

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

May 12, 2024

OT:RR:BSTC:PEN H337493 CP

Fines, Penalties and Forfeitures Officer
U.S. Customs and Border Protection
1901 Cross Beam Drive
Charlotte, NC 28217

Re: 2023-1501-900001-01; Grenades (Battle Born Munitions, Petitioner); 19 U.S.C.
§ 1595a(d), 22 U.S.C. § 401, and 18 U.S.C. § 981

Dear Sir:

This letter is in response to your memorandum of February 21, 2024, regarding a petition for relief submitted by the law firm of Winston & Strawn LLP ("petitioner's counsel") on behalf of Battle Born Munitions ("BBM" or "petitioner"). The petition was submitted in connection with the above-referenced case. The petitioner requested remission of a shipment of [REDACTED] M430A1 HEDP grenades ("grenades" or "property") that U.S. Immigration and Customs Enforcement ("ICE") seized. Our decision is set forth below.

FACTS

According to the file, on or about September 20, 2023, Simtex International Ltd. ("Simtex"), a United Kingdom-based freight forwarder, attempted to file Electronic Export Information ("EEI") on behalf of BBM for the export of a shipment of grenades to Ukraine through the Czech Republic. Simtex attempted to submit an EEI filing which included reference to export license number 058281440. The system generated a failure message stating that the declared export license number was unknown. ICE Homeland Security Investigations ("HSI") ultimately determined that the export license that Simtex had been provided by BBM was marked with two separate license numbers – 058281440 and 058281140 – and the license was fraudulent. The U.S. Department of State Directorate of Defense Trade Controls ("DDTC") advised that it had never issued any license with either of those numbers.

On or about October 11, 2023, ICE seized the property. According to the Notice of Seizure, the property was seized under the following provisions:

19 USC 1595a(d), 22 USC 401, 50 USC 4815, 15 USC 4811 - Failure to Obtain License or Authorization Under Export Control Reform Act/Merchandise

18 USC 981(a)(1)(A), 18 USC 1956(c)(7)(D), 18 USC 554 - Smuggling Out of the United States

19 USC 1595a(d), 22 USC 401, 18 USC 554, 22 USC 2778 - Export Smuggling

22 USC 401(a), 19 USC 1595a(d), 22 USC 2778, 22 CFR 127.6, 22 CFR 123.1 - Failure to Obtain Export License

22 USC 401(a), 19 USC 1595a(d), 22 USC 2778, 22 CFR 127.6, 22 CFR 127.2 - Use or Attempted Use of Any Export or Temporary Import Control Document Containing a False Statement or a Misrepresentation or Omission of Material Fact

Also, according to the Notice of Seizure, the property has an appraised domestic value of \$ [REDACTED]

PETITIONER'S CLAIMS

The petitioner submitted a petition, dated November 10, 2023.¹ The petitioner requested remission of the forfeiture and release of the property “without charging BBM any remission forfeiture amounts, fees, costs, or interest.” The petitioner made the following claims.

According to the petition, the violation occurred due to the actions of one of its employees, William Russel Brown (“Brown”), who “managed BBM’s DDTC compliance program from approximately 2019 until October 18, 2023.” The petitioner claimed that Brown provided the fictitious license numbers to Simtex without any knowledge by other BBM personnel and “[Brown] apparently created numerous fraudulent documents and correspondence ...

¹ CBP also received a submission from PACEM Defense (“PACEM”), the manufacturer of the property, in which PACEM stated that it “supports the petition of Battle Born Munitions.” In a subsequent email to the Fines, Penalties and Forfeitures Officer in Charlotte, North Carolina, PACEM stated the following, in part:

After the October 2023 seizure, PACEM made a new agreement for supplying the same munition to the same Ukrainian end user but not involving the U.S. Company implicated in the seizure, Battle Born Munitions (“BBM”). Based on this new agreement, PACEM applied for a new DDTC export license, aka DSP-5, on January 2, 2024. On January 23, 2024, DDTC approved this new DSP-5, for which we subsequently submitted an amendment application, aka DSP-6, on February 23, 2024. DDTC has not yet approved that DSP-6.

PACEM also stated that “its plan is to take custody of the munitions when released, and either return them to [its] factory in Perry, Florida, or to store them in another authorized storage facility, until DDTC approves [its] DSP-6 (or grants a new DSP-5) (emphasis added).”

In addition, CBP received a submission from the National Police of Ukraine, which confirmed that BBM was exporting the grenades to the National Police of Ukraine.

that served to keep BBM personnel in the dark about [his] failure to properly apply for and obtain the necessary license....” BBM stated that, upon being made aware of the violation, it “immediately retained counsel and submitted an Initial Notice of Voluntary Disclosure to DDTC as well as a voluntary self-disclosure to the Department of Justice’s National Security Division.”

BBM claimed that it submitted a new license application on October 24, 2023. BBM also stated it “is exploring options for a third party to act as the exporter of record after the third party obtains the requisite ITAR license.”

