UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff v. PAUL A. ALLAIRE, G. RICHARD THOMAN, BARRY D. ROMERIL, PHILIP D. FISHBACH, DANIEL S. MARCHIBRODA, AND GREGORY B. TAYLOR, Defendants.	CIVIL ACTION NO: 03 CV 4087 (DLC) July 5, 2019

REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO Fed. R. Civ. P. 60(b)(4)

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ORAL ARGUMENT IS REQUESTED

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ARGUMENT

I. THE ORDER IS VOID UNDER RULE 60(b)(4) AND VIOLATES THE FIRST AMENDMENT

There is no merit in the SEC's argument that a Rule 60(b) motion cannot be used to set aside an unconstitutional gag order. Indeed, the SEC itself recently argued that "the proper vehicle is review of the consent judgment[] before the court[] that entered [it]," citing this very case, *SEC v. Allaire.*[1] Second Circuit precedent unequivocally holds that a judgment imposing a prior restraint on speech is "void" under 60(b)(4), *see Crosby v. Bradstreet Co*., 312 F.2d 483, 485 (2d Cir. 1963), just as the Supreme Court holds that an "injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights" and "must be vacated." *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 418–20 (1971).

The propriety of challenging the validity of the consent order gag though a Rule 60(b)(4) motion for relief from judgment is underscored by the collateral bar rule prohibiting a party from challenging "a district court's order by violating it. Instead, he must move to vacate or modify the order, or seek relief in this Court." *United States v. Cutler*, 58 F.3d 825, 832 (2d Cir. 1995). SEC has cited one non-binding case to the contrary, *U.S. v. Berke*, 170 F.3d 882 (9th Cir. 1999), and even there the court reserved decision on whether the gag could be enforced.

Crosby not only provides the procedural rule of decision, but its substance. The SEC's memorandum fails to cite a *single case or theory that provides this court with authority to sustain a governmentally imposed lifetime gag enforced through the threat of a reopened prosecution.* Not one. The Supreme Court held in *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68–71 (1963), that the First Amendment prohibits governments from imposing content-based prior restraints on speech enforced by threats of prosecution. *Bantam Books* (and subsequent

[1] *See* Cato Institute v. SEC, No. 1:19cv47, Dkt. 12 (D.D.C. May 10, 2019), p. 18.

cases[2]) reaffirm the substantive holding of *Crosby*. SEC's unconvincing attempt to cast *Crosby*'s vacatur of a 30-year-old prior restraint between private parties as resting merely on the rule that equity will not enjoin libel is belied by the opinion itself:

> *even assuming ... that it is proper for a federal court to enjoin a libel*, the order here … was not directed solely to defamatory … statements, but to 'any' statements … was in violation of the First Amendment …. was void, and under Rule 60(b)(4)" relief "must be granted."

312 F. 2d at 485.

Crosby represents the prevailing law in the circuits: a judgment violating the First Amendment is void under Rule 60(b)(4).[3] As a leading legal encyclopedia explains, "[s]ince a consent order is enforceable as a judicial decree, it is subject to a motion for relief from judgment like other judgments and decrees …. [A] judgment allegedly void on constitutional grounds is subject to attack at any time." 47 Am. Jur. 2d Judgments § 653; 49 C.J.S. Judgments § 506 ("A consent judgment may be set aside where it is void on constitutional grounds").[4] *Crosby*'s rationale applies with even greater force when *the government* is the party imposing it. [5]

The SEC's brief's facile and fallacious reasoning claims that because some constitutional rights are waivable, all are. This premise ignores First Amendment law that content-based

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[2] *See, e.g., Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003); *Penthouse Int'l, Ltd. v. McAuliffe*, 610 F.2d 1353, 1362 (5th Cir. 1980); *see also U.S. v. PHE, Inc.*, 965 F.2d 848 at 857 (1992).

