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15 UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,  
 17  
 Plaintiff,  
 18  
 19 vs.  
 20 ARACELI MARTINEZ,  
 a/k/a Maria Araceli Ramos de Martinez,  
 21  
 22 Defendant.

Case No.: 2:17-cv-2658-RGK (SS)

**PLAINTIFF’S NOTICE OF  
 MOTION FOR JUDGMENT ON  
 THE PLEADINGS UNDER FRCP  
 12(C) & MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT**

Hearing Date: August 21, 2017  
 Time: 9:00 a.m.  
 Judge: Hon. R. Gary Klausner

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on Monday, August 21, 2017, at 9:00 a.m., or as soon thereafter as the parties may be heard, Plaintiff the United States will bring for hearing a motion to for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). The hearing will take place before the Honorable R. Gary Klausner in Courtroom 850, Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, Los Angeles, CA 90012.

This motion is based on the memorandum of points and authorities attached hereto, all pleadings, papers, and files in this action, and such oral argument as may be presented at the hearing on the motion. Plaintiff has been unable to confer pursuant to L.R. 7-3 with Defendant Araceli Martinez a/k/a Maria Araceli Ramos de Martinez (“Martinez”), who has not responded to prior written communication and has failed to appear in this action despite receiving personal service.

DATED: July 20, 2017

Respectfully submitted,

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS**

3           Plaintiff United States of America (“United States”) hereby moves for judgment on  
4 the pleadings pursuant to Federal Rule of Civil Procedure 12(c)<sup>1</sup> because the facts  
5 established in the pleadings show that this Court must denaturalize Defendant Araceli  
6 Martinez a/k/a Maria Araceli Ramos de Martinez (“Martinez”) under Counts I, II, and IV  
7 of the Complaint. Throughout the naturalization process, Martinez concealed the fact  
8 that she was actively engaged in a fraudulent scheme in which she held herself out as a  
9 government employee who could assist undocumented immigrants with obtaining legal  
10 status in exchange for compensation and for which she was later convicted. As  
11 demonstrated below, the Court should enter judgment as a matter of law in favor of the  
12 United States because the indisputable material facts mandate Martinez’s  
13 denaturalization.

14                                   **I.     INTRODUCTION**

15           The United States respectfully seeks judgment revoking Martinez’s naturalization  
16 under 8 U.S.C. § 1451(a). Section 1451(a) requires a federal district court to revoke an  
17 individual’s naturalization for either of two independent grounds: (1) if the naturalization  
18 was illegally procured; or (2) if the naturalization was procured by concealment of a  
19 material fact or by willful misrepresentation. 8 U.S.C. § 1451(a). Based on the  
20 undisputed facts, both grounds exist here.

21           First, Martinez illegally procured her citizenship because she lacked the good  
22 moral character required to naturalize and become a United States citizen. On September  
23 12, 2012, Martinez pleaded guilty to and was convicted of four counts of Obtaining  
24

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25 <sup>1</sup> Though default judgment is generally appropriate where, as here, Defendant has not answered the  
26 complaint or filed any motion with respect to the complaint despite having been personally served with  
27 the summons and complaint under Fed. R. Civ. P. 55(b)(2), the remedy of default judgment in  
28 denaturalization proceedings is disfavored. *See Klapprott v. United States*, 335 U.S. 601 (1949).  
Martinez’s time to answer the complaint expired on June 19, 2017. *See* 8 U.S.C. § 1451(b) (providing  
sixty days after service of denaturalization complaint for defendant to file answer); *see also* Fed. R. Civ.  
P. 6(a)(3); Proof of Service, ECF No. 8 (service effected on April 17, 2017).

1 Money, Labor or Property by False Pretense under California Penal Code § 532(a) and  
2 was sentenced by the Superior Court of the State of California for the County of Los  
3 Angeles to two years and eight months' imprisonment. That conviction was based on  
4 conduct that occurred during the period of time when Martinez was required to show she  
5 had good moral character. Under the Immigration and Nationality Act ("INA"), as  
6 amended, the crimes of which Martinez was convicted each constitute a crime involving  
7 moral turpitude ("CIMT") that statutorily precluded her from establishing the good moral  
8 character required for naturalization. 8 U.S.C. § 1101(f)(3).

9 Second, Martinez's conduct also constitutes "unlawful acts" that reflect adversely  
10 on her moral character and which likewise barred her from establishing the requisite good  
11 moral character. *See* 8 C.F.R. § 316.10(b)(3)(iii). This ground stems from U.S  
12 Citizenship and Immigration Services' ("USCIS") regulation on good moral character,  
13 and is separate and independent from the statutory provision at 8 U.S.C. § 1101(f)(3).  
14 Because Martinez committed unlawful acts that adversely reflected on her moral  
15 character, and because she has not and cannot demonstrate extenuating circumstances  
16 excusing or mitigating such conduct, she was ineligible for and illegally procured United  
17 States citizenship.

18 Third, although Martinez has pleaded guilty to willfully defrauding undocumented  
19 immigrants immediately prior to applying for naturalization and while she was going  
20 through the naturalization process, she concealed and misrepresented such criminal  
21 activity to immigration authorities throughout the naturalization process. Had she  
22 disclosed such conduct, USCIS would have been required to deny her naturalization  
23 application. Thus, Martinez procured her naturalization by concealment of a material fact  
24 and by willful misrepresentation.

