's Declaration as untimely because it was filed approximately 7 months after his evidence was due and violates discovery procedures. Respondent was repeatedly accorded stays and additional time to file evidence and submissions. Respondent repeatedly ignored these deadlines. Even if the undersigned accepted Respondent's Declaration and exhibits, they would carry no probative value. As discussed in detail below, all items in question were shipped from the United States in violation of the EAR. Accordingly, Respondent's Declaration in Support of Defenses and its attached exhibits is *rejected.*

Determination on Respondent's Failure To Comply With Discovery

On June 19, 2009, BIS served all discovery requests on Respondent but Respondent replied only to BIS's Requests for Admission on July 6, 2009. He did not respond to BIS's Interrogatories and Requests for Production of Documents. Instead, Respondent asserted preliminary objections on June 30, 2009 and renewed objections on September 3, 2009. In my Order of August 20, 2009, Respondent was again ordered to respond to the interrogatories and document requests. To date, he has not replied to BIS's Interrogatories and Requests for Production of Documents, nor did he submit copies of his discovery requests as previously ordered to determine if enforcement is appropriate.

Authority for Sanction for Failure To Comply With Discovery

The Discovery Rules at 15 CFR 766.9 (d) provide as follows:

> *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make a determination or enter any order in the proceeding as the judge deems reasonable and appropriate. *The judge may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery.* [Emphasis added.] In addition, enforcement by a district court of the United States may be sought under section 12(a) of the EAA.

On October 26, 2009, BIS filed its Supplemental Submission in Response to the October 15, 2009 Order that the parties submit copies of their respective discovery requests to the undersigned to determine if enforcement pursuant to Section 766.9(d) of the Regulations is appropriate. In its Supplemental Submission, BIS claims, among other things, that Respondent's Answer to BIS's Motion for Summary Decision contained information and references to documents upon which Respondent is relying that should have been disclosed in BIS's discovery requests but were not disclosed. BIS avers that Respondent "should be barred from offering as evidence or otherwise seeking to make use of this material, as well as any other responsive material that he failed to produce, whether responsive documents or information that is responsive to any interrogatory." (BIS's October 26, 2009 Supplemental Submission in Response to October 15, 2009 Order, at 3.)

Specifically, the information in question is a Declaration from Sanja Milic of Micei and a purported e-mail from Range Systems. BIS argues that the e-mail contains information that was responsive to its discovery requests pertaining to Respondent's Defense No. 16 found in on page 3 of "Declaration of Yuri Montgomery in Opposition to Bureau of Industry and Security's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen" dated October 12, 2009. Defense No. 16 states, "[w]hen I contacted Maintenance Products, Inc. to inquire of the availability of the products which are listed in the [sic] charges 6 and 13 of the Charging Letter herein, I was informed by Maintenance Products, Inc. that all of the products Micei was interested in purchasing were made in China and were very cheap and I did not even inquire of their prices." BIS further averred that the Court should strike Respondent's defense number 16 and any argument or purported evidence related to that defense. BIS ended with the recommendation that the Court postpone ruling on any discovery sanction until after ruling on the Motion for Summary Decision because that Motion can be resolved without discovery sanctions. The undersigned also notes that Respondent's Affirmative Defense No. 16 filed on April 2, 2009 with his Corrected Answer to Charging Letter avers "[t]he goods subject to the Charging Letter are of foreign origin and are therefore not subject to the prohibitions of the purported Denial Order." Respondent's affirmative defense no. 11, filed in his original Answer, reads "[t]he goods subject to the Charging Letter are of foreign origin and are therefore not subject to the Charging Letter."

The undersigned denied BIS's Motion for Partial Summary Decision. BIS asked in its January 15, 2010 "Memorandum on Evidence Submitted in Support of Charges" that Respondent be barred from offering as evidence or otherwise seeking to make use of any responsive material that he failed to produce, whether the information is a responsive document or answer to an interrogatory. In addition, BIS asks the Court to strike Respondent's Defense No. 16 and any argument or purported evidence related

to that defense pursuant to 15 CFR 766.9(d).

The November 10, 2009 memorandum and Order stated that the undersigned will make a determination or enter an Order deemed reasonable and appropriate in accordance with 15 CFR 766.9(d) on the issue of Respondent's continued refusal to comply with BIS's Interrogatories and Requests for Production of Documents despite previous Orders to do so. That determination follows:

Sanction on Respondent's Refusal To Disclose Discovery Materials

Respondent's arguments, e-mail, and Declaration contain information that should have been disclosed during discovery. Respondent failed to disclose this information despite being ordered to do so and then used those undisclosed discovery materials in his defense against BIS's Motion for Summary Decision. His arguments that the items in question are foreign made and therefore excluded from the Denial Order still remain in his affirmative defense filed with his Answer. Therefore, in consideration of the forgoing and in accordance with 15 CFR 766.9(d), the following are stricken from the record: (1) Respondent's Defense No. 16 in his "Declaration of Yuri Montgomery in Opposition to Bureau of Industry and Security's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen" dated October 12, 2009; (2) the Declaration from Sanja Milic of Micei; (3) the e-mail from Range Systems; (4) Affirmative Defense No. 16 in Respondent's Corrected Answer to Charging Letter which states "[t]he goods subject to the Charging Letter are of foreign origin and are therefore not subject to the prohibitions of the purported Denial Order;" (5) Affirmative Defense No. 11 which states, "[t]he goods subject to the Charging Letter are of foreign origin and are therefore not subject to the Charging Letter;" and (6) any argument related to that basic defense.

Paragraph IV of the Denial Order

Even if Respondent complied with discovery as previously ordered, and if the arguments and documents were found credible and give appropriate weight, they do not show that the items in question fall into the Paragraph IV exception to the Denial Order based only on their purported foreign origin. Paragraph IV of the Denial Order states, "[t]his Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology." This language does not amend the specific language in Paragraph I of the Denial Order which prohibits any participation of any kind in the export from the United States of any items subject to the Regulations.

Paragraph I prohibits participation in transactions involving items exported or to be exported from the United States. Items located in the United States are subject to the Regulations, regardless of where they are produced. *See,* 15 CFR 734.3(a). Since the items in this case were located in the United States at the time of Respondent's transactions and were not subject to the exclusive jurisdiction of another agency, Respondent was prohibited from participating in those transactions. The items in question are subject to the EAR as shown below:

Respondent claims that the Paragraph IV exemption applies if the items in question were manufactured abroad. As shown above, items subject to the EAR include items located in the United States regardless of where they have been manufactured or produced. In this case, jurisdiction is based on the fact that the items in question were located in the United States at the time of the transactions or the attempted or intended transactions, regardless of their origin. Once jurisdiction of the items in question is established based on the location of the items in the United States, such as in this case, it is not necessary to consider any other basis. The origin of an item must be determined only if the item happens to be located abroad at the time of the transaction. In this case, the items were located in the United States.

In summary, Paragraph IV of the Denial Letter provides a narrow exception to transactions involving only items subject to the Regulations by reason of the foreign direct product rule which does not apply here because the items in question were not located abroad. In this case, jurisdiction over these items exists under Section 734.3. The items were subject to the Regulations and were exported or attempted or intended to be exported from the United States. Therefore, Respondent's affirmative defense that foreign origin of the goods exempts them from the Regulations is rejected even in the absence of sanction.

Time for Decision

Title 15 CFR 766.17(d) provides that administrative enforcement proceedings not involving Part 760 of the EAR shall be concluded within one year from submission of the Charging Letter unless the Administrative Law Judge extends such period for good cause shown. In light of the attached detailed activity in these proceedings evidencing several stays, the time consumed to adjudicate disputed discovery issues, and the additional time consumed to adjudicate numerous motions, the undersigned finds that good cause exists for not concluding these proceedings within the time prescribed and that these proceedings are extended to October 28, 2010. This matter is now ripe for decision.

As detailed in Attachment A, the parties have raised many issues and the undersigned has ruled on most of them in previously issued Orders. This Recommended Decision and Order also rules on the affirmative defenses and any outstanding issues. As noted above, BIS filed its Notice of Withdrawal of Charge 10, concerning the 10,800 pairs of boots described in the charging Letter's Schedule of Violations. Therefore, seven (7) counts of section 764.2(k) and six (6) counts of Section 764.2(e) of the Regulations remain for decision. After careful review of the entire record, I find that BIS has *proved,* by the preponderance of reliable, probative, and credible evidence, on seven (7) occasions, from July 2, 2003 and October 8, 2003, that Respondent violated EAR code Section 764.2(k), "Acting Contrary to the Terms of a Denial Order," and on six (6) occasions that Respondent violated EAR code Section 764.2(e), "Acting with Knowledge of a Violation."

Recommended Findings of Fact

The Findings of Fact and Conclusions of Law are based on a thorough and careful analysis of the documentary evidence, exhibits, and the entire record as a whole.

General Findings and Background

1. Respondent Yuri I. Montgomery, also known as Yuri I. Malinkovski was convicted in the U.S. District Court for the District of Columbia of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1991 & Supp. 2000) and the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1991 & Supp. 2000)). (BIS Ex. B)

2. Specifically, Respondent's conviction was for knowingly and willingly exporting and causing the export of U.S.-origin stun guns to Macedonia and U.S. origin laser gun sights to Slovenia without applying for and obtaining the required export licenses from the Department of Commerce, and of knowingly and willfully exporting and causing the

export of U.S.-origin PAGST military helmets to Slovenia and U.S.-origin handcuffs, laser gun sights, and laser mountings to Macedonia without applying for and obtaining the required export licenses from the Department of Commerce. (BIS Ex. B)

3. Section 11(h) of the Export Administration Act of 1979 provides that, at the discretion of the Secretary of Commerce, no person convicted of violating the International Emergency Economic Powers Act or the Export Administration Act, or certain other provisions of the U.S. Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Export Administration Act or the Export Administration Regulations for a period of up to 10 years from the date of the conviction. (BIS Ex. B)

4. Pursuant to Sections 766.25 and 750.8(a) of the Regulations and upon notification that a person has been convicted of violating the International Emergency Economic Powers Act or the Export Administration Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such person. (BIS Ex. B)

5. Having received notice of Respondent's conviction and after providing Respondent with notice and opportunity to make written submission before issuing an Order denying his export privileges, the Director, Office of Exporter Services, Bureau of Export Administration, issued an Order (Denial Order) on September 11, 2000 denying Respondent export privileges effective through January 22, 2009 and publishing it in the **Federal Register**.[8] (65 FR 57,313 (Sept. 22, 2000) (BIS Ex. B))

6. Paragraph I of the Denial Order states that "Until January 22, 2009, Yuri I. Montgomery, also known as Yuri I. Malinkovski, [home address redacted] may not, directly or indirectly, participate in any way in any transaction involving any Commodity, software or technology (hereinafter collectively referred to as 'item') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations * * *. " (BIS Ex. B, at paragraph I)

7. The Denial Order specifically listed as non-exclusive examples of prohibited participation, "[c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations * * *." (BIS Ex. B)

8. The Denial Order also provided that Respondent was prohibited from "[b]enefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations. (BIS Ex. B)

9. Respondent received actual notice of the Denial Order by letter on or about September 13, 2000 from BIS that included a copy of the Denial Order. (BIS Ex. E, page 4, Request/Response 3; BIS Ex. F)

10. On October 24, 2000, Respondent wrote to then Under Secretary William Reinsch requesting reinstatement of his "export privileges denied on September 11, 2000." (BIS Ex. E, page 4, Request/Response 5; BIS Ex. G)

11. Under Secretary Reinsch denied the request on Dec. 21, 2000. (BIS Ex. H)

12. Respondent had notice of the Denial Order no later than October 24, 2000. (BIS Ex. E, pages 4–16, Requests/Responses Nos. 2, 5, 7m, 8m, 9h, 10m, 11m, 12m, and 13m)

13. Respondent knew that the Denial Order was in effect at all times from September 11, 2000 until January 22, 2009. (BIS Ex. E, page 4, Request/Response 2)

14. Respondent knew that he was subject to the Denial Order at the time of each transaction at issue. (BIS Ex. E, pages 4–16, Requests/Responses Nos. 2, 5, 7m, 8m, 9h, 10m, 11m, 12m, and 13m)

15. Respondent encouraged Micei "to use my credit card for Micei purchases as much as possible as it would allow me to accumulate United Airline miles through the use of my United Visa credit card * * *" (October 12, 2009 Declaration of Yuri Montgomery in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen, at paragraph 12)

16. On several occasions, Respondent "made inquiries for Micei of the availability on some of the products purchased for Micei." (*Id.* at paragraph 14)

17. Respondent benefited from all the purchases by stating, "[t]he charges made with my credit card directly attribute to the 'violations' alleged Micei in the Charging Letter herein amount to approximately $15,000, which allowed me to accumulate approximately $15,000 [sic] miles with United Airlines." (BIS Ex. J, page 3, paragraph 18; BIS Ex. E, page 6, admission 7j)

The preceding Findings of Fact are incorporated in the following, specific Findings of Fact as set for below:

Charges 1 and 8, 61 Pairs of Magnum boots

18. On or about June 9, 2003 Respondent placed an order for 61 pairs of Magnum boots with the Modesto, California Division of Hi-Tec Retail, Inc., manufacturer and retailer of footwear. (BIS Exhibit E, page 4, admission 7a; BIS Exhibits L and M)

19. The issuing bank declined Hi-Tec's initial attempt to charge Montgomery's credit card for the order which caused R. Uber at Hi-Tec to seek assistance from Respondent. (BIS Ex. O).