[3] *CBS Inc. v. Young*, 522 F.2d 234, 241 (6th Cir. 1975) ("a prior restraint upon First Amendment freedoms is presumptively void."). *VTA, Inc. v. Airco, Inc.*, 597 F.2d 220, 225, 225, n.11 (10th Cir. 1979). (Rule 60 may void a consent order inconsistent with due process of law or that violates other fundamental constitutional rights); *Simer v. Rios*, 661 F.2d 655, 663 (7th Cir. 1981) ("where an error of constitutional dimension occurs, a judgment may be vacated as void."). U.S. district courts agree. *See, e.g., Anderson v. Dean*, 354 F. Supp. 639, 643-44 (N.D. Ga. 1973) (Speech ban "unconstitutional and void'); *Baker v. Joseph*, 938 F. Supp. 2d 1265, 1269 (S.D. Fla. 2013).

[4] The SEC also incorrectly alleges that Romeril does not identify a violation of due process, thus ignoring his claim that the gag is unconstitutionally vague, giving SEC unfettered discretion to reprosecute him if his speech creates the wrong "impression." Dkt. No. 24, 15-16. That this court might not accede to the SEC's reopening, as argued by the SEC, Dkt No. 31, 24, does not spare him the chilling effects of a threatened prosecution—all that is needed to establish a First Amendment violation. *See PHE, Inc. v. U.S. Dep't of Justice*, 743 F. Supp. 15, 26 (D.D.C. 1990) (threats of prosecution for constitutionally protected activity impermissible).

[5] The SEC's responsive papers *in this action* breach with impunity the "no-admit" aspect of the settlement on record. Although the settlements with Xerox and Barry Romeril were no-admit as well as no-deny, the SEC asserts in its Memorandum "[t]he ramifications of the Xerox *fraud* were significant . . . . Xerox's *fraud* reverberated in Congress." Dkt. No. 31, 5, 6, emphasis added. Not alleged fraud. Not fraud that the parties expressly agreed in 2003 was *not* proven. Just "fraud." Determined to save its self-conferred power of permanent control over the public narrative, the SEC has breached its solemn agreement entered in this court that Xerox and its executives admitted no fraud.

judicially enforced prior restraints are presumptively invalid, *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105 (1991) and are subject to strict scrutiny. By contrast, waiver of jury trial or rights of appeal necessary to settlement as discussed below, are not strictly scrutinized. To put it another way, the constitutional right at stake *matters* as does its nexus with settlement. The SEC's logic of treating all constitutional rights as equally waivable would allow a government to demand irrelevant provisions, like permanently granting the government future warrantless search rights in exchange for settlement.

II. THE GAG ORDER IMPOSES A PRIOR RESTRAINT ON PROTECTED SPEECH

A. SEC's Requiring Surrender of First Amendment Rights Is Unconstitutional

Romeril has not waived his First Amendment rights through this forced consent. The many cases cited by the SEC involve gags upheld between *private* parties and are therefore inapposite, for the free speech clause is "a guarantee only against abridgment by government." *Hudgens v. NLRB*, 424 U.S. 507, 513 (1976).[6] Governments, by contrast, may not penalize First Amendment rights by withholding a privilege or benefit. *See Speiser v. Randall*, 357 U.S. 513, 518 (1958) ("[A] discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech."); *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 211 (2013); *Anobile v. Pelligrino*, 303 F.3d 107, 124-25 (2d Cir. 2002). When government conditions its benefits or privileges on surrender of a constitutional right, those who accepted the "deal" may challenge the condition in court.[7] In *Louisiana Pac. Corp. v. Beazer Materials & Servs.*,

[6] *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 673 F.3d 192 (3d Cir. 2012) is thus readily distinguishable; unlike here, no government body demanded surrender of First Amendment rights. *cf. Malem Med., Ltd. v. Theos Med. Sys.*, 761 F. Appx. 762 (9th Cir. 2019) (privately negotiated non-disparagement agreement between commercial parties that settled a disparagement suit); *In re George F. Nord Bldg. Corp.*, 129 F.2d 173 (7th Cir. 1942) (privately negotiated agreement that required court pre-approval of reorganization communications to creditors before final decree enforced). *Paragould Cablevision, Inc. v. Paragould*, 930 F. 2d 1310 (8th Cir. 1991), is inapposite because at issue were bargained-for commercial speech limitations by a cable company for the term of its contract with the city for which it presumably received consideration, not non-negotiable conditions imposed by the government-as-enforcer. *Erie Telecomms.v. Erie*, 853 F. 2d 1084 (3d Cir. 1988) (Same distinction).