25 For these three independent reasons, which are supported by undisputed facts and  
26 explained in detail below, the Court should grant judgment in favor of the Government  
27 and revoke Martinez's naturalization and cancel her Certificate of Naturalization.  
28

1 **II. STATEMENT OF THE FACTS**

2 On June 6, 2012, Martinez was charged in the Superior Court of the State of  
3 California for the County of Los Angeles (“California Superior Court”) with eleven  
4 counts of Obtaining Money, Labor or Property by False Pretense under California Penal  
5 Code § 532(a).<sup>2</sup> See Felony Complaint & Plea Colloquy, *State v. Martinez*, No.  
6 VA125171 (Cal. Super. Ct.), ECF No. 1-2 at 1-8. The charges were based on a  
7 fraudulent scheme in which Martinez held herself out as a government employee who  
8 could assist undocumented immigrants with obtaining legal status in exchange for  
9 compensation. See Supplementary Report, County of Los Angeles Sheriff’s Department  
10 (attached as Exhibit A).<sup>3</sup> As a result of her fraud, Martinez received between \$2,000 and  
11 \$5,000 from each of her undocumented-immigrant victims despite failing to submit any  
12 paperwork to USCIS on their behalf. *Id.*

13 On September 12, 2012, Martinez pleaded guilty to and was convicted of Counts  
14 1-4 of the indictment, all violations of California Penal Code § 532(a). See ECF No. 1-2  
15 at 9-10, 12-13, 20-21, 25-26. Specifically, she pleaded guilty to counts based on conduct  
16 that occurred on August 1, 2011 (Counts 1-3) and August 20, 2011 (Count 4). *Id.* at 1-2.  
17 The California Superior Court sentenced Martinez to two years and eight months’  
18 imprisonment. *Id.* at 25. Following a restitution hearing on December 14, 2012, the  
19 California Superior Court also ordered Martinez to make restitution to nine of her  
20 undocumented-immigrant victims. See Electronic Docket Report at 7, *State v. Martinez*,

21  
22 <sup>2</sup> Cal. Penal Code § 532(a) provides:

23 (a) Every person who knowingly and designedly, by any false or fraudulent representation or  
24 pretense, defrauds any other person of money, labor, or property, whether real or personal, or who  
25 causes or procures others to report falsely of his or her wealth or mercantile character, and by thus  
26 imposing upon any person obtains credit, and thereby fraudulently gets possession of money or  
property, or obtains the labor or service of another, is punishable in the same manner and to the  
same extent as for larceny of the money or property so obtained.

27 <sup>3</sup> Plaintiff is submitting the attached Supplementary Report to provide the Court with context and  
28 background regarding the nature of Martinez’s fraudulent scheme. Even without considering such  
information, however, Martinez’s conviction for theft by false pretenses itself is sufficient to grant  
Plaintiff’s motion for judgment as a matter of law.

1 No. VA125171 (Cal. Super. Ct.) (attached as Exhibit B); *see also* ECF No. 1-2 at 21  
2 (“Miss Martinez, you stole a lot of money from different people. You are responsible for  
3 paying back all of the victims . . . not just the four you plead on.”).

4 At the same time Martinez was engaged in her immigration fraud scheme, she  
5 applied to naturalize and become a United States citizen. On or about July 8, 2011,  
6 Martinez filed a Form N-400, Application for Naturalization (“naturalization  
7 application”). *See* Form N-400 Application for Naturalization, ECF No. 1-3 at 1.<sup>4</sup> In that  
8 application, Martinez checked “No” in response to part 10, question 15, which asked:  
9 “Have you **ever** committed a crime or offense for which you were **not** arrested?” *Id.* at 8  
10 (emphasis in original).

11 On October 17, 2011, Denise Segovia, an officer with USCIS, interviewed  
12 Martinez regarding her naturalization application to determine her eligibility for  
13 naturalization. *Id.* at 10. During the interview, Officer Segovia asked Martinez,  
14 consistent with part 10, question 15 of Martinez’s naturalization application, whether she  
15 had ever committed a crime or offense for which she was not arrested. *Id.* at 8.<sup>5</sup> In  
16 response, Martinez confirmed her written response, stating that she had never committed  
17 a crime or offense for which she was not arrested. *Id.* Martinez signed the naturalization  
18 application in the presence of Officer Segovia and swore that the contents of her  
19 application were true and correct to the best of her knowledge. *Id.* at 10. Based upon the  
20

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21 <sup>4</sup> Pinpoint citations are to the pagination of the original document.

22 <sup>5</sup> Courts have consistently recognized and relied on the standard practice among immigration officers to  
23 mark the N-400 during naturalization interviews by placing red check marks and annotations next to  
24 only those questions that are orally verified with the naturalization applicant. *See, e.g., Bernal v. INS*,  
25 154 F.3d 1020, 1022 (9th Cir. 1998) (finding false testimony under oath where “the INS officer recorded  
26 Mr. Bernal’s pertinent answers on the interview form and annotated the form in red ink”); *see also*  
27 USCIS’s Naturalization Quality Procedures Manual, *available at*  
28 [www.uscis.gov/sites/default/files/ilink/docView/AFM/DATAOBJECTS/App72-1Text.pdf](http://www.uscis.gov/sites/default/files/ilink/docView/AFM/DATAOBJECTS/App72-1Text.pdf) (last visited  
July 5, 2017) (“Officers must check off or circle in **RED** ink all N-400 questions which are asked and  
answered during the interview. **In order to clearly identify the applicant’s responses, the check or  
circle marks must be made next to the N-400 answers.** All additions, deletions, changes, and  
annotations made by the officer, must be in **RED** ink and numbered and noted in **RED** ink within the  
attestation section on the last page of the N-400 before the applicant signs.”) (emphasis in original).