BBM claimed that remission with “imposition of little to no costs to BBM” is appropriate due to several factors. BBM claimed that it has cooperated “with CBP, DDTC, DOJ, and ICE” in an exceptional manner and pointed out that it submitted “Voluntary Disclosures to DDTC and DOJ.” Specifically, BBM stated that it “dispatched [Charles] Stetler, BBM’s Director of Operations and a former Deputy Sheriff with the Carson City, Nevada Sheriff’s Office, to Orlando, FL where Chief Brown resides.” Stetler accompanied HSI agents to Brown’s residence and “permitted ICE agents to take five (5) BBM devices that were previously issued to [Brown].” BBM also claimed that, through petitioner’s counsel, it “engaged in a dialogue with” an Assistant U.S. Attorney “to make her aware of the ongoing internal investigation and to provide potential documentary evidence, such as the Fraudulent Export License.”

The petitioner claimed that there is “clear documentary evidence of remedial measures undertaken to prevent future violations.” BBM stated that, “following discovery of the fraud, [it] began removing [Brown] from all access to BBM’s digital assets and accounts and terminated [Brown]’s employment.” “BBM appointed Stetler as BBM’s new Chief Compliance Officer in charge of all DDTC compliance” and Stetler issued new internal compliance procedures.

The petitioner claimed that it provided “substantial assistance in the investigation of another person,” namely Brown. Specifically, BBM referenced petitioner’s counsel’s contact with an AUSA.

The petitioner also stated that “the property is not needed by the DOJ as evidence” and claimed that it has a “prior good record / seizure history.”

LAW

Title 19 United States Code (“U.S.C.”) § 1595a(d) provides the following:

Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.

Title 22 U.S.C. § 401(a) provides the following:

(a) Seizure and forfeiture of materials and carriers. Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war or other articles in violation of law, or whenever it is known or there shall be probable cause to believe that any arms or munitions of war or other articles are intended to be or are being or have been exported or removed from the United States in violation of law, the Secretary of the Treasury, or any person duly authorized for the purpose by the President, may seize and detain such arms or munitions of war or other articles and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been or is being used in exporting or attempting to export such arms or munitions of war or other articles. ... All arms or munitions of war and other articles, vessels, vehicles, and aircraft seized pursuant to this subsection shall be forfeited.

See also, 22 Code of Federal Regulations § 127.6.

Pursuant to 22 U.S.C. § 2778, among other things, “the President is authorized to control the import and the export of defense articles and defense services.” The International Traffic in Arms Regulations (“ITAR”) in Parts 120 *et seq.* of Title 22, Code of Federal Regulations (“C.F.R.”) (22 C.F.R. Parts 120 *et seq.*) require parties to obtain a license from the Department of State, Directorate of Defense Trade Controls (“DDTC”), prior to the temporary import of defense articles and prior to the export of defense articles, including articles on the USML.² Title 22 C.F.R. § 123.1 provides the following, in part:

Any person who intends to export or to import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. The applicant must be registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter prior to submitting an application.

Title 22 C.F.R. § 127.2(a) provides the following:

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778, and 22 U.S.C. 2779.

² The United States Munitions List.

Pursuant to 22 C.F.R. § 127.2(b), “export or temporary import control documents include,” among other things, an EEI filing, “[a]n application for a permanent export, reexport, retransfer, or a temporary import license and supporting documents,” “[a]ny other document used in the regulation or control of a defense article, defense service, or brokering activity regulated by this subchapter,” and “[a]ny other shipping document that has information related to the export of the defense article or defense service.”

Title 18 U.S.C. § 554(a) provides the following:

(a) In general. Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, or both.

Pursuant to 13 U.S.C. § 304, parties who are required to submit export information prior to departure “shall file such information in accordance with any rule, regulation, or order issued pursuant to this chapter.” *See also*, 13 U.S.C. § 305, which addresses “penalties for unlawful export information activities,” and provides that U.S. Customs and Border Protection (“CBP”) is empowered to enforce the provisions of 13 U.S.C. § 301 *et seq.* The Foreign Trade Regulations (“FTR”), which were promulgated pursuant to 13 U.S.C. § 301 *et seq.*, are codified at Part 30 of Title 15, Code of Federal Regulations (“C.F.R.”) (15 C.F.R. Part 30). Pursuant to 15 C.F.R. § 30.2, EEI must be filed through the Automated Export System (“AES”) for all exports of physical goods unless there is an applicable exemption or exclusion. Generally, EEI must be filed prior to exportation. *See* 15 C.F.R. § 30.2(b). Title 15 C.F.R. § 30.6 lists the mandatory, conditional, and optional EEI elements. Among other things, the export license number is a conditional element. *See*, 15 C.F.R. § 30.6(b)(5). Pursuant to 15 C.F.R. § 30.71(b)(4), “[i]n addition to any other civil penalties specified in this section, any property involved in a violation may be subject to forfeiture under applicable law.”