[7] *See Elrod v. Burns*, 427 U.S. 347, 360 n.13 (1976) (plurality opinion) (The argument that an unconstitutional condition is waived by accepting the benefit "swallows the rule …. [T]o accept the waiver argument is to say that

842 F. Supp. 1243, 1251, 1256-57 (E.D. Cal. 1994) the court held that the unconstitutional conditions doctrine applies to government offers of settlement. That case is also of interest in that the federal government (EPA) there took the position that the unconstitutional conditions doctrine should only apply to settlements "if the government seeks to compel waiver of a right other than judicial review"—which is just the distinction Romeril makes here. *Id. at* 1250.

The SEC argues that "consent judgments, which embody compromises, will always condition the 'benefit' of settlement on the relinquishment of rights, including the waiver of the right to a trial and an appeal." Dkt. 31, at 19. But this argument provides no justification for the suppression of Romeril's speech! Agreements with governmental actors to settle ongoing or imminent legal disputes have been held constitutional only where the right surrendered was one necessary to effectuate the finality that is the practical object of settlement.[8] Rights to jury trial, appellate review, counterclaim and cross-suit may be waived because they are inextricably intertwined with the dispute; cessation of legal process is essential to a negotiated settlement's goal of purchasing—or selling—peace. Thus, in *Town of Newton v. Rumery*, 480 U.S. 386 (1987) the Court held that a knowing and voluntary waiver of a right that might be raised in looming proceedings *arising out of the dispute* to be settled was valid. But a constitutional right surrendered as part of a settlement must have "a close nexus—a tight fit—between the specific interest the government seeks to advance in the dispute … and the specific right waived." *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1399 (9th Cir. 1991) (invalidating the "waiver" of a settling party's constitutional right to run for or serve in elective office extracted

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the government may do what it may not do."); *Agency for Int'l Dev.*, 570 U.S. at 211 (striking down content-based speech condition attached to federal funds even where plaintiffs had accepted such funds before the court challenge).

[8] *Leonard v. Clark*, 12 F.3d 885, 891 (9th Cir. 1993), cited by the SEC, is of no support to its view that government may condition the surrender of a First Amendment right upon settlement. The waiver was proposed by the settling party, not a condition imposed by the city. Similarly, *United States v. Int'l Brotherhood of Teamsters*, 931 F. 2d 177 (2d Cir. 1991) involved an agreement to publish union campaign literature agreed to by the qualified union representative, not a government condition forced upon the union.

by a school district as a condition to settle). Courts applying *Davies* have accordingly rejected conditions of government settlements that demand a greater surrender of constitutional liberty than is necessary to terminate litigation.[9] *Davies* provides the template for this court's ruling. The SEC's gag policy's demand of permanent surrender of First Amendment rights goes well beyond what is necessary to settle proceedings and accordingly violates the Constitution.[10]

The final—and fatal—flaw in the SEC's waiver arguments comes from its own brief, Dkt. 31, 4 when it argues that the Supreme Court reviews the validity of consent judgments as "compromises in which the parties give up something they might have won in litigation and waive their rights to litigation." *United States v. ITT Continental Baking Co*., 420 U.S. 223, 235 (1975). Indeed. The right that the consent order here purported to take from Romeril (the right to publicly question the SEC's allegations) was not one, win or lose, that he would have lost if the SEC had taken him to trial. Thus, as the SEC unwittingly admits in citing *ITT Continental*, the permanent no-public-denial clause is not a properly negotiable term of a settlement agreement.

