UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, Plaintiff, v. IYMAN FARIS, previously known as MOHAMMAD RAUF, Defendant.	)	Civil Case No. 17-295-SMY-GCS

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT

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The United States respectfully moves for summary judgment on Counts I, III, and IV of the Complaint (ECF-1), and in support states:

I. INTRODUCTION

There is no genuine dispute as to the material facts below, and those facts support three independent bases to denaturalize Iyman Faris. First, Faris's affiliation with al Qaeda within five years after naturalizing is *prima facie* evidence he was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States—prerequisites for naturalization—at the time he naturalized. *See* 8 U.S.C. § 1451(c). Absent countervailing evidence, which Faris has not produced, his al Qaeda affiliation is sufficient to revoke his naturalization as obtained by concealment of a material fact or willful misrepresentation. *See id*.

Second, Defendant "illegally procured" his naturalization, i.e. procured it without meeting the statutory prerequisites, because he had not previously been *lawfully* admitted for permanent residence. Lawful admission for permanent residence is, and was, a prerequisite for naturalization. *Id*. §§ 1427(a), 1429. To be "lawfully" admitted, one's admission must comply with the substantive requirements for admission, and not merely be procedurally regular. *Id*. § 1101(a)(20); *see, e.g.*, *Estrada-Ramos v. Holder*, 611 F.3d 318, 321 (7th Cir. 2010). Defendant was not lawfully admitted for three separate reasons: (1) he was inadmissible because he had previously obtained entry into the United States by fraud and willful misrepresentation, to wit: using another person's passport and visa at the port-of-entry; (2) he was inadmissible because he had previously sought to procure asylum by misrepresenting material facts on his asylum application; and (3) he misrepresented material facts on his adjustment-of-status application.

Third, Defendant illegally procured his citizenship because he gave false testimony to procure an immigration benefit when he was interviewed, under oath, on both his adjustment-of-

status and his naturalization applications. Good moral character is a prerequisite to naturalize. 8 U.S.C. § 1427(a)(3). An applicant who gives false testimony to procure an immigration benefit lacks good moral character. *Id*. § 1101(f)(6). Defendant, therefore, lacked the requisite good moral character.

For these reasons, the Court should grant summary judgment for Plaintiff.

II. STATEMENT OF MATERIAL FACTS AS TO WHICH NO GENUINE ISSUE EXITS

1. Defendant Iyman Faris was born in Pakistan in 1969, and given the name Mohammad Rauf. Ans. (ECF 16) ¶ 6.

2. In the late 1980s, Faris attended a paramilitary training camp in Afghanistan known as Unghar Adda, and received instruction there in firing Kalashnikov rifles, British single-bolt-action rifles, and rocket-propelled-grenade launchers; using grenades; performing sentry duties; and taking cover from bombs. Decl. of LaTisha M. Hartsough (Ex. A) ¶ 4.a.

3. After training at Unghar Adda, Faris fought with a group of fighters against military forces of the Soviet Union in the mountains of Afghanistan. At one point, his unit captured approximately 35 Soviet soldiers whom they subsequently executed. *Id*. ¶ 4.b.

4. In 1989, Faris was injured while engaged in combat in Kashmir. *Id*. ¶ 4.c.

5. In about 1992, Faris traveled to Bosnia-Herzegovina, where he fought in the Bosnian War with a group of foreign fighters. *Id*. ¶ 4.d.

6. While in Bosnia, Faris met Iyman al-Ibrahim al-Ali of Dubai. Due to their similar physical appearance, Faris asked to use al-Ali's passport to travel, and al-Ali agreed. *Id*. ¶ 4.e.

7. Al-Ali had an expired United States visa in his passport, and told Faris he would get the visa renewed and then give the passport and visa to Faris. *Id*.

8. Faris and al-Ali then traveled from Bosnia to Zagreb, Croatia. Al-Ali traveled to Austria to obtain a new U.S. visa. Al-Ali then he gave his passport with the new visa to Faris, who then traveled by train to Austria. *Id*. ¶ 4.f.

9. In March 1994, Faris flew from Vienna, Austria, to New York, New York, where he entered the United States, wearing traditional Arab dress,[1] and using the passport and visa of al-Ali. Ans., ¶ 7; Ex. A ¶ 4.g.

10. At the port-of-entry in New York City, a U.S. immigration officer permitted Faris to enter the United States after asking him a few questions. Ex. A ¶ 4.h.

11. In July 1994, Faris filed with the Immigration and Naturalization Service (INS) a Form I-589, Request for Asylum, in his own name. In his Form I-589, he said he entered the United States without inspection at Buffalo, New York, in May 1994. He also said he had left his country of citizenship, i.e. Pakistan, on "5-6-94," arrived in the United States that same date, and had not traveled through or resided in any other country after leaving Pakistan and before arriving in the United States. Decl. of Edward S. White (Ex. B), attachment (att.) 1 at 3-7.

