UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. KHALED ELSAYED MOHAMMAD ABO AL DAHAB a.k.a. KHALED ELSAYED MOHAMMAD-ABO ALDAHAB a.k.a. KHALED ELSAYED ALI MOHAMMAD a.k.a. KHALED ELSAYED MOHAMED a.k.a. KHALED E. MOHAMED a.k.a. KHALED MOHAMED, Defendant.	Civil Action No. 1:15-cv-514

MOTION FOR SUMMARY JUDGMENT

COMES NOW, the United States of America, pursuant to Federal Rule of Civil Procedure 56, and hereby moves this Court for an order granting summary judgment in its favor. The record in this case shows that no genuine issue of material fact exists as to whether this Court should revoke and set aside the order admitting Defendant to citizenship and cancel his certificate of naturalization. Accordingly, the Government is entitled to judgment as a matter of law.

In support of this motion, the Government respectfully refers the Court to the accompanying memorandum of points and authorities and to the accompanying statement of material facts as to which there is no genuine issue. A draft order reflecting the requested relief is also attached.

Date: October 31, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation

s/ Christopher W. Dempsey
CHRISTOPHER W. DEMPSEY
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 532-4110
Fax: (202) 305-7000
Email: christopher.dempsey@usdoj.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. KHALED ELSAYED MOHAMMAD ABO AL DAHAB a.k.a. KHALED ELSAYED MOHAMMAD-ABO ALDAHAB a.k.a. KHALED ELSAYED ALI MOHAMMAD a.k.a. KHALED ELSAYED MOHAMED a.k.a. KHALED E. MOHAMED a.k.a. KHALED MOHAMED, Defendant.	Civil Action No. 1:15-cv-514

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This is an action under 8 U.S.C. § 1451(a) to revoke and set aside the order admitting Khaled Elsayed Mohammad Abo Al Dahab ("Defendant"), to citizenship and to cancel Certificate of Naturalization No. 22641746. Defendant is a convicted terrorist who attended an Egyptian Islamic Jihad ("EIJ") training camp near Jalalabad, Afghanistan, where he received military-style training and taught foreign fighters to fly hang gliders in preparation for terrorist attacks. Moreover, during the period in which he was supposed to establish the good moral character to naturalize, Defendant operated a communications hub for EIJ operatives out of his Santa Clara, California apartment; facilitated the transfer of fraudulent passports, documents, money and other items by,

between, and among EIJ members; and researched communications devices and helicopter piloting at the direction of EIJ leadership. In particular, Defendant should be denaturalized because he illegally procured his citizenship on account of his false written statements and testimony during his naturalization proceedings regarding his current and past addresses; employment history; travel outside the United States; marital history; prior false testimony; prior claims of United States citizenship; commission of crimes for which he had not been arrested; and membership in or association with EIJ , as well as his affiliation with an organization that advocated terrorism. Defendant should also be denaturalized because he procured his citizenship by concealment of a material fact or by willful misrepresentation due his concealment of these matters.

FACTS AND BACKGROUND

I. IMMIGRATION HISTORY

Defendant, a native and citizen of Egypt, entered the United States on July 12, 1986, on a nonimmigrant (B2) visitor visa with an expiration date of January 11, 1987. His INS file ("A file") number is A70137972.[1] *See* Government Exhibit ("GX") 1, 4.

On August 6, 1986, Defendant married Bozena Theresa Lierno, a lawful permanent resident of the United States. Defendant divorced Ms. Lierno on January 25, 1989. *See* GX-2. On March 18, 1989, Defendant married Kim Annette Patterson, a

[1] On March 1, 2003, the Immigration and Naturalization Service ("INS") ceased to exist as an independent agency and many of its relevant functions transferred to DHS. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 110 Stat. 2135 (Nov. 25, 2002). However, because the events in this record took place prior to the transfer, the agency will be referred to as the "INS" throughout these pleadings, rather than DHS.

citizen of the United States. *See* GX-3, 4. On May 3, 1989, based on this purported marriage, Ms. Patterson filed an INS Form I-130, Petition for Alien Relative on behalf of Defendant, and Defendant filed an INS Form I-485, Application for Permanent Residence. *See* GX-4, 5. The INS approved the Petition for Alien Relative and Defendant's Application for Permanent Residence on July 8, 1989, thereby adjusting him to conditional lawful permanent residence status. Defendant was a lawful permanent resident as of this date. But his status was subject to revocation if he failed to remain married to his United States citizen spouse for two years. *See* GX-5, 7.

On September 13, 1989, Defendant divorced Ms. Patterson. *See* GX-8. On December 23, 1989, Defendant married Karie A. Rottluff, a citizen of the United States. *See* GX-9.

II. NATURALIZATION PROCEEDINGS

A. First Application for Naturalization

On March 17, 1995, Defendant filed an INS Form N-400, Application for Naturalization, based on having been a permanent resident for at least five (5) years. *See* GX-13. On his INS Form N-400, Defendant claimed to reside in Reno, Nevada; claimed no absences from the United States since becoming a permanent resident on July 8, 1989; claimed to have been married only two (2) times; stated that he had never claimed in writing, or in any way, to be a United States citizen; claimed that he had never knowingly committed any crime for which he had not been arrested; and averred that he had never been a member or affiliated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or any other place. *Id*. at pp. 1-4.

Defendant signed his INS Form N-400 under the penalty of perjury under the laws of the United States, thereby certifying that the information he provided was true and correct, and filed it with the Reno, Nevada office of the INS. *Id*. at p. 4.

The INS scheduled an interview on Defendant's Application for Naturalization for August 22, 1995. *See* GX-14 at p. 1. Defendant did not attend the interview. *Id*. at p. 2. The INS scheduled another interview on Defendant's Application for Naturalization for March 8, 1996. *Id*. at p. 3. Defendant did not attend this interview. *Id*. at p. 4. Accordingly, the INS denied Defendant's INS Form N-400, Application for Naturalization, as abandoned. *Id*. at p. 1.