1 information supplied by Martinez in her naturalization application, and the sworn  
2 answers she gave during her October 17, 2011 naturalization interview, USCIS ultimately  
3 approved the application. *Id.* at 1.<sup>6</sup>

4 Martinez received a Notice of Naturalization Oath Ceremony (“Oath Notice”),  
5 which indicated her naturalization oath ceremony would take place on April 17, 2012.  
6 *See* Form N-445, Notice of Naturalization Oath Ceremony, ECF No. 1-4. The Oath  
7 Notice included instructions for questions referring to her to actions since the date she  
8 was first interviewed on her naturalization application. *Id.* at 2. The Oath Notice further  
9 instructed that Martinez must bring the completed questionnaire to the oath ceremony and  
10 give them to the employee of USCIS at the oath ceremony. *See id.*

11 Martinez answered “No” in response to Question 3 on the back of the Oath Notice,  
12 which asked: “AFTER the date you were first interviewed on your Application for  
13 Naturalization Form N-400 . . . Have you knowingly committed any crime or offense, for  
14 which you have not been arrested.” *Id.* Martinez signed the Oath Notice, certifying that  
15 “each of the answers shown above were made by me or at my direction, and that they are  
16 true and correct as of the date of my naturalization ceremony.” *Id.* On April 17, 2012,  
17 Martinez took the Oath of Allegiance to become a United States citizen and was issued  
18 Certificate of Naturalization No. 35052490. *See* Certificate of Naturalization (attached as  
19 Exhibit C).

20 On April 7, 2017, the United States filed the underlying complaint in this case  
21 seeking an order revoking and setting aside the order admitting Martinez to United States  
22 citizenship, and canceling her certificate of naturalization. *See* Complaint, ECF No. 1.  
23

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24 <sup>6</sup> USCIS initially denied Martinez’s naturalization application on November 30, 2011, for lack of good  
25 moral character under 8 C.F.R. § 316.10. Martinez freely admitted during her naturalization interview  
26 that, on March 5, 2004, she was detained at the Otay Mesa port of entry for alien smuggling, and, on  
27 June 13, 2006, she was arrested at the San Ysidro, California port of entry for alien smuggling. *See*  
28 Naturalization Application, ECF No. 1-3 at 8 & Attachment. On March 16, 2012, USCIS conducted a  
review hearing of Martinez’s N-400 and determined Martinez overcame the deficiencies described in the  
denial of her N-400. Plaintiff asserts that the initial denial of her naturalization application on  
November 30, 2011, has no bearing on the present cause of action against Martinez.

1 Martinez was personally served over three months ago on April 17, 2017, while in  
2 criminal incarceration at the Mendocino County Jail. *See* Proof of Service, ECF No. 8.  
3 Although the summons informed Martinez that she had sixty days to respond to the  
4 Complaint, *see* Summons, ECF No. 6, she has not yet appeared in this litigation or  
5 otherwise responded.

### 6 III. LEGAL STANDARDS

#### 7 A. Denaturalization Under 8 U.S.C. § 1451(a) Requires Clear, Unequivocal, and 8 Convincing Evidence

9 The Supreme Court has described United States citizenship “as the highest hope of  
10 civilized men,” concluding that once United States citizenship has been conferred, it  
11 should not be taken away without “clear, unequivocal, and convincing evidence, which  
12 does not leave the issue in doubt.” *Schneiderman v. United States*, 320 U.S. 118, 122  
13 (1943) (internal quotations omitted). The government bears the burden of such proof in  
14 denaturalization proceedings because of the “importance of the right that is at stake.”  
15 *Fedorenko v. United States*, 449 U.S. 490, 505-06 (1981). Nevertheless, “once a district  
16 court determines that the Government has met its burden of proving that a naturalized  
17 citizen obtained his citizenship illegally or by willful misrepresentation, it has no  
18 discretion to excuse the conduct,” and must enter a judgment of denaturalization. *Id.* at  
19 517.

#### 20 B. Judgment on the Pleadings under Rule 12(c)

21 After the pleadings are closed, a party may move for judgment on the pleadings  
22 under Federal Rule of Civil Procedure 12(c). Fed. R. Civ. P. 12(c). The standard  
23 governing a Rule 12(c) motion for judgment on the pleadings is “functionally identical”  
24 to that governing a Rule 12(b)(6) motion. *United States ex rel. Caffaso v. Gen. Dynamics*  
25 *C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). Thus, when the plaintiff moves  
26 for judgment on the pleadings, the court should accept as true all factual allegations in the  
27 answer and all factual allegations from the complaint that the defendant admits or fails to  
28 deny. *See Hal Roach Studios v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th

1 Cir. 1989). “Judgment on the pleadings is proper when the moving party clearly  
2 establishes on the face of the pleadings that no material issue of fact remains to be  
3 resolved and that it is entitled to judgment as a matter of law.” *Id.* “Uncontested  
4 allegations to which the other party had an opportunity to respond are taken as true.”  
5 *Qwest Commc’ns Corp. v. City of Berkeley*, 208 F.R.D. 288, 291 (N.D. Cal. 2002)