The SEC further *admits* it exacted a unilateral, non-negotiable gag from Mr. Romeril. It represents to this court the "consent" is required by "a 1972 Commission policy, pursuant to which *the Commission will accept a settlement only if the defendant agrees to such a no-deny provision*." Dkt. 31, 3, emphasis added. The SEC's later sly intimation that Romeril "should not have bargained [his First Amendment rights] … away," Dkt 31 at 11, is belied by that binding

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[9] *See, e.g., Lil' Man In The Boat, Inc. v. City & Cty. of San Francisco*, No. 17-CV-00904-JST, 2017 WL 3129913, at *9–10 (N.D. Cal. July 24, 2017) (waiver of future disputes fails the close nexus test.); *Emmert Indus. Corp. v. City of Milwaukie*, 307 F. App'x 65, 67 (9th Cir. 2009) (litigation waiver and unlike here, not a dealbreaker for settlement.)

[10] *See United States v. Goodwin*, 457 U.S. 368, 372–78 (1982) ("while an individual certainly may be penalized for violating the law, he … certainly may not be punished for exercising a protected statutory or constitutional right."). The unconstitutional conditions doctrine similarly applies to plea agreements that require a defendant to admit to criminal acts other than those of which he has pled or been found guilty in order to receive a sentence reduction. *United States v. Oliveras*, 905 F.2d 623, 627–28 (2d Cir. 1990); *see also United States v. Ramirez*, 113 F.3d 1230 (2d Cir. 1997). *Warner v. Orange Cty. Dep't of Prob*., 968 F. Supp. 917, 923 (S.D.N.Y. 1997), *aff'd*, 173 F.3d 120 (2d Cir. 1999) (free exercise rights not waived). Plea bargain conditions may not effectively penalize protected speech. *PHE*, *supra*, at 26.

admission.[11] Consequently, the purported consent is a fiction. Romeril was not gagged pursuant to a "give-and-take" negotiation; he was strong-armed to surrender First Amendment rights through a codified agency policy, a systematic scheme prohibited by the Supreme Court. *United States v. Jackson*, 390 U.S. 570, 582 (1968). (disallowing programmatic, across-the-board government policies that infringe constitutional rights); *Bordenkircher v. Hayes*, 434 U.S. 357, 362–63 (1978). The coercive nature of the SEC's gag "consent" is recognized by jurists and former SEC insiders familiar with agency practices.[12] Romeril submitted, but he did not *consent*—at least not so far as the Constitution is concerned.

Indeed, Romeril's "waiver" of constitutional rights would not be upheld even under the relaxed standards governing such waivers in agreements between *private* parties unconstrained by the First Amendment, because "courts indulge every reasonable presumption against waiver" of constitutional rights. *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937).[13] The FTC recently announced that the very existence of "gag clauses" in private contracts violate the law, whether or not the drafters enforce them. *See* 15 U.S.C. § 45b. If federal regulatory policy treats gag clauses in consumer contracts as unlawful, the same logic extends *a fortiori* to the SEC.

B. Defendants Cannot Waive the First Amendment Rights of the Public

The First Amendment protects not only the speaker's free expression, but also "necessarily protects the right to receive it." *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943).[14] Romeril

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[11] *See also* James Valvo, *The CFTC and SEC Are Demanding Unconstitutional Speech Bans in Their Settlement Agreements,* Yale J. Reg. (2017) (SEC enforcers say the provision is non-negotiable).

[12] "Once the [SEC] charges a private party, the person is labeled publicly as a law breaker, even if … the legal theory is new and untested and faces severe and frequently career … ending sanctions. The private party must incur the costs, distress, and adverse publicity associated with a defense or succumb … the pressure to settle is overwhelming even when the SEC case lacks merit." Andrew N. Vollmer, Four Ways to Improve SEC Enforcement, 43 SEC. REG. L. J. 333, 336 (2015).

[13] Consent decrees are treated as contracts, *ITT Cont'l Baking*, *supra* at 238, and courts will not enforce contractual provisions that violate public policy. *Fomby-Denson v. Dep't of the Army*, 247 F.3d 1366, 1377-78 (Fed. Cir. 2001) (settlement agreement cannot silence defendant from making a truthful report about plaintiff to authorities.)