B. Second Application for Naturalization

On or about October 8, 1996, Defendant filed a second INS Form N-400, Application for Naturalization, based on having been a permanent resident for at least five (5) years. *See* GX-16. On his second INS Form N-400, Defendant claimed to reside in Reno, Nevada since 1995; claimed that his only absence from the United States since becoming a permanent resident was from May 1995 through November 1995, to Egypt, for an emergency; listed no employers for the previous five (5) years, or since October 8, 1991; claimed to have been married only one time; stated that he had never claimed in writing, or in any way, to be a United States citizen; claimed that he had never given false testimony for the purpose of obtaining an immigration benefit; claimed that he had never knowingly committed any crime for which he had not been arrested; and averred that he had never been a member or affiliated with any organization, association, fund,

foundation, party, club, society, or similar group in the United States or any other place. *Id*. at p. 4.

Defendant signed his second INS Form N-400, under penalty of perjury under the laws of the United States, thereby certifying that the information he provided was true and accurate, and filed it with the Reno, Nevada office of the INS. *Id*.

C. Naturalization Interview

On October 18, 1996, INS placed Defendant under oath and interviewed him regarding his second INS Form N-400, Application for Naturalization. *Id*. at p. 4; ECF No. 1-1 at ¶ 3. Consistent agency policy, the INS asked Defendant to verify his answers to certain questions on his naturalization application, while testifying under oath. *See* GX-20. The INS annotated which question it asked Defendant during his naturalization examination in red ink with a slash through the question number, and any changes or notes also written in red ink.[2] *See* GX-16; GX-20 at pp. 2, 13 at ¶ (i)(2). During this interview, Defendant testified that his place of residence was Sparks, Nevada; testified

[2] Courts have consistently recognized and relied on the standard practice among immigration officers to mark the INS Form N-400 during naturalization interviews by placing red check marks and annotations next to only those questions that are orally verified with the naturalization applicant. *See, e.g*., *Bernal v. INS*, 154 F.3d 1020, 1022 (9th Cir. 1998) (finding false testimony under oath where "the INS officer recorded Mr. Bernal's pertinent answers on the interview form and annotated the form in red ink"); *see also* GX-20 at p. 3 ("Officers must check off or circle in RED ink all N-400 questions which are asked and answered during the interview. In order to clearly identify the applicant's responses, the check or circle marks must be made next to the N-400 answers. All additions, deletions, changes, and annotations made by the officer, must be in RED ink and numbered and noted in RED ink within the attestation section on the last page of the N-400 before the applicant signs."); s*ee also United States v. Phoeun Lang*, 672 F.3d 17, 22 (1st Cir. 2012); *United States v. Sadig*, 271 F. App'x 290, 293 (4th Cir. 2007); *United States v. Genovese*, 133 F. Supp. 820, 826 (D.N.J. 1955), *aff'd sub nom. United States v. Montalbano*, 236 F.2d 757 (3d Cir. 1956); *United States v. Arango*, No. 09-178, 2014 WL 7179578, at *5 (D. Ariz. Dec. 17, 2014); *Maina v. Lynch*, No. 15-00113, 2016 WL 3476365, at *2–3 (S.D. Ind. June 27, 2016); *United States v. Galato*, 171 F. Supp. 169, 172 (M.D. Pa. 1959).

that his only absence from the United States since becoming a permanent resident was from May 1995 to November 1995 for an emergency trip to Egypt; denied any additional travel since becoming a lawful permanent resident on July 8, 1989; testified that he was self-employed and provided the same Post Office box as in Part 1 of his application for naturalization as his place of employment; testified that he had only married twice; testified that he had never claimed in writing, or in any way, to be a United States citizen; testified that he had never given false testimony for the purpose of obtaining an immigration benefit; testified that he had never knowingly committed any crime for which he had not been arrested; and testified that he had never been a member or affiliated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or any other place. *See* GX-16 at pp. 1-4

At the end of the interview on October 18, 1996, Defendant again signed his INS Form N-400 under penalty of perjury under the laws of the United States, thereby attesting that the information in his application for naturalization, including any corrections and supplements, was true to the best of his knowledge and belief. *Id*. at p. 4.

D. Approval and Naturalization

Based on his INS Form N-400 and sworn testimony during the naturalization interview, the INS approved Defendant's application for naturalization on December 7, 1996. *Id*. at p. 1. On February 7, 1997, Defendant filled out the questionnaire on his INS Form N-445, Notice of Naturalization Oath Ceremony and filed it with INS. *See* GX-17. In response to Question 3 on his INS Form N-445, Defendant stated that he had not knowingly committed any crime or offense for which he had not been arrested. *Id*. at p.

2. Defendant signed his INS Form N-445, thereby certifying that each of his answers were true and correct. *Id*. Based on his approved INS Form N-400, Application for Naturalization, and INS Form N-445, the INS administered the oath of allegiance to Defendant on February 7, 1997, admitted him to United States citizenship, and issued Certificate of Naturalization No. 22641746. *See* GX-18.

LEGAL STANDARDS

I. SUMMARY JUDGMENT IN DENATURALIZATION CASES

The standards for evaluating a motion for summary judgment are well-settled. A moving party is entitled to summary judgment if the pleadings, depositions, documents, declarations, admissions, or interrogatory answers in the case demonstrate that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. *See* FED. R. CIV. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is "material" only if it might affect the outcome of the suit under the governing law. And a dispute over a material fact is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Bennett v. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson*, 477 U.S. at 247-48 (emphasis in original).

Rule 56 "requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S.

at 324 (internal quotation marks omitted). Thus, the nonmoving party "may not rest upon the mere allegations or denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248 (internal quotation marks omitted); *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1984) (stating "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts").

Despite the government's heavy burden of proof in a denaturalization case, summary judgment is appropriate when no genuine, triable issues of fact exist. *See generally Celotex Corp.*, 477 U.S. at 322; *see also United States v. Dailide*, 953 F. Supp. 192, 195 (N.D. Ohio 1997), *aff'd*, 227 F.3d 385 (6th Cir. 2000) ("ample precedent exists for the revocation of citizenship at the summary judgment stage"). That is, summary judgment is a proper method to order denaturalization where the material facts are undisputed and the legal elements for a denaturalization claim are met. *See, e.g., United States v. Hirani*, 824 F.3d 741, 748 (8th Cir. 2016) ("Summary judgment is warranted 'if, viewing the evidence in the light most favorable to the naturalized citizen, there is no genuine issue of material fact as to whether clear, unequivocal, and convincing evidence supports denaturalization'") *quoting United States v. Arango*, 670 F.3d 988, 992 (9th Cir. 2012); s*ee also United States v. Dailide*, 227 F.3d 385, 389 (6th Cir. 2000) ("[A]lthough the government bears a heavy burden in denaturalization proceedings, the facts of a case may be such that revocation of citizenship at the summary judgment stage may be appropriate."); *United States v. Schmidt*, 923 F.2d 1253, 1257 (7th Cir. 1991) ("Summary

judgment is appropriate in denaturalization proceedings when there are no genuine issues of triable fact.").

