

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil Action No. _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENOS FONG KORTI,

Defendant.

**COMPLAINT TO REVOKE
NATURALIZATION**

PRELIMINARY STATEMENT OF THE CASE

The United States of America ("Plaintiff") brings this civil action against Enos Fong Korti ("Defendant") to revoke and set aside his naturalized U.S. citizenship under 8 U.S.C. § 1451. Defendant procured his naturalization unlawfully and procured it by concealment of a material fact or by willful misrepresentation.

Before Defendant naturalized as a U.S. citizen in 2001, he was admitted to the United States and to permanent resident status as an immediate relative as the unmarried child of a U.S. citizen (IR-2). However, Defendant was, in fact, married and had two children at the time of his admission. Defendant affirmatively misrepresented and concealed this information in his written visa application and provided false testimony in his sworn visa interview. The truth meant he was disqualified from admission as an IR-2, and his misrepresentations made him inadmissible at the time of admission. As Defendant was not lawfully admitted to permanent residence, he was ineligible to naturalize as a U.S. citizen.

Additionally, in his naturalization interview, Defendant testified that he had never previously given false testimony to secure an immigration benefit. This was false, because he provided false testimony about his marital status and children during his sworn visa interview. Moreover, the sworn visa interview took place within five years of his written Naturalization Application. The false testimony at both his sworn visa interview and his naturalization interview disqualified Defendant from demonstrating the good moral character required for U.S. citizenship. 8 U.S.C. § 1101(f)(6).

With the attached affidavit showing good cause, the United States brings this civil action on the grounds that Defendant illegally procured his naturalization and willfully misrepresented and concealed material facts during the naturalization process. Under 8 U.S.C. § 1451(a), the United States seeks to revoke and set aside the order admitting Defendant to citizenship and to cancel his certificate of naturalization.

I. JURISDICTION AND VENUE

1. This is an action under 8 U.S.C. § 1451(a) to revoke and set aside the order admitting Defendant to U.S. citizenship and to cancel Certificate of Naturalization No.  issued February 6, 2002.

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

3. Pursuant to 8 U.S.C. § 1451(a) and 28 U.S.C. § 1391, venue is proper in this district because Defendant resides in Brooklyn Park, Minnesota, which is within the jurisdiction and venue of this Court.

II. PARTIES

4. Plaintiff is the United States of America.
5. Defendant is a native of Liberia and a naturalized U.S. citizen.

III. FACTUAL ALLEGATIONS

A. Defendant's Immigration History

6. The affidavit of Jeffrey J. Anderson, an agent within the Department of Homeland Security, showing good cause for this action, as required by 8 U.S.C. § 1451(a), is attached as Exhibit A.

7. In 1993, F.T.K. was born to Defendant.

8. On August 8, 1994, Defendant married Jestina Yei Vakun in Accra, Ghana.

9. In the spring of 1995, B.K. was born to Defendant.

10. Defendant can read, speak, and write in English.

11. On August 29, 1995, Defendant filled out his Form 230, Application for Immigrant Visa and Alien Registration ("Form 230").

12. Defendant filled out his Form 230 for the purposes of seeking admission to the United States and obtaining permanent residence in the United States as an immediate relative of a U.S. citizen, specifically as the unmarried child of a U.S. citizen (IR-2).

13. The IR-2 immigrant visa category, which Defendant sought, is reserved for unmarried children of U.S. citizens who are under 21-years-old, and this visa category is not limited by annual numerical caps.

14. A true and correct copy of Defendant's Form 230, except for redactions of immaterial personally identifying information, is attached as Exhibit B.

15. In his Form 230, Defendant reported that he could speak, read, and write English.

16. In his Form 230, Defendant reported that no one else assisted him in preparing his Form 230.

17. In his Form 230, when asked for his Marital Status, Defendant checked the box indicating "Single (never married)."

18. In fact, Defendant had married Vakun in August 1994, and he remained married to her.

19. In his Form 230, when asked for "Name Of Spouse," Defendant wrote "None."

20. In fact, the name of Defendant's then-spouse was Jestina Yei Vakun.

21. In his Form 230, when asked to "List name, date and place of birth, and addresses of all children," Defendant drew "----", indicating that he had no children.

