IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MUBARAK AHMED HAMED, Defendant.	))))))))))	Civil Action No. 2:18-cv-04024 **COMPLAINT TO REVOKE NATURALIZATION**

I. PRELIMINARY STATEMENT

This is a civil action seeking to revoke the naturalization of Mubarak Ahmed Hamed ("Defendant") under 8 U.S.C. § 1451(a). Defendant was ineligible to naturalize because, prior to naturalizing, Defendant committed multiple crimes to which he pled guilty after naturalizing and that he concealed during the naturalization process. Those crimes include Defendant's violation of, and conspiracy to violate, sanctions imposed against Iraq under the International Emergency Economic Powers Act ("IEEPA"), as well as obstruction of Internal Revenue laws.

This Court should revoke Defendant's naturalization and cancel his naturalization certificate for four reasons. First, he lacked the statutorily required good moral character to naturalize because he falsely testified under oath during his naturalization interview about his prior criminal actions. Second, he lacked the statutorily required good moral character because he committed crimes involving moral turpitude ("CIMTs") during the period when he was required to demonstrate good moral character. Third, he committed unlawful acts adversely reflecting on his moral character, regardless of whether the acts also constitute CIMTs. Fourth, Defendant willfully misrepresented and concealed material facts during his naturalization proceedings.

Based on Defendant's actions and the attached affidavit of good cause in support of this complaint, and under 8 U.S.C. § 1451(a), Plaintiff United States of America brings this civil action to revoke and set aside the order admitting Defendant to citizenship and to cancel his naturalization certificate. In support of this action, Plaintiff alleges as follows.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction under 8 U.S.C. § 1451(a) and 28 U.S.C. §§ 1331 and 1345, as this is an action to revoke naturalization and cancel Certificate of Naturalization No. 25738418.

2. The affidavit of Gina Cox, Special Agent, Homeland Security Investigations, U.S. Immigration and Customs Enforcement ("ICE"), an agency within the Department of Homeland Security ("DHS"), showing good cause for this action as required by 8 U.S.C. § 1451(a) is attached as Exhibit A. Criminal history documents supporting the affidavit are attached as Exhibit B.

3. Venue is proper in this district under 8 U.S.C. § 1451(a) and 28 U.S.C. § 1391.

III. PARTIES

4. Plaintiff is the United States of America.

5. Defendant is a naturalized United States citizen whose last known address of residence is in Columbia, Missouri, which is within this Court's jurisdiction and venue.

IV. FACTUAL BACKGROUND

IMMIGRATION HISTORY

6. In 1990, Defendant, a native and citizen of Sudan, arrived in the United States with authorization to study under an F-1 student visa.

7. In 1991, Defendant became Executive Director of the Islamic American Relief Agency ("IARA"), in which position he was responsible for implementing projects authorized by IARA's Board of Directors or with which IARA associated itself. Defendant spoke for IARA, negotiated and entered cooperation agreements and contracts on its behalf, and authorized its spending and payment for projects, materials, and travel. IARA also received funds from the United States Agency for International Development. Ex. B – Plea Agreement ¶ 3(D).[1]

8. On or about October 2, 1994, after securing an immigrant visa through the Diversity Immigrant Visa Program, Defendant submitted to the Immigration and Naturalization Service ("INS")[2] a Form I-485, Application to Register Permanent Residence or Adjust Status, whereby he sought to adjust his immigration status to lawful permanent residence.

9. On February 21, 1995, INS approved Defendant's adjustment application. *Id*.

NATURALIZATION PROCEEDINGS

Naturalization Application

10. On or about November 23, 1999, Defendant filed a Form N-400, Application for Naturalization, with INS based on having been a lawful permanent resident of the United States for at least five years. *See* Ex. C – Naturalization Application.

11. Part 7, Question 15(a) of the naturalization application asks, "Have you ever knowingly committed any crime for which you have not been arrested?" In response to that question, Defendant checked the box marked "No." *Id.*

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[1] *See also United States v. Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶ D (W.D. Mo. June 25, 2010).