[14] *Kleindienst v. Mandel*, 408 U.S. 753, 762–63 (1972); *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969) (First Amendment must "preserve an uninhibited marketplace of ideas" and the public's "crucial" right of access).

has no power or standing to surrender the public's First Amendment rights, whose interests must also be considered under prevailing First Amendment doctrine.

The U.S. Supreme Court recognizes the "listener's stake," for example, in the context of prior restraints on government employees: "Government employees are often in the best position to know what ails the agencies for which they work; public debate may gain much from their informed opinions." *Waters v. Churchill*, 511 U.S. 661, 674 (1994) (plurality opinion); *see also U.S. v. NTEU*, 513 U.S. 454, 470 (1995). Because the 98% of defendants who settle with the SEC are likewise inarguably the most knowledgeable about its enforcement practices, "it is essential that they be able to speak out freely on such questions." *Id*. In *Harman v. City of New York*, 140 F. 3d. 111 (2d Cir. 1998), the Second Circuit affirmed that the rights of both the speaker and the public were violated by a city policy requiring its employees to pre-clear any contacts with the press, noting "free and open debate is vital … [from those] most likely to have informed and definite opinions" about government activity. *Id.* at 118. *Accord SEC v. CR Intrinsic Investors*, 939 F. Supp. 2d. 431, 443 (S.D.N.Y. 2013) (Marrero, J.). Dkt. 24, at 11. Romeril's gag—which forbids even truthful speech—violates this public interest.

III. THE SPEECH BAN SERVES NO COMPELLING GOVERNMENT INTEREST AND DOES NOT OPERATE BY THE LEAST RESTRICTIVE MEANS

The SEC asserts that "[e]ven if the no-deny provision is viewed through the lens of a judicially imposed restriction on speech against the speaker's will—rather than as a voluntary agreement not to speak—it is constitutional." Dkt. 31, at 18. The SEC's inapposite case law and four policy justifications for that proposition wither under review of the law and their logic.

The SEC attempts to import the wholly irrelevant law of temporary gag orders in ongoing proceedings or employee publication pre-clearance for classified information as its first line of argument in favor of "judicially imposed restriction on speech against the speaker's will."

Temporary gag orders, at times necessary to ensure fair trials in ongoing proceedings or prevent dissemination of confidential trial information, provide no support since both rationales for a gag are obviously inapplicable here.[15] No ongoing proceeding could possibly be prejudiced by Romeril's views about the merits of the SEC's prosecution 16 years ago. His views are *not* confidential or classified information that he could acquire only through the judicial proceeding or as a government employee; instead, they are his assessment of the facts, informed by his knowledge of his own conduct and of the SEC's public allegations against him.[16]

As a viewpoint-based restriction on speech, the SEC's gag provision must survive strict scrutiny: it is "presumptively unconstitutional and may be justified only if … narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). The SEC's suppression of Romeril's speech fails on both counts.

SEC's contention that allowing Romeril to speak about his settlement would "undermine the authority of the Court that approved it," attempts to bring the court in league with a SEC policy that the courts had no part in crafting or extracting from defendants, and which has come under sharp criticism from judges sitting in this district. Moreover, "the law gives 'judges as

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[15] SEC fails to cite controlling Second Circuit law that such orders should "be no broader than necessary to protect the integrity of the judicial system and the defendant's right to a fair trial." *United States v. Salameh*, 992 F.2d 445, 447 (2d Cir. 1993). The SEC's use of a Fifth Circuit cite to argue that "gag orders on trial participants are evaluated under a less stringent standard than gag orders on the press," ignores the standard it settles on: a gag is appropriate only if the "extrajudicial commentary … would present a 'substantial likelihood' of prejudicing the court's ability to conduct a fair trial." *United States v. Brown*, 218 F.3d 415, 425, 427 (5th Cir. 2000). *Brown* gets the SEC no closer to justifying Romeril's lifetime muzzle. *Snepp v. United States*, 444 U.S. 507 (1980), a classified information contractual obligation breached by a CIA official has no application here, and further did not restrain the expression.