22. In fact, Defendant had at least two children, both of whom were born before he signed the Form 230.

23. In his Form 230, when asked whether he was an alien who "seeks or has sought a visa, entry into the United States, or any U.S. immigration benefit by fraud or misrepresentation", Defendant checked the box indicating "No."

24. In fact, Defendant was falsely claiming to be single, falsely claiming that he had no wife, and falsely claiming that he had no children to obtain an IR-2 visa.

25. In his Form 230, when asked why he is unlikely to become a public charge, he indicated he was relying on an Affidavit of Support.

26. On January 25, 1996, Defendant appeared before a consular officer in connection with his Form 230.

27. Defendant was placed under oath for his visa interview.

28. In his interview, Defendant said that he could speak, read, and write English.

29. In his interview, Defendant said that no one else assisted him in preparing his Form 230.

30. In his interview, when asked for his Marital Status, Defendant said that he was single and never married.

31. In fact, Defendant married Vakun and he remained married to her at the time of his visa interview.

32. In his interview, when asked to list the names, dates and places of birth, and addresses for all children, Defendant said that he had no children.

33. In fact, Defendant had at least two children who were born before he attended his visa interview.

34. In his interview, when asked whether he was an alien who “seeks or has sought a visa, entry into the United States, or any U.S. immigration benefit by fraud or misrepresentation”, Defendant responded in the negative.

35. In fact, in both his interview and his Form 230, Defendant was falsely claiming to be single, falsely claiming that he had no wife, and falsely claiming that he had no children while seeking an IR-2 visa.

36. After his interview, Defendant’s Form 230 was approved.

37. On February 21, 1996, Defendant entered the United States and was admitted to permanent residence as an unmarried child of a U.S. citizen (IR-2).

38. At the time of his entry and admission, Defendant was married.

39. At the time of his entry and admission, Defendant did not have a valid entry document that would have allowed his admission as a married child of a U.S. citizen.

40. At the time of his entry and admission, Defendant had misrepresented his marital status, his wife, and his children.

41. Many years later, Defendant obtained a divorce decree from the district court for the Minnesota's Fourth Judicial District's Family Court Division on November 21, 2012.

42. According to the judgment, Korti had married Vakun on August 8, 1994 and remained married to her at the time of the visa application, visa interview, and his admission to permanent residence as the unmarried child of a U.S. citizen.

43. A copy of the Minnesota divorce judgment and decree, except for redactions of immaterial personally identifying information, is attached as Exhibit C.

B. Defendant's Naturalization Application

44. On January 8, 2001, Defendant completed and signed his written Application for Naturalization (Form N-400).

45. A true and correct copy of Defendant's Application for Naturalization, except for redactions of immaterial personally identifying information, is attached as Exhibit D.

46. On January 22, 2001, USCIS received Defendant's Application for Naturalization at one of its lockbox facilities.

47. In his Application for Naturalization, when asked for information about his marital history, Defendant disclosed that he had been married twice.

48. Defendant neither disclosed his marriage to Vakun nor any details about the marriage.

49. In the Application for Naturalization, Defendant reported he had three children.

50. He reported he had a child named F.T.K., born in 1993.

51. He reported he had a child named L.K., born in 1993.

52. He reported he had a child named B.K., born in 1995.

53. In his Application for Naturalization, Defendant was asked if he had ever “given false testimony for the purposes of obtaining an immigration benefit.”

54. In response to this question (Part 7, Question 12(g)) of his Application for Naturalization, Defendant checked the box indicating “No.”

55. This was false because, in fact, Defendant had given false testimony in his visa interview on January 25, 1996.

56. In his January 25, 1996 visa interview, Defendant testified falsely orally and under oath that he was single, that he had no children, and that he had not attempted to procure a visa or other immigration benefit through fraud or misrepresentation.