[2] 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). Because several of the events at issue here occurred prior to the transfer, however, the INS will be referenced where factually appropriate.

12. Part 11 of the naturalization application states, in part, "I certify or, if outside the United States, I swear or affirm, 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.* Defendant signed the naturalization application beneath that statement, certifying under penalty of perjury that his responses to the questions on the application were true and correct. *Id.*

13. Defendant filed his naturalization application with INS on or about November 23, 1999. *Id.*

Naturalization Interview

14. On or about May 8, 2000, an INS examiner placed Defendant under oath and interviewed him concerning his naturalization application. *Id.*

15. When orally asked the question at Part 7, Question 15(a) on his naturalization application, Defendant orally responded in the negative, thereby testifying under oath that he had not ever "knowingly committed any crime for which [he had] not been arrested." *Id.*

16. At the conclusion of his naturalization interview, Defendant again signed his naturalization application, thereby swearing that the contents of his naturalization application, including corrections to the application made at his interview, were true to the best of his knowledge and belief. *Id.*

17. Also on May 8, 2000, based on Defendant's representations in his naturalization application and his sworn testimony during his naturalization interview, INS approved Defendant's naturalization application. *Id.*

Oath of Allegiance

18. Following INS's approval of his naturalization application, Defendant received a Form N-445, Notice of Naturalization Oath Ceremony, which indicated that his oath ceremony

would take place on July 21, 2000. *See* Ex. D – Oath Notice.

19. On July 21, 2000, Defendant completed the questionnaire on his oath notice in supplementation of his naturalization application. *Id.*

20. Question 3 of the oath notice questionnaire asks, in part, "AFTER the date you were first interviewed on your Application for Naturalization, Form N-400 . . . Have you knowingly committed any crime or offense, for which you have not been arrested[?]" In response to that question, Defendant checked the box marked "No." *Id.*

21. On July 21, 2000, Defendant signed his oath notice, thereby certifying that his answers provided in the oath notice questionnaire were true and correct. *Id.*

22. Also on July 21, 2000, based on Defendant's approved naturalization application and the responses he provided that same day when he submitted the oath notice questionnaire, Defendant was administered the oath of allegiance, admitted to United States citizenship, and issued his Certificate of Naturalization No. 25738418. *See* Ex. E – Certificate of Naturalization.

FEDERAL CRIMINAL CHARGES AND CONVICTION

23. On or about October 21, 2008, in the United States District Court for the Western District of Missouri, the United States filed a forty-one-count Second Superseding Indictment in which Counts 1-31 and 33-41 charged Defendant with (i) conspiracy to violate the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 18 U.S.C. § 371; (ii) violation of the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 50 U.S.C. §§ 1701-1706, 18 U.S.C. § 2, and 31 C.F.R. § 575.210; (iii) conspiracy to commit money laundering under 18 U.S.C. § 1956(h); (iv) money laundering under 18 U.S.C. §§ 1956(a)(2)(A) and 2; (v) theft of public money under 18 U.S.C. §§ 641 and 2; (vi) conspiracy to commit money laundering under 18 U.S.C. § 1956(h); (vii) money

laundering under 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2; (viii) obstructing or impeding the administration of Internal Revenue laws under 26 U.S.C. § 7212(a); (ix) violation of the International Emergency Economic Powers Act and the terrorism sanctions regulations under 50 U.S.C. §§ 1701-1706, 18 U.S.C. § 2, and 31 C.F.R. § 594.204; and (x) a forfeiture allegation under 18 U.S.C. § 982(a)(1) and (b)(1). Ex. B at Second Superseding Indictment.[3]

24. On June 25, 2010, pursuant to a plea agreement, Defendant pled guilty to conspiracy to violate the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 18 U.S.C. § 371 (Count One); violation of the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 50 U.S.C. §§ 1701-1706 (Count Ten); and obstructing and impeding the administration of Internal Revenue laws under 26 U.S.C. § 7212(a) (Count Thirty-Three). *Id.* at Plea Agreement ¶¶ 2, 3(E)-(M), (R)-(V).[4] The remaining charges against Defendant were dismissed under the plea agreement.