Title 18 U.S.C. § 981 authorizes the seizure and civil forfeiture of any property that is the proceeds of or traceable to a specified unlawful activity (“SUA”). 18 U.S.C. § 981(a)(1)(A), (C). Title 18 U.S.C. § 1956(a)(1) makes it a crime to knowingly conduct, or attempt to conduct, a “financial transaction” with proceeds from SUA with specific intent to: (1) promote SUA, (2) conceal or disguise the source, origin, nature, ownership, or control of the proceeds, (3) evade reporting requirements, or (4) evade taxes. Sections 981 and 1956 of Title 18, United States Code may be used as authority to seize property other than monetary instruments if that property is traceable to an SUA. Under 18 U.S.C. § 1956(c)(7)(D), the term “specified unlawful activity” includes an offense under 18 U.S.C. § 554, “relating to smuggling goods from the United States.”

Once the government shows probable cause to detain and seize the goods, the burden shifts to the claimant. *See*, 19 U.S.C. § 1615.

ANALYSIS

The property was properly seized, and is subject to forfeiture, under the provisions of 19 U.S.C. § 1595a(d) and 22 U.S.C. § 401. There was an intended and attempted export of the property without the required license. *See*, 22 U.S.C. § 2778. In addition, incorrect EEI information was filed in violation of 13 U.S.C. § 301 *et seq.* and 15 C.F.R. Part 30.

The petitioner claimed that the violation occurred due to the rogue actions of a single employee. However, that employee was not just *any* employee, he was the employee empowered by BBM to *manage* “BBM’s DDTC compliance program....” BBM did not have a system in place to effectively monitor and audit Brown’s activities. According to HSI, its investigation revealed that Brown operated with no supervision or oversight. Among other things, other BBM personnel did not have full access to DDTC’s DECCS³ portal. Furthermore, Brown emailed the fraudulent export license to BBM executives who did not check Brown’s work or read the export license, which included two different license numbers. BBM also permitted the fraudulent license information to be provided to Simtex, who submitted it as EEI on BBM’s behalf.

Pursuant to the relevant mitigation guidelines,⁴ property subject to forfeiture may be remitted upon payment of 30 – 50% of the export value of the goods for a first offense with aggravating factors present. Also, according to the mitigation guidelines, “[t]he remission amount for License Violations should generally be at the higher end of the range.” “License Violations” include failure to obtain a required DSP-5 permanent export license.

We find, as a mitigating factor, that the petitioner has taken remedial measures. Specifically, the petitioner terminated Brown’s employment and implemented new internal compliance procedures. We also find the petitioner’s prior good record to be a mitigating factor. While BBM filed an “Initial Notice of Voluntary Disclosure to DDTC as well as a voluntary self-disclosure to the Department of Justice’s National Security Division,” we give those actions limited weight because they were filed only after the government was already aware of the violation. Similarly, we give little weight to the petitioner’s assistance in the investigation of another person, noting the significance of the fact that the person in question was a BBM employee at the time of the violation.

We find, as aggravating factors, that the circumstances suggest the intentional nature of the violation and that there were several violations in the same export transaction (*e.g.*, failure to obtain a license *and* incorrect EEI filing).

DECISION

After a careful review of the file, and consistent with the recommendation of HSI, the property may be remitted for **return to the petitioner’s domestic inventory** upon the following conditions, which must be met prior to release:

³ Defense Export Control and Compliance System.

⁴ <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Mitigation-Guidelines-Export-Control-Violations.pdf>.

- 1) Payment of \$ [REDACTED] which is equal to [REDACTED] % of the export value;
- 2) Submission of an executed Hold Harmless Agreement; and
- 3) Payment of any seizure and storage charges associated with the seizure.

If the petitioner intends to **export the property**, the following additional conditions must also be met prior to release:

- 4) Presentation to CBP of a valid DSP-5 export license authorizing export and, if applicable, a valid DSP-6 amended export license; and
- 5) Filing of accurate EEI.

The petitioner may designate another party (*e.g.*, PACEM) to receive the property on the petitioner's behalf provided that the relevant conditions are met. Please notify the petitioner of our decision, through petitioner's counsel. You may include a copy of this letter with your notification. You may also notify CBP and HSI personnel who were involved in this case.

Sincerely,

Paul Pizzeck

Digitally signed by Paul
Pizzeck
Date: 2024.05.12 12:28:12
-04'00'

Paul Pizzeck
Chief, Penalties and Seizures Branch
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection

EXHIBIT D



PACEM-SOLUTIONS.COM



PACEM-DEFENSE.COM

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September 27, 2024

U.S. Customs and Border Protection FOIA Appeals OFFICE Via Secure Release Portal

Subj: Appeal of September 26, 2024, Final Response in CBP-FO-2024-174897

Dear Sir/Madam:

On September 26, 2024, I received the enclosed “final response,” advising me that, “A search of CBP databases revealed that any responsive records are currently part of an open and pending investigation and/or CBP action. . . . Therefore, all pages of responsive records are being withheld in their entirety pursuant to Title 5 U.S.C. §552(b)(7)(A).” I hereby appeal.