12. After applying for asylum, Faris married Geneva Bowling, a U.S. citizen, on September 9, 1995, and on December 18, 1995, Ms. Bowling filed with the INS a Form I-130, Petition for Alien Relative, to have Faris recognized as the spouse of a U.S. citizen. At the same time, Faris filed a Form I-485, Application to Register Permanent Residence or Adjust Status, seeking to adjust his status to lawful permanent resident (LPR) based on his marriage to Ms. Bowling. Ans., ¶ 10; Ex. B, Att. 1 at 8-13.

13. On his Form I-485, Faris stated, *inter alia*, that he had (a) last entered the United States from Canada without inspection by an U.S. immigration officer, and (b) never, by fraud or

[1] As noted in Statement of Material Fact (SMF) # 6, Mr. al Ali was from Dubai.

willful misrepresentation of a material fact, sought to procure, or procured, a visa, other documentation, entry into the United States, or any other immigration benefit. Ans., ¶ 11; Ex. B, att. 1 at 11, 12.

14. Faris signed the Form I-485 at the end of the form certifying, under penalty of perjury, that the application "is all true and correct." Ex. B, att. 1 at 13.

15. Faris, in fact, had never been to Canada. Ex. A ¶ 4.i.

16. An INS immigration officer interviewed Faris under oath in connection with his Form I-485 on February 20, 1996. Ans., ¶ 11; Ex B, att. 1 at 10; Decl. of Chance Robinson (Ex. C) ¶ 9.

17. At that interview, the immigration officer orally asked Faris those questions on the Form I-485 for which the answer has a red check mark on the form. In response, Faris testified consistently with the answer given on the Form I-485. Ex B, att. 1 at 10-13; Ex. C ¶ 9.

18. At the I-485 interview, Faris testified that he had entered the United States from Canada. Ex. B, att. 1 at 11; Ex. C ¶ 9.

19. Following the interview, INS approved Faris's Form I-485on March 20, 1996, and adjusted his status to permanent resident. Ex. B, att. 3; Ex. C ¶ 9.

20. Faris's Form I-589, Request for Asylum, was recorded as "withdrawn" on September 10, 1996, in INS records. Decl. of Martin Lawson (Ex. D) ¶ 3.

21. On January 14, 1999, Faris filed a Form N-400, Application for Naturalization. On his Form N-400, Faris said he had never (a) given false testimony for the purpose of obtaining an immigration benefit, or (b) knowingly committed a crime for which he had not been arrested. Ex. B, att. 1 at 14-17.

22. An immigration officer interviewed Faris, under oath, concerning his Form N-400 on September 16, 1999. At that interview, the officer orally asked Faris those questions on the Form

N-400 for which the answer has a red check mark on the form. In response, Faris testified consistently with the answer given on the Form N-400. Where Faris provided new or different information, the officer noted it on the Form N-400, also in red ink. Ex B, att. 1 at 14-17; Ex. C ¶¶ 5-7.

23. At his N-400 interview, Faris testified under oath that he had never given false testimony for the purpose of obtaining an immigration benefit, and that he had never knowingly committed a crime for which he had not been arrested. Ex. B, att. 1 at 16 (Pt. 7, Questions 12.g. and 15.a.; Ex. C ¶ 7.

24. At the end of the N-400 interview, Faris again signed the Form N-400, as annotated during the interview, in the presence of the interviewing immigration officer, swearing the amended application was true and correct. Ex. B, att. 1 at 17; Ex. C ¶ 11.

25. Faris's naturalization application was approved the same day, September 16, 1999, and Faris took the oath of allegiance on December 16, 1999. Ex. B, att. 1 at 14, 19; Ex. C ¶ 13.

26. As part of his naturalization, Faris changed his name from Mohammad Rauf to Iyman Faris. Ex. B, att. 1 at 18, 19; Ex. C ¶ 12.

27. Beginning in 2000, Faris traveled to Pakistan, where he met Usama bin Laden and other high-ranking al Qaeda members. Statement of Facts, *United States v. Faris*, No. 1:03-cr-189 (E.D. Va.) (Ex. E), ¶ 2; Pre-Indictment Plea Hrg. Tr., *United States v. Faris*, No. 1:03-cr-189 (E.D. Va.) (Ex. F) at 31:16-32:10.

28. Later, at the request of an al Qaeda member, Faris researched information about ultralight aircraft and provided the results of his research to a senior al Qaeda leader. Ex. E ¶ 3; Ex. F at 32:11-33:7.

29. Faris also arranged, through a travel agent in Karachi, Pakistan, to extend several airline tickets issued to al Qaeda operatives, at the request of an al Qaeda member. Ex. E ¶ 5; Ex. F at 34:1-13.

30. After returning to the United States, Faris researched the use of "gas cutters," evaluated the practicality of a plot to collapse a suspension bridge in New York using gas cutters, and communicated this information to his al Qaeda contact in Pakistan via coded messages. Ex. E ¶¶ 8-11; Ex. F at 35:23-38:4.

31. In March 2003, Federal Bureau of Investigation agents approached Faris in the lobby of a Cincinnati, Ohio, hotel and asked to speak to him. Later that same day, Faris met with the agents at a restaurant in Columbus, Ohio. Decl. of Jack VanderStoep (Ex. G) ¶ 2 & tab A.