25. During the entire period the Iraqi sanctions were in effect, Defendant used funds received as charitable contributions in the United States to engage in prohibited transactions involving money transfers to Iraq. *Id*. at ¶ 3(M). More specifically, Defendant regularly authorized and transferred funds from IARA accounts in the United States to an account in Jordan controlled by Khalid Al-Sudanee, a.k.a. Khalid Ahmad Jumah Al-Sudani, knowing that Al-Sudanee would then transport such funds into Iraq in violation of sanctions. *Id*. at ¶¶ 2, 3(I), (K). On October 13, 2004, the U.S. Department of the Treasury's Office of Foreign Assets Control designated IARA and Al-Sudanee as Specially Designated Global Terrorists. *Id*. at ¶ 3(L).[5]

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[3] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 135 (W.D. Mo. Oct. 21, 2008).
[4] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V).
[5] Recent OFAC Actions, U.S. Dep't of the Treasury (Oct. 13, 2004), https://www.

26. In pleading guilty to Counts One, Ten, and Thirty-Three, Defendant admitted that he knowingly and willfully committed the offenses. *Id*. at ¶ 2.

27. On January 11, 2012, the district court sentenced Defendant to concurrently running imprisonment terms of 58 months on Count One, 58 months on Count Ten, and 36 months on Count Thirty-Three. *Id*. at Judgment.[6]

28. Defendant's plea agreement and the other criminal documents filed as exhibits to this complaint establish the facts outlined below.

FALSE STATEMENTS AND TESTIMONY

Crimes Prior to Naturalization Interview for which Not Arrested

29. Beginning at least as early as January 1, 1997, and continuing up to, and past July 21, 2000, Defendant committed crimes for which he had not been arrested at the time he naturalized, to wit: conspiracy to violate the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 18 U.S.C. § 371; violation of the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 50 U.S.C. §§ 1701-1706; and obstructing and impeding the administration of Internal Revenue laws under 26 U.S.C. § 7212(a).[7] *Id*. at Plea Agreement ¶¶ 3(E)-(M), (R)-(V).[8]

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treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20041013.aspx (last visited Feb. 6, 2018).

[6] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 649 at 2 (W.D. Mo. Jan. 12, 2012).

[7] The period in which Defendant committed these crimes actually spanned from at least January 1, 1997, until at least October 13, 2004, as the Plea Agreement indicates. *See Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V); *see also id*. at ECF No. 135 ¶¶ 45, 57, 76. This naturalization revocation complaint, however, does not rely on Defendant's actions after his naturalization date of July 21, 2000, when Defendant's statutory good moral character period concluded.

[8] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V).

30. Defendant committed the crimes referenced in paragraph 29 at least as early as January 1, 1997, and continuing up to, and past July 21, 2000, the date on which he was naturalized, when, while employed by IARA, he solicited funds as charitable contributions using IARA's tax-exempt status while representing that the funds were legitimate charitable contributions when they were not. *Id*.

31. Defendant also committed the crimes referenced in paragraph 29 at least as early as January 1, 1997, and continuing up to, and past July 21, 2000, the date on which he was naturalized, when, while employed by IARA, he misused part of the funds he had solicited as charitable contributions by transferring them to Iraq. *Id.*

32. Defendant also committed the crimes referenced in paragraph 29 at least as early as January 1, 1997, and continuing up to, and past July 21, 2000, the date on which he was naturalized, when, while employed by IARA, he coordinated IARA funds soliciting and money transfer to Iraq with others. *Id*.

33. Defendant also committed the crimes referenced in paragraph 29 when, while employed by IARA and for each year from 1997 continuing up to, and past July 21, 2000, the date on which he was naturalized, he failed to disclose material information on Internal Revenue Service ("IRS") Form 990 and in his communication with IRS agents and his instructions to others concerning their communications. *Id*.

34. Accordingly, Defendant's representation in his naturalization application at Part 7, Question 15(a), that he had not ever knowingly committed any crime for which he had not been arrested, was false. Additionally, Defendant's sworn testimony in response to this same question during his naturalization interview on May 8, 2000, also was false.