On September 23, 2024, I re-submitted a prior expedited FOIA request that was not processed because, according to a September 22, 2024, e-mail, from cbpfoia@cbp.dhs.gov, it “was reviewed as a third-party request and did not include authorization that information on this individual, or business, can be released to you. All third-party FOIA requests must include a signed G-28 or G-639 form, or a signed statement from the individual verifying that his/her information may be released to you. . . .” In my September 23, 2024, re-submission, I clarified that this was not a third-party request on behalf of another entity, which prompted a phone call from a CBP FOIA employee who insisted that because I was requesting information that belonged to another party, it was a third-party request, and CBP could not release it unless the other party authorizes release. When I respectfully disagreed, explaining to her that I needed the information as a matter of “due process” in order to understand an August 22, 2024, decision by CBP that referenced other parties in CBP’s reasoning for denying my petition for remission, the CBP FOIA employee agreed to process my request further so if I was dissatisfied I could appeal.

The statutory subsection cited in the final response provides a FOIA release exception for: “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. §552(b)(7)(A). As the requested information is for due process purposes, the very next FOIA subsection that provides a FOIA release exception for, “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . would deprive a person of a right to a fair trial or an impartial adjudication,” 5 U.S.C. §552(b)(7)(B), is relevant. The final response on appeal withholding all responsive information deprives Pacem of its “right to . . . an impartial adjudication” in the ongoing administrative matter cited in the FOIA request.¹

Specifically, Pacem is requesting basic information in an ongoing adjudication of its November 16, 2023, petition for remission in CBP Case 2023150190000101, which CBP Case also includes

¹ FOIA defines “adjudication” to mean, “agency process for the formulation of an order.” 5 U.S.C. §551(7). An “order” is defined to mean, “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing.” 5 U.S.C. §551(6).



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a petition filed by Battle Born Munitions ("BBM"). Pacem had a contract to export the goods subject of the two interrelated petitions for remission. The enclosed Pacem petition incorporates by reference and attaches the BBM petition in the same adjudicatory CBP Case number.

On May 12, 2024, CBP issued the enclosed order granting BBM petition with conditions, inviting BBM to submit a supplementary petition. CBP advised Pacem that the deadline for BBM to submit a supplemental petition was extended to August 5, 2024, but CBP declined Pacem's request for whatever BBM submitted on or before August 5, 2024, instead suggesting that PACEM seek it through FOIA.

On August 22, 2024, CBP issued the enclosed order denying Pacem's petition on the grounds that: "After review of the file, based on the analysis above, we find that PACEM has failed to set forth a petitionable interest in the seized property that is superior to at least one other petitioner's interest pursuant to 19 C.F.R. § 171.1(c)(4) and PACEM's request for relief is **DENIED.**" CBP invited Pacem to submit a supplemental petition, the deadline for which has been extended to October 22, 2024, so that Pacem can obtain the information needed to understand the above-quoted CBP reasoning. The CBP paralegal assigned to Case No. 2023150190000101 suggested FOIA.

In any event, for Pacem to understand why its "petitionable interest" is inferior to "at least one other petitioner's interest," Pacem needs at least basic notice of what those other petitioner's interests are. Accordingly, Pacem appeals the denial of its FOIA request for what the enclosed August 22, 2024, CBP Decision addressed to PACEM refers to as: "CBP also received a submission from Battle Born Munitions ('BBM'). In addition, CBP received a submission from the National Police of Ukraine, which confirmed that the grenades were being exported to the National Police of Ukraine."

5 U.S.C. §552(b)(7)(B), quoted above, demonstrates Congress' intent that FOIA not be utilized to compromise Pacem's right to "an impartial [adjudication](#)," 5 U.S.C. §552(b)(7)(B),

Accordingly, I respectfully appeal, and reiterate my request for expedited processing.

Certification to Accompany FOIA Request for Expedited Processing

The undersigned certifies that the statements in this appeal and the underlying request for expedited processing, as well as the statements in this certification, are true and correct to the best of the undersigned's knowledge.

Yours truly,

Joseph E. Schmitz

ENCLOSURES: As stated

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

September 26, 2024

Sent via email to: joseph.schmitz@pacem-solutions.com

Re: FOIA Case CBP-FO-2024-174897

Joseph Schmitz
Pacem Solution International
2941 Fairview Park Drive, Ste 350
Falls Church, VA 22042

Dear Mr. Schmitz:

This is the final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) received on April 24, 2024. You requested records referenced in your response as a footnote pertinent to case file 2023150190000101.

A search of CBP databases revealed that any responsive records are currently part of an open and pending investigation and/or CBP action. CBP has considered the foreseeable harm standard when reviewing the record set and has applied the FOIA exemptions as required by the statute and the Attorney General's guidance¹. Therefore, all pages of responsive records are being withheld in their entirety pursuant to Title 5 U.S.C. §552 (b)(7)(A).