57. On January 8, 2001, Defendant signed his Application for Naturalization swearing, under penalty of perjury, that the Application for Naturalization was true and correct.

58. On January 22, 2001, Defendant’s Application for Naturalization was received by the Immigration & Nationality Service (INS).¹

59. On August 6, 2001, Defendant attended an interview with the INS in connection with his Application for Naturalization.

60. Defendant attended this interview for the purpose of obtaining naturalization.

61. At this interview, an INS officer placed Defendant under oath.

62. In his sworn interview on his Application for Naturalization, Defendant was asked if he had ever “given false testimony for the purposes of obtaining an immigration benefit.”

¹ On March 1, 2003, the INS ceased to exist 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 many of the events in this case took place prior to the transfer, “INS” will be referenced where factually accurate.

63. In response to this question in his sworn interview on his Application for Naturalization, Defendant testified orally and under oath that he had not given false testimony for the purposes of obtaining an immigration benefit.

64. This was false because, in fact, Defendant had given false testimony in his visa interview on January 25, 1996.

65. In his January 25, 1996 visa interview, Defendant testified falsely orally and under oath that he was single, that he had no children, and that he had not attempted to procure a visa or other immigration benefit through fraud or misrepresentation.

66. At the conclusion of his interview on his Application for Naturalization, Defendant again signed the Application for Naturalization, swearing that its contents were “true to the best of [his] knowledge and belief.”

67. As a result of the representations made on his written Application for Naturalization and on the testimony he provided in his naturalization interview, the INS approved Defendant’s Application for Naturalization on August 6, 2001.

68. On February 6, 2002, Defendant was naturalized as a U.S. citizen in Bloomington, Minnesota.

69. Defendant was issued a Certificate of Naturalization, No. .

70. A copy of this certificate, except for redactions of immaterial personally identifying information, is attached as Exhibit E.

71. Subsequent to his naturalization, B.K. and F.T.K. were admitted as unmarried children of a U.S. citizen (Defendant), and automatically derived citizenship as a result of Korti’s naturalization. *See* 8 U.S.C. § 1431(a).

IV. GOVERNING LAW

A. Congressionally Imposed Prerequisites to the Acquisition of Citizenship

72. No alien 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) (“An alien 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).

73. Among the threshold requirements for naturalization under 8 U.S.C. § 1427 is that a person must be “lawfully admitted for permanent residence.”

74. Congress has defined the term “lawfully admitted for permanent residence” to mean “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws.” *See* 8 U.S.C. § 1101(a)(20).

75. The term “lawfully” requires compliance with substantive legal requirements for admission, and not mere procedural regularity. *See* 8 U.S.C. § 1101(a)(20); *Arellano-Garcia v. Gonzales*, 429 F.3d 1183, 1186 (8th Cir. 2005).

76. Additionally, 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....” 8 U.S.C. § 1427(a)(3). 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.*

77. 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. 8 U.S.C. § 1101(f).

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

79. Further, Congress created a “catch-all” provision, which states, “[t]he fact that any person is not within any of the [statutorily described] 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).

80. Thus, an individual who, during the statutory period within which he or she is required to prove good moral character, commits an unlawful act adversely reflecting upon his or her moral character cannot meet the good moral character requirement, unless the applicant proves extenuating circumstances existed. *See* 8 C.F.R. § 316.10(b)(3)(iii); 8 U.S.C. § 1101(f).

81. “[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 both 8 U.S.C. § 1101(f)(3) and 8 C.F.R. § 316.10(b)(3)(iii)).

B. The Denaturalization Statute

82. Recognizing 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, Congress enacted 8 U.S.C. § 1451.

83. Under 8 U.S.C. § 1451(a), this Court must revoke Defendant's naturalization and cancel Defendant's Certificate of Naturalization if Defendant's naturalization was either:

- a. illegally procured, or
- b. procured by concealment of a material fact or by willful misrepresentation.