II. THE DENATURALIZATION STATUTE

Congress has authorized the government to seek denaturalization if a naturalized citizen either: (1) illegally procured naturalization; or (2) procured naturalization by concealment of material facts or by willful misrepresentation. *See* 8 U.S.C. § 1451(a). An individual has "illegally procured" naturalization if he was statutorily ineligible to naturalize at the time he became a naturalized citizen. *See Federenko v. United States*, 449 U.S. 490, 506 (1981). An individual is subject to denaturalization under the latter ground set forth in section 1451(a) if he procured naturalization by either concealment or misrepresentation, if the concealment or misrepresentation was willful, and if the fact at issue was material. *Kungys v. United States*, 485 U.S. 759, 767 (1988) *citing Federenko*, 440 U.S. at 507, n.28.

"To prevail in a denaturalization proceeding, the government must prove its case by clear, convincing, and unequivocal evidence, and leave no issue in doubt." *Klapprott v. United States*, 335 U.S. 601, 612 (1949). When a court determines that the government has met its burden of proving that a naturalized citizen obtained his citizenship illegally, or by willful misrepresentation, it has no discretion to excuse the conduct, and must enter a judgment of denaturalization. *Federenko*, 449 U.S. at 517.

III. NATURALIZATION REQUIREMENTS

A. General Naturalization Requirements

The Immigration and Nationality Act specifies that "[n]o person . . . shall be naturalized" unless the applicant meets the following criteria:

> (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years. . . .
>
> (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship; and
>
> (3) during all periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

8 U.S.C. § 1427(a); *see also* 8 C.F.R. § 316.2(a) (regulatory provisions detailing requirements for naturalization).

B. The Requirement of Good Moral Character

A naturalization applicant must show that he is "a person of good moral character." 8 U.S.C. § 1427(a)(3); *see also* 8 C.F.R. § 316.2(a)(7). The statutory period for which good moral character is required begins five years before the N-400 application is filed and continues until the applicant becomes a United States citizen. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1). In this case, Defendant was required to prove that he was a person of good moral character from five years prior to filing his naturalization application on October 8, 1996, until the time he became a naturalized citizen on

February 7, 1997 ("statutory period").[3] In other words, the statutory period in this case is from October 8, 1991 to February 7, 1996.

C. Bars To Establishing Good Moral Character

1. *False Testimony*

Congress has erected several statutory bars the preclude naturalization of an applicant for lack of good moral character. *See* 8 U.S.C. § 1101(f). Within this context, an alien who provides false testimony with the intent to obtain an immigration benefit is statutorily precluded from naturalizing. The statute provides, in pertinent part:

> (f) No person shall be regarded as, or found to be, a person of good moral character, who, during the period for which good moral character is required to be established, is, or was –
>
> * * *
>
> (6) one who has given false testimony for the purpose of obtaining any benefit under this chapter . . . .

8 U.S.C. § 1101(f)(6); *see also* 8 C.F.R. § 316.10(b)(2)(vi) ("[A]pplicant shall be found to lack good moral character if . . . he has given false testimony" to obtain an immigration benefit "regardless of whether the information provided in the false testimony was material . . . .").

---

[3] However, Congress has provided that good moral character findings are not restricted to the five year statutory period; instead, the agency may take into consideration the applicant's conduct and acts at any time prior to that period. *See* 8 U.S.C. § 1427(e) ("In determining whether the applicant has sustained the burden of establishing good moral character . . . [the Court] shall not be limited to the applicant's conduct during the [statutory period], but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period."); *see also* 8 C.F.R. § 316.10(a)(2) ("not limited to reviewing the applicant's conduct during the [statutory period] . . . if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.").

The Supreme Court has explained that section 1101(f)(6) "means precisely what it says," so that "even the most immaterial of lies with the subjective intent of obtaining immigration or naturalization benefits" will justifiably prevent a finding of good moral character. *Kungys v. U.S.*, 485 U.S. 759, 779-80 (1988) (defining the 1106(f)(6) inquiry as whether "there is a subjective intent to deceive, no matter how immaterial the deception."). Hence, there is no materiality requirement with false statements in the naturalization context. *Id*. As the Supreme Court explained in *Kungys*:

> The absence of a materiality requirement in section 1101(f)(6) can be explained by the fact that its primary purpose is not to prevent false pertinent data from being introduced into the naturalization process (and to correct the result of the proceedings where that has occurred), but the identify lack of good moral character. The later appears to some degree whenever there is a subjective intent to deceive, no matter how immaterial the deception . . . .

Id. at 780; *see also Plewa v. INS*, 77 F. Supp. 2d 905, 910 (N.D. Ill. 1999).

To constitute a false testimony, the oral statement must be intentionally made with the subjective intent to obtain an immigration benefit. *Hajro v. Barrett*, 849 F. Supp. 2d 945, 959 N.D. Cal. 2012). The Court's focus is solely on the applicant's subjective intent when he made the false statements. *Hajro*, 849 F. Supp. 2d at 959 *citing Kungys*, 485 U.S. at 780). Subjective intent is a question of fact. *Kungys*, 485 U.S. at 782; *see also United States v. Hovespian*, 422 F.3d 883, 887-88 (9th Cir 2005); *c.f. Newton v. Nat'l Broad Co.*, 930 F.2d 662, 670 n. 12 (9th Cir. 1990) ("A state of mind issue such as actual motive is a 'pure question of fact' normally subjected to review under the 'clearly

erroneous' standard."). To determine subjective intent, the Court must consider the specific questions asked, the specific topics and the specific answers. *Id*.

2. *False Statements*

In addition, Congress that aliens who have committed crimes involving moral turpitude ("CIMT") are precluded from naturalizing. The statute provides, in pertinent part:

> (f) No person shall be regarded as, or found to be, a person of good moral character, who, during the period for which good moral character is required to be established, is, or was –
>
> * * *
>
> (3) a member of one or more of the classes of persons . . . described in subparagraphs (A) and (B) of section 1182(a)(2) of this title . . . .