Additional information regarding the applicable exemptions and response can be found at the following link: <https://www.cbp.gov/document/guidance/exemption-definitions>.

Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

¹ Department of Justice (DOJ), "Freedom of Information Act Guidelines," March 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>

This completes the CBP response to your request. You may contact CBP's FOIA Public Liaison, Charlyse Hoskins, by sending an email via your SecureRelease account, mailing a letter to 90 K St, NE MS 1181, Washington DC, 20229 or by calling 202-325-0150. The FOIA Public Liaison is able to assist in advising on the requirements for submitting a request, assist with narrowing the scope of a request, assist in reducing delays by advising the requester on the type of records to request, suggesting agency offices that may have responsive records and receive questions or concerns about the agency's FOIA process.

If you are not satisfied with the response to this request, you have a right to appeal the final disposition. Should you wish to do so, you must file your appeal within 90 days of the date of this letter following the procedures outlined in the DHS regulations at Title 6 C.F.R. §5.9. Please include as much information as possible to help us understand the grounds for your appeal. You should submit your appeal via SecureRelease. If you do not have computer access, you may send your appeal and a copy of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office again about this matter, please refer to **CBP-FO-2024-174897**.

Sincerely,

FOIA Division
Privacy and Diversity Office

**IN THE DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CUSTOMS AND BORDER PROTECTION**

ALS, Inc. / PACEM Defense
4700 Providence Road
Perry, Florida 32347

and

Battle Born Munitions Inc.
3255 Kinney Ct.
Reno, Nevada 89511

Case No. 2023150190000101

PETITION FOR REMISSION OF FORFEITURE

In its November 10, 2023, Petition for Remission of Forfeiture in the above case number, Battle Born Munitions Inc., through Counsel, describes the seized property involved as, “[REDACTED] ([REDACTED]) units of M430A1 40mm High Explosive, Dual Purpose (HEDP) ammunition cartridges packaged in seven-hundred and eighty-two (782) separate packages (the ‘Seized Property’ or the ‘Property’).” PACEM Defense is the manufacturer of this Property, and hereby supports the petition of Battle Born Munitions, which is attached hereto as Exhibit A and incorporated herein by reference. Attached hereto as Exhibit B is the Notice of Seizure and Information to Claimants in the same above case number dated October 17, 2023, addressed to ALS, Inc / PACEM Defense, with the last page, “ELECTION OF PROCEEDINGS – JF FORM,” with #1 checked, “I request that CBP consider my petition . . . ,” dated, and signed.

In its Sale and Purchase of Goods Agreement with Battle Born Munitions (attached as Exhibit B to Battle Born Munitions’ attached petition, and attached hereto as Exhibit C), Battle Born Munitions purchased the seized Property at issue from PACEM Defense. In the same Sale and Purchase of Goods Agreement, Battle Born Munitions granted PACEM Defense “a security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever

located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.” Sale and Purchase of Goods Agreement, ¶5.

In its November 10, 2023, petition, Battle Born Munitions, without mentioning PACEM Defense by name, describes “reasons favoring remission of the Seized Property to BBM (or for onward export under a valid DDTC license issued either to BBM or to a third-party replacement exporter of record)” Battle Born Munitions Petition, p. 6. PACEM Defense is prepared to become that “third party replacement exporter or record.”

In the final paragraph of its Petition, Battle Born Munitions once again supports the release of the seized Property to “the third party” if for whatever reason it cannot be released to Battle Born Munitions: “BBM would respectfully request the Seized Property be released to BBM or the third party or onward exported consistent with a license, as appropriate, without charging BBM any remission forfeiture amounts, fees, costs, or interest.” Battle Born Munitions Petition, p. 9.

Accordingly, to the extent the Petition of Battle Born Munition is not granted forthwith, PACEM Defense respectfully requests that this Petition be granted, and Pacem Defense requests on its own behalf the immediate remission of forfeiture of the Seized Property without charging PACEM Defense any remission forfeiture amounts, fees, costs, or interest.

November 16, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joseph E. Schmitz', with a stylized flourish at the end.

Joseph E. Schmitz
Chief Legal Officer
PACEM Defense, LLC
4700 Providence Road
Perry, Florida 32347
(703) 992-3095
Joseph.Schmitz@pacem-defense.com

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CUSTOMS AND BORDER PROTECTION

Petition for Remission of Forfeiture

Case No.: 2023150190000101

Battle Born Munitions Inc.
3255 Kinney Ct.
Reno, NV 89511

Pursuant to 19 U.S.C. § 1618 and 19 C.F.R. §§ 171.1 and 171.2, Battle Born Munitions Inc. (“BBM”) hereby respectfully petitions Customs and Border Protection (“CBP”) for remission of forfeiture of BBM’s seized property. BBM also specifically requests CBP use its discretion, as described in 19 U.S.C. § 1618, to remit or mitigate the forfeiture, or to otherwise discontinue prosecution of the forfeiture, with little or no penalties, costs, fees, or interest charged to BBM due to BBM’s critical role, consistent with U.S. foreign policy, of facilitating transactions supporting Ukraine’s defense from the Russian Federation (“Russia”) war of aggression launched in February 2022, such as the underlying transaction related to the seized property.