84. 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.

85. 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).

86. Where the government establishes that the defendant's citizenship was procured illegally or by willful misrepresentation of material facts, "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 NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE

(Adjustment Procured Unlawfully: Ineligible for Adjustment as Unmarried Child of a U.S. Citizen)

87. Plaintiff incorporates by reference the allegations set forth above.

88. To qualify for naturalization, an applicant must have been "lawfully admitted" to the United States for permanent residence. *See* 8 U.S.C. §§ 1427(a)(1), 1429.

89. As noted above, the term “lawfully” denotes compliance with substantive legal requirements, not mere procedural regularity. *See* 8 U.S.C. § 1101(a)(20); *Arellano-Garcia v. Gonzales*, 429 F.3d 1183, 1186 (8th Cir. 2005).

90. Defendant’s admission to permanent residence as an “immediate relative” as the child of a U.S. citizen required that he be both under the age of 21 and unmarried. 8 U.S.C. § 1101(b)(1) (1995) (“The term ‘child’ means an unmarried person under twenty-one years of age...”); § 1151(b)(2)(A)(i) (1995).

91. At the time of his admission, Defendant was married.

92. Defendant’s admission to permanent residence as the immediate relative unmarried child of a U.S. citizen was unlawful, because he was ineligible for admission under the IR-2 category because of his marriage.

93. As Defendant was ineligible for the IR-2 classification at the time he was admitted to permanent resident status as an IR-2, he was never lawfully admitted for permanent residence in accordance with the substantive legal requirements to obtain that status.

94. Because Defendant was never lawfully admitted for permanent residence, he was and remains ineligible for naturalization under 8 U.S.C. §§ 1427(a)(1) and 1429.

95. Because he was ineligible to naturalize, Defendant illegally procured his citizenship.

96. Because Defendant illegally procured his citizenship, this Court must revoke his citizenship as provided for in 8 U.S.C. § 1451(a).

COUNT II

**ILLEGAL PROCUREMENT OF NATURALIZATION
NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE
(Adjustment Procured Unlawfully – Inadmissible at the Time of Admission/Adjustment)**

97. Plaintiff incorporates by reference the allegations set forth above.

98. As discussed above, to qualify for naturalization, a petitioner must have been *lawfully* admitted to the United States for permanent residence. 8 U.S.C. § 1427(a)(1); *see also id.* § 1429.

99. The term “lawfully” as used in 8 U.S.C. § 1427(a)(1) requires status that is rightfully obtained in compliance with substantive legal requirements, rather than by mistake or fraud.

100. Among the statutory requirements applicable at the time of Defendant’s admission into the United States as a permanent resident was that he be admissible to the United States. *See* 8 U.S.C. § 1182(a) (1995).

101. Under the law then in effect, an individual “who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit” was ineligible to receive a visa and was excluded from admission into the United States. 8 U.S.C. § 1182(a)(6)(C)(i) (1995).

102. Defendant was never lawfully admitted to the United States as a permanent resident, and did not satisfy the requirements of 8 U.S.C. §§ 1427(a)(1) and 1429, because he was inadmissible at the time of his admission into the United States.

103. Specifically, Defendant misrepresented his marital status in his visa application and in his visa interview.

104. In his visa application and his visa interview, Defendant represented that he was single.

105. Defendant was, in fact, married.

106. At the time of his visa application, Defendant knew he was married.

107. At the time of his visa interview, Defendant knew he was married.

108. In his visa application and in his visa interview, Defendant willfully represented that he was single.

109. In his visa application and in his visa interview, Defendant willfully represented "None" when asked for his spouse's name.

110. His marital status and wife's name were material because the truth, if known, would have disqualified him from admission as an IR-2.

111. The concealment of his marital status and of wife's name in his visa interview was material because the truth, if known, would have revealed Defendant misrepresented his marital status and spouse's name on his written visa application.