20. Micei employee Sanja Milic advised Hi-Tec via e-mail that according to Respondent, VISA had put a security block on its payment which he had already removed so that Hi-Tec can charge the amount without any problem. (BIS EX. P)

21. With the payment issue resolved, Respondent paid for the boots with his credit card. (BIS Ex. Q; BIS Ex. 5 at page 4, admission 7b)

22. Micei reimbursed Respondent for purchasing the boots. (BIS Ex. E, page 5, admission 7i(iii))

23. Respondent intended the boots, which are subject to the Regulations, to be exported to Macedonia. (BIS Ex. E at page 7, admission 7e; BIS Exhibits N, R, and S; BIS Ex. I, 15 CFR 734.3(a))

24. The boots were exported from the United States to Macedonia on or about July 2, 2003. (BIS Exhibits R and S)

25. The boots are items subject to the Regulations. (15 CFR 734.3(a); BIS Ex. I)

26. At the time of the transaction, Respondent knew he was subject to the Denial Order. (BIS Ex. E at Request/Response 7m)

Charges 2 and 9, Firing Range Clearing Devices

27. At Micei's request, Respondent telephonically contacted Range Systems, a New Hope, Minnesota manufacturer of firing range equipment, "to inquire of the availability and price

[8] Through an internal organizational order, the Department of Commerce changed the name of Bureau of Export Administration to Bureau of Industry and Security. *See,* Industry and Security Programs: Change of Name, 67 FR 20,630 (Apr. 26, 2002). Pursuant to the Savings Provision of the Order, "Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security." *Id.* at 20,631.

for their product * * *." (October 12, 2009 Declaration of Yuri Montgomery in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen, paragraph 20)

28. In a July 8, 2003 e-mail inquiry sent to Range Systems describing himself as Micei's regional office, Respondent stated that "currently we have one [bid] which calls for various products including 5–10 clearing traps such as your RRI Guardian (GDN) model * * *. Please quote the price of your RRR GUARDIAN (GDN) model and e/m me a complete price list if possible * * *." (BIS Ex. T, page 2)

29. Range Systems provided the requested price quote in a reply e-mail sent on July 11, 2003. (BIS Ex. T, page 1)

30. Respondent placed an order for two of the gun clearing devices via e-mail sent on July 15, 2003. (BIS Ex. E, page 6, admission 8a; BIS Exhibits T, U, and V)

31. Respondent paid Range Systems, Inc. for the gun clearing devices with his VISA credit card. (BIS Ex. T; BIS Ex. E, page 6, admission 8b)

32. Respondent directed Ranges Systems to export the gun clearing devices to Micei in Macedonia via their freight forwarder, requesting that he be advised of the weight and size of the boxes via e-mail with a copy to Micei representatives. (BIS Ex. T, page 1)

33. Micei reimbursed Respondent for the purchase of the gun clearing devices. (BIS Ex. E, page 7, admission 8i)

34. On or about July 18, 2003, Range Systems exported the gun clearing devices from the United States to Macedonia. (BIS Ex. E, page 7, admission 8e; BIS Ex. T; X, and W)

35. The gun clearing devices were manufactured in the United States. (BIS Ex. Y, Z, and AA)

36. The gun clearing devices are items subject to the Regulations. (BIS Ex. I; 15 CFR 734.3(a))

37. At the time of the transaction, Respondent knew he was subject to the Denial Order. (BIS Ex. E, page 8, admission 8k and 8m)

38. Respondent benefited from the purchase of the gun clearing devices. (BIS Ex. E, page 7, admission 8j)

Charge 3

39. On August 5, 2003, Respondent sent an e-mail to Galls, Inc., a Lexington, Kentucky based distributor of police equipment, military equipment, and apparel, identifying himself as "Micei Int'l U.S. Operations" and requesting a price quotation for 10,800 pairs of shoes and boots. (BIS Ex. E, page 8, admission 9a; BIS Ex. BB, EE, and FF)

40. Respondent intended to export the boots and shoes from the United States to Macedonia. (BIS Ex. E, page 8, admission 9d; BIS Ex. BB)

41. Respondent carried on negotiations concerning the shoes and boots, stating in an e-mail to Galls "our [Micei] HQ will be putting up the performance bond at 20% in cash. Therefore, please make sure you quote the best possible price so you can so we can win this one, too." (BIS Ex. BB)

42. The boots and shoes are items subject to the Regulations (BIS Ex. I; 15 CFR 734.3(a))

43. Respondent knew he was subject to the Denial Order on or about August 5, 2003, at or about the time he requested a quotation. (BIS Ex. E, page 9, admission 8f)

Charges 4 and 11

44. Micei's account number at Galls is 2547320. (BIS Ex. CC)

45. On or about August 5, 2003, Respondent contacted Galls to pay for order # 25473620/016, previously placed. (BIS Ex. DD)

46. The items in that order number consist of shoes and remote strobe tubes.[9] (BIS Ex. EE and FF)

47. In Respondent's August 5, 2003 e-mail to Galls, he provided his credit card account information to pay for the $2,562.44 order, stating that Micei advised him to pay for the items with his VISA card. (BIS Ex. DD and BIS Ex. E, page 9, admission 10b)

48. Micei reimbursed Respondent for purchasing the shoes and remote strobe tubes. (BIS Ex. E, page 10, admission 10i(iii))

49. Respondent intended to export the shoes and strobe tubes from the United States to Macedonia. (BIS Ex. E, page 9, admission 10e; BIS Exhibits EE, FF, and GG)

50. The shoes and remote strobe tubes were exported from Galls's Inc. in Lexington, Kentucky, United States to Macedonia on or about September 5, 2003. (BIS Exhibits EE and GG)

51. The shoes and remote strobe tubes are items subject to the Regulations. (BIS Ex. I; 15 CFR 734.3)

52. At the time of the transaction, Respondent knew he was subject to the Denial Order. (BIS Ex. E, page 11, admission 10m)

53. Respondent benefited from the VISA card purchase of the shoes and remote strobe tubes from Galls by earning credit towards the purchase of airline tickets. (BIS Ex. E, page 10, admission j and finding of fact 17 above)

Charges 5 and 12

54. On July 31, 2003, Respondent placed on order for 150 golf/polo shirts from Save On Promotional Products of Sandy, Oregon. (BIS Ex. HH and II)

55. Upon receiving Respondent's order, Save On ordered the shirts from its supplier, Tri-Mountain Gear Corp. of Baldwin Park, California. (BIS Ex. LL)

56. Respondent ordered the shirts for or on behalf of Micei and intended them to be exported from the United States to Macedonia. (Ex. E at Request/Response 11e); BIS Ex. HH: BIS Ex. II; BIS Ex. KK; BIS Ex. LL; BIS Ex. MM; BIS Ex. BIS NN)

57. Respondent paid for the order with his credit card. (BIS Ex. JJ; BIS Ex. E at Request/Response 11b)

58. Micei reimbursed Respondent for purchasing the shirts. (BIS Ex. E, page 12, admission 11i(iii))

59. The shirts were exported from the United States to Macedonia on or about August 13, 2003. (BIS Ex. MM; BIS Ex. NN)

60. The shirts are items subject to the Regulations. (BIS Ex. I; (15 CFR 734.3(a))

61. At the time of the transaction, Respondent knew he was subject to the Denial Order. (BIS Ex. E, page 12, admission 11m)

62. Respondent benefited from purchasing the shirts from a U.S. supplier using his VISA card by earning credit towards the purchase of airline tickets. (BIS Ex. E, page 12, admission 11j; Finding of Fact 17, above)

Charges 6 and 13

63. Respondent ordered two load binders, one ratchet strap, one binder chain, and one safety shackle from Maintenance Products, Inc. of Lowell, Indiana, on or about September 9, 2003. (BIS Ex. E, page 13, admission 12a; BIS Ex. OO and QQ)

64. Respondent paid Maintenance Products, Inc. for the load binders, ratchet strap, binder chain, and safety shackle, including freight charges of $21.52, with his VISA credit. (BIS Ex. E, page 13, admission 12b; BIS Ex. PP and QQ)

65. Micei reimbursed Respondent for purchasing the binder, ratchet strap, binder chain, and safety shackle. (BIS Ex. E, page 14, admission 12i(iii))

66. As Respondent intended, the load liners, ratchet strap, binder chain, and safety shackle exported from the United States to Macedonia on or about September 15, 2003. (BIS Ex. E, page 13, admission e; BIS Ex. RR and SS)

67. The load binders, binder chain, and safety shackle were manufactured

[9] Remote strobe tubes are components of the flashing emergency lights found on vehicles such as police cars.

in the United States. (BIS Ex. TT and UU)

68. The load binders, ratchet strap, binder chain and safety shackle are items subject to the Regulations. (BIS Ex. I and 49 CFR 734.3(a))

69. At the time of the transaction, Respondent knew he was subject to the Denial Order. (BIS Ex. E, page 14, admission 12m; BIS Ex. B, paragraph I and BIS Ex. F, paragraph I on page 3 of the Order Denying Export Privileges)

70. By charging the purchase from the U.S. supplier of the load binders, ratchet strap, binder chain and safety shackle on his VISA card, Respondent benefitted by earning credit towards the purchase of airline tickets. (BIS Ex. E, page 14, admission 12j; *see also,* Finding of Fact 17, above)

Charges 7 and 14

71. In October 2003, Respondent, describing himself as "Micei Int'l (N/America Op's), placed an order for uniform pants with Galls (Galls # 5473720/017). (BIS Ex. VV)

72. Again describing himself as representing Micei, Respondent paid for the order with his VISA credit card. (BIS Ex. E, page 14, admission 13b; BIS Ex. WW)

73. The uniform pants were to be shipped from Galls' supplier, Liberty Uniform of Spartanburg, South Carolina, to Micei in Macedonia. (BIS Ex. E, page 15, admission 13e; BIS Ex. XX)

74. Micei reimbursed Respondent for purchasing the uniform pants. (BIS Ex. E, pages 15 and 16, admission 13i(iii))

75. The uniform pants are items subject to the Regulations. (BIS Ex. I; 15 CFR 734.3(a))

76. At the time of the transaction, Respondent knew he was subject to the Denial Order. (BIS Ex. E, page 16, admission 13m)

77. Respondent benefitted from his purchase of the uniform pants with his VISA credit card by earning airline frequent flier miles. (BIS Ex. E, page 16, admission 13j; *see also,* Finding of Fact 17, above)

Discussion

Burden of Proof

The burden in this proceeding lies with the Bureau of Industry and Security to prove the charges instituted against the Respondents by a preponderance of reliable, probative, and substantial evidence. *Steadman* v. *SEC.,* 450 U.S. 91, 102 (1981); *In the Matter of Abdulmir Madi, et al,* 68 FR 57406 (October 3, 2003). In the simplest terms, the Agency must demonstrate that the existence of a fact is more probable than its nonexistence. *Concrete Pipe & Products* v. *Construction Laborers Pension Trust,* 508 U.S. 602, 622 (1993).

Respondent's Prior Criminal Conviction

The evidence shows that on January 22, 1999, Respondent, Yuri I. Montgomery, also known as Yuri I. Malinkovski, was convicted in the U.S. District Court for the District of Columbia of knowingly and willingly exporting and causing the export of U.S. origin stun guns to Macedonia and U.S. origin laser gun sights to Slovenia without applying for and obtaining the required export licenses from the Department of Commerce, and of knowingly and willfully exporting and causing the export of U.S. origin PAGST military helmets to Slovenia and U.S. origin handcuffs, laser gun sights, and laser mountings to Macedonia without applying for and obtaining the required export licenses from the Department of Commerce, in violation of the International Emergency Economic Powers and the Export Administration Act of 1979.

Denial Order

The Export Administration Act of 1979 provides that no person convicted of violating the International Emergency Economic Powers Act or the Export Administration Act, among other provisions of the U.S. Code, shall be eligible for any export license for a period of up to 10 years from the date of the conviction. Therefore, pursuant to the Regulations at Sections 766.25 and 750.8(a) and upon notification to Respondent and an opportunity to be heard, the Director, Office of Exporter Services, Bureau of Export Administration, issued an Order (Denial Order) on September 11, 2000 denying Respondent export privileges effective through January 22, 2009.

In pertinent part, the Denial Order states at paragraph I that "Until January 22, 2009, Yuri I Montgomery, also known as Yuri I. Malinkovski * * * may not, directly or indirectly, participate in any way in any transaction involving any * * * [item] exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations." The Denial Order detailed that Respondent may not, directly or indirectly, participate in any way in any transaction involving any * * * [item] exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations or * * * [b]benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations."

The Denial Order detailed non-exclusive examples of conduct included in the broad prohibition including "[c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving an item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations."

On October 24, 2000, Respondent requested that his exporting privileges be reinstated; the Under Secretary denied his request on December 21, 2000. Therefore, Respondent had notice of the Denial Order no later than October 24, 2000. He also knew it was in effect at all times from September 11, 2000 until January 22, 2009, which covers each transaction at issue.

Law

The Regulations define "Acting contrary to be terms of a denial order" at 15 CFR 764.2(k) as follows: "No person may take any action that is prohibited by a denial order. *See* § 764.3(a)(2) of this part." This is a strict liability offense.

The Regulations define "Acting with knowledge of a violation" at 15 CFR 764.2(e) as follows: "No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item."

The Regulations define Knowledge at 15 CFR 772.1 under "Definitions of terms as used in the Export Administration Regulations (EAR)."

* * * * *

"*Knowledge.* Knowledge of a circumstance (the term may be a variant, such as "know," "reason to know," or "reason to believe") includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. This definition does not apply to part 760 of the EAR

(Restrictive Trade Practices or Boycotts)."

Applying the Denial Order and the Law to the Findings of Fact

As detailed in the Findings of Fact, Charges 1 and 8 reflect that Respondent placed an order with Hi-Tec Retail, Inc. of Modesto, California Division, for 61 pairs of Magnum boots. He paid for the boots with his VISA credit card and had the boots, which are subject to the Regulations, exported from the United States to Micei, Inc. in Macedonia on July 2, 2003. Micei, Inc. reimbursed Respondent for the purchase of the boots. Respondent's purchase and reimbursement amounted to buying, selling or financing. Respondent benefited from the purchase of the boots by accumulating frequent flier miles with United Airlines. The Denial Order which prohibited these activities was in effect at the time and Respondent had knowledge of the Denial Order.