[16] The SEC cites *In re Dow Jones & Co., Inc*., 842 F.2d 603, 609 (2d Cir. 1988), to assert "there is a substantial difference between a restraining order directed against the press—a form of censorship … and the order here directed solely against trial participants *and challenged only by the press*." *Id.* (emphasis added). Yet the SEC's memorandum omits the italicized portion of the sentence! In context, the temporary gag was upheld because the defendants refused to challenge that infringement themselves. *Id.* Romeril's gag both binds and is challenged by him. *Dow Jones* is obviously irrelevant. *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), likewise cuts against the Commission because it found a "substantial likelihood of materially prejudicing" an ongoing adjudicative proceeding. 501 U.S. at 1074–75. Temporary gags for ongoing proceedings only issue when the "'evil … [is] extremely serious and the degree of imminence extremely high.'" *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 844 (1978) (quoting *Bridges v. California*, 314 U.S. 252, 263 (1941)). That standard is in no way met here.

persons, or courts as institutions no greater immunity from criticism than other persons or institutions.'" *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839 (1978) (quoting *Bridges v. California*, 314 U.S. 252, 289 (1941) (Frankfurter, J., dissenting)).

The SEC argues that extracting gags "promotes a strong public policy favoring settlements to conserve resources." But "the First Amendment does not permit" government "to sacrifice speech for efficiency." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 795 (1988). The SEC's interests in efficiency are, in this case, no more "compelling" than those of any government actor that would prefer to enforce without heeding constitutional guarantees. In any event, the SEC's policy is not even rationally related, let alone "narrowly tailored," to promoting efficiency.[17] Invalidating this gag order will have no likely effect on settlements. If anything, defendants are likely to be more willing to settle if no gag is required.

The SEC next alleges that allowing settling parties to speak will "create confusion for investors and the market." Docket No. 31, 1. Current SEC policy insists upon "no-deny" as to every unproven allegation in their kitchen-sink complaints, though they rarely if ever prevail on *all* charged allegations at trial. Yet, settling defendants may not deny any charges so market information favors the SEC's most aggressive view. The reigning confusion is grossly pro-enforcement and is *entirely the creation of the SEC*. Setting aside this order will allow Mr. Romeril to correct this baked-in asymmetry providing investors and the market with more balanced and truthful views. Nor is a lifetime gag "narrowly tailored" for, or the least restrictive means of, avoiding confusion. If a settling defendant makes a public statement the SEC believes would "confuse" investors, the agency is free to issue a press release to correct the record.

[17] *Lake James Community Volunteer Fire Dep't v. Burke County*, 149 F. 3d 277 (4th Cir. 1998), by contrast, involved a government-as-contractor (not enforcer) provision that required a fire department that had failed to respond to fire-service calls to agree for the term of its renewed contract not to contest petitions filed by regions served. The waiver was limited in time and narrowly tailored in application and remedy to provide dependable fire protection.

Finally, the SEC fears that allowing defendants to criticize the agency's proceedings would "undermine confidence in the Commission's enforcement program by creating an unfair impression that there was no factual or legal basis for the Commission's enforcement action" or the relief obtained. Dkt. 31, 1, 22. The American Revolution did away with judicial declarations such as that of Lord Chief Justice Holt for the Queen's Bench: "[I]t is very necessary for all governments that the people should have a good opinion of it." *Queen v. Tutchin*, 14 State Trials 1095, 1128 (Q.B. 1704). "In the United States, [where] the executive magistrates are not held to be infallible," there is "a freedom in canvassing the merits and measures of public men, of every description." James Madison, *Report … Concerning the Alien and Sedition Laws* (1799).

CONCLUSION

Congress itself could not enact a law requiring people who wish to settle with the government never to question charges brought against them. Prosecutors do not gag parties who settle cases or even criminals who enter a plea. The idea that an administrative agency may assert a power to enforce a lifetime gag when Congress itself is forbidden to do so by the First Amendment requires this Court's prompt correction. Under the rule set forth in *Crosby* and as argued above, Barry Romeril's gag must be set aside as unconstitutional.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on this 5th day of July, 2019, I have served a copy of the above and foregoing on all counsel of record through the Court's CM/ECF system.

/s/ Margaret A. Little
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