6 As a general rule, in considering a motion for judgment on the pleadings, a court  
7 must limit its review to the pleadings or convert the motion to one seeking summary  
8 judgment. *See* Fed. R. Civ. P. 12(d) (“If, on a motion under . . . 12(c), matters outside the  
9 pleadings are presented to and not excluded by the court, the motion must be treated as  
10 one for summary judgment”). Nevertheless, a district court may also consider, without  
11 converting the Rule 12(c) motion into one for summary judgment: (1) “documents  
12 referred to in the complaint whose authenticity is not disputed,” *Old Oakland P’ship I v.*  
13 *Lukens*, 188 F.3d 514 (9th Cir. 1999); (2) “materials properly attached to a complaint as  
14 exhibits,” *Qwest Commc’ns Corp.*, 208 F.R.D. at 291; and (3) “facts that are contained in  
15 materials of which the court may take judicial notice,” *Heliotrope Gen., Inc. v. Ford*  
16 *Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999) (internal quotations omitted).<sup>7</sup> In  
17 particular, a court may take judicial notice of state court records. *See Smith v. Duncan*,  
18 297 F.3d 809, 815 (9th Cir. 2002) (federal courts may take judicial notice of related state  
19 court documents), *overruled on other grounds as recognized in Cross v. Sisto*, 676 F.3d  
20 1172 (9th Cir. 2012); *Mike Rose’s Auto Body, Inc. v. Applied Underwriters Captive Risk*  
21 *Assurance Co., Inc.*, No. 16-cv-1864, 2016 WL 5407898, at \*1 (N.D. Cal. Sept. 28, 2016)  
22 (“Judicial notice of the state court record is likewise proper.”).

23  
24  
25 <sup>7</sup> *See also Summit Media LLC v. City of Los Angeles*, 530 F. Supp. 2d 1084, 1096 (C.D. Cal. 2008)  
26 (“[D]ocuments attached to the complaint and incorporated by reference are treated as part of the  
27 complaint, not extrinsic evidence; thus, these documents are properly considered in a Rule 12(c)  
28 motion.”); Wright & Miller, 5C Fed. Prac. & Proc. Civ. § 1367 (3d ed.) (stating that a court reviewing a  
12(c) motion may consider “the competing pleadings, exhibits thereto, matters incorporated by reference  
in the pleadings, whatever is central or integral to the claim for relief or defense, and any facts of which  
the district court will take judicial notice”).

1 **IV. ARGUMENT**

2 As demonstrated below, based on the pleadings this Court must denaturalize  
3 Martinez for three separate reasons. First, the undisputed facts establish that during the  
4 statutory period Martinez committed a CIMT of which she was later convicted, and thus  
5 she was statutorily ineligible to naturalize. Second, Martinez’s fraudulent and criminal  
6 conduct constituted an unlawful act that adversely reflects on her moral character and  
7 precluded her from establishing the requisite good moral character, rendering her  
8 ineligible for naturalization. Third, the undisputed facts also establish that Martinez  
9 procured her naturalization by willfully misrepresenting and concealing material facts  
10 during the naturalization process relating to her criminal conduct. Accordingly, both  
11 grounds for denaturalization under 8 U.S.C. § 1451(a) exist as a matter of law in this  
12 case, and the Court must enter an order revoking Martinez’s naturalization and canceling  
13 her Certificate of Naturalization No. 35052490.

14 **A. Martinez illegally procured her United States citizenship because she**  
15 **committed a CIMT during the statutory period, which precluded her from**  
16 **establishing the requisite good moral character (Count I).**

17 The pleadings and court records attached to the Complaint establish that Martinez  
18 pleaded guilty to and was convicted defrauding undocumented immigrants, and that her  
19 underlying criminal conduct occurred during the good moral character statutory period.  
20 Because the crime of which she was convicted is a CIMT, Martinez was precluded from  
21 establishing the good moral character required to lawfully naturalize as a United States  
22 citizen. Therefore, Martinez illegally procured her naturalization, and this Court must  
23 denaturalize her, as set forth in Count I of the Complaint.

24 Among the many statutory requirements that an applicant must satisfy to qualify  
25 for naturalization, 8 U.S.C. § 1427(a)(3) requires that an applicant establish that, “during  
26 all periods referred to in this subsection[, she] has been and still is a person of good moral  
27 character.” 8 U.S.C. § 1427(a)(3). The statutory period for Martinez’s showing of the  
28 required good moral character began five years before the date she filed her

1 naturalization application and continued until the time she took the oath of allegiance and  
2 became a naturalized United States (the “statutory period”). *Id.*; 8 C.F.R. § 316.10(a)(1).  
3 Martinez filed her naturalization application on July 8, 2011, and she became a  
4 naturalized United States citizen on April 17, 2012. *See* Form N-400, ECF No. 1-3; *see*  
5 *also* Ex. B. Therefore, Martinez was required to demonstrate good moral character from  
6 July 8, 2006 to April 17, 2012.

7 Title 8 U.S.C. § 1101(f) precludes a naturalization applicant from establishing  
8 good moral character if she falls within certain enumerated classes. *See* 8 U.S.C.  
9 § 1101(f)(1)-(8). In particular, an applicant statutorily lacks good moral character if she  
10 commits a CIMT during the statutory period and later either is convicted of the CIMT or  
11 admits her commission of it. 8 U.S.C. § 1101(f)(3) (cross-referencing 8 U.S.C.  
12 § 1182(a)(2)(A)); 8 C.F.R. § 316.10(b)(2)(i).<sup>8</sup> An individual cannot escape the CIMT bar  
13

14 <sup>8</sup> Title 8 U.S.C. § 1101(f)(3) provides:

15 (f) For the purposes of this chapter—

16 No person shall be regarded as, or found to be, a person of good moral character who, during the  
17 period for which good moral character is required to be established, is, or was—

18 . . .