I. Description of the Property Involved

The property involved is [REDACTED] ([REDACTED]) units of M430A1 40mm High Explosive, Dual Purpose (HEDP) ammunition cartridges packaged in seven-hundred and eighty-two (782) separate packages (the “Seized Property” or the “Property”).

II. Date and Place of the Seizure

The Property was seized on October 11, 2023 at Leland, North Carolina. (**Exhibit A** – Notice of Seizure and Information to Claimants).

III. Proof of Petitionable Interest in the Seized Property

BBM's proof of its ownership interest is attached hereto as **Exhibit B** (Sale & Purchase of Goods Agreement No.: BBM23-001).

IV. Background

A. BBM and Its Role in Supporting Ukraine's Defense against Russia's War of Aggression

BBM is a professional services firm that provides four (4) principle services that ultimately facilitate the international shipment of defense articles to support the U.S. and its allies around the globe: (i) BBM employs or otherwise affiliates with knowledgeable veterans of multiple U.S.-allied militaries that have the expertise and experience to vet potential arms transfers to determine if the defense articles requested by potential end-users will ultimately be compatible with the end-user's weapons platforms, equipment, and needs; (ii) BBM is registered with the U.S. Department of State's ("State") Directorate of Defense Trade Controls ("DDTC") (*see* **Exhibit C** – DDTC Registration Letters) and complies with regulations administered by the U.S. Department of Justice's ("DOJ") Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to apply for defense brokering activities approvals, defense articles exports, and defense articles permanent imports under those registrations, as appropriate, to facilitate various transactions supporting the North Atlantic Treaty Organization ("NATO"), its members, and its allies; (iii) BBM provides up-front financing for transactions through lines of credit it obtains from time to time; and (iv) BBM provides insurance for transactions through its marine cargo insurance policy covering defense articles relevant to BBM's transactions. (*See* **Exhibit D** – Affidavit of Frederick A. Hees).

BBM coordinates with a number of governmental and business organizations both inside and outside the U.S. to ensure appropriate defense articles from around the world can be provided

to Ukrainian government end-users for their self-defense against Russia’s war of aggression. In such Ukraine-related transactions, BBM generally employs all four of its key services, as described above. Because some of these activities fall under the International Traffic in Arms Regulations (“ITAR”) definition of “brokering activities,” (*see* 22 C.F.R. § 129.2(b)), BBM’s practice is to obtain prior approvals from DDTC to engage in such brokering activities, and, of course, to obtain licenses for export from DDTC or licenses to permanently import from ATF, as necessary, depending on BBM’s role in each transaction. (*See Exhibit D*).

Russia’s war of aggression against Ukraine created a shortage of many types of ammunition in Europe. BBM’s role is vital to supporting the Ukrainian defense because there are few U.S.-based organizations with an equivalent combination of international defense relationships, technical defense articles expertise, access to sufficient capital, and the requisite insurance for such high-risk activities that are typically difficult and expensive to insure. (*See Exhibit D*). Indeed, the Seized Property was intended for end-user the National Police of Ukraine. (*See Exhibit E – Nontransfer and Use Certificate (DSP-83)*).

B. BBM’s Discovery That DSP-5 Export License for the Seized Property Was Fraudulent

William Russell Brown, U.S. Army CW5 (Ret.) of 5985 Bent Pine Dr. #1601, Orlando, FL 32822 (“Chief Brown”) managed BBM’s DDTC compliance program from approximately 2019 until October 18, 2023. BBM President Frederick Adolph Hees (“Hees”) hired Chief Brown specifically due to Chief Brown’s experience working on the logistics of arms transfers at U.S. Central Command in Tampa, FL. (*See Exhibit D*). In late September 2023, BBM personnel including Hees, BBM Director Mark William Tofanelli (“Tofanelli”), and BBM Director of Operations Charles “Buck” Stetler (“Stetler”) began to coordinate with Chief Brown to engage

DDTC regarding what was then communicated by Chief Brown to Hees, Tofanelli, and Stetler to be a technical error in the Defense Export Control and Compliance System (“DECCS”). According to Chief Brown – who was then the sole BBM employee with the required full access to the BBM profile on DECCS – the license required for export of the Seized Property had disappeared completely from DECCS after previously being issued. (See **Exhibit F** – Affidavit of Mark W. Tofanelli).

