

15-1080 (L)
United States v. Burden

KEARSE, *Circuit Judge*, concurring:

I concur in the majority opinion, although I find it difficult to interpret the stipulations in which these federal habeas corpus petitioners agreed to forgo review of their new sentences as not encompassing all facets of their new sentences. Each petitioner agreed that:

[I]f the Court adopts this stipulation and imposes an incarceration term within the agreed-upon guideline range of 262–365 months' incarceration, the petitioner waives and gives up his right to appeal and/or collaterally attack *any* alleged error *in connection with the re-sentencing itself* and waives and gives up any right to raise *any* claim on direct appeal or collateral attack related to his remaining, underlying convictions *or anything* that occurred in this case prior to the re-sentencing itself

(Emphases added.)

I regard this language—“any alleged error in connection with the re-sentencing” and “anything that occurred in this case prior to the re-sentencing”—as encompassing everything in connection with petitioners' resentencings and everything in the case that preceded their resentencings. However, because in some cases involving stipulations whose language was slightly less broad, *see, e.g., United States v. Cardona*, 612 F. App'x 622 (2d Cir.

2015); *United States v. Turloukis*, 558 F. App'x 112, 113, 115 (2d Cir. 2014), we have found no waiver as to unmentioned aspects of the sentence, I do not dissent.