19 (3) a member of one or more of the classes of persons, whether inadmissible or not, described in  
20 paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and  
21 (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section (except as such  
paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the  
offense described therein, for which such person was convicted or of which he admits the  
commission, was committed during such period;

22 Title 8 U.S.C. § 1182(a)(2)(A)(i) provides:

23 (A) Conviction of certain crimes

24 (i) In general

25 Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who  
admits committing acts which constitute the essential elements of—

26 (I) a crime involving moral turpitude (other than a purely political offense) or an attempt  
or conspiracy to commit such a crime, or

27 (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State,  
28 the United States, or a foreign country relating to a controlled substance (as defined in  
section 802 of Title 21),

1 on good moral character merely because the conviction or confession occurs after the  
2 statutory period. As the Seventh Circuit has explained:

3 There is no reason, either in the text or in the intent of [8 U.S.C.  
4 §§ 1101(f)(3) and 1182(a)(2)(A)(i)], to assume that the *proof* [of the  
5 offense] must occur during the statutory period. To the contrary, the  
6 *offense* must occur during the statutory period under the language of  
7 . . . section 1101(f)(3) but the proof may come at any time. To read  
8 these statutes otherwise would lead to the absurd result that the district  
9 court feared: an applicant who evaded prosecution or refused during the  
10 statutory period to admit committing a crime would have an advantage  
11 over an applicant who was convicted or who was truthful during that  
12 time period.

13 *United States v. Suarez*, 664 F.3d 655, 659-60 (7th Cir. 2011) (emphasis in original).<sup>9</sup> In  
14 summary, under § 1101(f)(3) Martinez was precluded from showing the requisite good  
15 moral character if: (1) she committed a CIMT; (2) during the statutory period; and (3) she  
16 was convicted of, or admits committing, that CIMT. All three elements are met in this  
17 case.

18 Based on the certified California Superior Court records attached to the Complaint,  
19 it is beyond dispute that Martinez pleaded guilty to and was convicted of four counts of  
20 Obtaining Money, Labor or Property by False Pretense under California Penal Code

21 \_\_\_\_\_  
22 is inadmissible.

23 The two exceptions in 8 U.S.C. § 1182(a)(2)(A)(ii) do not apply in this case because Martinez  
24 committed multiple crimes, was not under the age of 18 at the time the act was committed, and was  
25 sentenced to 2 years and 8 months' imprisonment.

26 <sup>9</sup> In *United States v. Dang*, 488 F.3d 1135 (9th Cir. 2007), the court analyzed pre-naturalization conduct  
27 for which the defendant was convicted post-naturalization under 8 C.F.R. § 316.10(b)(3)(iii) rather than  
28 under 8 U.S.C. § 1101(f)(3). *See id.* at 1139-41. Nothing in the Dang court's analysis, however,  
precludes a finding that Martinez's conduct rendered her ineligible under both the statute and the  
regulation, consistent with *Suarez* and many other courts to have addressed the issue. *Suarez*, 664 F.3d  
at 659-60; *see also United States v. Ogbonna*, No. 6:16-cv-244, 2017 WL 1100720, at \*2 (E.D. Tex.  
Mar. 24, 2017); *United States v. Garcia*, No. 14-cv-22397, 2015 WL 12533126, at \*4 (S.D. Fla. Sep. 18,  
2015); *United States v. Romero-Ramirez*, No. 14-cv-522, 2015 WL 4492352, at \*3 (E.D. Wis. July 23,  
2015); *United States v. Gayle*, 996 F. Supp. 2d 42, 52 (D. Conn. 2014); *United States v. Gomez*, 945 F.  
Supp. 2d 1359, 1364 (S.D. Fla. 2013); *United States v. Bogacki*, 925 F. Supp. 2d 1288, 1293-94 (M.D.  
Fla. 2012); *United States v. Romero-Reyes*, No. 11-cv-69, 2012 WL 6680167, at \*4-5 (D.V.I. Dec. 21,  
2012); *Agarwal v. Napolitano*, 663 F. Supp. 2d 528, 542 (W.D. Tex. 2009); *United States v. Ekpin*, 214  
F. Supp. 2d 707, 713 (S.D. Tex. 2002).

1 § 532(a). *See* ECF No. 1-2 at 9-10, 12-13, 20-21, 25-26. Specifically, on September 12,  
2 2012, Martinez pleaded guilty to Counts 1-4 of an eleven count indictment. *Id.*  
3 Moreover, it is clear from the records that Martinez committed the conduct underlying  
4 the four counts to which she plead guilty in August 2011, which was during the statutory  
5 period. *Id.* at 1-2 (Counts 1-3 - August 1, 2011; Count 4 - August 20, 2011). Thus, the  
6 second and third elements are satisfied, and the only remaining question is whether the  
7 crime of which Martinez was convicted constitutes a CIMT—a question of law. *See Leal*  
8 *v. Holder*, 771 F.3d 1140, 1144 (9th Cir. 2014); *Olivas-Motta v. Holder*, 746 F.3d 907,  
9 908 (9th Cir. 2013).

10         Martinez’s commission of Obtaining Money, Labor or Property by False Pretense  
11 qualifies as a CIMT, as a matter of law, because fraud is inherent in the crime. *See*  
12 California Penal Code § 532(a) (“Every person who knowingly and designedly, by any  
13 *false or fraudulent* representation or pretense, *defrauds* any other person of money, labor,  
14 or property, whether real or personal, . . . and thereby *fraudulently* gets possession of  
15 money or property, or obtains the labor or service of another, is punishable in the same  
16 manner and to the same extent as for larceny of the money or property so obtained.”)  
17 (emphasis added). The INA does not define “moral turpitude,” but case law and  
18 administrative decision-making provide guidance on which crimes are CIMTs and which  
19 are not. The Supreme Court has held that crimes involving fraud categorically qualify as  
20 CIMTs. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (“American courts have,  
21 without exception, included [fraud] crimes within the scope of moral turpitude.”).  
22 Similarly, the Ninth Circuit has a “longstanding rule that crimes that have fraud as an  
23 element . . . are categorically crimes involving moral turpitude.” *Planes v. Holder*, 652  
24 F.3d 991, 997-98 (9th Cir. 2011) (re-affirming that “fraud crimes are categorically crimes  
25 involving moral turpitude, simply by virtue of their fraudulent nature”); *see also*  
26 *Ramirez-Contreras v. Sessions*, 858 F.3d 1298, 1304 (9th Cir. 2017) (“Fraud is the  
27 prototypical crime of moral turpitude”). Moreover, the Board of Immigration Appeals  
28 (“BIA”) has determined that when fraud is inherent in an offense, that offense qualifies as