Efforts by Hees, Tofanelli, and Stetler to confirm the root cause of and fix the then-believed disappearance of a valid DDTC license for export of the Seized Property ultimately culminated in a visit by Tofanelli and Chief Brown to Kelli Long (“Long”) of State’s Bureau of Political-Military Affairs in Washington, D.C. Believing documentation provided by Chief Brown was legitimate, Tofanelli provided Long approximately forty (40) pages of documents, including the purported DDTC DSP-5 number 058281440 (which later investigation revealed was also labeled under number 058281140) for permanent export of the Seized Property (the “Fraudulent Export License”). Throughout the visit, Chief Brown maintained there must be an error in DECCS leading to a disappearance of the Fraudulent Export License. Two (2) days later, on the morning of October 18, 2023, Tofanelli learned from DDTC employee Michael Boyd (“Boyd”) that an email message Chief Brown provided to his BBM colleagues regarding the Fraudulent Export License and purportedly sent by Boyd could not be real as Boyd was out on leave on the day the email was marked as having been sent. (See **Exhibit F**).

Through the revelation by Boyd on October 18, 2023, BBM discovered that Chief Brown apparently created numerous fraudulent documents and correspondence over the course of the preceding approximately four (4) months that served to keep BBM personnel in the dark about Chief Brown’s failure to properly apply for and obtain the necessary license to export the Seized

Property. (See **Exhibit F**). Among those documents was the Fraudulent Export License. BBM immediately retained the undersigned outside counsel the same day, as described in BBM's Initial Notice of Voluntary Disclosure submitted to DDTC (and submitted as a voluntary self-disclosure to DOJ's National Security Division ("NSD")) on October 18, 2023. The Initial Notice of Voluntary Disclosure was later revised on October 27, 2023. (See **Exhibit G** – Revised Initial Notice of Voluntary Disclosure). In accordance with the voluntary disclosure provisions under the ITAR, (see 22 C.F.R. § 127.12), BBM plans to submit a final narrative report of its internal investigation to DDTC and DOJ as soon as possible. Preliminary findings indicate the apparent fraud does not pre-date approximately July 2023. Additionally, BBM's review indicates all the underlying contractual documents and end-use statements supporting the export of the Seized Property are valid. Accordingly, BBM submitted all those valid documents along with a new license application to DDTC on October 24, 2023. (See **Exhibit H** – DSP-5 License Application for Permanent Export of the Seized Property with Attachments Submitted on October 24, 2023).¹

C. Efforts to Obtain Third Party Authorized Participation in the Underlying Transaction to Ensure Ukraine's Critical Defense Needs Will Be Met

Due to CBP's seizure of the Property and Ukraine's critical need for the Property, BBM is exploring options for a third party to act as the exporter of record after the third party obtains the requisite ITAR license.

¹ The DSP-5 license application carries an October 26, 2023 date from the date when it was downloaded from DECCS, but it was originally submitted on October 24, 2023. DECCS apparently updates the date each time the application is downloaded, even if it was already submitted.

V. Remission/Mitigation Considerations

CBP’s July 2019 “Forfeiture Remission Guidelines for Export Control Violations”² (the “Mitigation Guidelines”) provide a non-exhaustive list of factors considered when CBP rules on remission petitions. Below, we have examined the reasons favoring remission of the Seized Property to BBM (or for onward export under a valid DDTC license issued either to BBM or to a third party replacement exporter of record) and favoring imposition of *little to no cost* to BBM for the remission in terms of forfeiture remission amounts, fees, interest, and costs.

A. Exceptional Cooperation with CBP, DDTC, DOJ, and ICE, Including Voluntary Disclosures to DDTC and DOJ

As described above, upon discovery of the Fraudulent Export License on October 18, 2023, BBM retained the undersigned counsel who submitted an Initial Notification of Voluntary Disclosure to DDTC and DOJ NSD. (See **Exhibit G**).

That same day, BBM dispatched Stetler, BBM’s Director of Operations and a former Deputy Sheriff with the Carson City, Nevada Sheriff’s Office, to Orlando, FL where Chief Brown resides. Stetler arrived in Orlando at approximately 1:00 A.M. on October 19, 2023 and at 7:00 A.M. that same day met with agents from the U.S. Department of Homeland Security’s Immigrations and Customs Enforcement (“ICE”). Stetler submitted to a brief interview conducted by the ICE agents after which Stetler and the agents travelled to Chief Brown’s residence at approximately 8:00 A.M. During the visit with Chief Brown, Stetler permitted the ICE agents to take five (5) BBM devices that were previously issued to Chief Brown: two BBM-issued (2) mobile phones and three (3) BBM-issued laptop computers. (See **Exhibit I** – Affidavit of Charles Stetler).

² Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Mitigation-Guidelines-Export-Control-Violations.pdf>.

The undersigned counsel has also engaged in a dialogue with Assistant U.S. Attorney Barbara Kocher (“AUSA Kocher”) to make her aware of the ongoing internal investigation and to provide potential documentary evidence, such as the Fraudulent Export License.

BBM anticipates continued cooperation.