35. Defendant knew his answer to Part 7, Question 15(a), as well as his oral testimony in response to that question at his naturalization interview, to be false because Defendant knew that, during his employment with IARA, he had committed each of the above-described crimes through his actions while employed by IARA.

36. Defendant took these actions – representing in his naturalization application and testifying at his interview in support of his application that he had not ever knowingly committed any crime for which he was not arrested – with the intent to deceive and to obtain an immigration benefit.

Commission of Crimes between Date of First Naturalization Interview and Taking the Oath of Allegiance to the United States

37. Between the date of Defendant's first naturalization interview on May 8, 2000, and the date he took the oath of allegiance to the United States on July 21, 2000, Defendant committed crimes for which he was not arrested, to wit: conspiracy to violate the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 18 U.S.C. § 371; violation of the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 50 U.S.C. §§ 1701-1706; and obstructing and impeding the administration of Internal Revenue laws under 26 U.S.C. § 7212(a). *Id.*[9]

38. Defendant committed the crimes referenced in paragraph 37 when, while employed by IARA and during the period from May 8 to July 21, 2000, he solicited funds as charitable contributions using IARA's tax-exempt status while representing that the funds were legitimate charitable contributions when they were not. *Id.*

[9] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V).

39. Defendant also committed the crimes referenced in paragraph 37 when, while employed by IARA and during the period from May 8 to July 21, 2000, he misused part of the funds by transferring them to Iraq. *Id*.

40. Defendant also committed the crimes referenced in paragraph 37 when, while employed by IARA and during the period from May 8 to July 21, 2000, he coordinated IARA funds soliciting and money transfer to Iraq with others. *Id*.

41. Defendant also committed the crimes referenced in paragraph 37 when, while employed by IARA and during the period from May 8 to July 21, 2000, he failed to disclose material information on IRS Form 990 and in his communication with IRS agents and his instructions to others concerning their communications. *Id*.

42. Accordingly, Defendant's answer on July 21, 2000, in response to Question 3 of his oath notice questionnaire that, after the date he was first interviewed for his naturalization application, he had not ever knowingly committed any crime for which he had not been arrested, was false.

43. Defendant knew his answer in response to Question 3 of his oath notice questionnaire was false because he knew that, since the time of his first naturalization interview, he had committed each of the above-described crimes through his actions while employed by IARA.

44. Defendant took this action – misrepresenting the truth in response to question 3 of his oath notice questionnaire – with the intent to deceive and to obtain an immigration benefit.

V. GOVERNING LAW

A. Congressionally Imposed Prerequisites to the Acquisition of Citizenship

45. 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).

46. 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). 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 United States citizen. *Id.*; 8 C.F.R. § 316.10(a)(1).

47. As a matter of law, an applicant necessarily lacks good moral character if he commits a CIMT during the statutory period and later either is convicted of the crime or admits his commission of the criminal activity. 8 U.S.C. § 1101(f)(3) (cross-referencing 8 U.S.C. § 1182(a)(2)(A)); 8 C.F.R. § 316.10(b)(2)(i) (providing that an applicant "shall be found to lack good moral character" if, for example, he committed and was convicted of one or more CIMTs).

48. 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).

49. Further, Congress created a "catch-all" provision that 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).

50. Thus, in light of section 1101(f), and pursuant to naturalization regulations, individuals who, during the statutory period, commit unlawful acts adversely reflecting upon their moral character cannot meet the good moral character requirement unless they establish that extenuating circumstances exist. 8 C.F.R § 316.10(b)(3)(iii).

51. "[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)). But where an individual has been convicted, he is collaterally estopped from contesting all issues necessarily decided in the criminal matter. *See id.* at 663 (stating that a defendant "may not . . . re-litigate issues decided in his criminal case" in a subsequent civil denaturalization action) (citing *United States v. Jean-Baptiste*, 395 F.3d 1190, 1192 (11th Cir. 2005), *cert. denied*, 546 U.S. 852 (2005)).