8 U.S.C. § 1101(f)(3). Subparagraph (A) of 8 U.S.C. § 1182(a)(2) provides that a person lacks good moral character if he or she has admitted to "committing acts which constitute the essential elements" of a crime of moral turpitude. 8 U.S.C. § 1182(a)(2)(A); *Kabongo v. INS*, 837 F.2d 753, 758 (6th Cir. 1988); *see also* 8 C.F.R. § 316.10(b)(2) ("applicant shall be found to lack good moral character if . . . the applicant committed one or more crimes involving moral turpitude").

A criminal offense involves "moral turpitude" if the relevant statute defines the offense in such a manner "that it necessarily entails conduct on the part of the offender that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Serrato-Soto v. Holder*, 570 F.3d 686, 689 (6th Cir. 2009) *citing Matter of Kochlani*, 24 I. & N. Dec. 128, 129

(B.I.A. 2007). In particular, "crimes that have a specific intent to defraud as an element have always been found to involve moral turpitude." *Serrato-Soto*, 570 F.3d at 689. As the Supreme Court has explained, "fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude." *Id*. *citing Jordan v. De George*, 341 U.S. 223, 229 (1951); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5th Cir. 2002) ("In the wake of *Jordan*, the courts of appeals of interpreted 'moral turpitude' as including a wide variety of crimes that involve some fraud or deceit.").

It is a crime to make or use false writing in a matter within the jurisdiction of the United States. *See* 18 U.S.C. § 1001(a)(3). Section 1001(a)(3) provides: "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry . . . ." shall be guilty of a felony. *Id*. A naturalization application is a matter within the jurisdiction of the United States. False written statements in violation of 18 U.S.C. § 1001(a)(3) constitute a CIMT, which bar an applicant's naturalization under 8 U.S.C. §§ 1101(f)(3); 1182(a)(2)(A). *See Kabongo*, 837 F.2d at 758.

3. *Affiliation with Certain Organizations*

Pursuant to 8 U.S.C. § 1424(a)(4), a person is precluded from naturalizing if they are "a member of or affiliated with any organization that advocates or teaches . . . (A) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or

officers . . . of the Government of the United States or any other organized government because of his or their official character; or (B) the unlawful damage, injury or destruction of property. . . ." This provision applies to "any applicant for naturalization who at any time within the period of ten years immediately preceding the filing of the application for naturalization . . . is, or has been found to be within any of the classes enumerated within [section 1424]." *See* 8 U.S.C. § 1424(c). Further, pursuant to 8 U.S.C. § 1451(c), if within the five years next following their naturalization, an alien becomes a member of or affiliated with any organization described by provisions at 8 U.S.C. § 1424, "it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and in the absence of countervailing evidence, it shall be sufficient to authorize the revocation and setting aside of the order admitting such person to citizenship as having been obtained by the concealment of a material fact or by willful misrepresentation . . . ." *See* 8 U.S.C. § 1451(c).

ARGUMENT

I. DEFENDANT ILLEGALLY PROCURED HIS NATURALIZATION

Defendant illegally procured his naturalization because he was statutorily precluded from establishing the good moral character necessary to naturalize on account of his false statements and testimony regarding his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization. *See* 8 U.S.C. §§ 1101(f)(3), (f)(6); 8 C.F.R. 316.10(b)(2)(i), (vi), (3)(iii).

In addition, Defendant illegally procured his naturalization because he affiliated with a terrorist organization prior to naturalizing. *See* 8 U.S.C. §§ 1424(a)(4); 1427(a)(3).

A. Defendant Made False Statements

Defendant knowingly and willfully made at least five (5) materially false written statements on both his first and second naturalization applications, dated March 17, 1995 and October 8, 1996, respectively. *See* GX-13; GX-16.

1. *Residence*

Defendant's statements in Part 1 and Part 3(a) of his first INS Form N-400, Application for Naturalization, and Part 1 and Part 4(a) of his second INS Form N-400, Application for Naturalization, that he lived in Reno or Sparks, Nevada, were indisputably false. *See* GX-13 at p. 2; GX-16 at p. 2. Defendant did not reside in Reno or Sparks, Nevada from July 7, 1994 through October 18, 1996. *See* GX-19; GX-22 at ¶¶ 7(b), 8. Defendant never resided in Reno or Sparks, Nevada. *Id*. Defendant's spouse, Ms. Rottluff-Mohamed, never resided in Reno or Sparks, Nevada. *Id*.; ECF No. 1-1 at ¶ 4(e). During all times relevant to his first and second applications for naturalization, Defendant resided in Santa Clara, California. *Id*.

At the time he signed and submitted his naturalization applications under penalty of perjury, Defendant no doubt knew that he ever resided in Reno or Sparks, Nevada, and therefore willfully made these false statements about his residence. Indeed, Defendant later admitted that he filed his naturalization applications in Nevada because he was told the processing time was much shorter in that jurisdiction than in California. *See* GX-22 at ¶ 7(c).

Residence is material to an applicant's eligibility for naturalization because an applicant is statutorily required to file their naturalization application in the district where they reside. *See* 8 U.S.C. § 1427(a)(1) ("No person, except as otherwise provided in this subchapter, shall be naturalized unless . . . [they] resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months . . . .").

2. *Trip to Pakistan and Afghanistan*

Defendant's statement in Part 3 of his first INS Form N-400, Application for Naturalization, that he had not traveled outside the United States since July 8, 1989, was indisputably false. *See* GX-13 at p. 1. In addition, Defendant's statement in Part 3 of his second INS Form N-400, Application for Naturalization, that his only travel outside the United States since July 8, 1989 was to Egypt for an emergency, was also false. *See* GX-16 at p. 1. Defendant traveled to Pakistan and Afghanistan from approximately May 1991 through June 1991 to attend a jihadist training camp in Afghanistan where he both received and provided training in connection with a foreign terrorist organization.[4] *See* GX-22 at ¶¶ 3(b), 5-6, 7(c). At the time he signed and submitted his naturalization

