

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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DEFENSE DISTRIBUTED;	)	
SECOND AMENDMENT	)	
FOUNDATION, INC.	)	
	)	
Plaintiffs-Appellants,	)	
	)	
CONN WILLIAMSON,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF STATE;	)	
MIKE POMPEO, SECRETARY, U.S.	)	
DEPARTMENT OF STATE;	)	
DIRECTORATE OF DEFENSE	)	
TRADE CONTROLS, Department of	)	
State Bureau of Political Military Affairs,	)	
	)	
Defendants-Appellees.	)	

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No. 18-50811

**UNOPPOSED MOTION FOR LEAVE TO FILE A DECLARATION  
TO CORRECT STATEMENT IN THE ANSWERING BRIEF**

The government respectfully moves for leave to file a declaration to correct a statement in the answering brief. The government’s initial answering brief, filed on August 9, 2019, stated that the government had paid plaintiffs \$39,581 as part of an earlier settlement between the parties. Answering Br. 1, 7. At the time of filing the answering brief, undersigned counsel believed that statement to be correct. After receiving plaintiffs’ reply brief, undersigned counsel learned for the first time that the Judgment Fund within the Department of the Treasury had not yet processed the

settlement payment for the plaintiffs. In the declaration that follows this motion, undersigned counsel explains the steps he took to ensure that the answering brief was accurate and the steps that the government took after receiving plaintiffs' reply brief to ensure that plaintiffs were promptly paid. The government accordingly seeks leave from the Court to file this declaration to correct the statement in the answering brief, and to reflect that the government had now paid the plaintiffs \$39,581 in settlement no later than September 23, 2019. Counsel for the plaintiffs-appellants has authorized us to state that this motion is unopposed.

### CONCLUSION

To clarify the status of the government's payment obligation under the parties' settlement, the government asks the Court for leave to file the following declaration, which corrects the statement concerning payment on page one of the government's answering brief.

Respectfully submitted,

SHARON SWINGLE

*/s/ Daniel Aguilar*

DANIEL AGUILAR

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*U.S. Department of Justice*

*950 Pennsylvania Ave., N.W.*

*Washington, D.C. 20530*

October 11, 2019

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U.S. DEPARTMENT OF STATE;	)	
MIKE POMPEO, SECRETARY, U.S.	)	
DEPARTMENT OF STATE;	)	
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TRADE CONTROLS, Department of	)	
State Bureau of Political Military Affairs,	)	
	)	
Defendants-Appellees.	)	

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No. 18-50811

**DECLARATION OF DANIEL AGUILAR**

I, Daniel Aguilar, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am over the age of eighteen and provide this declaration based on my personal knowledge and information.

2. I am an attorney in the U.S. Department of Justice who works on the Appellate Staff of the Civil Division. My primary responsibilities are litigating cases in the courts of appeals and consulting with agencies on potential or pending litigation.

3. I was assigned to represent the government in this appeal in July 2019, after the appellate attorney who had previously been representing the government left the Department of Justice. In learning about the case, I was informed that the government had complied with all portions of the parties' settlement agreement other than those that had been preliminarily enjoined by the district court in the Western District of Washington. *See Washington v. U.S. Dep't of State*, 318 F. Supp. 3d 1247 (W.D. Wash. 2018).

4. One of the provisions in the settlement agreement was for the government to pay plaintiffs \$39,581. After settlement agreements have been executed, Department of Justice attorneys submit payment requests to the Judgment Fund. *See* 31 U.S.C. § 1304. In my experience, payment is typically processed and delivered within several months. Here, the parties executed the settlement in June 2018. When I filed the answering brief, based on the passage of time and what I had been told about the government's compliance with the settlement agreement, it was my understanding that this payment had been made. My supervisor on this case, Sharon Swingle, shared this understanding.

5. Before I filed the answering brief, I shared a draft with the trial attorneys who litigated this case in the district court, negotiated and signed the settlement agreement, and requested payment from the Judgment Fund. Trial counsel and I discussed the draft and there were no concerns raised about the statement in the brief that the government had already fulfilled its payment obligation.

6. Plaintiffs filed their reply brief on the evening of August 30, 2019, and I reviewed it the morning of the next business day, September 3, 2019. The statements in the reply brief on pages one and two were the first indication I received that the settlement had not yet been paid. I immediately consulted with the affected agencies and trial counsel to determine whether plaintiffs were correct that they had not yet been paid. Based on those inquiries, I learned that plaintiffs had not yet been paid.

7. I was informed that trial counsel had submitted three requests to the Judgment Fund for payment, with the last request submitted in May 2019, which he believed had been processed for payment.

8. Trial counsel then consulted with the Judgment Fund in order to ensure payment. On September 23, 2019, plaintiffs' counsel informed us that they had received and deposited their settlement checks.

9. For these reasons, I wish to correct the erroneous statement in the government's answering brief that the government had complied fully with its obligation to pay the settlement amount. Although that obligation had not previously been completed, it now has been completed no later than September 23, 2019. The Department of Justice and its attorneys apologize for the misstatement and the confusion it caused.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 11, 2019.

By: /s/ Daniel Aguilar

Daniel Aguilar

Attorney, Civil Division, Appellate Staff

U.S. Department of Justice

### **CERTIFICATE OF SERVICE**

I certify that on October 11, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Daniel Aguilar*  
Daniel Aguilar

**CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with the requirements of Federal Rule of Appellate Procedure 27(d). This motion contains 930 words.

I further certify that I conferred with counsel for the plaintiffs-appellants, who do not oppose the motion.

*/s/ Daniel Aguilar*  
Daniel Aguilar