These activities show, by the preponderance of reliable, probative, and credible evidence that Respondent ordered the boots, carried on negotiations concerning the boots, bought, sold, and/or financed the boots, and benefited from the transactions for the boots, and that those actions violated the terms of his Denial Order, in violation of 15 CFR 764.2(k). Therefore, Charge 1 is *proved.*

These activities also show, by the preponderance of reliable, probative, and credible evidence that Respondent ordered the boots, carried on negotiations concerning the boots, bought, sold, and/or financed the boots with knowledge that a violation of his Denial Order had occurred, or was about to occur, or was intended to occur in connection with the boots, in violation of 15 CFR 764.2(e). Therefore, Charge 8 is *proved.*

As detailed in the Findings of Fact, Charges 2 and 9 reflect that at Micei's request, Respondent contacted Range Systems, a New Hope, Minnesota manufacturer of firing range equipment, to inquire of the availability and price for their product. In a July 8, 2003 e-mail inquiry sent to Range Systems describing himself as Micei's regional office, Respondent stated that "currently we have one [bid] which calls for various products including 5–10 clearing traps such as your RRI Guardian (GDN) model * * *. Please quote the price of your RRR GUARDIAN (GDN) model and e/m me a complete price list if possible * * *." Range Systems provided the requested price quote in a reply e-mail sent on July 11, 2003. Respondent placed an order for two of the gun clearing devices via e-mail sent on July 15, 2003. Respondent paid Range Systems, Inc. for the gun clearing devices with his VISA credit card. Respondent directed Range Systems to export the gun clearing devices to Micei in Macedonia via their freight forwarder and Micei reimbursed Respondent for the purchase of the gun clearing devices. Range systems exported the gun clearing devices from the United States to Macedonia on or about July 18, 2003. The gun clearing devices were also manufactured in the United States and subject to the Regulations. At the time of the transaction, Respondent knew he was subject to the Denial Order. Respondent also benefited from the purchase of the gun clearing devices.

These activities show, by the preponderance of reliable, probative, and credible evidence, Respondent ordered the gun clearing devices, carried on negotiations concerning the gun clearing devices, bought, sold, and/or financed the purchase of the gun clearing devices, and that those actions violated the terms of his Denial Order, in violation of 15 CFR 764.2(k). Therefore, Charge 2 is *proved.*

These activities also show, by the preponderance of reliable, probative, and credible evidence, Respondent ordered the gun clearing devices, carried on negotiations concerning the gun clearing devices, bought, sold, and/or financed the purchase of the gun clearing devices, with knowledge that a violation of his Denial Order had occurred, was about to occur, or was intended to occur, in connection with the gun clearing devices, in violation of 15 CFR 764.2(e). Therefore, Charge 9 is *proved.*

As detailed in the Findings of Fact, Charge 3 shows that on August 5, 2003, Respondent sent an e-mail to Galls, Inc., a Lexington, Kentucky based distributor of police and military equipment and apparel identifying himself as "Micei Int'l (U.S. Op's and requesting a price quotation for 10,800 pairs of shoes and boots. Respondent intended to export the boots and shoes from the United States to Macedonia. Respondent carried on negotiations concerning the shoes and boots, stating in an e-mail to Galls "our [Micei] HQ will be putting up the performance bond at 20% in cash. Therefore, please make sure you quote the best possible price so you can so we can win this one, too." The boots and shoes are items subject to the Regulations and he knew that he was subject to the Denial Order at the time he requested the quotation on or about August 5, 2003. Therefore, Respondent violated 15 CFR 764.2(k).

These activities show, by the preponderance of reliable, probative, and credible evidence, that Respondent carried on negotiations concerning the 10,800 pairs of shoes and that those actions violated the terms of his Denial Order which Respondent knew was in effect, in violation of 15 CFR 764.2(k). Therefore, Charge 3 is *proved.*

As detailed in the Findings of Fact, Charges 4 and 11 reflect that on August 5, 2003, Respondent contacted Galls to pay for order # 25473620/016, previously placed. The first eight (8) digits of that number is Micei's account number at Galls. The items in that order number consist of shoes and remote strobe tubes. Respondent provided his credit card account information to pay for the $2,562.44 order, stating that Micei advised him to pay for the items with his VISA card. Micei reimbursed Respondent for purchasing the shoes and remote strobe tubes. Respondent intended to export the shoes and strobe tubes from the United States to Macedonia and the shoes and remote strobe tubes were exported from Galls' Inc. in Lexington, Kentucky, United States to Macedonia on or about September 5, 2003. The shoes and remote strobe tubes are items subject to the Regulations. At the time of the transaction, Respondent knew he was subject to the Denial Order. Respondent benefited from the VISA card purchase of the shoes and remote strobe tubes from Galls by earning credit towards the purchase of airline tickets.

These activities show, by the preponderance of reliable, probative, and credible evidence, that Respondent, bought, sold, and/or financed the purchase of shoes and remote strobe tubes, and that those actions violated the terms of his Denial Order, in violation of 15 CFR 764.2(k). Therefore, Charge 4 is *proved.*

These activities also show, by the preponderance of reliable, probative, and credible evidence, that Respondent, bought, sold, and/or financed the purchase of shoes and remote strobe tubes with knowledge that a violation of his Denial Order had occurred, was about to occur, or was intended to occur in connection with the shoes and remote strobe tubes, in violation of 15 CFR 764.2(e). Therefore, Charge 11 is *proved.*

As detailed in the Findings of Fact, Charges 5 and 12 reflect that on July 31, 2003, Respondent placed an order for 150 golf/polo shirts from Save On Promotional Products of Sandy, Oregon. Upon receiving Respondent's order, Save On ordered the shirts from its supplier, Tri-Mountain Gear Corp. of Baldwin Park, California. Respondent

ordered the shirts for or on behalf of Micei to be exported from the United States to Macedonia. Respondent paid for the order with his credit card. Micei reimbursed Respondent for purchasing the shirts. The shirts were exported from the United States to Macedonia on or about August 13, 2003. The shirts are items subject to the Regulations. At the time of the transaction, Respondent knew he was subject to the Denial Order. Respondent benefited from purchasing the shirts from a U.S. supplier using his VISA card by earning credit towards the purchase of airline tickets.

These activities show, by the preponderance of reliable, probative, and credible evidence, that Respondent ordered the shirts, carried on negotiations concerning the shirts, bought, sold, and/or financed the shirts, and benefited from the transactions while his Denial Order was in effect, in violation of 15 CFR 764.2(k). Therefore, Charge 5 is *proved.*

These activities also show, by the preponderance of reliable, probative, and credible evidence, that Respondent ordered the shirts, carried on negotiations concerning the shirts, bought, sold, and/or financed the shirts, and benefited from the transactions with knowledge that a violation of his Denial Order had occurred, was about to occur, or was intended to occur in connection with the shirts, in violation of 15 CFR 764.2(e). Therefore, Charge 12 is *proved.*

As detailed in the Findings of Fact, Charges 6 and 13 reflect that Respondent ordered two load binders, one ratchet strap, one binder chain, and one safety shackle from Maintenance Products, Inc. of Lowell, Indiana, on or about September 9, 2003. Respondent paid Maintenance Products, Inc. for these items, including freight charges of $21.52, with his VISA credit card. Micei reimbursed Respondent for purchasing these items. As per Respondent's intent, these items were exported from the United States to Macedonia on or about September 15, 2003. The load binders, binder chain, and safety shackle were manufactured in the United States. The load binders, ratchet strap, binder chain and safety shackle are items subject to the Regulations. At the time of the transaction, Respondent knew he was subject to the Denial Order. By charging the purchase from the U.S. supplier of the load binders, ratchet strap, binder chain and safety shackle on his VISA card, Respondent benefited by earning credit towards the purchase of airline tickets.

These activities show, by the preponderance of reliable, probative, and credible evidence, that Respondent ordered two load binders, one ratchet strap, one binder chain, and one safety shackle, bought, sold, and/or financed them, and benefited from the transactions while his Denial Order was in effect, in violation of 15 CFR 764.2(k). Therefore, Charge 6 is *proved.*

These activities also show, by the preponderance or reliable, probative, and credible evidence, that Respondent ordered two load binders, one ratchet strap, one binder chain, and one safety shackle, bought, sold, and/or financed them, and benefitted from the transactions with knowledge that a violation of his Denial Order had occurred, was about to occur, or was intended to occur, in connection with the two load binders, one ratchet strap, one binder chain, and one safety shackle, in violation of 15 CFR 764.2(e). Therefore, Charge 13 is *proved.*

As shown in Findings of Fact, Charges 7 and 14 reflect that in October 2003, Respondent, describing himself as "Micei Int'l (N/America Op's), placed an order for uniform pants with Galls (Galls number 2547320/017). Again describing himself as representing Micei, Respondent paid for the order on October 8, 2003 with his VISA credit card. The uniform pants were to be shipped from Galls' supplier, Liberty Uniform of Spartanburg, South Carolina, to Micei in Macedonia. Micei reimbursed Respondent for purchasing the uniform pants. The uniform pants are items subject to the Regulations. At the time of the transaction, Respondent knew he was subject to the Denial Order. Respondent benefited from his purchase of the uniform pants with his VISA credit card by earning airline frequent flier miles.

These activities show, by the preponderance of reliable, probative, and credible evidence, that Respondent ordered the uniform pants, bought, sold, and/or financed them, and benefited from the transactions while his Denial Order was in effect, in violation of 15 CFR 764.2(k). Therefore, Charge 7 is *proved.*

These activities also show, by the preponderance of reliable, probative, and credible evidence, that Respondent ordered the uniform pants, bought, sold, and/or financed them, and benefited from the transactions, with knowledge that a violation of his Denial Order had occurred, was about to occur, or was intended to occur, in connection with the uniform pants, in violation of 15 CFR 764.2(e). Therefore, Charge 14 is *proved.*

Ultimate Findings of Fact and Conclusions of Law

1. Respondent and the subject matter of these proceedings are properly within the jurisdiction vested in BIS under the EAA, and the EAR, as extended by Executive Order and Presidential Notices.

2. At all times relevant in these proceedings, Coast Guard Administrative Law Judges have jurisdiction to adjudicate export control cases for the Bureau of Industry and Security.

3. The exhibits that BIS submitted are relevant and material to the charges in the Charging Letter.

4. At all times relevant, The Denial Order was in effect.

5. At all times relevant, Respondent was subject to the terms of a Denial Order.

6. At all times relevant, Respondent knew he was subject to the Denial Order.

7. All items in question were subject to the Regulations at Section 734.3(a).

8. All items in question were subject to the prohibitions in the Denial Order.

9. As detailed in the Findings of Fact, from on or about July 2, 2003 to on or about October 8, 2003, on seven occasions as described in Charges 1 through 7 in the Schedule of Violations, Respondent took actions specifically prohibited by the Denial Order in violation of 15 CFR 7343.2(k).

10. As detailed in the Findings of Fact, from on or about July 2, 2003 to on or about October 8, 2003, on six occasions as described in Charges 8, 9 and 11–14 in the Schedule of Violations, Respondent took actions prohibited by the Denial Order with knowledge that a violation of his Denial Order had occurred, were about to occur, or were intended to occur, in violation of 15 CFR 764.2(e).

Affirmative Defenses

In his February 24, 2010 Memorandum in Defense to Evidence Submitted by BIS in Support of the Charges in its Charging Letter, Respondent offers eleven (11) affirmative defenses. Affirmative Defense number one claims "that subject matter jurisdiction is lacking herein * * * because the general Denial Order * * * was "null, void, and of no effect *ab initio* because BIS did not have statutory authority to impose such an order * * *."

This affirmative defense is the same as affirmative defenses numbered two, nine, and fourteen filed with his Answer, affirmative defenses numbered 2, 4, 14, and 19 filed in the Corrected

Answer, and objection number 5 in Respondent's Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen. It is also essentially the same as Objection 5 raised in his "Renewed Objections to BIS's Interrogatories and Request for Production of Documents filed on September 3, 2009 and Point numbered 1 and 10 raised in Respondent's Memorandum of Points and Authorities in Opposition to BIS' Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen filed October 12, 2009.

The undersigned previously ruled Respondent's claim that BIS had no statutory authority to issue the Denial Order because the EAA was in lapse is without merit. BIS had authority to issue the Denial Order and is still operating under that authority. *See,* November 10, 2009, Memorandum and Order disposing of numerous motions that the parties submitted on pre-decisional issues at 13. As noted in the charging Letter and subsequent filings, subsequent Presidential Notices have extended the EAA's provisions and regulations up to the present. The Agency and the Courts have held that continuing the operation and effectiveness of the EAA and its regulations by issuing Executive Orders by the President is a valid exercise of authority. *In the Matter of Micei International,* 74 FR 24,788, 24,790 (May 26, 2009); *Wisconsin Project on Nuclear Arms Control* v. *U.S. Dep't of Commerce,* 317 F. 3d 275, 278–79, 282 (DC Cir. 2003). Therefore, affirmative defense number one is *rejected* as being without merit.

In affirmative defense number two, Respondent claims "[t]his Court lacks jurisdiction to adjudicate this proceeding because the purported assignment of the Administrative Law Judge herein has been made in violation of the statute and regulations regulating the assignment of administrative law judges to BIS's civil penalty proceedings." This defense is essentially the same as affirmative defense number one filed with his Answer and affirmative defenses numbers one (1) and three (3) in his "Corrected Answer to Charging Letter." It is also essentially the same as his "Objection 6, raised in his "Renewed Objections to BIS's Interrogatories and Request for Production of Documents filed on September 3, 2009 and essentially the same as Point Number 2 raised in Respondent's Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen filed October 12, 2009. The undersigned has previously ruled that at all relevant times in these proceedings, Memoranda of Agreement and an Office of Personnel Management authorization letters properly establish jurisdiction for U.S. Coast Guard Administrative Law Judges to adjudicate export control cases for BIS. *See,* November 10, 2009, Memorandum and Order disposing of numerous motions that the parties submitted on pre-decisional issues at 3, 13, and 14. Therefore, affirmative defense number two is *rejected* as being without merit.

In affirmative defense number three, Respondent claims "[t]his proceeding is defective and should be dismissed because it has been filed in violation of the prohibition against Double Jeopardy in the Constitution of the United States." This defense is the same as Respondent's affirmative defense number eight (8) raised in his Answer and affirmative defense number thirteen (13) raised in his Corrected Answer. It is also the same as Points numbered 3 and 6 in Respondent's Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen filed October 12, 2009. The undersigned has previously found that double jeopardy does not apply to these administrative proceedings in the November 18, 2009 Order Denying Respondent's Objections to Qualifications of Administrative Law Judge at 3, 4, but further clarification is necessary.