1 a CIMT even if “intent to defraud” is not a specific element of the offense. *Matter of*  
2 *Flores*, 17 I. & N. Dec. 225, 229-30 (BIA 1980).<sup>10</sup>

3 Here, Martinez’s conviction under California Penal Code § 532(a) constitutes a  
4 CIMT. Section 532 is entitled “*False pretenses; obtaining money, labor or property;*  
5 *punishment; evidence necessary to support conviction.*” Cal. Penal Code § 532  
6 (emphasis added). Subsection (a) makes unlawful:

7 *knowingly and designedly, by any false or fraudulent representation or*  
8 *pretense, defraud[] any other person of money, labor, or property . . . or who*  
9 *cause[] or procure[] others to report falsely of his or her wealth or mercantile*  
10 *character, and by thus imposing upon any person obtains credit, and thereby*  
11 *fraudulently gets possession of money or property, or obtains the labor or*  
12 *service of another . . . .*

13 *Id.* § 532(a) (emphasis added). Thus, both the title and the express language of the statute  
14 establish that deceit and fraudulent misrepresentation are inherent in Martinez’s  
15 conviction. Indeed, California courts have long held that intent to defraud is an essential  
16 element of the crime of theft by false pretenses. *See, e.g., People v. Ashley*, 267 P.2d  
17 271, 279 (Cal. 1954) (“To support a conviction of theft for obtaining property by false  
18 pretenses, it must be shown that the defendant made a false pretense or representation  
19 with intent to defraud the owner of his property, and that the owner was in fact  
20 defrauded.”); *Otash v. Bureau of Private Investigators & Adjusters*, 230 Cal. App. 2d  
21 568, 572 (Cal. Ct. App. 1964) (discussing § 532 and stating that “[t]o support a  
22 conviction of the substantive crime of obtaining property by false pretenses, it must be  
23 shown that the defendant made a false representation with intent to defraud an owner of  
24 his property, and that the owner was in fact defrauded.”); *People v. Fujita*, 43 Cal. App.  
25 3d 454, 466-67 (Cal. App. 1974) (“The crime of theft by false pretenses consists of three  
26 elements: (1) the making of a false pretense or representation by the defendant, (2) the  
27 intent to defraud the owner of his property, and (3) actual reliance by the owner upon the

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28 <sup>10</sup> Under the *Chevron* doctrine, this Court should defer to the BIA’s interpretation of the term  
“moral turpitude” in its published decisions. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999).

1 false pretense in parting with his property.”). Martinez’s act of “knowingly and  
2 designedly . . . defrauding” undocumented immigrants of money is a “prototypical  
3 crime of moral turpitude.” *See Ramirez-Contreras v. Sessions*, 858 F.3d at 1304 (“Fraud  
4 is the prototypical crime of moral turpitude”).

5 In summary, the pleadings in this case and Martinez’s criminal conviction in  
6 California Superior Court, establish that Martinez committed a CIMT during the statutory  
7 period and was thus precluded from establishing the requisite good moral character  
8 necessary to lawfully naturalize. Because Martinez was ineligible to naturalize, she  
9 illegally procured her naturalization and this Court must denaturalize her. *See*  
10 *Fedorenko*, 449 U.S. at 517 (holding that once a district court determines that the  
11 Government has met its burden of proving that a naturalized citizen obtained his  
12 citizenship illegally, the court must enter a judgment of denaturalization).

13 **B. Martinez illegally procured her United States citizenship because she**  
14 **committed “unlawful acts” that adversely reflected on her moral character**  
15 **during the statutory period, and which rendered her ineligible for**  
16 **nationalization (Count II).**

17 This Court should also issue an order denaturalizing Martinez because her  
18 commission of “unlawful acts” during the statutory period precluded her from  
19 establishing the good moral character required for naturalization.

20 As discussed above, an applicant for naturalization must establish that she is a  
21 person of good moral character during the statutory period. *See* 8 U.S.C. § 1427(a)(3).  
22 In addition to enumerated classes of aliens who lack good moral character, *see* 8 U.S.C.  
23 § 1101(f)(1)-(8), Congress created a “catch-all” provision, which states, “[t]he fact that  
24 any person is not within any of the foregoing classes shall not preclude a finding that for  
25 other reasons such person is or was not of good moral character.” 8 U.S.C. § 1101(f).  
26 Pursuant to the authority granted by Congress in this “catch-all” provision, the agency  
27 issued regulations which provide additional criteria for when a naturalization applicant  
28 shall be found the lack good moral character. *See* 8 C.F.R. § 316.10. Under that

1 regulation, a naturalization applicant “shall be found to lack good moral character if,  
2 during the statutory period, the applicant . . . [c]ommitted unlawful acts that adversely  
3 reflect upon the applicant’s good moral character, or was convicted or imprisoned for  
4 such acts,” unless the applicant “establishes extenuating circumstances.” 8 C.F.R.  
5 § 316.10(b)(3)(iii).