32. The next morning, Faris went to the FBI office in Columbus, Ohio. He initially denied any knowledge of impending attacks by al Qaeda in the United States, and when shown photographs of several high-level al Qaeda leaders, stated he had never met them. Ex. G ¶ 4. As a polygraph exam was being prepared, however, Faris admitted to one of the FBI agents that he had met with numerous individuals tied to terrorism, including Khalid Sheik Mohammad. *Id*.

33. Faris subsequently agreed to accompany the agents first to a hotel outside Columbus, Ohio, and later to an FBI facility in Virginia, to continue talking with them. *Id*. ¶¶ 5-7.

34. Once at the FBI facility in Virginia, Faris retained possession of his cellular telephone, spoke with his girlfriend on various occasions, met with his girlfriend on one occasion, and consented to five polygraph exams. *Id*. ¶¶ 8, 11, 12, 16, & tabs A & B.

35. In 2003, Faris was convicted in the U.S. District Court for the Eastern District of Virginia, in accord with his guilty pleas, of providing material support to a foreign terrorist organization, to wit: al Qaeda, in violation of 18 U.S.C. § 2339B, and of conspiring to provide

material support to al Qaeda, in violation of 18 U.S.C. § 371. Ans. ¶¶ 19, 22; Ex. F at 40:17-24; Information, *United States v. Faris*, No. 1:03-cr-189-001 (E.D. Va.) (Ex. H); Judgment, *United States v. Faris*, No. 1:03-cr-189-001 (E.D. Va.) (Ex. I).[2]

36. The U.S. Secretary of State designated al Qaeda a "foreign terrorist organization" pursuant to 8 U.S.C. § 1189 on October 8, 1999. 64 Fed. Reg. 55112 (Oct. 8, 1999); Decl. of Evan F. Kohlmann (Ex. J) ¶ 8.a.

37. Al Qaeda is, and was from before Faris naturalized, an organization of the sort describe in 8 U.S.C. § 1424(a)(4). Ex. J ¶ 9 & att. 2.

38. Faris, who was represented by counsel with whose representation he expressed satisfaction, Ex. F at 26:13-15, orally admitted the acts described in paragraphs 27 to 30, *supra*, during his plea colloquy with the district court in his criminal case. Ex. F at 31:16-33:07, 34:1-13, 35:23-38:4; Decl. of J. Frederick Sinclair (Ex. K) ¶ 19.

39. To convict, the criminal court had to find, based on Defendant's guilty plea, that he knowingly provided material support or resources to a foreign terrorist organization, namely al Qaeda. Ex. F at 27:21–28:3. *See also United States v. Yousef*, 750 F.3d 254, 261 (2d Cir. 2014).

40. In finding Faris guility of the charges, the court relied on a Statement of Facts that Faris signed and incorporated into his plea agreement, and on his plea colloquy with the court. Ex. F at 40:17-24.

41. After pleading guilty and agreeing to cooperate with the Government, Faris sought to withdraw his guilty plea, claiming he had lied to the FBI and the Court. Motions & Sentencing

[2] Judgment affirmed, 388 F.3d 452 (4th Cir. 2004), *cert. granted, judgment vacated, remanded for reconsideration in light of United States v. Booker, 543 U.S. 220 (2005)*, 544 U.S. 916 (2005), *re-aff'd* 162 F. App'x 199 (4th Cir. 2005).

Hrg. Tr., *United States v. Faris*, No. 1:03-cr-189-A (Oct. 28, 2003) (Ex. L) at 3:3-7, 29:9-10; Ex. K ¶¶ 22, 23. The Court denied Faris's motion to withdraw his guilty plea. Ex. L at 29:16-35:17.

42. In 2006, Faris moved to set aside his sentence on the grounds he had received ineffective assistance of counsel, but his motion was denied. Memo. Op., *United States v. Faris*, No. 1:03-cr-189 (E.D. Va. Nov. 27, 2006) (Ex. M). The district court's order denying the motion was affirmed on appeal. *United States v. Faris*, 241 F. App'x 992 (4th Cir. 2007).

III. STANDARD OF REVIEW

A. REVOCATION OF NATURALIZATION

The government bears the burden to prove its denaturalization case by "clear, unequivocal, and convincing" evidence, which must "not leave the issue in doubt." *Fedorenko v. United States*, 449 U.S. 490, 505 (1981) (internal quotations omitted). While this is a heavy burden, if the government carries it, a court lacks discretion to excuse the conduct, and must enter a judgment of denaturalization. *Id*. at 517; *United States v. Suarez*, 664 F.3d 655, 662 (7th Cir. 2011) (citing *United States v. Ciurinskas*, 148 F.3d 729, 732 (7th Cir. 1998)).

B. SUMMARY JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 56

"[S]ummary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (internal quotations omitted); *see also* Fed. R. Civ. P. 56(c). That rule applies in denaturalization actions. *United States v. Schmidt*, 923 F.2d 1253, 1257 (7th Cir. 1991). The Court must construe all facts and reasonable inferences in the light most favorable to the non-moving party, *Spivey v. Adaptive Marketing, LLC.*, 622 F.3d 816, 822 (7th Cir. 2010), but "[t]he existence of merely a scintilla of evidence in support of the non-moving party's position is insufficient [to create a genuine dispute]; there must be evidence on

which the jury could reasonably find for the non-moving party," *McMahan v. Deutsche Bank AG*, 892 F.3d 926, 933 (7th Cir. 2018).