112. The concealment of his spouse in his visa application and in his visa interview was material.

113. Likewise, in his visa application and his visa interview, Defendant represented that he had no children.

114. In fact, Defendant had at least two children born before he filed his visa application and attended his visa interview.

115. At the time of his visa application, Defendant knew he had a child, F.T.K., born in 1993.

116. At the time of his visa application, Defendant knew he had a child, B.K., born in Spring 1995.

117. At the time of his visa interview, Defendant knew he had a child, F.T.K., born in 1993.

118. At the time of his visa interview, Defendant knew he had a child, B.K., born in 1995.

119. The concealment of his children in his visa application and in his visa interview was material because the truth, if known, might have led the consular officer to open a line of inquiry into Defendant's marital status.

120. The concealment of his children and spouse in his visa application and in his visa interview was material because the truth, if known, might have led the consular officer to open a line of inquiry into Defendant's likelihood of becoming a public charge.

121. The concealment of his children in his visa interview was material because the truth, if known, would have revealed a line of inquiry as to whether Defendant misrepresented that he had no children on his Form 230.

122. Thus, the concealment of his children in his Form 230 and in his visa interview was material.

123. Further, in his interview, when asked whether he was an alien who "seeks or has sought a visa, entry into the United States, or any U.S. immigration benefit by fraud or misrepresentation," Defendant testified in the negative.

124. In fact, in both his interview and his Form 230, Defendant was falsely claiming to be single, falsely claiming that he had no wife, and falsely claiming that he had no children to obtain an IR-2 visa.

125. This misrepresentation was material because the truth, if known, would have revealed that Defendant was excludable under § 1182(a)(6)(C)(i) (1995).

126. Defendant's false statements, as set forth above, were material to determining his eligibility for the immigration benefits for which he applied. Defendant's false statements had the natural tendency to influence the decisions to approve his applications and requests. Defendant thus sought to procure or procured a visa or other documentation, or entry into the United States, by fraud or by willfully misrepresenting a material fact.

127. At the time he was admitted as a permanent resident, Defendant was inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(C)(i) (1995), because he had sought to procure a visa or other documentation, or entry into the United States, by fraud or by willfully misrepresenting a material fact.

128. Because Defendant was inadmissible at the time he was admitted as a lawful permanent resident, he was not lawfully admitted for permanent residence.

129. Because Defendant was not lawfully admitted for permanent residence, he was and remains ineligible for naturalization under 8 U.S.C. §§ 1427(a)(1) and 1429.

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

COUNT III

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

131. Plaintiff incorporates by reference the allegations set forth above.

132. Under the law in effect when Defendant petitioned for naturalization, Defendant was required to establish that he was a person of good moral character during the statutory period beginning five years immediately preceding the date he filed his petition, and continuing until the date he was admitted to U.S. citizenship.

133. To be eligible for naturalization Defendant was required to establish that he was a person of good moral character from January 22, 1996, to February 6, 2002. 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

134. Defendant was statutorily barred from establishing the good moral character necessary to naturalize because, during the statutory period, he gave false testimony orally and under oath for the purpose of obtaining an immigration benefit, including naturalization. *See* 8 U.S.C. § 1101(f)(6).

135. The materiality of the concealed information is irrelevant for the purposes of § 1101(f)(6). *Kungys*, 485 U.S. at 780. All that is required is an intent to deceive. *Id.*

136. Defendant testified falsely for immigration benefits on two occasions during the statutory period: (a) at his sworn visa interview on January 25, 1996, and (b) at his sworn naturalization interview on August 6, 2001.

137. On January 25, 1996, Defendant attended his visa interview with a consular officer for the purposes of obtaining admission as an immigrant and permanent resident status as the unmarried child of a U.S. citizen.