Respondent's double jeopardy argument is found on pages 15–17 of his Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen filed October 12, 2009 and his factual basis is found in his October 12, 2009 "Declaration of Yuri Montgomery in Opposition to BIS' Motion for Summary Decision as to Charges Two, Six, Nine and Thirteen" at paragraphs 32 to 38, and 50 to 54. He also includes this argument in his "Declaration of Yuri Montgomery in Support of Objection to Qualifications of ALJs and all Other Members of BIS' Decision making Body" of October 20, 2009 scattered throughout various paragraphs.

He states that in May 2005, criminal charges were initiated against him in the U.S. District of Columbia for alleged violations of this Denial Order. In 2006 that criminal action was dismissed and he was re-indicted on substantially identical charges in the U.S. District Court for the Western District of Washington at Seattle, and on April 30, 2008. The Second Superseding Indictment was filed in the same court. Respondent claims the criminal prosecution was based on his alleged violations of this Denial Order and that his subsequent trial resulted in a mistrial because the jurors could not agree. Respondent further claims that following the mistrial, he filed a motion for judgment of acquittal which the district judge granted. Respondent's statement is incorrect. Attached to his Declaration is the Second Superseding Indictment dated April 30, 2008, a Notice of Dismissal DATED October 10, 2008, dismissing the Indictment with prejudice against this Respondent, and the October 20, 2008 Order of Dismissal, signed by U.S. District Judge Ricardo S. Martinez, dismissing the Indictment with prejudice against this Respondent. The Order references Federal Rule of Criminal Procedure 48a which states "The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent." The District Judge did not enter an order of acquittal.

In his Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen at 16, Respondent claims "[t]he charges brought forth in this proceeding are based on the same facts of which respondent has already prevailed and obtained dismissal with prejudice, which is the equivalent to acquittal, after undergoing a trial in the criminal proceeding." In support of this claim, Respondent cites *Hudson* v. *United States,* 522 U.S. 93 (1997) as authority. In *Hudson,* the Office of the Comptroller of the Currency imposed civil monetary penalties and debarment on the defendants for causing two banks in which they were officials to make certain loans in a manner that unlawfully allowed them to receive the loans' benefits, in violation of the banking statutes. The government later indicted the defendants for essentially the same conduct so they moved to dismiss on double jeopardy grounds. The Supreme Court held that the double jeopardy clause of the Fifth Amendment is not a bar to the later criminal prosecution because the administrative proceedings were civil, not criminal. 522 U.S. at 95, 96. The Supreme Court found that the double jeopardy clause protects only against the imposition of multiple criminal punishments for the same offense. Moreover, Respondent was neither acquitted nor convicted. Therefore, affirmative defense number three is *rejected* as being without merit.

In affirmative defense number four, Respondent claims "[s]ubject matter

jurisdiction is lacking over [Respondent] because the BIS's claims are not colorable, *i.e.,* they are both, immaterial and made solely for the purpose of obtaining jurisdiction over [Respondent] and are wholly insubstantial and frivolous." This affirmative defense is essentially the same as affirmative defense number 10 in his Answer, affirmative defense number 15 in his Corrected Answer, and those raised in argument number 4 in his Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen of October 12, 2009. The undersigned previously ruled that "Respondent and the subject matter of these proceedings are properly within the jurisdiction vested in BIS under the EAA, and the EAR, as extended by Executive Order and Presidential Notices. *See,* November 10, 2009, Memorandum and Order disposing of numerous motions that the parties submitted on pre-decisional issues at 3. Therefore, Respondent's affirmative defense number four is *rejected* as being without merit.

In affirmative defense number five, Respondent claims "[t]he charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the doctrine of collateral estoppel." This affirmative defense is the same as affirmative defense number 5 in Respondent's Answer, affirmative defense number 8 and 9 in his Corrected Answer, and argument number 7 in his Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to charges Two, Six, Nine, and Thirteen of October 12, 2009. Simply put, collateral estoppel would prevent a party from relitigating an issue previously decided against the party. Respondent claims that the dismissal of his criminal case is the same as an acquittal. According to Black's Law Dictionary, 8th ed. (2004), an acquittal is a legal certification, usually by jury verdict, that an accused person is not guilty of the charged offense. According to Respondent, the jury could not agree on a verdict, and the proceedings ended in mistrial. On application of the government, the District Judge dismissed with prejudice. There there were no findings of "not guilty" of the counts in the Indictment and therefore no acquittal. Similarly, Black's defines *estoppel,* as raised by Respondent in his Answer at affirmative defense number 5 and in his Corrected Answer at affirmative defense number 8, as a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. Respondent was not convicted in the criminal case. Therefore, Respondent's affirmative defense number five is *rejected* as being without merit.

In affirmative defense number six, Respondent claims "[t]he charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the doctrine of *res judicata.*" This is the same as affirmative defense number 4 in his Answer, affirmative defense number 7 in his Corrected Answer, and Argument number 8 in his Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to charges Two, Six, Nine, and Thirteen of October 12, 2009. Black's Law Dictionary, 8th ed. (2004), defines *res judicata* as an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been—but was not—raised in the first suit. The three essential elements are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties. As stated in the above discussion on collateral estoppel, there was no decision in the criminal case. Therefore, further analysis of the elements is unnecessary. Respondent's affirmative defense number six is *rejected* as being without merit.

In defense number seven, Respondent claims "[t]he monetary penalty proposed by BIS should not be applied as violative of the Constitutional prohibition against cruel and unusual punishments." This affirmative defense is the same as affirmative defense number 9 in Respondent's October 16, 2009 "Memorandum of Points and Authorities in Opposition to BIS' Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen." These proceedings are civil administrative proceedings and not criminal proceedings. Under the Eighth Amendment of the Constitution of the United States, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Assuming Respondent is referring to the excessive fines clause, Congress has set the maximum penalty per violation in these civil proceedings at $250,000. International Emergency Economic Powers Enhancement Act of 2007, Public Law 110–96, 121 Stat. 1011 (Oct. 16, 2007). The criminal penalties were also raised from $50,000 and ten years of imprisonment to $1,000,000 and twenty years of imprisonment. Here, BIS proposes a civil monetary penalty in the amount of $340,000 for all thirteen violations. If the maximum civil penalty of $250,000 were assessed for each of the remaining 13 violations, Respondent would face civil penalties totaling $3,250,000. He has not offered any argument or case law supporting the notion that assessed civil penalties amounting to less than 10.5% of the congressionally established maximum violate the Eighth Amendment. Therefore, the monetary penalty BIS proposes does not violate the Constitutional prohibition against cruel and unusual punishments and affirmative defense number seven is *rejected* as being without merit.

In affirmative defense number eight, Respondent claims "[n]o denial order may be imposed upon Respondent, as IEEPA provides no statutory authorization for such penalty." This affirmative defense is the same as argument number 10 in Respondent's Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to charges Two, Six, Nine, and Thirteen of October 12, 2009. The undersigned previously ruled that BIS has the statutory authority to issue a Denial Order. *See,* November 10, 2009, Memorandum and Order disposing of numerous motions that the parties submitted on pre-decisional issues at 13. Therefore, affirmative defense number eight is *rejected* as being without merit.

In affirmative defense number nine, Respondent claims "[t]he charges of 'acting with knowledge of violations' should be dismissed because they are (a) duplicitous as interpreted by BIS and (b) unauthorized by IEEPA as amended in 2007." This is the same as argument number 11 in Respondent's Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to charges Two, Six, Nine, and Thirteen of October 12, 2009.

Concerning part (b) of Respondent's argument, the Regulations are maintained in force pursuant to the International Emergency Economic Powers Act. This Court's previous ruling that the Regulations are, in fact, maintained in force supports the validity of the knowledge charges. *See* Order of November 10, 2009 at 13. *See also, In the Matter of Ihsan Medhat Elashi,* 71 FR 38,843 (July 10, 2006) imposing a civil monetary penalty of $330,000 and a 50 year denial of export privileges for selling items with knowledge of a denial order. That case cites the IEEPA as statutory authority and 15 CFR 764.2(e) as regulatory authority. Therefore, Respondent's

affirmative defense that the charges of acting with knowledge of violations should be dismissed because they are unauthorized by IEEPA as amended in 2007, affirmative defense nine "b" is *rejected* as being without merit.

Concerning Respondent's claim that "acting with knowledge of violations should be dismissed because they are (a) duplicitous as interpreted by BIS is also rejected as being without merit. Under the *Elashi* case, "if an individual has a denied export license, violating the denial order is one violation and the act of knowingly violating the EAR is a separate violation." *Elashi* at 38,849. Therefore, Respondent's affirmative defense nine "a" that "[t]he charges of 'acting with knowledge of violations' should be dismissed because they are (a) duplicitous as interpreted by BIS" is *rejected* as being without merit.

In defense number ten, Respondent claims "[t]he penalty enhancement under IEEPA, as retroactively amended in 2007, cannot be applied herein because it is violative of the Ex Post Facto clause of the Constitution of the United States." This is the same as argument number 12 in Respondent's Memorandum of Points and Authorities in Opposition to BIS' Motion for Summary Decision as to charges Two, Six, Nine, and Thirteen of October 12, 2009.

Congress added the enhanced civil penalty as part of Section 206(b) of the International Emergency Economic Powers Act of 2007, Public Law 110–96, 121 Stat. 1011 (Oct. 16, 2007). Section 2 of that Act reads as follows:

(a) IN GENERAL.—Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended to read as follows:

"SEC. 206. PENALTIES.

"(a) UNLAWFUL ACTS.—It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this title.

"(b) CIVIL PENALTY.—A civil penalty may be imposed on any person who commits an unlawful act described in subsection (a) in an amount not to exceed the greater of—

"(1) $250,000; or

"(2) an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

"(c) CRIMINAL PENALTY.—A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) shall, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.".

(b) EFFECTIVE DATE.—

(1) CIVIL PENALTIES.—Section 206(b) of the International Emergency Economic Powers Act, as amended by subsection (a), shall apply to violations described in section 206(a) of such Act with respect to which enforcement action is pending or commenced on or after the date of the enactment of this Act.

(2) CRIMINAL PENALTIES.—Section 206(c) of the International Emergency Economic Powers Act, as amended by subsection (a), shall apply to violations described in section 206(a) of such Act with respect to which enforcement action is commenced on or after the date of the enactment of this Act.

The above language shows that Congress intended to establish separate penalties for civil and criminal proceedings. Once it is established that Congress intended to enact a civil enforcement scheme, only the clearest proof will override that intent and transform what is clearly a civil penalty into what amounts to a criminal penalty. *See, Smith* v. *Doe,* 538 U.S. 84, 92 (2003). Respondent has not presented any evidence such proof.

The enhanced civil penalties apply to violations with respect to which enforcement action is pending or commended on or after the date of the enactment of the Act. The effective date of the Act was October 17, 2007. Since this enforcement proceeding commenced on July 1, 2008, a civil penalty of up to $250,000 per violation applies to this case since. Therefore, Respondent's affirmative defense ten that the penalty enhancement violates the Ex Post Facto clause of the United States Constitution is *rejected* as being without merit.

In defense number eleven, Respondent claims "[a]ll of the charges in the Amended Charging Letter should be dismissed because BIS has failed to allege in said Charging Letter and prove that any of the subject products were not 'the foreign-produced direct product of U.S.—origin technology' which has been expressly exempted from the prohibitions of the Denial Order." The undersigned has previously rejected this argument as stated in this Recommended Decision and Order. Therefore, affirmative defense number eleven is *rejected* as being without merit.

Respondent's Two Objections

In his February 24, 2010 Objections to Evidence Submitted by BIS in Support of the Charges in its Charging Letter, Respondent offers two Objections: (1) "Respondent hereby Objects to unsworn, unverified, unsubstantiated, and unauthenticated 'evidence' supporting its charges;" (2) "Objection is hereby made to the letter submitted by BIS as Exhibit I, as such letter does not constitute evidence but is inadmissible self-serving legal opinion."

Concerning objection #1, Respondent does not address any specific exhibit or show why they are not admissible under BIS's procedural rules at 15 CFR 766.13(b). BIS's exhibits are declarations provided under penalty of perjury; however, that section provides "[t]he rules of evidence prevailing in courts of law do not apply, and all evidentiary deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight." Having so found, Respondent's objection #1 is Overruled.

Concerning objection #2, BIS routinely determines what items are subject to its regulations. Absent a showing that this Exhibit is not a valid exercise of BIS's authority and how it is not relevant or material to the Charges in the Charging Letter and therefore inadmissible under 15 CFR 766.13(b), this objection cannot be sustained. Therefore, Respondent's objection #2 is Overruled.

Respondent's Remaining Affirmative Defenses

The remaining affirmative defenses from Respondent's original nineteen (19) not included in his February 24, 2010 "Memorandum in Defense to Evidence Submitted by BIS in Support of the Charges in its Charging Letter" are addressed as follows:

6. "The Charging Letter herein and any of its allegations fail to state facts constituting a valid claim against Respondent herein." The undersigned previously ruled on this defense in the March 23, 2009 Order Denying Respondent's Motion for More Definite Statement. After detailing the parties' arguments, the undersigned held, "[t]he Charging Letter, together with the Schedule of Violations provides notice to Respondent sufficient to formulate his answer. To the extent Respondent requests additional information he may avail himself of the Discovery procedures under 15 CFR 766.9 *after* he files his Answer. Therefore, Respondent's motion for a more definite statement is denied." In consideration of the foregoing, Respondent's defense #6 is *rejected* as being without merit.

10. "This proceeding is barred by the doctrine of waiver. Waiver is a voluntary relinquishment or abandonment, either express or implied, of a legal right or advantage. Black's Law Dictionary, (8th ed. 2004). However, Respondent offers no evidence or authority on this defense. Therefore, this defense is *rejected* as being without merit.

11. "This proceeding is barred by the doctrine of release." Release is a liberation from an obligation, duty, or demand or the act of giving up a right or claim to the person against whom it could have been enforced. Black's law Dictionary, (8th ed. 2004). However, Respondent presents no evidence or authority on this defense. Therefore, Respondent's defense of "release" is *rejected* as being without merit.