IV. ARGUMENT

A. DEFENDANT MUST BE DENATURALIZED PURSUANT TO 8 U.S.C. § 1451(C)

1. *Defendant Was Not Attached to the Principles of the Constitution and Well Disposed to the Good Order and Happiness of the United States When He Naturalized*

If, within five years after naturalizing, a person affiliates with an organization described in 8 U.S.C. § 1424(a)(4) (hereinafter a "prohibited organization"), that affiliation is, by law, *prima facie* evidence the person was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States at the time of naturalization. *Id.* § 1451(c). In the absence of countervailing evidence, proof of such affiliation with a prohibited organization is sufficient revoke and set aside the order admitting the person to citizenship, and cancel the certificate of naturalization . . . ." *Id.*

A person "affiliates" with an organization by, *inter alia*, "the giving, loaning, or promising of support or of money or any other thing of value for any purpose" to an organization. *Id.* § 1101(e)(2). A prohibited organization is an organization that advocates or teaches:

> (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers . . . of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage . . . .

Id. § 1424(a)(4). Al Qaeda was at the time Defendant naturalized, and remains, a prohibited organization. Statement of Material Facts (SMF) ## 36, 37.

Defendant naturalized on December 16, 1999. SMF # 25. Less than five years later, between late 2000 and 2003, at the request of an al Qaeda member, Defendant researched

ultralight aircraft and provided the results of his research to that person; arranged the extension of several airline tickets issued to al Qaeda operatives; and researched the use of "gas cutters," evaluated the practicality of a plot to collapse a suspension bridge in New York using gas cutters, and communicated this information to his al Qaeda contact in Pakistan via coded messages. SMF ## 27-30. Based on these facts, Defendant pled guilty to and was convicted of providing material support[3] to al Qaeda, a foreign terrorist organization. SMF ## 35-39.

These facts establish Defendant affiliated with al Qaeda, a prohibited organization, within five years after naturalizing (indeed, within one year of naturalizing). That affiliation, in turn, is *prima facie* evidence Defendant was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States, which are required to naturalize. *See* 8 U.S.C. § 1451(c).

2. *Defendant's Conviction for Providing Material Support to al Qaeda Conclusively Establishes the Facts that Prove His Affiliation with a Prohibited Organization and He Is Collaterally Estopped from Contending Otherwise*

Defendant's 2003 criminal conviction conclusively establishes his material support to al Qaeda based on the above-described facts, which formed the basis for the criminal charge against him, and for his guilty plea thereto. These same facts establish his "affiliation" with al Qaeda for purposes of 8 U.S.C. § 1451(c), and he is collaterally estopped from re-litigating these facts. *See United States v. Suarez*, 664 F.3d 655, 663 (7th Cir. 2011) (applying collateral estoppel in civil denaturalization action based on earlier criminal conviction); *Appley v. West*, 832 F.2d 1021, 1025–26 (7th Cir. 1987) (collateral estoppel may be applied in civil trials to issues

[3] "Material support" means "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials." 18 U.S.C. § 2339A(b).

previously determined in a criminal conviction); *see also United States v. Zhou*, 815 F.3d 639, 644 (9th Cir. 2016) (applying collateral estoppel in civil denaturalization action based on earlier criminal conviction); *United States v. Akamo*, 515 F. App'x 248, 249 (5th Cir. 2012) (same); *United States v. Jean-Baptiste*, 395 F.3d 1190, 1194-95 (11th Cir. 2005) (same). Collateral estoppel applies when "1) the party against whom estoppel is asserted was a party to the earlier proceeding, 2) the issue was actually litigated and decided on the merits, 3) the resolution of the particular issue was necessary to the result, and 4) the issues are identical." *Appley*, 832 F.2d at 1025; *see also Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014).

Here, Defendant was undisputedly a party to the earlier criminal proceeding, in which he was represented by counsel. SMF # 35.[4] To convict, the court had to find, based on Defendant's guilty plea, that he knowingly provided material support or resources to a foreign terrorist organization, namely al Qaeda. SMF # 39. In so finding, the court relied on a Statement of Facts Defendant signed, and on the plea colloquy with the court. SMF # 40. In both, Defendant described the various ways he provided material support to al Qaeda. SMF ## 38, 40. Because "material support" was an element of the crime of which the court convicted Defendant, and he explicitly admitted the above-described facts to the court as part of his plea agreement and in his plea colloquy, those facts were clearly decided in the criminal case and necessary to the result. Because those same facts establish that Defendant "affiliated" with al Qaeda, the fact issue in this case is identical to the fact issue in Defendant's prior criminal case. Consequently, Defendant is collaterally estopped from disputing he committed the acts described in section

[4] Defendant expressly professed his satisfaction with counsel during his plea colloquy with the Court. Ex. F at 26:13-15. Further, though he later alleged his trial defense counsel had been constitutionally ineffective, both the trial and appellate courts rejected that claim. Memo. Op. (Dkt. No. 66), *United States v. Faris*, No. 1:03-cr-189 (E.D. Va. Nov. 28, 2006), *appeal dismissed*, 241 F. App'x 992 (4th Cir. 2007).