B. <u>The Denaturalization Statute</u>

52. Recognizing that there are situations in which 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.

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

i. illegally procured; or

ii. procured by concealment of a material fact or by willful misrepresentation.

54. 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.

55. 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." *Id.* at 517.

VI. CAUSES OF ACTION

COUNT ONE

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

56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 55 of this complaint.

57. A naturalization applicant must satisfy the statutory requirement of demonstrating that he is a person of good moral character during the relevant statutory period. *See* 8 U.S.C. § 1427(a); 8 C.F.R. § 316.10(a)(1).

58. The statutory period requiring good moral character applicable here began November 23, 1994, five years before the date Defendant filed his naturalization application on

November 23, 1999, and it continued until Defendant took the oath of allegiance and became a United States citizen on July 21, 2000. *Id.*

59. Congress has statutorily precluded a naturalization applicant from establishing the requisite good moral character to naturalize if, during the statutory period, he gives false testimony under oath for the purpose of obtaining an immigration benefit. *See* 8 U.S.C. § 1101(f)(6).

60. On May 8, 2000, during the statutory good moral character period, INS interviewed Defendant concerning his naturalization application. At the beginning of his naturalization interview, Defendant took an oath affirming that he would answer all questions truthfully.

61. As alleged above, during Defendant's May 8, 2000 naturalization interview, and during the statutory period, Defendant provided false testimony for the purpose of obtaining an immigration benefit when he swore under oath that he had never knowingly committed any crime for which he had not been arrested.

62. As alleged above, the testimony Defendant provided was false because it misrepresented the fact that, although he had not yet been arrested, Defendant had, in fact, knowingly conspired to violate sanctions against Iraq, violated sanctions against Iraq, and obstructed and impeded the administration of Internal Revenue laws.

63. Because Defendant provided false testimony during the statutory period in order to obtain an immigration benefit, he was statutorily ineligible to naturalize due to lack of good moral character. *See* 8 U.S.C. §§ 1101(f)(6), 1427(a).

64. Defendant therefore illegally procured his naturalization, and this Court must revoke his naturalization as provided by 8 U.S.C. § 1451(a).

COUNT TWO

ILLEGAL PROCUREMENT OF NATURALIZATION LACK OF GOOD MORAL CHARACTER (Crimes Involving Moral Turpitude)

65. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 64 of this complaint.

66. As alleged above, during the statutory period that began November 23, 1994, and ended when Defendant naturalized on July 21, 2000, Defendant committed, among other crimes, the crime of corruptly obstructing and impeding the administration of Internal Revenue laws, in violation of 26 U.S.C. § 7212(a).

67. Beginning as early as January 1, 1997, and continuing beyond Defendant's naturalization date of July 21, 2000, while employed by IARA, Defendant solicited funds as charitable contributions using IARA's tax-exempt status while representing that the funds were legitimate charitable contributions; misused part of the funds so solicited by transferring them to Iraq; coordinated this funds soliciting and money transfer with others; and then failed to disclose material information on IRS Form 990 and in his communication with IRS agents and his instructions to others concerning their communications. *See* Ex. B at Plea Agreement ¶¶ 3(R)-(V).[10] All are in violation of 26 U.S.C. § 7212(a).

68. As also alleged above, during the statutory period that began November 23, 1994, and ended when Defendant naturalized on July 21, 2000, Defendant provided false representations and testimony, and these actions constitute the following criminal offenses: making false statements in a matter within the jurisdiction of the executive branch of the

[10] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(R)-(V).

government of the United States, in violation of 18 U.S.C. § 1001(a); and perjury, in violation of 18 U.S.C. § 1621(1).

