

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

UNITED STATES OF AMERICA,	)	
	)	CASE NO: 1:26-cv-00719
Plaintiff,	)	
	)	
v.	)	COMPLAINT TO REVOKE
	)	NATURALIZATION
FRANCISCO JAVIER MONTANO,	)	
	)	
Defendant.	)	
_____	)	

I. PRELIMINARY STATEMENT

1. The United States of America brings this civil action against Francisco Javier Montano ("Defendant") to revoke his naturalized United States citizenship. This action under 8 U.S.C. § 1451(a) is based on Defendant's unlawful conduct prior to naturalizing. Specifically, before he became a citizen of the United States, Defendant engaged in criminal activity that he concealed throughout the naturalization process and that disqualified him from United States citizenship ("U.S. citizenship").

2. On multiple occasions between July 1996 and July 1999 Defendant sexually assaulted a child under the age of fourteen. In January 2000, Defendant illegally procured U.S. citizenship by knowingly concealing material facts and willfully misrepresenting his criminal conduct during his naturalization process. In March 2003, a Texas state jury convicted Defendant of two counts of aggravated sexual assault, in violation of Texas Penal Code section 22.021, and four counts of indecency with a child in violation of Texas Penal Code section 21.11(a)(1). *See State of Texas v. Francisco Javier Montano*, No. CR-3370-02-D (206th Dist. Ct.-Hidalgo County, Tex. March 11, 2003). Each of these crimes is punishable by aggregate sentences of confinement

of five years or more. Accordingly, as shown below, Defendant unlawfully naturalized and this Court must order the denaturalization of Defendant.

II. JURISDICTION, PARTIES, AND VENUE

3. This is an action filed under 8 U.S.C. § 1451(a) to revoke and set aside the order admitting Defendant to U.S. citizenship and to cancel Defendant's Certificate of Naturalization No. .

4. This Court has subject-matter jurisdiction under 8 U.S.C. § 1451(a) and 28 U.S.C. §§ 1331 and 1345.

5. Plaintiff is the United States of America.

6. Defendant is a naturalized U.S. citizen and a native of Mexico.

7. Venue is proper in this District under 8 U.S.C. § 1451(a) and 28 U.S.C. § 1391 because Defendant resides in La Feria, Texas, which is within the jurisdiction of this Court.

III. FACTUAL BACKGROUND

A. Defendant's Immigration History and Naturalization Application

8. On February 11, 1987, Defendant entered the United States at the Hidalgo, Texas, point of entry as a conditional permanent resident. *See* Exhibit A, Affidavit of Good Cause ¶ 3.

9. On July 8, 1989, Defendant adjusted his status to permanent resident after applying with the former Immigration and Nationalization service ("INS")¹ as the spouse of his natural born citizen wife. *Id.*

10. On June 9, 1997, Defendant applied for U.S. citizenship by filing a Form N-400, Application for Naturalization ("N-400"), a true and complete copy of which, except for redactions

¹ On March 1, 2003, INS ceased to exist and many of its relevant functions transferred to DHS and its sub-agencies, including U.S. Citizenship and Immigration Services ("USCIS"). *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 110 Stat. 2135 (Nov. 25, 2002). Because several of the events at issue here occurred prior to the transfer, we reference INS where factually appropriate.

of personally identifying information immaterial to this action, is attached hereto as Exhibit B.

11. Part 7, Question 15(a) of the N-400, asks, “Have you ever knowingly committed any crime for which you have not been arrested?” *Id.*, p. 2. In his response, the Defendant checked the box for “No.” *Id.*, p. 2.

12. Part 7, Question 12(g) of the N-400, asks, “Have you ever given false testimony for the purpose of obtaining any immigration benefit?” *Id.* In his response, the Defendant checked the box for “No.” *Id.*

13. Part 11 of the N-400 requires the applicant to “certify ... under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct.” *Id.*, p. 4. On February 17, 1997, Defendant signed the application affirming that his application was true and correct. *Id.*

14. On October 15, 1998, an INS officer placed Defendant under oath and conducted an interview regarding his N-400 to determine his eligibility for naturalization. *Id.*, pp. 1, 4.

15. During the interview, and consistent with his responses on the N-400, Defendant orally testified under oath that he had never committed a crime or offense for which he was not arrested. *Id.*, p. 3.