12. "This proceeding is barred by settlement agreement." Respondent offers no evidence of a previous settlement agreement or authority in support of this defense. He apparently is referring to the criminal charges that resulted in a hung jury and subsequent dismissal in October 2008. In paragraph 24 of the "Declaration of Yuri Montgomery in Support of Objection to Qualifications of Administrative Law Judges and All Other Members of BIS Decisionmaking Body" Respondent states, "[s]hortly prior to July 3, 2008, my attorney apparently informed the prosecutor in said criminal action of my intention to file a motion to suppress my testimony given without the presence of counsel during my meetings and telephone interviews with BIS personnel and prosecutors in said criminal matter, as well as a motion to suppress some of my records obtained by BIS pursuant to a search warrant illegally obtained by BIS." He mentions "plea agreement" in the following paragraph 25 in which he states, "[o]n July 3, 2008, I filed a motion to suppress said testimony on the ground that I shared said information with the government based on my understanding that it was part of my obligation to cooperate with the government in exchange for immunity given to me pursuant to a plea agreement I entered into [on] or about 1999 and which resulted in the issuance of said Denial Order, as well as a motion to suppress evidence, including but not limited to copies of my e-mails, obtained under said search warrant, on the grounds that said warrant was stale and was obtained as a result of misleading statements made my BIS agents to a U.S. magistrate judge in eh affidavit in support of said search warrant." This is an affirmative defense in which Respondent bears the burden of going forward with producing the evidence in support of it. Respondent has not produced any plea agreement. Therefore, Respondent's claim is *rejected* as being without merit.

15. "The Charging letter herein is invalid as it alleges claims which are frivolous and insubstantial and made for the sole purpose of obtaining jurisdiction over Respondent herein." Defense #15 is *rejected* as being without merit for the reasons set forth in the ruling on defense #6, above.

17. "This administrative proceeding is barred by laches due to BIS's excessive delay in bringing the Charging Letter herein." Black's Law Dictionary 8th ed., 2004 defines "laches" as "unreasonable delay in pursuing a right or claim—almost always an equitable one—in a way that prejudices the party against whom relief is sought. "Section 2462 of Title 28 of the United States Code imposes a five-year statute of limitation on the commencement of enforcement proceedings brought by BXA [now BIS] under the Export Administration Act." *In the Matter of MK Technology Associates, Inc.,* Decision and Order (Dept. of Commerce), 64 FR 69,478, 69,481 (Dec. 13, 1999). Title 28 U.S.C. 2462 reads as follows:

§ 2462. Time for commencing proceedings

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. 2462

The Charging Letter of July 1, 2008 shows the claim first accrued on July 2, 2003, within the five-year year Statute of Limitations. Further, Respondent has not shown how the passage of time within the five-year statute of limitations has disadvantaged or prejudiced him. Therefore, Respondent's defense #17 is *rejected* as being without merit.

18. "This proceeding is barred as it violates the Due process clause of the Constitution of the United States." In the Memorandum and Order of November 10, 2009, the undersigned Overruled Respondent's objection #1 that the previous scheduling orders for discovery violated his due process rights. Here, Respondent makes no specific showing of due process violations but it is assumed that he objects to the entire proceedings. As the above detailed record of these proceedings shows, Respondent has been accorded reasonable notice and more than reasonable opportunity to be heard as provided for within the framework of BIS's procedural rules. Therefore, Respondent's defense #18 is *rejected* as being without merit.

Recommended Sanction

Under Section 764.3 of the Regulations, the applicable sanctions are: (1) A monetary penalty; (2) a denial of export privileges under the Regulations; and (3) exclusion from practice before BIS. Pursuant to the International Emergency Economic Powers Enhancement Act of 2007, Public Law 110–96, 121 Stat. 1011 (Oct. 16, 2007), as amended, "an amount not to exceed the greater of * * * $250,000; or * * * an amount that is twice the amount of the transaction that is the basis of the violation with respect to which enforcement action [was] pending or commenced on or after the date of the enactment of [the] Act." Since BIS initiated this enforcement action after October 16, 2007, the maximum penalty in this case is $250,000 per violation.

The Agency recommends a civil monetary penalty in the amount of $340,000 and a denial of export privileges for thirty (30) years. The undersigned agrees. This sanction is consistent with prior cases, including, *In the Matter of: Ishan Medhat Elashi,* 71 FR 38,843 (July 10, 2006). *Elashi* violated a Denial Order against him and acted with knowledge of these violations by exporting and conspiring to export computer equipment to Syria. For Elashi's thirty (30) violations, he received the maximum available civil monetary penalty available at the time ($11,000 per violation for a total civil monetary penalty of $330,000) as well as a denial of his export privileges for fifty (50) years.

The record is devoid of any acknowledgement of or acceptance of responsibility by Respondent for his actions. Respondent's conduct reflects a serious disregard for export compliance responsibilities.

Wherefore,

REDACTED SECTION (PAGES 55–58)

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary for review and final action for the agency, without further notice to the Respondent, as provided in 15 CFR 766.22.

Done and dated October 28, 2010, in New York, New York.

Walter J. Brudzinski,
Administrative Law Judge.

Attachment A

Summary of Pre-Decision Motions Practice; Activity Prior to Respondent's Answer to Charging Letter

On July 28, 2008, Peter Offenbecher, Esq., of Skellenger Bender, PS, entered his appearance on behalf of Respondent and requested an extension of time to file Answer. On August 5, 2008, the Chief Administrative Law Judge granted Respondent's request and extended the time to file Answer until August 18, 2008.

On August 14, 2008, Respondent filed an unopposed motion to stay the instant proceedings pending a parallel criminal trial in U.S. District Court for the Western District of Washington.[10]

On August 15, 2008, the Chief Administrative Law Judge assigned this case to the undersigned for adjudication and on August 18, 2008, the undersigned granted Respondent's unopposed motion to stay.

On October 28, 2008, BIS filed a Stipulated Motion to Stay Proceedings for 30 Days Due to Settlement Negotiations. The Motion advised that the parallel criminal action concluded on October 21, 2008 and that counsel for Respondent and counsel for BIS desire to engage in settlement negotiations.[11] Accordingly, on October 30, 2008, the undersigned issued an Order Granting the Motion to Stay until December 1, 2008. Counsel for Respondent filed his Notice of Attorney Withdrawal on December 2, 2008, since that time Respondent has been self-represented.

On January 7, 2009, Respondent filed his Notice to Stay Administrative Proceeding advising that he and counsel for BIS have agreed to extend the date for his responsive Answer until January 31, 2009. On January 9, 2009, the undersigned issued an Order Granting Respondent's request staying the proceedings until January 31, 2009 at which time the Respondent shall file his Answer. Respondent did not file his Answer on January 31, 2009. Instead, on February 3, 2009, the undersigned received via facsimile Respondent's Motion for More Definite Statement and Demand for Hearing on the Motion for More Definite Statement, which he dated January 31, 2009. BIS received that Motion via facsimile on February 18, 2009.

On March 9, 2009, BIS filed its opposition to Respondent's Motion averring, among other things, that the mutually agreed upon extension of time to file Answer did not include any extension of time to file a motion for more definite statement. Moreover, the regulations do not provide for the filing of a more definite statement.

On March 23, 2009, the undersigned denied Respondent's Motion for More Definite Statement and ordered Respondent to Answer the Charging Letter and *Any Demand for Hearing* [emphasis added] by April 2, 2009.

Respondent filed his Answer "under protest, duress, and compulsion of the Order Denying Respondent's Motion for More Definite Statement." He denied each and every allegation in the Charging Letter but did not demand a hearing. He also asserted fourteen (14) Affirmative Defenses:

1. Neither this Court nor any of the administrative law judges herein have jurisdiction to adjudicate the instant administrative proceeding.
2. The Department of Commerce, Bureau of Industry and Security, has no jurisdiction over this administrative proceeding.
3. The Charging Letter herein and any of its allegations fail to state facts constituting a valid claim against Respondent.
4. This administrative proceeding is barred by the doctrine of res judicata.
5. This administrative decision is barred by the doctrine of estoppel.
6. This administrative proceeding is barred by the doctrine of waiver.
7. This administrative proceeding is barred by the doctrine of release.
8. This administrative proceeding is barred by the double jeopardy clause of the Constitution of the United States.
9. This administrative proceeding is unauthorized in that the Export Control Regulations used as a basis for the Charging Letter herein lack proper statutory authorization and are thus invalid.
10. The Charging Letter herein is invalid as it alleges claims which are frivolous and insubstantial and made for the sole purpose of obtaining jurisdiction over Respondent.
11. The goods subject to the Charging Letter are of foreign origin and are therefore not subject to the Charging Letter.
12. This administrative proceeding is barred by laches due to BIS's excessive delay in bringing the Charging Letter.
13. This administrative proceeding is violative of the Due Process clause of the Constitution of the United States.
14. This administrative proceeding is unauthorized by law in that the statute under which the pertinent Export Control Regulations have been promulgated has expired.

Respondent subsequently filed a "Corrected Answer to Charging Letter," again denying each allegation and also objecting to among other things, the form of the Charging Letter. He did not demand a hearing but included the following amended affirmative defenses:

1. This Court and any and all of the administrative law judges herein have no subject matter jurisdiction over this proceeding.
2. The Department of Commerce, Bureau of Industry and Security, has no subject matter jurisdiction over this proceeding.
3. This Court and any and all of the administrative law judges herein have no personal jurisdiction over Respondent herein.
4. The Department of Commerce, Bureau of Industry and Security, has no personal jurisdiction to adjudicate this proceeding.
5. This Court and any and all of the administrative law judges herein lack statutory authorization to adjudicate this proceeding.
6. The Charging Letter herein and any of its allegations fail to state facts constituting a valid claim against Respondent herein.
7. This proceeding is barred by the doctrine of res judicata.
8. This proceeding is barred by the doctrine of estoppel.
9. This proceeding is barred by the doctrine of collateral estoppel.
10. This proceeding is barred by the doctrine of waiver.
11. This proceeding is barred by the doctrine of release.
12. This proceeding is barred by settlement agreement.
13. This proceeding is barred by the double jeopardy clause of the Constitution of the United States.
14. This proceeding is unauthorized by law in that the Regulations used as a basis for the Charging Letter herein lack statutory authorization and are thus invalid.
15. The Charging Letter herein is invalid as it alleges claims which are frivolous and insubstantial and made for the sole purpose of obtaining jurisdiction over Respondent herein.
16. The goods subject to the Charging Letter are of foreign origin and are therefore not subject to the prohibitions of the purported Denial Order;
17. This administrative proceeding is barred by laches due to BIS's excessive delay in bringing the Charging Letter herein;
18. This proceeding is barred as it violates the Due Process clause of the Constitution of the United States;
19. This proceeding is unauthorized by law in that the statute under which the Regulations have been promulgated has expired.

Activity After Respondent's Answer to Charging Letter; Case To Be Adjudicated on the Record

Since neither party filed a demand for hearing, the undersigned issued a Scheduling Order on June 5, 2009 stating the matter will be adjudicated on the record in accordance with 15 CFR 766.6(c). The Order set July 6, 2009 as the deadline to complete discovery; August 5, 2009 as the deadline for the Agency to file evidence in support of charges; September 2, 2009 as the deadline for Respondent to reply and file evidence in support of his defenses; and September 16, 2009 as the deadline for the Agency to file rebuttal.

On June 19, 2009, BIS served its "Requests for Admissions and Interrogatories" and "Requests for Production of Documents" on Respondent and on June 30, 2009, Respondent filed his "Preliminary Objections to BIS's Interrogatories and Requests for Production of Documents"

[10] Out of the eleven Counts in the Indictment, four Counts concerned conduct corresponding to Charges in the Charging Letter. The Charging Letter alleged violations of 15 CFR 764.2(e) and (k). The Indictment alleged violations of 15 CFR 764(a) and (b), as well as 18 U.S.C. 2 and 50 U.S.C. 1705.

[11] Respondent was neither convicted nor acquitted. The criminal trial ended in mistrial due to "hung jury" and the District Judge granted leave to dismiss the Indictment with prejudice.

as well as his "Objections to BIS's Interrogatories and Requests for Production of Documents," the latter of which contained Respondent's Answers to BIS's Requests for Admission.

On July 6, 2010 Respondent filed his "Requests for Admissions and Requests for Production of Documents." These requests were followed by the parties' "Stipulation to Stay Discovery Response Deadlines and Extending Remaining Deadlines" and on July 30, 2010, the undersigned issued an Amended Scheduling Order extending the deadlines.

That Order was followed by another Order on August 20, 2009 setting September 3, 2009 as the deadline for BIS to respond to Respondent's "Requests for Admission and Request for Production of Documents" and for Respondent to respond to BIS's "Interrogatories and Requests for Production of Documents."

Respondent did not file responsive pleadings pursuant to the August 20, 2009 Order but instead filed "Renewed Objections to BIS's Interrogatories and Requests for Production of Documents" on September 3, 2009. Respondent's Objections are as follows:

1. The Order Setting Deadlines and Compelling Discovery Responses on BIS' Motion to Set Deadline and Compel Discovery Responses is null, void, and of no effect because it was issued by the Administrative Law Judge in manifest violation of Respondent's constitutional right to due process, as it was issued on the same day said motion was served on Respondent and even before Respondent received said motion which deprived Respondent of notice and opportunity to be heard required by the due process clause of the Constitution of the United States.

2. The Order Setting Deadlines and Compelling Discovery Responses on BIS's Motion to Set Deadline and Compel Discovery Responses is null, void, and of no effect because it was issued by the Administrative Law Judge in violation of the pertinent responses.

3. The Order Setting Deadlines and Compelling Discovery Responses on BIS's Motion to Set Deadline and Compel Responses is null, void, and of no effect because it implicitly required that responses be sent "via facsimile and mail", while pursuant to 15 CFR 766.5(b) service by facsimile is deemed acceptable but could be in no way required by the Regulations.

4. The Order Setting Deadlines and Compelling Discovery Responses on BIS's Motion to Set Deadline and Compel Discovery Responses is null, void, and of no effect because it implicitly required that responses be "produced * * * to Eric Clark" at a specified address, while 15 CFR 766.9(b) provides for "requests for production of documents for inspection and copying", and has no provision for such responses to be provided by other means.

5. The Order Setting Deadlines and Compelling Discovery Responses on BIS's Motion to Set Deadline and Compel Discovery Responses is null, void, and of no effect because this tribunal has no subject matter jurisdiction over respondent, as the general denial order imposed against Yuri Montgomery was void because BIS did not have statutory authority to impose such an order against Yuri Montgomery due to EAA being in lapse when said denial order was issued and/or when the alleged violations by Yuri Montgomery occurred.