[4] This trip was not for the purpose of facilitating a kidney transplant for Defendant's mother. *See* ECF No. 1-1 at ¶ 4(d). Nevertheless, on or about September 18, 1990, prior to leaving the United States, Defendant filed an INS Form I-131, Application for Issuance of Permit to Reenter the United States. *See* GX-10. In Part 9 of his INS Form I-131, as his reason for travelling abroad, Defendant stated, "medical emergency in the family might require me to donate a kidney to my mother due to renal failure." *Id*. Additionally, on July 19, 1991, based on his divorce and remarriage, Defendant filed an INS Form I-752, Application for Waiver of Requirement to File Joint Petition for Removal of Conditions. *See* GX-12. Defendant filed his INS Form I-752 approximately three months past the deadline. *Id*. In a letter to INS dated July 2, 1991, Defendant claimed he was unable to file the INS Form I-752 on time because he was in Pakistan donating a kidney to his mother. These statements were false. Nevertheless, Defendant signed these forms under penalty of perjury under the laws of the United States, thereby certifying the information he provided was true and correct. *Id.* at p. 2; GX-10 at p. 1.

applications under penalty of perjury, Defendant no doubt knew that had traveled to Pakistan and Afghanistan and therefore willfully made these false statements about his travel.

Travel outside the United States is material to an applicant's eligibility for naturalization because it bears on the requirement of continuous residence. *See* 8 U.S.C. § 1427(a)(2) (applicant must reside continuously within the United States for five years preceding their application for naturalization). Additionally, travel history may open lines of inquiry relevant to whether an applicant possesses good moral character or whether they are "attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States." *See* 8 U.S.C. § 1427(a); 8 C.F.R. § 316.2(a). Indeed, if Defendant had disclosed his travel to Pakistan and Afghanistan from May 1991 through June 1991, it likely would have led the INS to discover that Defendant attended a terrorist training camp.

3. *Marital History*

Defendant's statement in Part 5 of his first INS Form N-400, Application for Naturalization, that he had only married twice, was indisputably false. *See* GX-13 at p. 2. In addition, Defendant's statement in Part 5 of his second INS Form N-400, Application for Naturalization, that he had only married once, was also false. *See* GX-16 at p. 2. As of March 17, 1995 – the date he filed his first naturalization application – Defendant had married at least three times. *See* GX 2, 3, 9. On August 6, 1986, Defendant married Bozena Theresa Lierno, a lawful permanent resident of the United States. Defendant divorced Ms. Lierno on January 25, 1989. *See* GX-2. On March 18, 1989, Defendant

married Kim Annette Patterson, a citizen of the United States. On September 13, 1989, Defendant divorced Ms. Patterson. *See* GX-8. On December 23, 1989, Defendant married Karie A. Rottluff, a citizen of the United States. *See* GX-9. At the time he signed and submitted his naturalization applications under penalty of perjury, Defendant no doubt knew that had been married three times, and therefore willfully made these false statements about his marital history.

Marital history is material to an applicant's eligibility for naturalization because the Government is entitled "to discover what possible legal obligations, liabilities, and relationships the applicant for citizenship may have contracted in the past . . . [including] all of his involvements in . . . marriages or the marriage ceremony . . . [which] could give rise to certain legal obligations." *U.S. v. Ali*, 557 F.3d 715, 721-22 (6th Cir. 2009) *citing Boufford v. U.S.*, 239 F.2d 841, 844 (1st Cir. 1956).

4. *Claim of United States Citizenship*

Defendant's statement in Part 7 at Question 11 of his first and second INS Form N-400, Application for Naturalization, that he had never claimed in writing, or in any way, to be a United States citizen, was indisputably false. *See* GX-13 at p. 3; GX-16 at p. 3. Defendant claimed to be a United States citizen in writing on his application for employment with National Semiconductor Corporation dated March 14, 1988. *See* GX-24 at p. 2. At the time he signed and submitted his naturalization applications under penalty of perjury, Defendant no doubt knew that had previously claimed to be a United States citizen, and therefore willfully made these false statements about his prior claim of citizenship.

False claims of United States citizenship are material to an applicant's eligibility for naturalization because a false claim of citizenship constitutes a crime under 18 U.S.C. § 911, which may preclude a showing of good moral character. *See* 8 U.S.C. § 1101(f)(3); 8 C.F.R. § 316.10(b)(3)(iii); *see also Matter of Guadarrama*, 24 I. & N. Dec. 625 (B.I.A. Sept. 23, 2008). Indeed, aliens who have made false representations of United States citizenship are inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(C)(ii), and removable under 8 U.S.C. § 1227(a)(1)(A).

5. *Membership or Affiliation*

Defendant's statement in Part 9 of his first and second INS Form N-400, Applications for Naturalization, that he had never been a member of or affiliated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place, were indisputably false. As discussed below in sections I.C.1-7, from on or about November 2, 1989 through at least on or about October 29, 1998, Defendant was a member or associated with EIJ. *See* GX-22 at ¶¶ 3-7. Defendant attended an EIJ training camp near Jalalabad, Afghanistan, where he received military-style training and taught foreign fighters to fly hang gliders for terrorist attacks; operated a communications hub for EIJ operatives out of his Santa Clara, California apartment; facilitated the transfer of fraudulent passports, documents, money and other items by, between, and among EIJ members; and researched communications devices and helicopter piloting at the direction of EIJ leadership. *See* GX-22 at ¶¶ 3(b), 5-6, 7(c). At the time he signed and submitted his naturalization applications under penalty of perjury,

Defendant no doubt knew that he was a member of or affiliated with EIJ, and therefore willfully made these false statements denying his involvement in the terrorist group.[5]

Memberships or affiliations are material to whether an applicant possesses good moral character or whether they are "attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States." *See* 8 U.S.C. § 1427(a); 8 C.F.R. § 316.2(a). Indeed, if Defendant had disclosed his involvement in a terrorist organization, he would have been statutorily precluded from naturalizing pursuant to 8 U.S.C. § 1424(a)(4), inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(3)(B), and removable under 8 U.S.C. § 1227(a)(4)(B).

Defendant knowingly and willfully made false material statements on his first and second naturalization applications regarding his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization. Defendant's naturalization application was a matter within the jurisdiction of the United States. *See United States v. Damrah*, 334 F. Supp. 2d 967, 981 n.16 (N.D. Ohio 2004) (naturalization application within jurisdiction of the United States). Accordingly, Defendant committed the crime of false statements, in violation of 18 U.S.C. § 1001(a)(3), which constituted both a CIMT and unlawful act precluding his naturalization under 8 U.S.C. § 1101(f)(3) and 8 C.F.R. 316.10(b)(3)(iii), and thus illegally procured his naturalization.