16. Additionally, during the interview, and consistent with his responses on the N-400, Defendant testified that he had never given false testimony for the purpose of obtaining any immigration benefit. *Id.*, p. 4.

17. During the interview, Defendant was given the chance to make changes to his

N-400 application before testifying to its accuracy. He made seven changes to his application, as noted by the circled numbers in handwritten red ink by the interviewing INS officer. *Id.*, pp. 1 - 4.²

18. Despite the opportunity, none of the changes made to the N-400 by Defendant during the interview revised his previous statement that he had never committed a crime or offense for which he was not arrested or that he had never given false testimony for the purpose of obtaining any immigration benefit.

19. At the end of the interview, Defendant signed his N-400 at Part 12, swearing for a second time that the contents of his naturalization application were true to the best of his knowledge and belief. *Id.*, p. 4.

20. On April 21, 1999, based on Defendant's representations in his naturalization application and his own sworn testimony during his naturalization interview, INS approved Defendant's naturalization application. *See* Exhibit A ¶ 6.

21. On January 6, 2000, Defendant prepared the final pre-naturalization paperwork by filing a form N-445, Notice of Naturalization Ceremony ("N-445"), a true and complete copy of which, except for redactions of personally identifying information immaterial to this action, is attached hereto as Exhibit C.

² The following changes were made to the N-400 and witnessed by the Immigration Services Officer: 1: Changed his stated middle name from "J." to Javier. *Id.*, at P. 1.; #2: Changed Defendant's Port of Entry from "Monterrey, Mexico" to "HID". *Id.*; #3: Changed the Defendant's Name on Alien Registration card from "—" to "Francisco J. Montano." *Id.*; #4: Changed Dates of Residence from a blank space to "Present". *Id.*, at 2.; #5: Changed the "to" section of dates of employment from "4-15-97" to "Present". *Id.*; #6: Changed "Total Number of Children" from a blank space to "2" and indicated that the children were U.S. Citizens. *Id.*; #7: Inserted, by rubber stamp, a question added to Part 7 which reads "Have you ever registered for or voted in any election in the United States?" and for which the box for "No" is checked.

22. The N-445 requests, in relevant part, information regarding an applicant's conduct between the time of their naturalization interview and the time of their naturalization ceremony.

23. Question 3 of the N-445 reads, in relevant part, "AFTER the date you were first interviewed on your Application for Naturalization, Form N-400 ... (3) Have you knowingly committed any crime or offense, for which you have not been arrested"? (emphasis in original) In his response, Defendant checked the box for "No.". *Id.*, p. 2.

24. The final question of Form N-445 requires the applicant to "certify that each of the answers shown above were made by me or at my direction, and that they are true and correct." Defendant signed the application on January 6, 2000. *Id.*

25. On January 7, 2000, Defendant took the oath of allegiance and was admitted to U.S. citizenship. In addition, INS issued Defendant his Certificate of Naturalization No.  attached hereto as Exhibit D.

B. Defendant's Texas State Criminal Charges and Conviction

26. In July 2002, a grand jury in Hidalgo County, Texas, issued an eight-count indictment charging Defendant with four counts of Aggravated Sexual Assault (Counts 1-4)³ and four counts of Indecency with a Child (Counts 5-8). *See* indictment and jury records from *Texas v. Montano*, attached hereto as Exhibit E. *See also* Exhibit A ¶ 9.

27. The four counts of Aggravated Sexual Assault alleged that between July 12, 1996, and July 12, 1999, the Defendant sexually assaulted a child under the age of 14. Exhibit E, pp. 37-39.

³The Indictment Return Sheet incorrectly recites that "the statute for offense" for the crime of aggravated sexual assault is "22.02 PC." Section 22.02 of the Texas Penal Code is the statute for aggravated assault, whereas Mr. Montano was convicted of aggravated sexual assault, which is found in section 22.021 of the Texas Penal Code. The incorrect notation on the judgment appears to be a scrivener's error.

28. The four counts of Indecency with a Child alleged that between July 12, 1996, and July 12, 1999, the Defendant had illegal sexual contact with a child younger than 17 years. *Id.*, pp. 39-44.

29. On March 11, 2003, a jury found Defendant guilty of counts 3 and 4, Aggravated Sexual Assault; and counts 5-8, Indecency with a Child. *Id.*, pp. 3-28.

