

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Robert Herman Fleischer, 20003 N. 23rd Avenue, Apt. 250, Phoenix, AZ 85027

On August 4, 2017, in the U.S. District Court for the District of Arizona, Robert Herman Fleischer ("Fleischer") was convicted of violating Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (2012) ("AECA"), by intentionally attempting to willfully and knowingly export and cause to be exported from the United States to Mexico 2,999 rounds of 7.62 x 39mm caliber ammunition, manufactured by Igman Arsenal, which are designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Fleischer was sentenced to 21 months in prison, with credit for time served, three years of supervised release, and a special assessment of \$100. Fleischer was also placed on the U.S. Department of State Debarred List.

The Export Administration Regulations ("EAR" or "Regulations") are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS").¹ Section 766.25 of the Regulations provides, in pertinent part, that the "Director of [BIS's] Office of Export Enforcement, in consultation with the Director of [BIS's] Office of Exporter Services, may deny the export privileges of any person who has been convicted of a violation of any of the statutes set forth at 50 U.S.C. 4819 (e)(1)(B)," ²

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2021). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) ("EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) ("IEEPA"). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 ("ECRA"). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial

including Section 38 of the AECA. 15 CFR 766.25(a).³ The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d). In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person has an interest at the time of his/her conviction.⁴

BIS received notice of Fleischer's conviction for violating Section 38 of the AECA, and pursuant to Section 766.25 of the Regulations, has provided notice and an opportunity for Fleischer to make a written submission to BIS. BIS has not received a written submission from Fleischer.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Fleischer's export privileges under the Regulations for a period of seven years from the date of Fleischer's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued license in which Fleischer had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until August 4, 2024, Robert Herman Fleischer, with a last known address of 20003 N. 23rd Avenue, Apt. 250, Phoenix, AZ 85027, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives ("the Denied Person"), 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, 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,

orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

³ As codified at the time of the underlying conviction at issue, Section 11(h)(1) of the EAA, as amended, provided that: "No person convicted of a violation of this chapter (or any regulation, license, or order issued under this chapter), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701, *et seq.*], section 793, 794 or 798 of title 18, section 783(b) of this title, or section 2778 of title 22 shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this chapter for a period of up to 10 years from the date of conviction. The Secretary may revoke any export license under this chapter in which such person has an interest at the time of conviction." 50 U.S.C. 4610(h)(1).

⁴ See notes 1 and 3, *supra*.

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 engaging 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 from any other activity subject to the Regulations.

Second, 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.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Fleischer by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Fleischer may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Fleischer and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 4, 2024.

John Sonderman,

Director, Office of Export Enforcement.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Si Mong Park, 10386 East Painted Turtle Lane, Tucson, AZ 85747; Order Denying Export Privileges

On September 14, 2020, in the U.S. District Court for the District of Columbia, Si Mong Park (“Park”) was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778) (“AECA”). Specifically, Park was convicted of knowingly and willfully exporting and causing to be exported from the United States to South Korea, defense articles, that is, technical data related to launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines, and technical data related to enumerated aircraft and aircraft related articles, which are all designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Park was sentenced to 21 months in prison, 36 months of supervised release and a \$100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, Section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (“BIS”)

licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Park’s conviction for violating Section 38 of the AECA, and has provided notice and opportunity for Park to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”). 15 CFR 766.25.² BIS has not received a written submission from Park.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Park’s export privileges under the Regulations for a period of seven years from the date of Park’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Park had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until September 14, 2027, Si Mong Park, with a last known address of 10386 East Painted Turtle Lane, Tucson, AZ 85747, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), 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, 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 engaging 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

from any other activity subject to the Regulations.

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

A. Export, reexport, or transfer (in-country) 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.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Park by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Park may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Park and shall be published in the **Federal Register**.

¹ ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Park’s conviction post-dates ECRA’s enactment on August 13, 2018.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2021).

³ The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).