6. The Order Setting Deadlines and Compelling Discovery Responses on BIS's Motion to Set Deadline and Compel Discovery Responses is null, void, and of no effect because this Administrative Law Judge had no jurisdiction to issue said Order, as his assignment in this matter was made in violation of the Administrative Procedure Act, 5 U.S.C. Section 3344, and the regulations issued under said statute, 5 CFR 930.213.

Therefore, on September 4, 2009, the undersigned issued an Order for BIS to file its evidence in support of charges by September 30, 2009 as previously provided. The undersigned overruled the above Objections in the Memorandum and Order of November 10, 2009.

On September 18, 2009, BIS requested a temporary stay in the Scheduling Order and proposed a revised Scheduling Order and, on the same day, filed a "Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen."

On September 23, 2009, the undersigned issued an Order temporarily staying the July 30, 2009 Scheduling Order pending resolution of the Agency's "Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen." The Order also set October 16, 2009 for Respondent to Answer the Agency's Motion for Summary Decision and fifteen (15) days thereafter as the date for the BIS to Reply.

On October 13, 2009, Respondent filed his "Motion for an Immediate Temporary Stay of Further Running of the Court's Scheduling Order Issued on September 23, 2009, Pending the Outcome of Respondent's Motion that Requests for Admission be Deemed Admitted and that the Matters Therein Be Conclusively Established and Motion to Compel Production of Documents." He also filed his "Motion That Requests for Admission be Deemed Admitted and That the Matters Therein be Conclusively Established," and his "Memorandum of Points and Authorities in Support of Respondent's Motion That Requests for Admission be Deemed Admitted and That the Maters Therein be Conclusively Established." Further, he filed "Respondent's Motion to Compel Production of Documents," and "Memorandum of Points and Authorities in Support of Respondent's Motion to Compel Production of Documents."

On October 15, 2009, BIS filed its Opposition to Respondent's above motions and on the same day the undersigned issued an Order Denying Respondent's Motion for Immediate Stay and further ordered Respondent to Answer the Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen by October 16, 2009, as previously ordered. The Order further stated that the parties are to submit copies of their respective discovery requests by October 26, 2009 so that the Judge can determine if enforcement pursuant to Section 766.9(d) of the regulations is appropriate.

On October 16, 2009 the undersigned received the "Declaration of Yuri Montgomery in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen," his "Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen," and "Declaration of Sanja Milic in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen," all dated October 12, 2009. Respondent's "Memorandum of Points and Authorities in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen" contain twelve (12) affirmative defenses, some of which are the same as Respondent's affirmative defenses included with his Answer, Corrected Answer, and "Renewed Objections to BIS's Interrogatories and Requests for Production of Documents" of September 3, 2009. His objections and affirmative defenses to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen are as follows:

1. Subject matter jurisdiction is lacking herein over Yuri Montgomery because the general Denial Order imposed against Yuri Montgomery which he is alleged to have violated was null, void, and of no effect *ab initio* because BIS did not have statutory authority to impose such an order against Yuri Montgomery.

2. This Court lacks jurisdiction to adjudicate this proceeding because the purported assignment of the Administrative Law Judge has been made in violation of the statute and regulations regulating assignment of administrative law judges to BIS's civil penalty proceedings.

3. This proceeding is defective and should be dismissed because it has been filed in violation of the prohibition against Double Jeopardy in the Constitution of the United States.

4. Subject matter jurisdiction is lacking herein over Yuri Montgomery because the BIS's claims are not colorable, *i.e.,* they are both, immaterial and made solely for the purpose of obtaining jurisdiction over Yuri Montgomery *and* are wholly insubstantial and frivolous.

5. Summary adjudication as to each of the charges should be denied because, based on the evidence presented by Respondent, disputed issues of material fact are present as to each of the issues presented by the Motion for Summary Adjudication.

6. The charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the Double Jeopardy provision in the Constitution of the United States.

7. The charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the doctrine of *collateral estoppel.*

8. The charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the doctrine of *res judicata.*

9. The monetary penalty proposed by BIS should not be applied as violative of the Constitutional prohibition against cruel and unusually punishments.

10. No denial order may be imposed upon Respondent, as IEEPA provides no statutory authorization for such penalty.

11. The charges of "acting with knowledge of violation" should be dismissed because they are a) duplicitous as interpreted by BIS and b) unauthorized by IEEPA as amended in 2007.

12. The penalty enhancement under IEEPA, as retroactively amended in 2007, cannot be applied herein because it is violative of the Ex Post Facto clause of the Constitution of the United States.

On October 20, 2009, the undersigned received Respondent's "Objections to Qualifications of Administrative Law Judges and All Members of the Bureau of Industry and Security Decisionmaking Body." Among other things, Respondent claims that he has filed a civil suit against various BIS officials and members of this Court. To date, the undersigned has not been served with the Complaint nor has any other Coast Guard Administrative Law Judge. The undersigned also received "Respondent's Declaration in Support of Objections to Qualifications of ALJs and all Other Members of Bureau of Industry and Security Decisionmaking Body."

On October 26, 2009, BIS submitted its response to the Order of October 15, 2009 directing the parties to submit copies of their respective discovery requests by October 26, 2009 so that the Judge can determine whether enforcement pursuant to Section 766.9(d), noted above, is appropriate. BIS claimed that Respondent did not answer or produce any documents in response to BIS's Interrogatories and Requests for Production of Documents despite being ordered to do so. BIS also filed a Supplemental Submission on October 26, 2009 in response to the October 15, 2009 Order stating Respondent's reply papers to BIS's Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen included material that "clearly is responsive to BIS's discovery requests and thus should have been, but was not, provided to BIS, first in response to its discovery requests and then, most importantly, in response to the Court's Order of August 20, 2009." The items in question that Respondent did not disclose in response to BIS's Request for Production of Documents is a Declaration from Sanja Milic of Micei and a purported e-mail from Range Systems.

On November 2, 2009, BIS filed its Reply to Respondent's Opposition to Motion for Summary Decision and on November 6, 2009, filed its Response to Respondent's Objection to the Qualifications of Administrative Law Judges and All Other Members of Bureau of Industry and Security Decisionmaking Body.

The November 10, 2009 Memorandum and Order

On November 10, 2009, the undersigned issued a Memorandum and Order disposing of numerous motions that the parties submitted on pre-decisional issues. In summary, the Memorandum and Order found that U.S. Coast Guard Administrative Law Judges have jurisdiction to adjudicate cases for BIS involving export control regulations; that Respondent is not entitled to 20 days notice prior to service of a discovery request; that the deadline to complete discovery is not the deadline to make discovery requests; that documents are due on the dates specified, not simply mailed on the due dates; that Respondent's Requests for Admissions to BIS which he claims were mailed on July 6, 2009 but not received until July 13, 2009, are Not Timely; and that BIS timely filed its Answers to Respondent's Requests for Admission and Requests for Production of Documents on September 3, 2009.

The November 10, 2009 Memorandum and Order further Overruled the following numbered Respondent's objections: (1) That the undersigned's Order Setting Deadlines and Compelling Discovery Responses is null, void, and of no effect; (2) that the above-referenced Order is null, void, and of no effect because it was issued by the Administrative Law Judge in violation of minimum notice provisions required by 15 CFR 766.9(b) which is reasonably interpreted by Respondent to require at least a 20 day notice for service of the pertinent responses; (3) that the above-referenced Order is null, void, and of no effect because it implicitly requires that responses be sent via facsimile and mail while pursuant to 15 CFR 766.5(b) service by facsimile is deemed acceptable but could not be required by the Regulations; (4) that the above-referenced Order is null, void, and of no effect because it implicitly requires that responses be produced to Eric Clark at a specified address, while 15 CFR 766.9(b) provides for requests for production of documents for inspection and copying; (5) that the above-referenced Order is null, void, and of no effect because this tribunal has no subject matter jurisdiction; (6) that the above-referenced Order is null, void, and of no effect because the Administrative Law Judge had no jurisdiction to issue said Order as his assignment in this matter was made in violation of the Administrative Procedure Act, 5 U.S.C. Section 3344, and the regulations issued under said statute, 5 CFR 930.213.

The November 10, 2009 Memorandum and Order stayed the previous Order of September 4, 2009 directing BIS to submit its evidence in support of its charges by September 30, 2009 pending adjudication of BIS's Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen. The November 10, 2009 Memorandum and Order Denied Respondent's October 13, 2009 Motion that Requests for Admission be Deemed Admitted and That Matters Therein be Conclusively Established. The November 10, 2009 Memorandum and Order also Granted Respondent's request for production of certain Memoranda of Agreement and Office of Personnel Management letters of authorization establishing the jurisdiction of U.S. Coast Guard Administrative Law Judges. It further stated that the undersigned will make a determination or enter an Order deemed reasonable and appropriate in accordance with 15 CFR 766.9(d) on the issue of Respondent's continued refusal to comply with BIS's Interrogatories and Requests for Production of Documents despite previous Orders to do so.

The November 10, 2009 Memorandum and Order referenced BIS's October 26, 2009 Response to the October 15, 2009 Order wherein it claimed Respondent's Answer to BIS's Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen contained information and references to documents that Respondent is relying on which should have been disclosed in BIS's discovery requests but were not disclosed. BIS's Response requested

Respondent's defense number 16 and any argument or purported evidence related to that defense be stricken in accordance with 15 CFR 766.9(d) but recommended that the decision be postponed until after ruling on the Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen because that Motion can be resolved without discovery sanctions.[12] Therefore, the undersigned ruled that any decision on discovery sanctions will be made after the decision on BIS's Motion for Summary Decision.

On November 16, 2009, the undersigned Denied the Motion for Summary Decision on Charges Two, Six, Nine, and Thirteen finding that a genuine issue of material fact exists concerning whether the items in the Charging Letter are "the foreign-produced direct product of U.S.-origin technology." The undersigned also found Respondent's claim that BIS had no statutory authority to issue the Denial Order because the EAA was in lapse is without merit.

On November 18, 2009, the undersigned issued an "Order Denying Objections to Qualifications of Administrative Law Judges and All Other Members of Bureau of Industry and Security Decisionmaking Body" finding that Respondent's bare claims and use of other, unrelated and unsubstantiated allegations pertaining to another agency fail to overcome the presumption of honesty and integrity that accompanies administrative adjudicators. Among those arguments the undersigned rejected as being unsupported by any evidence was Respondent's bare claim that the undersigned and BIS initiated this administrative proceeding in retaliation for Respondent's prevailing in a BIS criminal proceeding.

On November 20, 2009, the undersigned issued a Scheduling Order setting January 15, 2010 as the deadline for BIS to file evidence in support of charges; February 16, 2010 as the deadline for Respondent to reply and file evidence in support of his defenses; and March 3, 2010 as the deadline for BIS to file its rebuttal.

On January 15, 2010, BIS filed its Notice of Withdrawal of Charge Ten citing Section 766.3(a) of the regulations which provides that "BIS may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge." The Notice further states, "[i]n authorizing BIS to unilaterally withdraw all of the charges in a charging letter, Section 766.3(a) also at least impliedly authorizes BIS to unilaterally withdraw fewer than all of the charges in a charging letter by providing notice to the presiding administrative law judge and the respondent in the matter." The undersigned views this interpretation as reasonable and consistent with procedures followed by other agencies.

The undersigned received BIS's "Submission of Evidence in Support of Charges" on January 15, 2010 and its separate "Memorandum on Evidence Submitted in Support of Charges."

On February 16, 2010, Respondent filed his "Application for Extension of Time to File a Reply and Evidence in Support of his Defenses" and on February 19, 2010, Respondent filed his "Emergency Application for Extension of Time to File a Reply and Evidence in Support of his Defenses" asking that the deadline be extended from February 16, 2010 to February 24, 2010.

On February 22, 2010, BIS filed its "Response to Respondent's Applications for Extension of Time to File a Reply and Evidence in Support of his Defenses." In its Response, BIS noted that it has been five (5) months since Montgomery was ordered to respond to BIS's discovery requests and, as noted in the September 4, 2009 Order, Respondent's intentional refusal to comply is evident. BIS asked that if Respondent's request is extended to February 24, 2010, then the time for BIS to file its reply ought to be extended to March 16, 2010.

On February 23, 2010, the undersigned issued an "Order Granting Respondent's Request for an Extension of Time to File Reply and Evidence in Support of His Defenses" to February 24, 2010 and that BIS's reply is due March 16, 2010.

On February 24, 2010, Respondent filed his "Objections to Evidence Submitted by BIS in Support of the Charges in its Charging Letter" and on February 25, 2010, he filed his "Memorandum in Defense to Evidence Submitted by BIS in Support of the Charges in its Charging Letter." Also on February 25, 2010 Respondent filed his "Motion for Immediate Stay of This Civil Penalty." His reason for an immediate stay was to await a decision from the DC Circuit in *Micei International* v. *United States,* Nos. 09–1155 and 09–1186, and "Respondent's intention to file suit in U.S. District Court to enjoin this civil penalty proceeding and transfer this matter to the U.S. District Court due to futility of this proceeding and institutional bias as has been continuously demonstrated throughout this proceeding and the proceeding before this tribunal in the matter of Micei International."

Respondent's "Objections to Evidence Submitted by BIS in Support of the Charges in its Charging Letter" lists two Objections: (1) That he objects to BIS's unsworn, unverified, unsubstantiated, and unauthenticated "evidence" supporting its charges; and (2) that he objects to the letter submitted to BIS as Exhibit I, as such letter does not constitute evidence but is inadmissible self-serving legal opinion.

Respondent's "Memorandum in Defense to Evidence Submitted by BIS in Support of the Charges in its Charging Letter" lists the following eleven (11) affirmative defenses:

1. Subject matter jurisdiction is lacking herein over Yuri Montgomery because the general Denial Order imposed against Yuri Montgomery which he is alleged to have violated was null, void, and of no effect *ab initio* because BIS did not have statutory authority to impose an order against Yuri Montgomery at the time said Denial Order was issued.

2. This Court lacks jurisdiction to adjudicate this proceeding because the purported assignment of the Administrative Law Judge herein has been made in violation of the statute and regulations regulating assignment of administrative law judges to BIS's civil penalty proceedings.