IV.A.1 above for the benefit of al Qaeda.[5] And those acts constitute affiliation, as defined by 8 U.S.C. § 1101(e)(2).

3. *There Is No "Countervailing Evidence" that Overcomes § 1451(c)'s Rebuttable Presumption*

"[I]in the absence of countervailing evidence," Defendant's affiliation with al Qaeda is "sufficient . . . to authorize the revocation and setting aside of the order admitting [him] to citizenship, and the cancellation of the certificate of naturalization . . . ." 8 U.S.C. § 1451(c). Defendant can cite no countervailing evidence he was attached to the principles of the Constitution and well disposed to the good order and happiness of the United States.

At his deposition, Defendant invoked his Fifth Amendment privilege to refuse to answer 176 questions,[6] including questions about his actions in support of al Qaeda and the evidence he intended to present to rebut the presumption created by his affiliation with al Qaeda. Faris Depo. Tr. (Ex. N) at 44:17-47:24, 100:9–19, 100:20–102:21. Prior to his deposition, in response to an interrogatory, Defendant pointed only to his "extraordinary cooperation" with the U.S. government, presumably a reference to his interviews with the FBI in early 2003, and his former marriage to a U.S. citizen. Defendant's Objections & Responses to Plaintiff's Interrogatories (Jul. 27, 2018) (Ex. O) at No. 6.

As an initial matter, Defendant may not use evidence—whether in opposition to this motion, in his own motion for summary judgment, or at trial—that he refused to produce during discovery. Fed. R. Civ. P. 37(c)(1); *see also Karum Holdings LLC v. Lowe's Cos.*, 895 F.3d 944,

[5] Even if the Court were not to apply collateral estoppel here, Defendant's admissions in his criminal case—both as part of his plea agreement and in his plea colloquy with the court—of the facts establishing his material support to, and therefore affiliation with, al Qaeda is sufficient to find those facts not genuinely in dispute. Further, as explained in section IV.A.3, Defendant's invocation of his Fifth Amendment privilege to refuse to answer questions about his actions in support of al Qaeda during his deposition in this case bars him from now presenting evidence to the contrary, and justifies an adverse inference against him on these points.

[6] Defendant invoked the Fifth Amendment in response to 176 out of 390 questions. *See generally* Ex. N.

951 (7th Cir. 2018) ("[t]he exclusion of non-disclosed evidence is automatic and mandatory under Rule 37(c)(1) unless non-disclosure was justified or harmless"); *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 758 (7th Cir. 2004) (same); *Hatcher v. Bd. of Trustees of S. Ill. Univ.*, No. 3:13-cv-407-SMY-SCW, 2018 WL 1640457, at *2 (S.D. Ill. Apr. 5, 2018).

Further, when a party invokes the Fifth Amendment privilege against self-incrimination, the Court may preclude that party from introducing further evidence on that matter, including affidavits in opposition to summary judgment and testimony at trial. *United States v. All Assets & Equip. of W. Side Bldg. Corp.*, 843 F. Supp. 377, 382-83 (N.D. Ill. 1993), *aff'd in part & remanded in part*, 58 F.3d 1181 (7th Cir. 1995). *See also Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539-549 (5th Cir. 2012); *United States v. $133,420.00 in U.S. Currency*, 672 F.3d 629, 640-41 (9th Cir. 2012); *In re Edmond*, 934 F.2d 1304, 1308-09 (4th Cir. 1991); *U.S. v. Parcels of Land*, 903 F.2d 36, 43 (1st Cir. 1990); *Trafficant v. Comm'r, IRS*, 884 F.2d 258, 265 (6th Cir. 1989).

In addition, the Court may, and should, also draw an adverse inference from Defendant's refusal to answer. *See, e.g., Daniels v. Pipefitters Ass'n Local Union No. 597*, 983 F.2d 800, 802 (7th Cir. 1993); *Nat'l Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924, 929-30 (7th Cir. 1983).

Even if the Court were to permit Defendant to put forth evidence, and he were to do so, of his purported "cooperation" with the U.S. Government and his marriage to a U.S. citizen, such evidence would be insufficient to rebut the presumption created by his active support of al Qaeda. First, Defendant did not walk unsolicited into an FBI office to report what he knew about al Qaeda. Rather, the FBI approached him, clearly indicating they were interested in him. He initially denied any knowledge of impending terrorist attacks or that he had met various al Qaeda leaders whose photographs the FBI showed him. SMF ## 30-32. It was only as a polygraph exam was being prepared that he admitted he had met Khalid Sheik Mohammad and others tied to

international terrorism. SMF # 32. Further, after pleading guilty and agreeing to cooperate with the Government, Defendant attempted to withdraw his guilty plea, claiming he had lied to the FBI and the Court. SMF # 41. Defendant's self-interested calculation about how to deal with the FBI's interest in him, especially in light of his knowledge of his prior affiliation with al Qaeda, in no way tends to prove he was actually attached to the principles of the Constitution at the time of this naturalization.