69. On June 29, 1998; August 10, 1999; and July 14, 2000, Defendant did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations, and did make or use false writings and documents knowing the same to contain materially false, fictitious, and fraudulent statements and representations, in a matter within the jurisdiction of the executive branch of the government of the United States. In filing on each of these dates the IRS Form 990, Defendant provided false representations by failing to disclose the fact that IARA had provided funds for projects and persons in Iraq; by falsely answering "no" to Question 76 and thus failing to disclose the improper and illegal activities set forth in Count One through Thirty-Two and Thirty-Four through Forty-One of the Second Superseding Indictment; and by falsely answering "no" to Question 80a and thus failing to disclose IARA's relationship to the Islamic Relief Agency ("ISRA"), also known as the Islamic African Relief Agency, headquartered in Khartoum, Sudan, and to the ISRA branch office located in Amman, Jordan, which was in violation of 18 U.S.C. § 1001(a). *Id.* at Plea Agreement ¶ 3(T); Second Superseding Indictment ¶¶ 77(F)-(G), (I)-(J).[11]

70. On June 29, 1998; August 10, 1999; and July 14, 2000, and under penalty of perjury as permitted under 28 U.S.C. § 1746, Defendant did willfully subscribe as true material matter which he did not believe to be true. In completing and signing the Form 990s that he filed with the IRS on these dates, Defendant subscribed as true that he had reported all of IARA's exempt purpose expenses to the IRS, that he had reported all IARA activity to the IRS, and that

[11] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶ 3(T) and ECF No. 135 ¶¶ 77(F)-(G), (I)-(J).

the IARA was not related to any other tax exempt or non-exempt organization. *Id.* These representations were perjurious, material, and not true, and Defendant did not believe them to be true. These actions were in violation of 18 U.S.C. § 1621(1).

71. Obstructing Internal Revenue laws, in violation of 26 U.S.C. § 7212(a), is a crime that adversely reflects on Defendant's moral character and constitutes a CIMT. *See U.S. v. Mitchell*, 985 F.2d 1275, 1278-79 (4th Cir. 1993) (interpreting section 7212(a)'s "omnibus provision" – prohibiting a corrupt endeavor to impede the administration of the Internal Revenue laws – to cover the "broad range of activity akin to the fraudulent activity alleged in [*Mitchell*]," including Mitchell's "conduct of fraudulently representing to the IRS that his tax organization was involved in tax exempt activities [and] of using his tax exempt status to solicit contributions that were not used for tax-exempt purposes[.]"); *cf. United States v. Williams*, 644 F.2d 696, 701 (8th Cir. 1981) (favoring a broad construction of section 7212(a)'s "omnibus clause" – addressing "an endeavor to impede or obstruct the due administration of the Internal Revenue Code" – to prohibit assisting the preparation and filing of false W-4 forms).

72. Making false statements, in violation of 18 U.S.C. § 1001(a), is a crime that adversely reflects on Defendant's moral character and constitutes a CIMT. *See Fayzullina v. Holder*, 777 F.3d 807, 813-14 (6th Cir. 2015) (reiterating that 18 U.S.C. § 1001(a)(2) constitutes a CIMT and holding that subsection (a)(3) also constitutes such a crime); *Ghani v. Holder*, 557 F.3d 836, 840-41 (7th Cir. 2009) ("[W]e conclude that a violation of 18 U.S.C. § 1001 is a crime involving moral turpitude as that term is used in the [Immigration and Nationality Act]."); *Kabongo v. I.N.S.*, 837 F.2d 753, 758 (6th Cir. 1988) (finding "false statements and [] statements made to defraud the United States Government" – which statements the alien acknowledged – constituted a CIMT under 18 U.S.C. § 1001); *Sellers v. Lynch*, 630 F. App'x 464, 469-70 (6th

Cir. 2015) (holding that a violation of 18 U.S.C. § 1001 constitutes a CIMT); *Martinez-Castelan v. Gonzalez*, 188 F. App'x 246, 247 (5th Cir. 2006) (upholding as reasonable the interpretation by the Board of Immigration Appeals that a violation of 18 U.S.C. § 1001(a)(2) constitutes a CIMT); *cf. Beltran v. Holder*, 522 F. App'x 430, 431 (10th Cir. 2013).