6 Courts have repeatedly upheld 8 C.F.R. § 316.10(b)(3) as a valid, binding, and  
7 proper regulation. *See United States v. Dang*, 488 F.3d 1135, 1140-41 (9th Cir. 2007)  
8 (upholding the regulation and affording it *Chevron* deference); *see also United States v.*  
9 *Jean-Baptiste*, 395 F.3d 1190, 1194 (11th Cir. 2005) (same); *United States v. Suarez*, 664  
10 F.3d 655, 661 (7th Cir. 2011) (same). Notably, this regulation explicitly applies even in  
11 situations where the unlawful act does not qualify as a crime involving moral turpitude  
12 (“CIMT”). *See* 8 C.F.R. § 316.10(b)(3)(iii) (noting that unlawful acts may preclude a  
13 finding of good moral character, “although the acts do not fall within the purview of  
14 § 316.10(b)(1) or (2)”).

15 An applicant falls within the ambit of 8 C.F.R. § 316.10(b)(3)(iii) if he has  
16 engaged in an act that was “unlawful” which “adversely reflects” on his good moral  
17 character. *See* 8 C.F.R. § 316.10(b)(3)(iii); *see also Khamooshpour v. Holder*, 781 F.  
18 Supp. 2d 888, 896 (D. Ariz. 2011) (“[B]ecause 8 C.F.R. § 316.10(b)(3)(iii) employed the  
19 broader phrase ‘unlawful acts that adversely reflect upon the applicant’s moral character’  
20 as opposed to ‘crimes involving moral turpitude,’ it is meant to apply to a broader scope  
21 of unlawful activity.”); *Meyersiek v. USCIS*, 445 F. Supp. 2d 202, 205-06 (D.R.I. 2006)  
22 (noting that “unlawful act” has been judicially defined as “bad acts that would rise to the  
23 level of criminality, regardless of whether a criminal prosecution was actually initiated”).  
24 If the applicant committed an act that was “unlawful” and “adversely reflects” on her  
25 moral character, the applicant can only naturalize if she demonstrates extenuating  
26 circumstances excusing or mitigating such conduct. *See* 8 C.F.R. § 316.10(b)(3). If no  
27 extenuating circumstances exist to excuse or explain the unlawful acts, the applicant  
28

1 lacks good moral character.<sup>11</sup> See 8 C.F.R. § 316.10(b)(3) (“Unless the applicant  
2 establishes extenuating circumstances, the applicant shall be found to lack good moral  
3 character . . .”); *United States v. Olivar*, 648 F. App’x 675, 677 (9th Cir. 2016) (“An  
4 individual lacks the good moral character required for naturalization if, in the absence of  
5 exigent circumstances, he or she ‘[c]ommitted unlawful acts that adversely reflect upon  
6 the applicant’s moral character’ during the statutory period.”); *but see Hussein v. Barrett*,  
7 820 F.3d 1083, 1089-1090 (9th Cir. 2016) (holding that 8 C.F.R. § 316.10 does not create  
8 “per se bars to naturalization,” and that courts must “consider all relevant factors” in  
9 making determination that an applicant failed to show he is of good moral character).

10 Here, it is indisputable that Martinez committed an unlawful act during the  
11 statutory period that adversely reflects upon her moral character. Indeed, as detailed  
12 above, Martinez pleaded guilty to and was convicted of Obtaining Money, Labor or  
13 Property by False Pretense in violation of California Penal Code § 532(a) based on  
14 conduct that occurred during the statutory period. See *supra* Part II. It is of no moment  
15 that she was not convicted of such conduct until after she naturalized because 8 C.F.R.  
16 § 316.10(b)(3)(iii) focuses on the date of the *commission* of unlawful acts. 8 C.F.R.  
17 § 316.10(b)(3)(iii) (providing an applicant “shall be found to lack good moral character  
18 if, during the statutory period, the applicant . . . [c]ommitted unlawful acts that adversely  
19 reflect upon the applicant’s good moral character”). Indeed, it applies even where the  
20 applicant has never been convicted. See *Agarwal v. Napolitano*, 663 F. Supp. 2d 528,  
21 542 n.7 (W.D. Tex. 2009) (where a conviction or admission “is not being used to prove  
22

23 \_\_\_\_\_  
24 <sup>11</sup> “Extenuating circumstances” in the context of a determination of good moral character “must pertain  
25 to the reasons showing lack of good character, including acts negating good character, not to the  
26 consequences of these matters.” *Suarez*, 664 F.3d at 662. Specifically, these are circumstances that  
27 “tend to palliate or lessen” the offender’s guilt for the offense. *United States v. Zhou*, 815 F.3d 639, 644  
28 (9th Cir. 2016). Unless an applicant demonstrates extenuating circumstance palliating guilt, under 8  
C.F.R. § 316.10(b)(3), the applicant lacks good moral character and is ineligible for United States  
citizenship, regardless of any subsequent good deeds. *Zhou*, 815 F.3d at 644 (“It is not a post-  
naturalization retrospective on the person, his achievements, or the unfortunate effect that  
denaturalization will surely have.”).

1 the conduct alleged, it essentially allows and requires the body adjudicating the  
2 application to hold a mini-trial on the question, for the purposes ascertaining whether or  
3 not an alien has actually committed crimes that have gone unpunished, and whether such  
4 conduct should preclude citizenship.”).

5 Moreover, Martinez’s unlawful acts “adversely reflect” upon her moral character at  
6 the time she was applying for United States citizenship. Indeed, her fraudulent conduct  
7 occurred approximately one month after she filed her application for naturalization and  
8 two months before she was interviewed, and constituted a crime (to which she later pled  
9 guilty) that is a CIMT. *See supra* Part IV.A.

10 Martinez’s fraudulent conduct precluded her from establishing good moral  
11 character, rendering her ineligible for naturalization at the time she took the oath of  
12 allegiance. *See* 8 C.F.R. § 316.10(b)(3)(iii). Thus, due to her commission of unlawful  
13 acts during the statutory period, Martinez illegally procured her naturalization, and this  
14 Court must revoke her citizenship, as provided for by 8 U.S.C. § 1451(a) and set forth in  
15 Count II of the Complaint.