---

[5] The term "affiliation" in this context is unambiguous. *See e.g., Bryson v. United States*, 396 U.S. 64, 69 (1969) (affirming false statements conviction based on answers to questions regarding affiliations); *Killian v. United States*, 368 U.S. 231, 247 (1961) (same).

B. Defendant Provided False Testimony

Defendant also illegally procured his naturalization because he provided false testimony during his sworn naturalization examination on October 18, 1996. *See* 8 U.S.C. § 1101(f)(6) (precluding naturalization where applicant provided false testimony for the purpose of obtaining an immigration benefit). Defendant provided false testimony about his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization. *See* DX-16 at pp. 1-4. Specifically, Defendant falsely testified that he lived in Sparks, Nevada; that his only trip outside the United States since becoming a lawful permanent resident was to Egypt for an emergency; that he had only married twice; that he had never claimed in writing, or in any way, to be a United States citizen; and that he had never been a member of or affiliated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place.

Defendant knew this testimony to be false, and he provided it with the intent to deceive and to obtain an immigration benefit. Defendant concealed his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization, all because he rightfully believed they might jeopardize his chances of naturalizing and may negatively impact his lawful permanent resident status in the United States. Defendant's concealment of the matters was no doubt calculated to avoid any prejudice they might have on his naturalization application. Moreover, Defendant's non-disclosures cut off lines of inquiry that the INS would have taken to determine whether the circumstances involved rendered him ineligible to naturalize. *See Golding*,

2009 WL 2222779, at *14 ("It is not within [and applicant's] discretion to decide what information to disclose and what to withhold. The government is entitled to know of any facts that may bear on the applicant's statutory eligibility for citizenship, so that it may pursue leads and make further investigation if doubts are raised.") (internal citations and quotations omitted). Instead of just telling the truth, acknowledging his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization, and letting the chips fall where they may, Defendant maintained a persistent and unyielding pattern of concealment when came to questions that would reveal the existence of these facts. As such, Defendant was statutorily precluded from showing the good moral character necessary to naturalize under 8 U.S.C. § 1101(f)(6), and thus illegally procured his naturalization.

C. Defendant Affiliated with a Terrorist Organization

Defendant illegally procured his naturalization because he affiliated with a terrorist organization for at least seven years prior to naturalizing. *See* 8 U.S.C. §§ 1424(a)(4); 1427(a)(3). From on or about November 2, 1989 through at least on or about October 29, 1998, Defendant was a member or associated with EIJ. *See* GX-22 at ¶¶ 3-7.

1. *Egyptian Islamic Jihad*

EIJ is also known as Egyptian Al-Jihad, Jihad Group, New Jihad, Al-Jihad, and Egyptian Islamic Movement. *See* GX-23 at pp. 13-22. EIJ emerged in Egypt in the early 1980s. *Id*. In due course, Ayman Muhammed Rabi al-Zawahiri ("al-Zawahiri") became the leader of EIJ. *Id*. Upon the death of Usama bin Laden, al-Zawahiri became the leader of al-Qaeda. *Id*. The spiritual leader of EIJ was Omar Ahmed Abdul-Rahman

("Abdul Rahman"), also known as "The Blind Sheikh," an Egyptian cleric currently in prison in the United States serving a life sentence for his role in the 1993 World Trade Center bombing. *Id*. EIJ was responsible for the 1981 assassination of Egyptian President Anwar Sadat. *Id*. It also claimed responsibility for the attempted assassinations in 1993 of Egyptian Interior Minister Hassan Al-Alfi and Egyptian Prime Minister Atef Sedki. *Id*. EIJ was responsible for the bombing of the Egyptian Embassy in Islamabad in 1995, and it plotted a similar attack against the United States Embassy in Albania in 1998. *Id*. In 2001, EIJ joined forces with Usama bin Laden's al-Qaeda at al-Zawahiri's insistence. *Id*. EIJ has been active worldwide under the auspices of al-Qaeda. *Id*. EIJ operatives played a key role in the attacks on the World Trade Center in 1993 and 2001. *Id*.

On September 24, 2001, the United States Secretary of State designated EIJ a Foreign Terrorist Organization ("FTO") and Specially Designated Terrorists ("SDT"). *See* GX-23 at p. 4, 6-8. The United States Department of Treasury has also designated EIJ a Specifically Designated Global Terrorist ("SDGT") entity. *Id*. at p. 5. On October 6, 2001, pursuant to paragraph 8(c) of resolution 1333, the United Nations listed EIJ as being associated with Al-Qaida, Usama bin Laden or the Taliban. *Id*. at p. 7. The governments of Canada, the United Kingdom, and Australia have all designated EIJ a terrorist organization. *Id*. at 13.

2. *Training Camp in Afghanistan*

From April 1991 through June 1991, Defendant traveled to Pakistan and Afghanistan to receive military training at a camp near Jalalabad, Afghanistan. *See* GX-

22 at ¶¶ 3(b), 5-6, 7(c). At the training camp, Defendant also provided instruction to EIJ members on how to fly hang gliders. *Id*. EIJ paid for Defendant's purchase of a hang glider, travel to Pakistan, and transport of the hang glider overseas. *Id*. at ¶ 3(b). Defendant traveled from the United States to Karachi, Pakistan, then onto Islamabad, Pakistan. *Id*. EIJ operatives drove Defendant from Islamabad, Pakistan to a safe house in the Hayat Abbad area of Peshawar, Pakistan. *Id*. After several weeks in the safe house, EIJ operatives smuggled Defendant into Afghanistan disguised in an Afghani costume. *Id*. Defendant traveled onto an EIJ training camp near Jalalabad, Afghanistan. *Id*. At the training camp, EIJ members trained Defendant in religion, politics, and weapons. *Id*. While Defendant was at the training camp, he witnessed EIJ members instructing other individuals on bomb making techniques. *Id*. For several weeks, Defendant trained at least four EIJ operatives in the use of hang gliders for terrorist attacks. *Id*. Defendant knew that EIJ would use his training on hang gliders in the commission of terrorist attacks. *Id*. Specifically, Defendant knew the EIJ wanted to use a hang glider to bomb targets inside Egypt, including the Liman Turra Prison near Cairo, Egypt. *Id*. Defendant met EIJ's then second in command, Abu Khabab al-Masri ("al-Masri") during this trip. *Id*. Defendant spent approximately one month at the EIJ training camp near Jalalabad, Afghanistan. *Id*.