138. The consular officer interviewed Defendant under oath about the information that he provided in his Form 230.

139. In this sworn interview, Defendant testified orally and under oath that he was single, never married.

140. Defendant was, in fact, married.

141. Defendant knew he was married.

142. In this sworn visa interview, Defendant testified orally and under oath that he had no children.

143. Defendant, in fact, had two children.

144. Defendant knew he had at least one child.

145. In this sworn visa interview, Defendant testified orally and under oath that he had never sought a visa, entry into the United States, or any U.S. immigration benefit by fraud or misrepresentation.

146. Defendant, in fact, misrepresented his marital status, his spouse, and his children in his written visa application.

147. As a result of his sworn interview, Defendant procured an IR-2 visa.

148. Because, during the statutory period, he provided false testimony under oath for the purpose of obtaining his visa, Defendant 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.

149. On August 6, 2001, an INS examiner interviewed Defendant regarding his Form N-400, Application for Naturalization.

150. In this August 6, 2001 interview, Defendant took an oath swearing that he would answer all questions truthfully.

151. Defendant attended this interview for the purposes of obtaining an immigration benefit, specifically naturalization.

152. As discussed above, while under oath at his naturalization examination, Defendant falsely testified orally and under oath that he had never provided false testimony for the purposes of obtaining an immigration benefit.

153. In truth, Defendant had testified falsely at his sworn visa interview on January 25, 1996, wherein he testified that he was single (never married), that he was not married, and that he had no children.

154. Defendant provided his false testimony orally and under oath at his naturalization interview (in denying that he had previously testified falsely) for the purpose of obtaining an immigration benefit, namely, naturalization.

155. Because, during the statutory period, he provided false testimony orally and under oath for the purpose of obtaining his naturalization, Defendant 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.

156. Because Defendant was not a person of good moral character, he was ineligible for naturalization under 8 U.S.C. § 1427(a)(3) (2000).

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

COUNT IV

**ILLEGAL PROCUREMENT OF NATURALIZATION
LACK OF GOOD MORAL CHARACTER
(Unlawful Acts Adversely Reflecting on Moral Character)**

158. Plaintiff realleges and incorporates by reference the allegations set forth above.

159. As outlined above, Congress has mandated that, to be eligible for naturalization, an applicant must show that he or she has been a person of good moral character for the five-year statutory period before filing his or her naturalization application until the time the applicant becomes a naturalized U.S. citizen. 8 U.S.C. § 1427(a); 8 C.F.R. § 316.10(a)(i).

160. Defendant filed his naturalization application on January 22, 2001, and he naturalized February 6, 2002. Thus, to be eligible for naturalization, Defendant was required to establish that he was a person of good moral character during his “statutory period” from January 22, 1996 until February 6, 2002.

161. Defendant completed and filed his Application for Naturalization during the “statutory period.”

162. Defendant violated 18 U.S.C. § 1001(a)(1)-(3) by knowingly and willfully concealing in his Application for Naturalization—a matter within the jurisdiction of the Executive Branch of the Government of the United States—the truth about his false testimony at his visa interview.

163. Specifically, Defendant violated 18 U.S.C. § 1001(a)(1)-(3) when he gave false or misleading information to a U.S. Government official while applying for naturalization via the written Form N-400, Application for Naturalization.

164. In his Application for Naturalization, Defendant was asked if he had ever “given false testimony for the purposes of obtaining an immigration benefit.”

165. In response to this question (Part 7, Question 12(g)) of his Application for Naturalization, Defendant checked the box indicating “No.”

166. No extenuating circumstances exist that would palliate Defendant’s guilt for violating 18 U.S.C. § 1001(a)(1)-(3).

167. Defendant also violated 18 U.S.C. § 1546(a) and (b)(3) by knowingly and willfully presenting fraudulent applications and documents and attesting to misrepresentations made under oath.

168. Specifically, Defendant violated 18 U.S.C. § 1546(a) and (b)(3) by knowingly and willfully presenting fraudulent applications and documents and attesting to misrepresentations made under oath on his Application for Naturalization.