73. Perjury, in violation of 18 U.S.C. § 1621, is a crime that adversely reflects on Defendant's moral character and constitutes a CIMT. *See Duran-Garcia v. Neelly*, 246 F.2d 287, 293 (5th Cir. 1957) (perjury under 18 U.S.C. § 1621 is a CIMT); *United States ex rel. Boraca v. Schlotfeldt*, 109 F.2d 106, 108 (7th Cir. 1940) (crime of perjury is a CIMT).

74. Because Defendant committed CIMTs during the statutory period, he was statutorily ineligible to naturalize for lack of good moral character. *See* 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I); 8 C.F.R. § 316.10(b)(2)(i).

75. Defendant therefore illegally procured his naturalization, and this Court must revoke his naturalization as provided by 8 U.S.C. § 1451(a).

COUNT THREE

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

76. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 75 of this complaint.

77. On June 25, 2010, Defendant pleaded guilty to conspiring to violate the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 18 U.S.C. § 371 (Count One); violating the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 50 U.S.C. §§ 1701-1706 (Count Ten); and obstructing and

impeding the administration of Internal Revenue laws under 26 U.S.C. § 7212(a) (Count Thirty-Three). Ex. B at Plea Agreement ¶¶ 3(E)-(M), (R)-(V).[12]

78. Defendant's plea agreement establishes that the unlawful acts underlying the crime to which he pled guilty at Count One of the Second Superseding Indictment occurred during the statutory period through multiple overt acts committed from May 31, 1995, to May 12, 2000. *Id*. at ¶¶ 3(E)-(M), (R)-(V); Ex. B at Superseding Indictment ¶¶ 55(F)-(Q).[13]

79. Defendant's plea agreement also establishes that the unlawful acts underlying the crime to which he pled guilty at Count Thirty-Three of the Second Superseding Indictment occurred during the statutory period through multiple filings of IRS Form 990s on June 29, 1998; August 10, 1999; and July 14, 2000. Ex. B at Plea Agreement ¶¶ 3(E)-(M), (R)-(V); *id*. at Superseding Indictment ¶¶ 77(F)-(G), (I)-(J).[14]

80. Defendant's plea agreement also establishes that, during the statutory period, he committed additional crimes that constitute additional unlawful acts.

81. Defendant violated the International Emergency Economic Powers Act and the Iraqi sanctions regulations under 50 U.S.C. §§ 1701-1706, 18 U.S.C. § 2, and 31 C.F.R. § 575.210 on December 9, 1999; January 4, 2000; January 14, 2000; February 8, 2000; and May 12, 2000. *See* Ex. B at Plea Agreement ¶ 3(M); *id*. at Second Superseding Indictment ¶ 57.[15]

82. Defendant falsely swore in an immigration matter, a violation of 18 U.S.C.

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[12] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V).

[13] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V) and ECF No. 135 ¶¶ 55(F)-(Q).

[14] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶¶ 3(E)-(M), (R)-(V) and ECF No. 135 ¶¶ 77(F)-(G), (I)-(J).

[15] *See also Hamed*, No. 4:07-cr-00087-NKL, ECF No. 521 ¶ 3(M) and ECF No. 135 ¶ 57.

§ 1546(a), by willfully and knowingly subscribing as true a false statement with respect to material facts in his naturalization application – that he had not ever knowingly committed any crime for which he had not been arrested – and presenting his application on or about November 23, 1999.

83. Defendant made false statements in a matter within the jurisdiction of the executive branch of the government of the United States, a violation of 18 U.S.C. § 1001(a), by providing false information in his naturalization application filed on or about November 23, 1999, when he falsely represented that he had not ever knowingly committed any crime for which he had not been arrested.

84. Defendant made false statements in a matter within the jurisdiction of the executive branch of the government of the United States, a violation of 18 U.S.C. § 1001(a), by providing false information at his naturalization interview on May 8, 2000, when he falsely testified that he had not ever knowingly committed any crime for which he had not been arrested.

85. Defendant made false statements in a matter within the jurisdiction of the executive branch of the government of the United States, a violation of 18 U.S.C. § 1001(a), by providing false information in his oath notice questionnaire submitted in support of his naturalization application on July 21, 2000, when he falsely represented that, since the date of his naturalization interview on May 8, 2000, he had not knowingly committed any crime for which he had not been arrested.