3. *Communications Hub*

From approximately January 1, 1990 through May 5, 1995, Defendant operated a communication hub for EIJ members and affiliates out of his Santa Clara, California apartment. *See* GX-22 at ¶¶ 3(c), 5-6, 7(e). During this time, Egyptian authorities were

intercepting telephone calls made from certain countries to Egypt in order to prevent EIJ members from planning terrorist attacks against Egypt. *Id*. at ¶ 3(c). Defendant devised a scheme with EIJ senior leadership whereby EIJ members would call Defendant in the United States, and Defendant would connect them to EIJ operatives in Egypt or abroad utilizing a three-way call feature on his phone line. *Id*.

At the time, Defendant understood that Egyptian authorities did not monitor telephone calls from the United States to Egypt or from Egypt to the United States. *Id*. Defendant's communication hub effectively bypassed monitoring of EIJ members by Egyptian authorities. *Id*. Defendant connected calls by EIJ members operating in Albania, Bahrain, Canada, Egypt, Jordan, Pakistan, Qatar, Saudi Arabia, and United Arab Emirates. *Id*. Defendant knew that he was working for the EIJ in furtherance of jihad and fighting against the Government of Egypt. *Id*. EIJ paid Defendant in cash for costs related to the communication hub. *Id*. All of the three-way calls that Defendant facilitated from his Santa Clara apartment were for EIJ members. *Id*.

EIJ conducted many operations related to terrorism, and Defendant's communication hub materially assisted in those operations. *Id*. at ¶ 7(e). For instance, Defendant's communication hub materially assisted an assassination attempt of Prime Minister Atef Sedky by EIJ in November 1993. *Id*. EIJ detonated a powerful car bomb that narrowly missed Prime Minister Sedky and blasted a nearby school, killing a girl and injuring at least nine others. *Id*. This plot was being run out of Yemen by an EIJ operative that Defendant met at the training camp in Afghanistan, who utilized Defendant's communication hub to conduct the operation. *Id*.

4. *Passport Fraud*

From approximately January 1990 through December 1995, Defendant facilitated the transfer of fraudulent passports by, between, and among EIJ members. *Id*. at ¶ 3(d), (g). EIJ operatives provided expired passports to Defendant, who then forged the renewal applications and signatures on the expired passports and forwarded them to the Egyptian Consulate in San Francisco, California. *Id*. at ¶ 3(g). Once Defendant received the renewed passports from the Egyptian Consulate, he sent them to the EIJ members in the United States or abroad. *Id*. EIJ paid Defendant in cash for each passport he processed fraudulently. *Id*. The fraudulent passports were used by EIJ operatives in carrying out terrorist activities on behalf of the EIJ. *Id*. Defendant knew that the passports he fraudulently obtained would be used by the EIJ in carrying out acts of terrorism. *Id*.

5. *Transfer of Documents and Money*

From approximately January 1990 through December 1995, Defendant facilitated document and money transfers on behalf of the EIJ. *Id*. at ¶ 3(d). Defendant hid cash, documents, or other items in packages and shipped them to EIJ operatives abroad. *Id*. During this time, Defendant collected and sent over $10,000 from the United States to EIJ operatives abroad. *Id*. Defendant also collected donations for EIJ and deposited them into his personal account. *Id*. He then transferred the money to other accounts specified by EIJ operatives. *Id*.

In May 1995, an EIJ operative provided Defendant with $4,000 in donations from a California mosque to forward to the EIJ for purpose of funding a terrorist attack against

the Egyptian Embassy in Islamabad, Pakistan. *Id*. at ¶ 3(f). Defendant knew that the money was for the EIJ and the attack in Pakistan. *Id*. He forwarded those funds to EIJ operatives. *Id*.

6. *Meeting with EIJ Leadership*

In 1992, Defendant met with EIJ leader al-Zawahiri in Santa Clara, California. *Id*. at ¶ 3(e). Defendant also met with al-Zawahiri when he traveled to California to raise funds for EIJ in late 1994. *Id*. Al-Zawahiri visited mosques in Santa Clara, Stockton, and Sacramento as part of a coast-to-coast fund-raising mission. *Id*. Al-Zawahiri asked Defendant to make inquiries about satellite phones and an apparatus that detects the frequencies of wireless equipment. *Id*. Defendant made inquiries in these devices and reported back to al-Zawahiri. *Id*.

7. *Egyptian Arrest and Conviction*

On or about October 29, 1998, Defendant was arrested by Egyptian authorities. *Id*. at ¶ 3. He was tried in Egyptian Military Court, Case No. 1998/8, convicted of terrorism-related offenses, and sentenced to fifteen (15) years imprisonment. *Id*. at ¶ 4. Specifically, Defendant was convicted of being a member of EIJ, for which he received a three (3) year prison sentence, and conspiracy to overthrow the Egyptian government, for which he received a sentence of twelve (12) years. *Id*.

Throughout Defendant's involvement in EIJ – from on or about November 2, 1989 through at least on or about October 29, 1998 – the organization advocated the duty, necessity, or propriety of the unlawful assaulting or killing of an officer of an organized government, and the unlawful damage, injury or destruction of property. *See* GX-23 at

pp. 13-22. Defendant's membership or affiliation with EIJ constitutes prima facie evidence that he was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization. *See* 8 U.S.C. § 1427(a)(3); *cf.* 8 U.S.C. 1451(c) (such affiliations within five years subsequent to naturalization grounds for revocation of citizenship). Since he affiliated with a terrorist organization within the period of ten years immediately preceding the filing of his naturalization application, Defendant was statutorily precluded from naturalizing pursuant to 8 U.S.C. § 1424(a)(4), and thus illegally procured his naturalization.