169. In his Application for Naturalization, Defendant was asked if he had ever “given false testimony for the purposes of obtaining an immigration benefit.”

170. In response to this question (Part 7, Question 12(g)) on his Application for Naturalization, Defendant checked the box indicating “No.”

171. Because, during the statutory period during which he was required to maintain good moral character, Defendant committed unlawful acts that adversely reflected on his moral character, for which no extenuating circumstances exist, he was and remains ineligible for naturalization under 8 U.S.C. §§ 1427(a)(1) and 1429.

172. Because he was ineligible to naturalize, Defendant illegally procured his citizenship.

173. Because Defendant illegally procured his citizenship, this Court must revoke his citizenship as provided for in 8 U.S.C. § 1451(a).

COUNT V

**PROCUREMENT OF U.S. CITIZENSHIP BY
CONCEALMENT OF A MATERIAL FACT OR
WILLFUL MISREPRESENTATION**

174. Plaintiff incorporates by reference the allegations set forth above.

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

176. A misrepresentation is "willful" if it is "deliberate and voluntary." *United States v. Hirani*, 824 F.3d 741, 749 (8th Cir. 2016).

177. A concealment or misrepresentation is "material" if it has that "natural tendency to influence the decisions of the Immigration and Naturalization Service." *Kungys*, 485 U.S. at 772. "[T]he test more specifically is whether the misrepresentation or concealment had a natural tendency to produce the conclusion that the applicant was qualified." *Id.* at 771-72. A misrepresentation or concealment has such a tendency "if the true [representation] would predictably have disclosed other facts relevant to [the applicant's] qualifications." *Id.* at 774. The issue of materiality is a legal question for the court. *Id.* at 772. "[W]hat is relevant is what would have ensued from official knowledge of the misrepresented fact." *Id.* at 775.

178. As set forth above, throughout the naturalization process, Defendant willfully misrepresented and concealed that he had procured his IR-2 visa and corresponding permanent residence by misrepresenting his marital status and by concealing his children.

179. Defendant knew that his misrepresentations and omissions about these matters were false and misleading, and he made such misrepresentations voluntarily and deliberately. Accordingly, Defendant made these representations willfully.

180. Defendant's misrepresentations and concealment were material to his naturalization because the disclosure of his prior false testimony and misrepresentations would have influenced the decision whether to approve his naturalization application. Indeed, but for Defendant's concealment of material facts and willful misrepresentations, his statutory ineligibility for naturalization would have been disclosed, and Plaintiff would not have approved his Application for Naturalization or administered the oath of allegiance.

181. Defendant thus procured his naturalization by willful misrepresentation and concealment of material facts, and this Court must revoke his citizenship under 8 U.S.C. § 1451(a).

VI. PRAYER FOR RELIEF

WHEREFORE, the United States of America, respectfully requests:

- (1) A declaration that Defendant illegally procured his citizenship;
- (2) A declaration that Defendant procured his citizenship by concealment of a material fact or by willful misrepresentation;
- (3) Judgment revoking and setting aside Defendant's admission to citizenship, effective as of the original date of naturalization, February 6, 2002;
- (4) Judgment canceling Certificate of Naturalization No. , effective as of the date of its issuance, February 6, 2002;
- (5) Judgment forever restraining and enjoining Defendant from claiming any rights, privileges, benefits, or advantages related to his February 6, 2002 naturalization;
- (6) Judgment requiring Defendant, within ten days of the entry of judgment against him, to surrender and deliver 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 to his designated representative, including the undersigned;

(7) Judgment requiring the Defendant, within ten days of the entry of judgment against him, to surrender and deliver any other indicia of U.S. citizenship, whether valid or expired, including, but not limited to, United States passports and passport cards, Enhanced Drivers Licenses, 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 to his designated representative, including the undersigned;

(8) Judgment granting the United States such other relief as may be lawful and proper in this case.

DATE: July 29, 2026

DANIEL ROSEN
United States Attorney
District of Minnesota

Respectfully Submitted,

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