86. Defendant perjured himself, a violation of 18 U.S.C § 1621(1), by subscribing as true the false representations he made to the IRS in Form 990s submitted on June 29, 1998, August 10, 1999, and July 14, 2000; the false contents of the naturalization application

Defendant filed on or about November 23, 1999; and the false testimony Defendant provided thereafter in his naturalization interview on May 8, 2000.

87. Defendant did not establish at the time of his naturalization, and cannot establish, extenuating circumstances with regard to the foregoing crimes, and therefore he cannot avoid the regulatory bar on establishing good moral character found at 8 C.F.R. § 316.10(b)(3)(iii).

88. The regulatory "unlawful acts" bar to establishing good moral character found in 8 C.F.R. § 316.10(b)(3)(iii) applies to Defendant regardless of whether the statutory CIMT bar outlined in Count Two also applies to him.

89. Defendant's unlawful acts precluded him from establishing good moral character, rendering him ineligible for naturalization at the time he took the oath of allegiance. *See* 8 C.F.R. § 316.10(b)(3)(iii).

90. Due to Defendant's commission of unlawful acts during the statutory period, he illegally procured his naturalization, and this Court must revoke his naturalization as provided by 8 U.S.C. § 1451(a).

COUNT FOUR

PROCUREMENT OF UNITED STATES CITIZENSHIP BY CONCEALMENT OF A MATERIAL FACT OR WILLFUL MISREPRESENTATION

91. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 90 of this complaint.

92. Under 8 U.S.C. § 1451(a), this Court must revoke naturalization and cancel the resulting naturalization certificate if the naturalization was procured by concealment of a material fact or by willful misrepresentation.

93. As set forth above, Defendant willfully misrepresented in his naturalization application and during his May 8, 2000 naturalization interview that he had never knowingly committed any crime for which he was not arrested.

94. Additionally, after the INS approved his naturalization application, on the day Defendant naturalized on July 21, 2000, Defendant willfully misrepresented in the oath notice questionnaire of his Form N-445 that, since the time of his naturalization interview, he had not committed a crime for which he had not been arrested.

95. Defendant intentionally misrepresented and concealed throughout his naturalization proceedings the fact that, although he had not yet been arrested, he had committed the crimes of conspiring to violate sanctions against Iraq; violating sanctions against Iraq; and obstructing and impeding the administration of Internal Revenue laws. Defendant knew his false representations and sworn testimony about these matters were false and misleading.

96. Defendant's willful misrepresentations were material to determining his eligibility for naturalization. Defendant's commission of crimes within the statutory good moral character period, his false testimony about his crimes, and the fact that his crimes involve moral turpitude and trigger the regulatory bar for unlawful acts at 8 C.F.R. § 316.10(b)(3)(iii) would have precluded Defendant from establishing the good moral character necessary to naturalize. These misrepresentations had a natural tendency to influence the INS's decision on Defendant's naturalization application.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following:

(1) A declaration that Defendant procured his citizenship illegally;

(2) A declaration that Defendant procured his citizenship by concealment of material facts and by willful misrepresentation;

(3) Judgment revoking and setting aside the order admitting Defendant to citizenship and cancelling Certificate of Naturalization No. 25738418, effective as of the original date of the order and certificate, July 21, 2000;

(4) Judgment forever restraining and enjoining Defendant from claiming any rights, privileges, benefits, or advantages under any document which evidences United States citizenship obtained as a result of his naturalization on July 21, 2000;

(5) Judgment requiring Defendant, within ten days of issuance of judgment, to surrender and deliver his naturalization certificate, 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 the undersigned;

(6) Judgment requiring Defendant, within ten days of issuance of judgment, to surrender and deliver any other indicia of United States citizenship, including, but not limited to, United States passports, voter registration cards, and other voting documents and 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 the undersigned; and

(7) Judgment granting Plaintiff such other relief as may be lawful and proper in this case.

Dated: February 7, 2018

Respectfully submitted,

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