30. On May 2, 2003, the court sentenced Defendant to five years imprisonment each for counts 3 and 4, and 10 years each for counts 5 – 8, with each count of conviction to be served concurrently. The ten year sentence in prison was probated to ten years of community supervision. *Id.*

IV. GOVERNING LAW

A. Congressionally Imposed Prerequisites to the Acquisition of Citizenship

31. No applicant has a right to naturalization “unless all statutory requirements are complied with.” *United States v. Ginsberg*, 243 U.S. 472, 474-75 (1917). Indeed, the Supreme Court has underscored that “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v. United States*, 449 U.S. 490, 506 (1981) (“A[] [noncitizen] who seeks political rights as a member of this Nation can rightfully obtain them only upon the terms and conditions specified by Congress.”) (quoting *Ginsberg*, 243 U.S. at 474).

32. Congress has mandated that an individual may not naturalize unless that person “during all periods referred to in this subsection has been and still is a person of good moral character” *See* 8 U.S.C. § 1427(a)(3).

33. The required statutory period for good moral character begins five years before the date the applicant files the application for naturalization, and it continues until the applicant takes the oath of allegiance and becomes a U.S. citizen. *Id.*; 8 C.F.R. § 316.10(a)(1).

34. Although Congress has not specifically defined what constitutes good moral character for naturalization purposes, the Immigration and Nationality Act lists certain classes of applicants who cannot be found to have the requisite good moral character. *See* 8 U.S.C. § 1101(f).

35. Congress has explicitly precluded an individual from establishing the good moral character necessary to naturalize if during the statutory period he commits certain offenses described in 8 U.S.C. § 1182, of which he was convicted or to which he admits. 8 U.S.C. § 1101(f)(3).

36. Among the offenses described in 8 U.S.C. § 1182 that preclude an individual from establishing the required good moral character are the commission of crimes for which he or she receives multiple criminal convictions with aggregate sentences of confinement of five years or more. 8 U.S.C. § 1182(a)(2)(B).

37. Congress also has explicitly precluded individuals who give false testimony for the purpose of obtaining immigration benefits from establishing the good moral character necessary to naturalize. 8 U.S.C. § 1101(f)(6).

38. Further, Congress created a “catch-all” provision, which states, “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” 8 U.S.C. § 1101(f). (catch-all provision)

39. Thus, an individual who commits an unlawful act adversely reflecting upon his or her moral character cannot meet the good moral character requirement unless he or she proves that

extenuating circumstances existed that would palliate or ameliorate guilt. *See* 8 C.F.R. § 316.10(b)(3)(iii); *see also* 8 U.S.C. § 1101(f). (catch-all provision)

40. “[A] conviction during the statutory period is not necessary for a finding that an applicant lacks good moral character. It is enough that the offense was ‘committed’ during that time.” *United States v. Suarez*, 664 F.3d 655, 661 (7th Cir. 2011) (discussing 8 U.S.C. § 1101(f)(3) and 8 C.F.R. § 316.10(b)(3)(iii)). Where an individual has been convicted, he or she is collaterally estopped from contesting all issues necessarily decided in the criminal matter. *Id.* at 663 (citing *United States v. Jean-Baptiste*, 395 F.3d 1190, 1192 (11th Cir. 2005), *cert. denied*, 546 U.S. 852 (2005)) (stating that a defendant “may not . . . re-litigate issues decided in his criminal case” in a subsequent civil denaturalization action).

B. The Denaturalization Statute

41. Congress enacted 8 U.S.C. § 1451 in recognition of the fact that there are situations where an individual has naturalized despite failing to comply with all congressionally imposed prerequisites to the acquisition of citizenship or by concealing or misrepresenting facts that are material to the decision on whether to grant his or her naturalization application.

42. Under 8 U.S.C. § 1451(a), a court must revoke an order of naturalization and cancel the individual’s Certificate of Naturalization if his or her naturalization was either:

- (i) illegally procured; or,
- (ii) procured by concealment of a material fact or by willful misrepresentation.

43. Failure to comply with any of the congressionally imposed prerequisites to the acquisition of citizenship renders the citizenship “illegally procured.” *Fedorenko*, 449 U.S. at 506.