16 **C. The Court must denaturalize Martinez because she procured her**  
17 **naturalization by willfully misrepresenting and concealing her criminal**  
18 **conduct during the statutory period (Count IV).**

19 Section 1451(a) also requires the Court to revoke the naturalization of an  
20 individual who procured her citizenship by willfully misrepresenting or concealing a  
21 material fact. 8 U.S.C. § 1451(a). The Supreme Court has instructed that the test for  
22 materiality under § 1451(a) is whether the misrepresentation “had a natural tendency to  
23 influence the decisions of” the decision making body to which the misrepresentations  
24 were address—here, USCIS. *See Kungys v. United States*, 485 U.S. 759, 772 (1988).<sup>12</sup>  
25 Accordingly, this Court must revoke Martinez’s naturalization if: (1) she misrepresented  
26 or concealed a fact during her naturalization proceeding; (2) the misrepresentation or

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27 <sup>12</sup> The Supreme Court recently reiterated that *Kungys* provides the governing standard for  
28 determining materiality in the context of civil denaturalization. *See Maslenjak v. United States*, No. 16-  
309, --- S. Ct. ---, 2017 WL 2674154, at \*10 (June 22, 2017).

1 concealment was willful; (3) the misrepresented or concealed fact had the natural  
2 tendency to influence USCIS's decision; and (4) Martinez procured citizenship as a result  
3 of her conduct. *See id.* at 767 (identifying the "four independent requirements" for  
4 denaturalization based on willful misrepresentation or concealment). As shown below,  
5 the pleadings establish and California Superior Court records support the finding that  
6 Martinez procured her naturalization by willfully misrepresenting and concealing her  
7 criminal conduct in her naturalization application and throughout the naturalization  
8 process.

9 First, Martinez represented throughout the naturalization process that she had never  
10 committed a crime or offense for which she had not been arrested, a representation that  
11 was patently false in light of her later guilty plea and conviction for fraudulent conduct  
12 that occurred during the three months between when she filed her naturalization  
13 application and was interviewed on that application. ECF No. 1-3 at 8; ECF No. 1-4 at 2.

14 Second, Martinez's misrepresentation was willful because she knew her  
15 representation to be false and made such representation voluntarily. *See United States v.*  
16 *Arango*, 670 F.3d 988, 995 (9th Cir. 2012) (holding that a misrepresentation is willful if it  
17 is deliberate and voluntary). Indeed, intent to defraud is an element of the crime to which  
18 Martinez pled guilty, *see supra* Section IV.A. Thus, Martinez is collaterally estopped  
19 from contending in this case that she did not know her conduct was illegal. *See, e.g.,*  
20 *United States v. Zhou*, 815 F.3d 639, 644 (9th Cir. 2016) (applying collateral estoppel in  
21 civil denaturalization action and citing *United States v. Jean-Baptiste*, 395 F.3d 1190,  
22 1194 (11th Cir. 2005) ("Collateral estoppel bars a defendant who is convicted in a  
23 criminal trial from contesting this conviction in a subsequent civil action with respect to  
24 issues necessarily decided in the criminal trial.")).

25 Third, Martinez's misrepresentation of her criminal conduct throughout the  
26 naturalization process was material to her naturalization. Materiality is a question of law,  
27 and exists where the misrepresentation would have had the "natural tendency to  
28 influence" USCIS's decision whether to grant the application for naturalization. *See*

1 *Kungys*, 485 U.S. at 771-72. Here, Martinez’s misrepresentation was material because  
2 USCIS could not have approved her naturalization application if she had been truthful  
3 about her criminal history because theft by false pretenses constitutes a CIMT and  
4 rendered her ineligible for naturalization, as shown above. *See* 8 U.S.C. § 1101(f)(3).

5 Fourth, Martinez procured her naturalization based on her misrepresentation. The  
6 test for “procurement” is whether it is “fair to infer that the citizen was actually  
7 ineligible” for naturalization. *See United States v. Alferahin*, 433 F.3d 1148, 1155 (9th  
8 Cir. 2006); *see also United States v. Latchin*, 554 F.3d 709, 714 (7th Cir. 2009); *United*  
9 *States v. Mensah*, 737 F.3d 789, 809 (1st Cir. 2013). That test is easily met here because  
10 Martinez’s concealed fraudulent scheme that constituted theft by false pretenses rendered  
11 her ineligible for naturalization. *See* 8 U.S.C. § 1101(f)(3).

12 Therefore, based on the pleadings and the California Superior Court records, this  
13 Court should denaturalize Martinez because she procured her naturalization by willfully  
14 misrepresenting and concealing material facts relating to her fraudulent and criminal  
15 conduct during the good moral character period.

## 16 V. CONCLUSION

17 For the reasons stated above, this Court should grant the United States’ motion for  
18 judgment on the pleadings under Rule 12(c), and enter an order revoking Martinez’s  
19 naturalization and canceling her Certificate of Naturalization.  
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1 DATED: July 20, 2017

Respectfully submitted,

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<sup>13</sup> This motion was prepared with the substantial assistance of René Hanna, a legal intern from the American University, Washington College of Law.

**CERTIFICATE OF SERVICE**  
Case No. 2:17-cv-2658-RGK (SS)

I hereby certify that on July 20, 2017, a copy of the foregoing document was served via regular U.S. Mail to the last known address for Defendant:

Araceli Martinez  
9908 Maple St  
Bellflower, CA 90706

/s/ Timothy M. Belsan  
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