3. This proceeding is defective and should be dismissed because it has been filed in violation of the prohibition against Double Jeopardy in the Constitution of the United States.

4. Subject matter jurisdiction is lacking herein over Yuri Montgomery because the BIS's claims are not colorable, *i.e.,* they are both immaterial and made solely for the purpose of obtaining jurisdiction over Yuri Montgomery and are wholly insubstantial and frivolous.

5. The charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the doctrine of collateral estoppel.

6. The charges sought by BIS to be adjudicated by the instant Motion should be dismissed as barred by the doctrine of res judicata.

7. The monetary penalty proposed by BIS should not be applied as violative of the Constitutional prohibition against cruel and unusual punishments.

[12] Respondent's defense number 16 in his "Declaration of Yuri Montgomery in Opposition to BIS's Motion for Summary Decision as to Charges Two, Six, Nine, and Thirteen" states, "[w]hen I contacted Maintenance Products, Inc. to inquire of the availability of the products which are listed in the [sic] charges 6 and 13 of the Charging Letter herein, I was informed by Maintenance Products, Inc. that all of the products Micei was interested in purchasing were made in China and were very cheap and I did not even inquire of their prices." Affirmative defense No. 16 in Respondent's "Corrected Answer" is, "[t]he goods subject to the Charging Letter are of foreign origin and are therefore not subject to the prohibitions of the purported Denial Order." Affirmative defense No. 11 in his original Answer is, "[t]he goods subject to the Charging Letter are of foreign origin and are therefore not subject to the Charging Letter."

8. No denial order may be imposed upon Respondent, as IEEPA provides no statutory authorization for such penalty.

9. The charges of "acting with knowledge of violation" should be dismissed because they are a) duplicitous as interpreted by BIS and b) unauthorized by IEEPA as amended in 2007.

10. The penalty enhancement under IEEPA, as retroactively amended in 2007, cannot be applied herein because it is violative of the Ex Post Facto clause of the Constitution of the United States.

11. All of the charges in the Amended Charging Letter should be dismissed because BIS has failed to allege in said Charging Letter and prove that any of the subject products were not "the foreign-produced direct product of U.S.-origin technology" which has been expressly exempted from the prohibitions of the Denial Order.

On March 5, 2010, BIS filed its Opposition to Respondent's Motion for Immediate Stay and on the same day the undersigned issued an Order denying Respondent's Motion. However, Respondent eventually received his requested Stay on March 16, 2010 when the parties submitted their "Stipulation to Stay Proceedings and Extend Time so that the Parties Can Engage in Settlement Negotiations." Among other things, the parties asked for a thirty (30) day stay. On that same day, the undersigned issued an Order Granting the Stipulated Motion for a thirty (30) day stay and also directed BIS to file its rebuttal to Respondent's evidence in support of his defenses ten (10) days after the stay terminates.

On April 22, 2010, BIS filed its "Rebuttal to Respondent's Objections to Evidence and His Memorandum in Defense to Evidence Submitted by BIS."

As previously ordered on June 5, 2009, this matter is adjudicated on the record since neither party has demanded a hearing in writing. BIS has submitted its evidence in support of the charges in the Charging Letter consisting of approximately fifty (50) exhibits as well as its "Memorandum on Evidence Submitted in Support of Charges." Respondent submitted his "Memorandum in Defense to Evidence Submitted by BIS in Support of its Charges in the Charging Letter," and BIS submitted its "Rebuttal to Respondent's Objections to Evidence and His Memorandum in Defense to Evidence Submitted by BIS."

Attachment B

List of Exhibits

Agency Exhibits

Exhibits Supporting All Charges

A. Charging Letter of July 1, 2008 with copy of signed and dated certified mail receipt.

B. Denial Order of September 11, 2000 as published in the **Federal Register** of September 22, 2000, 65 FR 57,313, 57314.

C. BIS Requests for Admission.

D. Respondent's Response to BIS Requests for Admission.

E. Copy of BIS's Requests for Admission combined with Respondent's corresponding responses.

F. September 13, 2000 Letter to Respondent from Eileen Albanese, Director, Office of Exporter Services, Bureau of Export Administration (subsequently renamed Bureau of Industry and Security).

G. October 24, 2000 Letter from Respondent to under Secretary Reinsch.

H. December 21, 2000 Letter from Under Secretary Reinsch to Respondent.

I. August 21, 2009 Certified BIS Licensing Determination.

J. Respondent's Declaration filed In the Matter of Micei International (Docket No. 08–BIS–0005).

K. [Blank].

Exhibits Supporting Charges 1 and 8

L. June 9, 2003 e-mail message from Respondent to R. Uber at Hi-Tec Retail, Inc. with the subject line "New Order (received today)."

M. June 18, 2003 invoice from Hi-Tec Retail, Inc.

N. June 17, 2003 e-mail message from Respondent to R. Uber at Hi-Tec Retail, Inc. with the subject line "Fw: Attn: Regina."

O. June 24, 2003 e-mail message from R. Uber to Respondent with the subject line "RE: C/C Info for Orders."

P. June 24, 2003 e-mail message from S. Milic at Micei International to R. Uber at Hi-Tec Retail, Inc. with the subject line "Order status."

Q. June 24, 2003 Hi-Tec receipt.

R. July 2, 2003 Kuehne & Nagel invoice for the shipment of "Magnum boots" from Hi-Tec Sports to Micei International.

S. July 2, 2003 Kuehne & Nagel air waybill for the shipment of "Magnum boots" from Hi-Tec Sports to Mecei International.

Evidence Supporting Charges 2 and 9

T. Series of 3 e-mail messages, the first on July 8, 2003 from Respondent to Steve Thomas at Range Systems, the second on July 11, 2003 from Steve Thomas to Respondent, and the third on July 15, 2003 from Respondent to Steve Thomas and Mitch Petrie at Range Systems.

U. July 15, 2003 Range Systems invoice from the sale of two gun clearing devices to Micei International, Inc./Yuri Montgomery.

V. July 15, 2003 Range systems sales order billing Respondent for the purchase of two gun clearing devices.

W. July 18, 2003 air waybill issued to Range Systems by Kuehne and Nagel.

X. July 18, 2003 Kuehne & Nagel invoice for the shipment of "Guardian Clearing" from Range Systems to Micei International.

Y. October 24, 2008 facsimile from Range Systems to Special Agent Poole of annotated e-mail stating that the gun clearing devices were manufactured in the United States.

Z. November 2, 2009 Declaration of Steve Thomas.

AA. October 29, 2009 Declaration of Tiffany Godfrey.

Evidence Supporting Charge 3

BB. August 5, 2003 e-mail message from Respondent to F. Corsi at Galls, Inc., with the subject "Fw: Shoe/Boot Request (Attn: Francesca Corsi)."

Evidence Supporting Charges 4 & 11

CC. February 24, 2003 e-mail message from K. Taylor at Galls, Inc. with the subject "Lead for you * * *"

DD. August 5, 2003 e-mail message Respondent to F. Corsi at Galls, Inc. with the subject "Payment of $2562.44."

EE. September 5, 2003 Kuehne & Nagel air waybill for the shipment of "Oxford athletic shoes" and "Remote strobe tubes" from Galls, Inc. to Micei International.

FF. August 8, 2003 Ekopak invoice for the shipment of "Oxford athletic shoes" and "Remote strobe tubes" from Galls, Inc. to Micei International.

GG. September 5, 2003 Kuehne & Nagel invoice for the shipment of "Oxford athletic shoes" from Galls, Inc. to Micei International.

Evidence Supporting Charges 5 & 12

HH. July 31, 2003 e-mail message from Respondent to A. McCabe at Save On Promotional Products, Inc. with the subject "Fw: Polo/golf Shirts by TriMountain #138 Navy Blue (ATTN: MS. ANNE)."

II. August 1, 2003 Save On Promotional Products, Inc. invoice.

JJ. August 1, 2003 Save On Promotional Products, Inc. credit card authorization form completed by Respondent.

KK. August 4, 2003 e-mail message from Respondent to A. McCabe Art Save On Promotional Products, Inc. with the subject "info for text on boxes/paperwork."

LL. August 4, 2003 Mountain Gear Corp. sales order.

MM. August 13, 2003 Kuehne & Nagel air waybill for the shipment of "accessories" from Mountain Gear Corp. to Micei International.

NN. August 13, 2003 Kuehne & Nagel invoice for the shipment of "accessories" from Mountain Gear Corp. to Micei International.

Evidence Supporting Charges 6 & 13

OO. September 9, 2003 picking ticket from Maintenance Products, Inc.

PP. September 9, 2003 credit card receipt from Maintenance Products, Inc.

QQ. September 9, 2003 invoice from Maintenance Products, Inc.

RR. September 15, 2003 air waybill issued to first Chain Supply Company, a Division of Maintenance Products, Inc. by Kuehne and Nagel.

SS. September 15, 2003 invoice from Kuehne and Nagel, Inc./from Elk Grove Village, IL, to Kuehne and Nagel D.O.O.E.L. in Skipje, Macedonia.

TT. August 27, 2009 Affidavit of Gary Jones.

UU. October 28, 2003 declaration of Gary Jones.

Evidence Supporting Charges 7 & 15

VV. October 8, 2003 e-mail message from Respondent to F. Corsi at Galls, Inc. with the subject line "Payment for order #25473620/017—pls release/ship ASAP."

WW. October 8, 2003 e-mail message from Respondent to F. Corsi to F. Corsi at Galls, Inc. with the subject "VISA Authorisation."

XX. October 16, 2003 Estes Express Lines bill of lading.

Respondent's Exhibits

Respondent offered the Declaration from Sanja Milic of Micei and a purported e-mail from Range Systems. Since Respondent had not complied with Discovery, the Administrative Law Judge struck both proposed exhibits from the record in accordance with 15 CFR 766.9(d).

Attachment C

Rulings on Proposed Findings of Fact

Agency's Proposed Findings of Fact

Since neither party filed a demand for hearing, the Administrative Law Judge adjudicated this matter on the record in accordance with 15 CFR 766.6(c). The Respondent offered no proposed findings of fact and conclusions of law and did not dispute any of the Agency's proposed findings. Instead, Respondent offered many affirmative defenses which the Administrative Law Judge ruled on in this Recommended Decision and Order.

The Agency's proposed findings of fact submitted in support of the Charges in the Charging Letter are reliable, probative, and credible. They prove by the preponderance of the evidence that Respondent committed the violations alleged in the Charging Letter. Therefore, they are all Accepted and Incorporated into the Recommended Decision. The footnotes are accepted but not necessarily incorporated herein. The Agency's Proposed Findings of Fact are as follows:

Facts Relating to All Charges

1. The Denial Order issued against Montgomery on Sept. 11, 2000. Exh. B.

2. The Denial Order was in effect at all times from September 11, 2000 through and including January 22, 2009. Exh. B; Exh. E at Request/Response No. 2.

3. Montgomery received actual notice of the Denial Order via a letter on or about September 13, 2000 from BIS informing him of, and including a copy of, the Denial Order. Exh. F; *see also* Exh. E at Request/Response No. 3.

4. The Denial Order was published in the **Federal Register** on September 22, 2000 (65 FR 57,313). Exh. B.

5. The following month, by letter dated October 24, 2000, Montgomery wrote to then-Under Secretary William Reinsch requesting reinstatement of his "export privileges denied on September 11, 2000." Oct. 24, 2000 Letter, attached as Exh. G hereto; *see also* Exh. E at Request/Response No. 5.

6. Montgomery's request to reinstate his export privileges was denied by Under Secretary Reinsch on December 21, 2000. Dec. 12, 2000 Letter, attached as Exh. H hereto.

7. Montgomery had notice of the Denial Order no later than October 24, 2000, he knew that it was in effect at all times from September 11, 2000 until January 22, 2009, and he knew that he was subject to the Denial Order at the time of each of the transactions at issue. Exh. E at Requests/Responses Nos. 2, 5, 7m, 8m, 9h, 10m, 11m, 12m, and 13m.

8. Paragraph I of the Denial Order states that "Until January 22, 2009, Yuri I. Montgomery, also known as Yuri I. Malinkovski, 518 Howard Avenue, N.E., Olympia, Washington 98506, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as 'item') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations * * *." Exh. B, at Paragraph I.

9. The Denial Order specifically listed as non-exclusive examples of prohibited participation, "*[c]arrying on negotiations concerning,* or *ordering, buying,* receiving, using, *selling,* delivering, storing, disposing of, forwarding, transporting, *financing,* or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations * * *." Exh. B. (Emphasis added.)

10. The Denial Order similarly provided specifically that Montgomery was prohibited from "[b]enefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations." Exh. B.

11. Montgomery encouraged Micei "to use my credit card for Micei purchases as much as possible as it would allow me to accumulate United Airline miles through the use of my United Visa credit card * * *." Oct. 12, 2008 Montgomery Declaration, at ¶ 12.

12. On several occasions, Montgomery "made inquiries for Micei of the availability on some of the products" purchased for Micei. *Id.,* at ¶ 14.

Additional Facts Relating to Charges 1 and 8

13. On or about June 9, 2003, Montgomery placed an order with the Modesto, CA, division of Hi-Tec Retail, Inc. ("Hi-Tec"), a manufacturer and retailer of footwear, for 61 pair of Magnum boots. *See* June 9, 2009 e-mail message from Montgomery to Hi-Tec, attached as Exh. L hereto; June 18, 2003 invoice from Hi-Tec, attached as Exh. M hereto; Exh. E at Request/Response No. 7a.

14. Hi-Tec's initial attempt to charge Montgomery's credit card for the order was declined by the issuing bank, causing R. Uber at Hi-Tec to seek assistance from Montgomery. *See* June 24, 2003 e-mail message from R. Uber to Montgomery, attached as Exh. O hereto.

15. Because Montgomery had just arrived in Macedonia, he subsequently informed Hi-Tec through Sanja Milic (an employee of Micei) that the issue with his credit card had been resolved. June 24, 2003 e-mail message from S. Milic to R. Uber, attached as Exh. P hereto.

16. With the payment issue resolved, Montgomery paid for the boots with his credit card. Hi-Tec receipt, attached as Exh. Q hereto; Exh. E at Request/Response No. 7b.