44. Naturalization was procured by concealment of a material fact or by willful misrepresentation, where: (1) the naturalized citizen misrepresented or concealed some fact during

the naturalization process; (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 v. United States*, 485 U.S. 759, 767 (1988).

45. Where the government establishes that the defendant's citizenship was procured illegally or by willful misrepresentation or concealment of a material fact, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization." *Fedorenko*, 449 U.S. at 517.

V. CAUSES OF ACTION

COUNT I **ILLEGAL PROCUREMENT OF NATURALIZATION** **LACK OF GOOD MORAL CHARACTER** **(Multiple Criminal Convictions)**

46. The United States re-alleges and incorporates by reference the factual and legal allegations set forth in Paragraphs 1 - 45 of this Complaint as if set forth herein.

47. To qualify for naturalization, Defendant was required to show that he was a person of good moral character from June 9, 1994 (five years before he applied for naturalization), until the date he became a U.S. citizen on January 7, 2000 ("the statutory period"). *See* 8 U.S.C. §1427(a); 8 C.F.R. § 316.10(a)(1).

48. An applicant for naturalization who committed crimes during his statutory period for which he received multiple criminal convictions and for which the aggregate sentences of confinement were 5 years or more could not have been found to be a person of good moral character. 8 U.S.C. § 1101(f)(3) (cross-referencing 8 U.S.C. § 1182(a)(2)(B)).

49. Defendant committed crimes during his naturalization process and was convicted for that criminal conduct.

50. As a result of those convictions, Defendant was sentenced to aggregate sentences of confinement of five or more years in prison.

51. Because Defendant committed crimes during the statutory period for which he received multiple convictions and a prison sentence of more than five years, he lacked the good moral character necessary to become a naturalized U.S. citizen. 8 U.S.C. § 1101(f)(3) (cross-referencing 8 U.S.C. § 1182(a)(2)(B))

52. Because Defendant was not a person of good moral character, he was ineligible to naturalize. *See* 8 U.S.C. § 1427(a)(3).

53. Because he was ineligible to naturalize, Defendant illegally procured his naturalization, and this Court must therefore revoke his naturalization as provided under 8 U.S.C. § 1451(a).

COUNT II
ILLEGAL PROCUREMENT OF NATURALIZATION
LACK OF GOOD MORAL CHARACTER
(Unlawful Acts)

54. Plaintiff re-alleges and incorporates by reference the factual and legal allegations in Paragraphs 1 - 53 of this complaint as if set forth herein.

55. As outlined above, Defendant was required to establish that he was a person of good moral character from June 9, 1994, until the date he became a U.S. citizen on January 7, 2000. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

56. Defendant could not establish the requisite good moral character for naturalization because he committed unlawful acts during the statutory period that reflected adversely upon his moral character, and there were no extenuating circumstances that would lessen his guilt. *See* 8 C.F.R. § 316.10(b)(3)(iii); 8 U.S.C. § 1101(f). (catch-all provision)

57. As set forth above, Defendant was convicted of Aggravated Sexual Assault and Indecency with a Child, and the criminal conduct occurred during his naturalization process.

58. There are no extenuating circumstances with regard to Defendant's unlawful acts that renders his conduct less reprehensible than it otherwise would be or that would tend to lessen his guilt. As such, he cannot avoid the regulatory bar on establishing good moral character found at 8 C.F.R. § 316.10(b)(3)(iii). Because Defendant committed unlawful acts that adversely reflected on his moral character during the statutory period, and he cannot demonstrate extenuating circumstances, he was barred under 8 U.S.C. § 1101(f) and 8 C.F.R. § 316.10(b)(3)(iii) from showing that he had the good moral character necessary to become a naturalized U.S. citizen.

59. Because Defendant was not a person of good moral character, he was ineligible for naturalization under 8 U.S.C. § 1427(a)(3).

60. Because Defendant was ineligible to naturalize, he illegally procured his naturalization, and this Court must revoke his naturalization under 8 U.S.C. § 1451(a).

COUNT III
ILLEGAL PROCUREMENT OF NATURALIZATION
LACK OF GOOD MORAL CHARACTER
(False Testimony)

61. Plaintiff re-alleges and incorporates by reference the factual and legal allegations in Paragraphs 1 - 60 of this complaint as if set forth herein.