Likewise, his marriage to a United State citizen also fails to rebut the presumption that he was not attached to the principles of the Constitution at the time he naturalized. People marry for myriad reasons, such as love, affection, financial security, and, unfortunately, sometimes to fraudulently obtain immigration benefits. Generally, however, one's choice of spouse is not understood as any indication or evidence of one's attachment to the principles of the Constitution. *See, e.g.* 8 U.S.C. § 1430(a) (aliens naturalizing as spouse of U.S. citizens not relieved of requirement to demonstrate they are attached to principles of Constitution and well disposed to good order and happiness of United States).

Because Defendant's conduct in support of al Qaeda constitutes "affiliation" with a prohibited organization, because that affiliation occurred within five years after Defendant naturalized, and because Defendant cannot rebut the statutory presumption that he was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States at the time he naturalized, the Court must, pursuant to 8 U.S.C. § 1451(c), revoke Defendant's naturalization.

B. DEFENDANT ILLEGALLY PROCURED NATURALIZATION BECAUSE HE WAS NEVER LAWFULLY ADMITTED FOR PERMANENT RESIDENCE[7]

[7] The United States acknowledges the Court's prior order denying the government's Rule 12(c) motion, which addressed this claim based on the pleadings alone. *See* ECF No. 37. Respectfully, Plaintiff seeks to clarify that the

Citizenship is "illegally procured" when an applicant fails to comply with "all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko*, 449 U.S. at 506. Defendant illegally procured his naturalization because he has never been *lawfully* admitted for permanent residence, which is a prerequisite to naturalization.

To naturalize, an applicant must be lawfully admitted for permanent residence. 8 U.S.C. §§ 1427(a)(1), 1429. One is admitted for permanent residence on adjustment of status. 8 U.S.C. § 1255(a), (b). "[T]o be 'lawfully admitted' the adjustment must be in compliance with substantive legal requirements, not mere procedural regularity." *Estrada-Ramos v. Holder*, 611 F.3d 318, 321 (7th Cir. 2010) (collecting authorities); *see also Injeti v. USCIS*, 737 F.3d 311, 316 (4th Cir. 2103); *Saliba v. Att'y Gen.*, 828 F.3d 182, 192 (3d Cir. 2016); *Kyong Ho Shin v. Holder*, 607 F.3d 1213, 1217 (9th Cir. 2010); *Walker v. Holder*, 589 F.3d 12, 19 (1st Cir. 2009).

One substantive legal requirement to adjust status is that the applicant be *admissible* to the United States for permanent residence. 8 U.S.C. § 1255(a)(2). An alien is, and was, inadmissible, however, if, "by fraud or willfully misrepresenting a material fact, [he] seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter . . . ." 8 U.S.C. § 1182(a)(6)(C)(i). A fact is material if it was "predictably capable of affecting, *i.e.*, had a natural tendency to affect, the official decision." *Kungys v. United States*, 485 U.S. 759, 771 (1988); *United States v. Latchin*, 554 F.3d 709, 714 (7th Cir. 2009). It has never been the test of materiality that the misrepresentation or concealment would be more likely than not to have produced an erroneous

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relevant inquiry is whether Defendant's fraud at the time of entry, and on his adjustment-of-status application, each individually rendered him inadmissible, and therefore ineligible to adjust his status to lawful permanent resident. *Estrada-Ramos*, 611 F.3d at 321. If the Court is satisfied the United States has shown Defendant was not in compliance with the substantive legal requirements for permanent residence, then *ipso facto* Defendant was not eligible to naturalize, *see* 8 U.S.C. §§ 1427(a)(1), 1429, and "illegally procured" his citizenship. *Fedorenko*, 449 U.S. at 509.

decision. Instead, a statement is material so long as it is germane to the decisional process, as long as it has a natural tendency to influence a reviewing officer's action. *Latchin*, 554, F.3d at 712-13 (internal quotations omitted).

The Board of Immigration Appeals has long considered a false statement in a visa application to be material if it tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Koszelnik v. Sec'y of Dep't of Homeland Sec.*, 828 F.3d 175, 180 (3d Cir. 2016) (quoting *Matter of Kai Hing Hui*, 15 I. & N. Dec 288, 289 (B.I.A. 1975)); *see also Mekonnen v. Lynch*, 668 F. App'x 481, 482 (4th Cir. 2016); *Gozun v. Att'y Gen.*, 375 F. App'x 276, 278–79 (3d Cir. 2010); *Azim v. U.S. Att'y Gen.*, 314 F. App'x 193, 196 (11th Cir. 2008); *Noorani v. Smith*, 37 F.3d 1505 (9th Cir. 1994).