17. Montgomery was reimbursed by Micei for the purchase of the boots. *See* Exh. E at Request/Response No. 7i.

18. The boots were intended to be exported to Macedonia. *See* June 17, 2003 e-mail from Montgomery to R. Uber, attached as Exh. N hereto; freight forwarder Kuehne & Nagel invoice, attached as Exh. R hereto; Kuehne &

Nagel air waybill, attached as Exh. S hereto; Exh. E at Request/Response No. 7e.

19. The boots were exported from the United States to Macedonia on or about July 2, 2003. *See* Exh. R; Exh. S.

20. Montgomery benefitted from the purchase of the boots, stating that, "[t]he charges made with my credit card directly attributable to the 'violations' alleged against Micei in the Charging Letter herein amount to approximately $15,000, which allowed me to accumulate approximately $15,000 miles with United Airlines." [13] Montgomery Declaration attached as Exh. J hereto, at ¶ 18; *see also* Exh. E at Request/Response No. 7j.

21. The boots are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

22. At the time of the transaction, Montgomery knew he was subject to the Denial Order. *See* Exh. E at Request/Response No. 7m.

Additional Facts Relating to Charges 2 and 9

23. At Micei's request, Montgomery contacted Range Systems, a New Hope, MN-based manufacturer of firing range equipment, by telephone "to inquire of the availability and price for their product * * *." Oct. 12, 2008 Montgomery Declaration, at ¶ 20.

24. In a July 8, 2003 e-mail inquiry Montgomery sent to Range Systems, Montgomery, describing himself as Micei's regional office, stated that "Currently we have one [bid] which calls for various products including 5–10 clearing traps such as your RRI Guardian (GDN) model. * * * Please quote the price of your RRR GUARDIAN (GDN) model and e/m me a complete price list if possible * * *" Series of e-mail messages between Montgomery and S. Thomas at Range Systems, attached as Exh. T hereto.

25. Range Systems provided the requested price quote in a reply e-mail sent on July 11, 2003. *Id.*

26. Montgomery placed an order for two of the gun clearing devices via an e-mail sent on July 15, 2003. *Id.; see also* Range Systems invoice, attached as Exh. U hereto; Range Systems sales order, attached as Exh. V hereto; Exh. E at Request/Response No. 8a.

27. Montgomery paid Range Systems, Inc. for the gun clearing devices with his VISA credit card. Exh. T; *see also* Exh. E at Request/Response No. 8b.

28. In his e-mail, Montgomery directed Range Systems to export the gun clearing devices to Micei in Macedonia and also requested that Range Systems e-mail shipping information concerning the weight and size of the boxes to him, and to two representatives (Iki Malinkovski and Sanja Milic) of Micei. Exh. T.

29. Montgomery was reimbursed by Micei for the purchase of the gun clearing devices. Exh. E at Request/Response No. 8i.

30. The gun clearing devices were intended to be, and were in fact, exported from the United States to Macedonia on or about July 18, 2003. *See* Exh. T; *see also* Air waybill issued to Range Systems, attached as Exh. W hereto; Kuehne and Nagel invoice, attached as Exh. X hereto; Exh. E at Request/Response No. 8e.

31. The gun clearing devices were manufactured in the United States. *See* Oct. 24, 2008 facsimile from Range Systems, attached as Exh. Y hereto. Range Systems' director of sales, who sent the Oct. 2008 facsimile to BIS, emphatically confirmed the country of origin for the gun clearing devices in a subsequent declaration, stating that each of the components used to manufacture the devices are of U.S. origin and that "[t]he Guardian clearing device has always been manufactured by Range Systems in Minnesota." Nov. 2, 2009 declaration of S. Thomas, attached as Exh. Z hereto; *see also* Oct. 29, 2009 declaration of T. Godfrey, attached as Exh. AA hereto.

32. The gun clearing devices are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

33. At the time of the transaction, Montgomery knew he was subject to the Denial Order. *See* Exh. E at Request/Response No. 8m.

34. Montgomery benefitted from the purchase of the gun clearing devices. *See supra* text accompanying note 8; *See also* Exh. E at Request/Response No. 8j.

Additional Facts Relating to Charge 3

35. On August 5, 2003, Montgomery sent an e-mail to Galls, Inc. ("Galls"), a Lexington, KY-based distributor of police and military equipment and apparel, identifying himself as Micei's U.S. operations and requesting a price quotation for 10,800 pair of shoes and boots. *See* Aug. 5, 2003 e-mail message from Montgomery to Francesca Corsi at Galls, attached as Ex. BB hereto; Exh. E at Request/Response 9a.

36. The boots and shoes were intended for export from the United States to Macedonia. In the e-mail requesting a quotation, Montgomery states that "the samples need to have arrived at our HQ in Macedonia by [August 14]." Exh. BB; *see also* Exh. E at Request/Response 9d.

37. Montgomery carried on negotiations concerning the shoes and boots, stating in an e-mail to Galls that Micei "will be putting up the performance bond at 20% in cash. Therefore, please make sure you quote the best possible price you can so we can win this one, too." Exh. BB.

38. The boots and shoes are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

39. At the time the request for quotation was made, Montgomery knew he was subject to the Denial Order. *See* Exh. E at Request/Response No. 9m.

Additional Facts Relating to Charges 4 and 11

40. Micei's account number at Galls is 25473620. Feb. 24, 2003 e-mail from K. Taylor at Galls to F. Corsi, attached as Exh. CC hereto.

41. On or about August 5, 2003, Montgomery contacted Galls to pay for a previously-placed order—order number 25473620/016. *See* Aug. 5, 2003 e-mail from Montgomery to F. Corsi, attached as Exh. DD hereto.

42. The items in that order number consist of shoes and remote strobe tubes.[14] *See* Kuehne & Nagel air waybill, attached as Exh. EE hereto; *see also* Ekopak invoice, attached as Exh. FF hereto.

43. In Montgomery's August 5, 2003 e-mail to Galls, Montgomery stated that he was advised to pay for the items with his credit card by Micei and he provided his credit card information to pay $2,562.44 for the order. Exh. DD; *see also* Exh. E at Request/Response No. 10b.

44. Montgomery was reimbursed by Micei for the purchase of the shoes and remote strobe tubes. *See* Exh. E at Request/Response No. 10i.

45. The shoes and remote strobe tubes were intended to be exported from the United States to Macedonia. *See* Exh. EE; Exh. FF; Exh. GG; Exh. E at Request/Response No. 10e.

46. The shoes and remote strobe tubes were exported from the United States to Macedonia on or about September 5, 2003. *See* Exh. EE; Exh. GG.

47. The shoes and remote strobe tubes are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

48. At the time of the transaction, Montgomery knew he was subject to the

[13] Montgomery's statement concerning the $15,000 in airline frequent flier miles relates to all seven transactions alleged in the Charging Letter.

[14] Remote strobe tubes are components of the flashing emergency lights found on vehicles such as police cars.

Denial Order. *See* Exh. E at Request/Response No. 10m.

49. Montgomery benefitted from the purchase of the oxford shoes and remote strobe tubes. *See supra* text accompanying note 8; *See also* Exh. E at Request/Response No. 10j.

Additional Facts Relating to Charges 5 and 12

50. On July 31, 2003, Montgomery placed an order for 150 shirts from Save On Promotional Products ("Save On"), located in Sandy, OR. *See* July 31, 2003 e-mail from Montgomery to A. McCabe at Save On, attached as Exh. HH hereto.

51. Upon receiving Montgomery's order, Save On, in turn, ordered the shirts from its supplier, Tri-Mountain/Mountain Gear Corp., located in Baldwin Park, CA. Mountain Gear sales order, attached as Exh. LL hereto.

52. Montgomery ordered the shirts for or on behalf of Micei and the shirts were intended for export from the United States to Macedonia. *See* Exh. HH; Exh. LL; Aug. 4, 2003 e-mail message from Montgomery to A. McCabe at Save On, attached as Exh. KK hereto; Save On invoice, attached as Exh. II hereto; Kuehne & Nagel air waybill, attached as Exh. MM hereto; Kuehne & Nagel invoice attached as Exh. NN hereto; *see also* Exh. E at Request/Response No. 11e.

53. Montgomery paid for the order with his credit card. Save On credit card authorization form, attached as Exh. JJ hereto; Exh. E at Request/Response No. 11b.

54. Montgomery was reimbursed by Micei for the purchase of the shirts. *See* Exh. E at Request/Response No. 11i.

55. The shirts were exported from the United States to Macedonia on or about Aug. 13, 2003. *See* Exh. MM; Exh. NN.

56. The shirts are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

57. At the time of the transaction, Montgomery knew he was subject to the Denial Order. *See* Exh. E at Request/Response No. 11m.

58. Montgomery benefited from the purchase of the shirts. *See supra* text accompanying note 8; *See also* Exh. E at Request/Response No. 11j.

Additional Facts Relating to Charges 6 and 13

59. Montgomery ordered two load binders, one ratchet strap, one binder chain, and one safety shackle, from Maintenance Products, Inc., located in Lowell, Indiana, on or about September 9, 2003. *See* Maintenance Products picking ticket, attached as Exh. OO hereto and Maintenance Products invoice, attached as Exh. QQ hereto; *see also* Exh. E at Request/Response No. 12a.

60. Montgomery paid Maintenance Products, Inc. for the load binders, ratchet strap, binder chain, and safety shackle with his VISA credit card. Credit card receipt, attached as Exh. PP hereto; *see also* Exh. E at Request/Response No. 12b.[15]

61. Montgomery was reimbursed by Micei for the purchase of the load binders, ratchet strap, binder chain and safety shackle. *See* Exh. E at Request/Response No. 12i.

62. The load binders, ratchet strap, binder chain, and safety shackle were intended to be, and were in fact, exported from the United States to Macedonia on or about September 15, 2003. *See* Air waybill issued to First Chain Supply Co., attached as Exh. RR hereto; Invoice from Kuehne and Nagel, attached as Exh. SS hereto; *see also* Exh. E at Request/Response No. 12e.

63. The load binders, binder chain, and safety shackle were manufactured in the United States. Aug. 27, 2009 affidavit of Gary Jones, attached Exh. TT hereto.[16] Maintenance Products' owner subsequently provided a declaration reaffirming that the load binders, binder chain, and safety shackle were manufactured in the United States and demonstrating that those items were manufactured in the United States and marked accordingly. Oct. 28, 2009 declaration of Gary Jones, attached as Exh. UU hereto.[17]

64. The load binders, ratchet strap, binder chain and safety shackle are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

65. At the time of the transaction, Montgomery knew he was subject to the Denial Order. Exh. E at Request/Response No. 12m.

66. Montgomery benefited from the purchase of the load binders, ratchet strap, binder chain and safety shackle. *See supra* text accompanying note 8; *See also* Exh. E at Request/Response No. 12j.

Additional Facts Relating to Charges 7 and 14

67. In October 2003, Montgomery, describing himself as Micei's North American operations, placed an order for uniform pants with Galls (Galls number 25473720/017). *See* Oct. 8, 2003 e-mail message from Montgomery to F. Corsi at Galls referring to "payment," attached as Exh. VV hereto.

68. Montgomery, again describing himself as representing Micei, paid for the order with his credit card. Oct. 8 2003 e-mail message from Montgomery to F. Corsi at Galls referring to "VISA authorization," attached as Exh. WW hereto; *see also* Exh. E at Request/Response No. 13b.

69. A bill of lading from freight forwarder Estes Express Lines states that the uniform pants were to be shipped from Liberty Uniform in Spartanburg, SC (Galls' supplier) to Micei in Macedonia. Estes bill of lading, attached as Exh. XX hereto; *see also* Exh. E at Request/Response No. 13e.

70. Montgomery was reimbursed by Micei for the purchase of the uniform pants. *See* Exh. E at Request/Response No. 13i.

71. The uniform pants are items subject to the Regulations. Section 734.3(a); *see also* BIS Licensing Determination, attached as Exh. I hereto.

72. At the time of the transaction, Montgomery knew he was subject to the Denial Order. *See* Exh. E at Request/Response No. 13m.

73. Montgomery benefited from the purchase of the uniform pants by earning airline frequent flier miles by making the purchase on his credit card. *See supra* text accompanying note 8; *See also* Exh. E at Request/Response No. 13j.

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[15] The invoice states that $21.52 of the $169.05 that Montgomery paid is for "freight." This fact demonstrates the inaccuracy of Montgomery's statement that he "never paid any shipping charges * * *" Oct. 12, 2008 Montgomery Declaration, at ¶ 30. The invoice and credit card receipt also contradict Montgomery's claim that the total amount charged to his credit card for the Maintenance Products transaction was $147.53 (which is, not coincidentally, the total amount minus the freight charge). *See* Oct. 12, 2008 Montgomery Declaration, at ¶ 18; Exh. PP; Exh. OO; Exh. K, at 6.

[16] According to Gary Jones, the ratchet strap was manufactured in China.

[17] This declaration demonstrates the inaccuracy of the assertion made in the Oct. 16, 2009 declaration by Sanja Milic, filed with Montgomery's opposition to BIS's motion for partial summary decision, that when the items Micei purchased from Maintenance Products arrived in Macedonia, all of the items were marked as being made in China.

Attachment D

Notice to the Parties Regarding Review by the Under Secretary

TITLE 15—COMMERCE AND FOREIGN TRADE

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

CHAPTER VII—BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

Section 766.22 Review by Under Secretary

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with Sec. 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. Sec. 2412(c)(3).

Certificate of Service

I hereby certify that I have served the foregoing *recommended decision & order* via overnight carrier to the following persons and offices:

Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230. *Telephone:* (202) 482–5301.

John T. Masterson, Jr., Esq., Chief Counsel for Industry and Security, Joseph V. Jest, Esq., Chief, Enforcement and Litigation, Parvin R. Huda, Esq., Senior Counsel, Eric Clark, Esq., Attorney Advisor, Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230. *Telephone:* (202) 482–5301.

Yuri I. Montgomery, 2912 10th Place West, Seattle, WA 98119. *Telephone:* (202) 283–4955.

Hearing Docket Clerk, USCG, ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022. *Phone:* 410–962–5100.

Done and dated October 28, 2010, in New York, New York.

Regina V. Maye,
Paralegal Specialist to the Administrative Law Judge.

[FR Doc. 2010–32563 Filed 12–29–10; 8:45 am]

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