II. DEFENDANT OBTAINED HIS NATURALIZATION BY WILLFUL MISREPRESENTATION OR CONCEALMENT OF MATERIAL FACTS

Denaturalization is required when an alien has concealed material facts or made willful misrepresentations which aided in the receipt of naturalization. *See* 8 U.S.C. § 1451(a). Specifically, the Court must revoke a grant of citizenship based on willful concealment and misrepresentation prior to naturalizing if: (1) the naturalized citizen misrepresented or concealed a fact; (2) the misrepresentation or concealment was willful; (3) the fact was material; and (4) the naturalized citizen procured citizenship as a result of the misrepresentation or concealment. *Kungys*, 485 U.S. at 767. Proof of intent to deceive is not required in order to meet the willfulness element of element. *See Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). Rather, knowledge of the falsity of a representation is sufficient. *Id.*; *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997) ("The element of willfulness is satisfied by a finding that the misrepresentation was deliberate

and voluntary.") (citation omitted); *Matter of Healy*, 17 I. & N. Dec. 22, 28 (B.I.A. 1979) (finding that knowledge of the falsity of a representation satisfies the willfulness requirement for purposes of the INA).

The test of whether "concealments or misrepresentations [are] material is whether they ha[ve] a natural tendency to influence the decisions of the Immigration and Naturalization Service." *Kungys*, 485 U.S. at 772. The Government is not required under this standard to prove that Defendant would not have naturalized had he not made the misrepresentation.[6] *Kungys*, 485 U.S. at 771. Rather, "[a] misrepresentation or concealment can be said to have such a tendency . . . if honest representations 'would predictably have disclosed other facts relevant to [the applicant's] qualifications.'" *Id*. at 783 (Brennan, J. concurring); *see also U.S. v. Puerta*, 982 F.2d 1297, 1304 (9th Cir. 1992) (holding that misstatements and omissions are material if they raise a "fair inference" of ineligibility.) The materiality of a misrepresentation in a denaturalization proceeding is a question of law. *Kungys*, 485 U.S. at 772.

---

[6] The Government is not required under this standard to prove that the defendant would not have been naturalized but for the misrepresentation. *Kungys*, 485 U.S. at 771 ("It has never been the test of materiality that the misrepresentation or concealment would more likely than not have produced an erroneous decision, or even that it would more likely than not have triggered an investigation."); *Injeti v. USCIS*, 737 F.3d 311, 316 (4th Cir. 2013) (noting that in *Kungys* "the Supreme Court held that a misrepresentation in an immigration proceeding (there a denaturalization proceeding) is material if it 'has a natural tendency to influence the decision of immigration officials") (internal alterations omitted); *United States v. Stelmokas*, 100 F.3d 302, 317 (3d Cir. 1996) ("Inasmuch as under *Kungys* the materiality of a misrepresentation in a denaturalization proceeding is a matter of law, not fact, there cannot possibly be a need for the government to produce evidence from officials that if the truth had been told the officers would have reached a different result."). Rather, a misrepresentation or concealment "can be said to have . . . a tendency" to produce the conclusion that the applicant was qualified for citizenship "if honest representations would predictably have disclosed other facts relevant to the applicant's qualifications." *Id*. at 783 (Brennan, J. concurring) (quotations and alterations omitted).

The "element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." *Toribio-Chavez v. Holder*, 611 F.3d 57, 63 (1st Cir. 2010) (discussing "willfulness" in context of removal) *citing Mwongera v. I.N.S.*, 187 F.3d 323, 330 (3d Cir. 1999); *Parlak v. Holder*, 578 F.3d 457, 463-64 (6th Cir. 2009); *see also United States v. Arango*, 670 F.3d 988, 995 (9th Cir. 2012) (discussing "willfulness" in context of denaturalization and stating that "an alien who seeks to obtain immigration status by misrepresenting a material fact has done so 'willfully' if the misrepresentation was 'deliberate and voluntary'"); *United States v. Castro-Juarez*, No. 12-cv-2643, 2014 WL 12531090, at *4 (S.D. Cal. May 7, 2014) ("Misrepresentation of a material fact is 'willful' under § 1451(a) so long as the misrepresentation was "deliberate and voluntary"). "An intent to deceive is not necessary; rather, knowledge of the falsity is sufficient." *Toribio-Chavez*, 611 F.3d at 63 *citing Forbes v. I.N.S.*, 48 F.3d 439, 442 (9th Cir. 1995); *Mwongera*, 187 F.3d at 330; *Parlak*, 578 F.3d at 463); *see also United States v. Rebelo*, 646 F. Supp. 2d 682, 697 (D.N.J. 2009), *aff'd*, 394 F. App'x 850 (3d Cir. 2010).

As discussed above, Defendant procured his naturalization by willful misrepresentations and concealment of material facts during his naturalization proceedings by knowingly making false statements on his naturalization application and providing false testimony at his naturalization examination regarding his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization. Further, as explained at sections I.A.1-5, Defendant's false statements and testimony were material. Defendant's false statements and testimony

misled the former INS and cut off material lines of inquiry. It is a fair and reasonable inference that if Defendant had disclosed his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a terrorist organization, the INS would have inquired about these matters and discovered that Defendant was ineligible to naturalize on multiple grounds. Defendant's concealment of these material facts was willful, deliberate, voluntary, and knowingly false. Based on the undisputed facts in this case, Defendant procured his naturalization as a result of his misrepresentations and concealment. Because Defendant procured his naturalization by concealment of material facts and willful misrepresentations, his naturalization must be revoked pursuant to 8 U.S.C. § 1451(a).

CONCLUSION

For the foregoing reasons, this Court should grant summary judgment in favor of the Government. The uncontroverted facts show that Defendant illegally procured his citizenship because he made false statements and provided false testimony during his naturalization proceedings and affiliated with terrorist organization. Defendant also procured his citizenship by willfully misrepresenting and concealing his residence, travel outside the United States, marital history, prior claim of citizenship, and affiliation with a

terrorist organization. As such, this Court should grant the Government's motion and issue an order revoking Defendant's order of naturalization.[7]

Date: October 31, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation

s/ Christopher W. Dempsey
CHRISTOPHER W. DEMPSEY
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 532-4110
Fax: (202) 305-7000
Email: christopher.dempsey@usdoj.gov

[7] On August 27, 2015, this Court ordered the United States to serve the Complaint and Summons on Defendant by email and Facebook message. (ECF No. 6). On September 16, 2015, in accordance with this Court's order, the United States served the Complaint and Summons on Defendant. (ECF No. 7). The United States has reason to believe that Defendant did receive the Complaint and Summons in this case, and that he does not intend to file a responsive pleading. *See* GX-21. Nevertheless, the Government will also serve this motion on Defendant by email and Facebook message.