Admissibility alone, however, is not sufficient. Because the ultimate decision to adjust an alien's status is left to the Attorney General "in his discretion and under such regulations as he may prescribe," 8 U.S.C. § 1255(a), an applicant must also comply with the prescribed regulations. *Injeti*, 737 F.3d at 318. One such regulation requires the applicant to certify that all information in the application "is true and correct." 8 C.F.R. § 103.2(a)(2). Where an application contains a material misrepresentation, and thus is not "true and correct," it does not comply with the regulation and the adjustment thereby obtained is not in compliance with substantive legal requirements. *Injeti*, 737 F.3d at 318.

Defendant was not lawfully admitted, in compliance with substantive legal requirements, for three reasons: (1) he was inadmissible because he procured his initial admission into the United States by fraud and willful misrepresentation, using the passport and visa of another person; (2) he was inadmissible because he sought to procure asylum by willfully

misrepresenting the circumstances of his entry into the United States on his asylum application; and (3) his adjustment-of-status application contained various material misrepresentations.

1. *Defendant Was Not Lawfully Admitted Because He Was Inadmissible, Having Procured Admission into the United States by Fraud and Willful Misrepresentation, Using the Passport and Visa of Another Person*

Defendant entered the United States in March 1994 at New York, New York, using the passport and visa of Iyman al-Ibrahim al-Ali. SMF ## 9, 10. In doing so, he procured admission to the United States by fraudulently misrepresenting his identity and that he had a valid visa. Both his identity and visa status were material to, i.e. had a natural tendency to influence, the immigration officer's decision to admit him. An alien who does not possess a valid passport and visa at the time he seeks admission is, and was, inadmissible. 8 U.S.C. § 1182(a)(7). Consequently, had the immigration officer at the port-of-entry known Defendant was Mohammad Rauf[8] and not Iyman al-Ibrahim al-Ali, he would have had to exclude Defendant as inadmissible under § 1182(a)(7) for lacking a valid passport and visa.

Further, Defendant's fraud shut off a line of inquiry relevant to his eligibility for a visa, which might well have resulted in a determination that he be excluded on other grounds as well, such as for engaging in terrorist activities under 8 U.S.C. § 1182(a)(3)(B), or participating in persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion, under 8 U.S.C. §§ 1158(a), 1101(a)(42). As Defendant told the FBI, before coming the United States he attended a paramilitary training camp and engaged in combat in Afghanistan against Soviet military forces (during which his unit executed captured Soviet soldiers), engaged in combat in Kashmir, and fought in the Bosnian War. SMF ## 2-5. Had Defendant properly sought a visa in his own name, a consular officer predictably would

[8] Defendant changed his name at naturalization from Mohammad Rauf to Iyman Faris. SMF # 26.

have inquired into Defendant's past activities both to determine his eligibility for a visa and to inform the consular officer's own exercise of discretion in deciding whether to issue a visa.[9] His entry through fraud, however, shut off any inquiry into those serious matters.[10] Consequently, his fraudulent misrepresentation of his identity and visa status to the immigration officer at the port-of-entry were material.

Because his fraudulent misrepresentation was material to the decision to admit him in 1994, he procured admission to the United States by fraud and willful misrepresentation, rendering him inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i). As the Seventh Circuit has noted:

> It is crystal clear that an individual who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact. There is simply no lawful gloss that can be placed on [such] actions.

Esposito v. I.N.S., 936 F.2d 911, 912 n.1 (7th Cir. 1991); *see also Peprah v. USCIS*, No. 12-cv-2564, 2014 WL 4814698, at *3 (N.D. Ill. Sept. 29, 2014) (quoting *Esposito* in context of § 1182(a)(6)(C)(i)). Indeed, the Seventh Circuit's statement in Esposito was based on similar facts: the defendant entered the United States by "present[ing] immigration officials at the border with an Italian passport bearing his picture, but someone else's name" which he later admitted he knew was not his passport. *Esposito*, 936 F.2d at 912.

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[9] Issuance of nonimmigrant visas is and was discretionary. 8 U.S.C. § 1201(a)(1)(B). There is no basis to think Defendant would have been eligible for an immigrant visa. *See* 8 U.S.C. § 1153 (describing who is eligible to petition for an immigrant visa).

[10] It is important to note that Defendant's visa and passport fraud need only have been material to the immigration inspector's decision to admit him at the port-of-entry in New York in 1994, rather than to the later decision to naturalize him. *See Kungys*, 485 U.S. at 774 n.8 (noting that "[i]t is a quite different question, not argued here, whether, under the statutes governing the issuance of visas in 1947, Kungys' misrepresentations or concealments at that time *rendered his visa invalid*, thus causing his U.S. residence to be unlawful, and (since lawful residence is a requirement of naturalization) his naturalization to be 'illegally procured' under that separate provision of § 1451(a)." (emphasis in original)). If the fraud at initial entry was material, then he was inadmissible, and if inadmissible, then not lawfully admitted for permanent residence, and if not lawfully admitted, then not eligible to naturalize. If he was not eligible to naturalize, then his naturalization was "illegally procured." This is a wholly separate line of analysis than whether Defendant's naturalization was procured by willful misrepresentation or concealment of material facts, a separate cause of action in 8 U.S.C. § 1451(a). *See Kungys*, 485 U.S. at 774 n.8.