B. Clear Documentary Evidence of Remedial Measures Undertaken to Prevent Future Violations

By approximately 10:43 A.M. Eastern Time on October 18, 2023, following discovery of the fraud, BBM began removing Chief Brown from all access to BBM’s digital assets and accounts and terminated Chief Brown’s employment. (See **Exhibit F**). BBM appointed Stetler as BBM’s new Chief Compliance Officer in charge of all DDTC compliance. On October 26, 2023, Stetler issued internal compliance procedures mandating the below list of requirements for every submission to ATF, DDTC, the U.S. Department of Commerce’s Bureau of Industry and Security, NATO, and the System for Award Management:

- Four Eye Rule – two separate members will write and review the documentation for submission; one of those who MUST review is Charles “Buck” Stetler, Chief Compliance Officer.
- A third member of BBM must “Approve” any DDTC submission in DECCS once completed.
- Multiple members of BBM must review any published license on the DECCS portal and must have a valid ‘IdenTrust’ certificate.
- ALL licenses and certificates that have been approved or emailed back from a government agency must be shared with the BBM team from a ‘forwarded email’ to show the validity and ‘credibility’ of the license that is attached to the email. The original email from the sender must be traceable.

(See **Exhibit J** – Oct. 19, 2023 Memorandum of Understanding).

C. Substantial Assistance in the Investigation of Another Person

As described above, the undersigned counsel is in ongoing contact with AUSA Kocher and has provided her with potential documentary evidence of fraudulent activity by Chief Brown.

BBM intends to continue its cooperative stance and believes its final narrative report to DDTC and DOJ NSD will be of assistance to the government's investigation of Chief Brown.

D. The Seized Property Is Not Needed by the DOJ As Evidence

Seized Property can be of great value to the government in the prosecution of suspects and indicted persons. DOJ has already informed BBM through the undersigned counsel that it has no need for the Seized Property as evidence.

E. Prior Good Record / Seizure History

BBM has had no goods seized in the past two (2) years. (See **Exhibit D**). The Mitigation Guidelines state confirm that a prior good record is a mitigating factor.³ (Mitigation Guidelines at 6).

V. **Argument for No Imposition of a Forfeiture Remission Amount**

The Mitigation Guidelines provide for the imposition of “forfeiture remission amounts,” payment of which is a prerequisite for remission of seized goods upon a favorable remission decision by CBP. CBP should not require payment of a forfeiture remission amount in this case on account of BBM's responsible behavior historically as well as in the immediate hours and days following discovery of the likely existence of a Fraudulent Export License, the same day voluntary disclosure of the same, the subsequent confirmation of its fraudulent nature in a Revised Initial Notice of Voluntary Disclosure, and BBM's immediate and significant cooperation with law enforcement agencies.

³ While BBM did have an import shipment under Entry No. 344-10380934 seized more than two (2) years ago on Oct. 19, 2021 (Case No. 2022010130000201), CBP reduced its initial pre-penalty determination of ten thousand dollars (\$10,000.00) to a mere one thousand dollars (\$1,000.00). In the letter announcing the mitigation, CBP acknowledged BBM's petition, which clarified (i) the third-party supplier substituted an alternative source “without BBM's knowledge,” which resulted in an incorrect Country of Origin marking; (ii) BBM immediately submitted a new ATF permanent importation Form 6 listing the correct Country of Origin; and (iii) and BBM quickly remarked the substituted product with the correct Country of Origin. (See **Exhibit K** – Jan. 27, 2022 Petition Decision). In other words, the detention resulted from actions outside the knowledge and control of BBM. The reduced penalty of just one thousand dollars (\$1,000.00) reflects CBP's acquiescence to the alleged violation's non-egregious nature.

Title 19 U.S.C. § 1618 allows CBP, upon “find[ing] the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture,” to “remit or mitigate the same upon such terms and conditions as [it] deems reasonable and just, or [to] order discontinuance of any prosecution related thereto.” Further, the Mitigation Guidelines note CBP is empowered to decide that in cases where a voluntary disclosure is submitted, such “disclosure may serve to remit the forfeiture in full, *i.e.*, without payment of a forfeiture amount.” (Mitigation Guidelines at 6).

For the foregoing reasons CBP should not charge BBM a forfeiture remission amount.

VI. Request for Remission of Seizure of the Property at Minimal or No Cost to BBM

For the above-described reasons, BBM hereby respectfully requests immediate remission of forfeiture of the Seized Property without charging BBM any remission forfeiture amounts, fees, costs, or interest. In the event a valid license for export of the Seized Property is issued by DDTC to BBM or to a third party replacement exporter of record (as described above) before any remission of the Seized Property, BBM would respectfully request the Seized Property be released to BBM or the third party or onward exported consistent with a license, as appropriate, without charging BBM any remission forfeiture amounts, fees, costs, or interest.

Respectfully submitted,

Dated: November 10, 2023

A handwritten signature in black ink, reading "Cari N. Stinebower". The signature is fluid and cursive, with the first name "Cari" being more prominent and the last name "Stinebower" written in a continuous script.

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