62. As outlined above, Defendant was required to establish that he was a person of good moral character from June 9, 1994, until the date he became a U.S. citizen on January 7, 2000. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

63. Defendant was statutorily precluded from showing that he was a person of good moral character during the statutory period because he gave false testimony under oath for the

purpose of securing an immigration benefit, specifically naturalization. 8 U.S.C. § 1101(f)(6); 8 C.F.R. § 316.10(b)(2)(vi).

64. As set forth in paragraphs 14 through 20, during the statutory period, Defendant provided false testimony during his naturalization interview when he stated under oath that he had never committed a crime or offense for which he was not arrested.

65. In addition, as also set forth in paragraphs 14 through 20, during the statutory period, Defendant provided false testimony during his naturalization interview when he stated under oath that he had never given false testimony for the purpose of obtaining any immigration benefit, even though he had just testified, falsely, that he had had never committed a crime or offense for which he was not arrested.

66. Defendant provided the false testimony for the purpose of obtaining an immigration benefit, namely, naturalization.

67. Because Defendant provided false testimony under oath for the purpose of obtaining naturalization, he was barred under 8 U.S.C. § 1101(f)(6) from showing that he had the good moral character necessary to become a naturalized U.S. citizen.

68. Because Defendant could not establish that he was a person of good moral character during the statutory period, he was ineligible for naturalization under 8 U.S.C. § 1427(a)(3).

69. Because he was ineligible to naturalize, Defendant illegally procured his naturalization, and this Court must revoke his naturalization under 8 U.S.C. § 1451(a).

COUNT IV

PROCUREMENT OF NATURALIZATION BY CONCEALMENT OF A MATERIAL FACT OR WILLFUL MISREPRESENTATION

70. Plaintiff re-alleges and incorporates by reference the factual and legal allegations in Paragraphs 1 - 69 of this complaint as if set forth herein.

71. Under 8 U.S.C. § 1451(a), this Court must revoke Defendant's naturalization and cancel his Certificate of Naturalization because he procured his naturalization by concealment of a material fact and by willful misrepresentation.

72. As set forth in paragraphs 11 through 25 above, throughout his naturalization process, Defendant willfully misrepresented and concealed his criminal conduct and presented false testimony to obtain an immigration benefit.

73. At no point during the naturalization process did Defendant disclose his criminal conduct, but instead knowingly presented false information that he had not committed any criminal acts.

74. Further, at no point during the naturalization process did Defendant disclose that he had given false testimony concerning his criminal conduct during his naturalization interview.

75. Defendant knew his misrepresentations and concealment were false and misleading and he acted willfully in providing such misrepresentations and concealment.

76. Defendant's misrepresentations were material determining his eligibility for naturalization because they did not allow INS to make an informed decision when approving his naturalization application. In addition, Defendant's conduct related directly to a determination of whether he could establish the good moral character required under 8 U.S.C. § 1427(a)(3).

77. Had Defendant disclosed the truth about his criminal conduct, INS would have denied Defendant's naturalization and would not have allowed him to take the oath of allegiance because of his ineligibility.

78. Defendant procured his naturalization by willful misrepresentation and concealment of material facts, and this Court must revoke his naturalization pursuant to 8 U.S.C. § 1451(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, requests:

1. A finding that Defendant illegally procured his citizenship;
2. A finding that Defendant procured his naturalization by concealment of material facts and willful misrepresentation;
3. Judgment revoking and setting aside Defendant's naturalization and canceling Certificate of Naturalization No.  effective as of the original date of the order and certificate, January 7, 2000;
4. Judgment forever restraining and enjoining Defendant from claiming any rights, privileges, benefits, or advantages under any document which evidences U.S. citizenship obtained as a result of his January 7, 2000, naturalization;
5. Judgment requiring Defendant to surrender and deliver, within ten (10) days of Judgment, his Certificate of Naturalization, as well as any copies thereof in his possession or control (and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession or control of others), to the Attorney General, or his representative, including undersigned counsel;
6. Judgment requiring the Defendant to surrender and deliver, within ten (10) days of Judgment, any other indicia of U.S. citizenship, including, but not limited to, U.S. passports and passport cards, voter registration cards, and other voting documents, as well as any copies thereof in his possession or control (and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession or control of others), to the Attorney General, or his representative, including undersigned counsel; and,
7. Judgment granting the United States such other relief as may be lawful and proper in this case.

Dated June 30, 2026

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