Here, Faris' knowing fraudulent use of someone else's passport to enter the United States rendered him inadmissible, and thus ineligible to adjust his status to permanent resident alien. His adjustment was, therefore, not in compliance with the substantive requirements of the law.[11] Finally, because he was not "lawfully" admitted for permanent residence, he was not eligible to naturalize, and his naturalization was illegally procured.

2. *Defendant Was Not Lawfully Admitted Because He Was Inadmissible, Having Sought to Procure Asylum by Willfully Misrepresenting the Circumstances of His Entry into the United States on His Asylum Application*

At the time he sought to adjust his status, Defendant was inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i) for an additional reason, to wit: he had sought asylum in the United States by fraud and willful misrepresentation of material facts. In July 1994, Defendant submitted a Request for Asylum to the INS. SMF # 11. In that request, he said he had (1) departed from his country of nationality, i.e. Pakistan, on "5-6-94," (2) arrived in the United States on "5-6-94" at Buffalo, New York, and (3) not traveled through or resided in any other country after leaving his home country and before entering the United States. Each of those statements were false. As Defendant told the FBI, he actually entered the United States in March 1994 at New York, New York, arriving there from Bosnia, by way of Croatia and Austria, and had never been to Canada. SMF ## 6-10.

[11] The Attorney General could have waived Defendant's inadmissibility under § 1182(a)(6)(C)(i). *See* 8 U.S.C. § 1182(i). Such a waiver, however, was discretionary and required an affirmative application. 8 C.F.R. § 212.7(a)(1)(ii) ("An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 with the director or immigration judge considering the application for adjustment of status."); *see also Sharma v. Reno*, 902 F. Supp. 1130, 1136-37 (N.D. Cal. 1995) ("The Court thus finds that the Director's finding, that petitioner was not entitled to a waiver of excludability because he did not file a Form I–601 to request one, is supported by substantial evidence . . . ."). Defendant neither sought nor obtained a waiver. Indeed, rather than acknowledge his fraud—as he would have had to do to seek a waiver—Defendant represented to INS in his adjustment-of-status application that he had never sought to procure or procured entry into the United States or any other immigration benefit by fraud or willful misrepresentation. Ans. ¶ 11.

Defendant's misrepresentations in his asylum application were material to that application. An alien is not, and was not then, eligible for asylum if he is firmly resettled in another country before arriving in the United States. 8 U.S.C. § 1158(b)(2)(A)(vi). It is for that reason, *inter alia*, that the asylum application asks about the applicant's date of departure from his home country, date of entry into the United States, and whether he has resided in or traveled through any other countries before coming to the United States. Had Defendant disclosed the truth, i.e. that he had been residing in Bosnia for an extended period prior to coming to the United States, it would have predictably led to further inquiry to determine whether he was, in fact, eligible for asylum. The United States need not establish Defendant definitely would have been found ineligible for asylum; it is sufficient that his lies were germane to the decisional process and had a natural tendency to influence a reviewing officer's action. *See Latchin*, 554 F.3d at 712-13. As a result, Defendant's misrepresentations on his asylum application were material.

Further, an alien is not, and was not then, eligible for asylum if he participated in persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158(a), 1101(a)(42). In the early 1990s, a sectarian war that pitted Bosnian-Serb Orthodox Christians, Bosnian-Croat Roman Catholics, and Bosniak Muslims against each other raged in Bosnia. There were notorious reports of war crimes and ethnic cleansing in Bosnia. *See, e.g.* U.N.S.C. Res. 808 (Feb. 22, 1993); Statement by CIA Dep. Dir. for Intelligence John Gannon on Ethnic Cleansing and Atrocities in Bosnia (Aug. 9, 1995) (available at https://www.cia.gov/news-information/ speeches-testimony/ 1995/ ddi_testimony_8995.html). Had Defendant disclosed he had been living in Bosnia for a significant period of time prior to coming to the United States, an asylum officer would

predictably have inquired about his activities there to determine whether he had engaged in persecution. His misrepresentations on his asylum application shut off a line of inquiry with a natural tendency to affect the official decision. Consequently, his misrepresentation was material.

Finally, it does not matter that the INS never adjudicated Defendant's asylum application. It is sufficient that, by submitting the application containing material misrepresentations, he *sought* to procure an immigration benefit. *See, e.g.*, *Pauliukoniene v. Holder*, 496 F. App'x 657, 670 (7th Cir. 2012) (alien who unsuccessfully sought to adjust status based on material misrepresentations inadmissible because she had *sought* to procure an immigration benefit); 8 U.S.C. § 1182(a)(6)(C)(i) (providing that inadmissibility exists where an individual, *inter alia*, "has procured" or "has sought to procure").

Because Defendant sought to procure asylum by fraud or willful misrepresentation of material facts, he was inadmissible. Because he was inadmissible, he was not eligible to adjust his status to permanent resident, and his adjustment was, therefore, not in compliance with the substantive requirements of the law. And because he was not "lawfully" admitted for permanent residence, he was not eligible to naturalize and his naturalization was illegally procured.

3. *Defendant Was Not Lawfully Admitted Because His Adjustment-of-Status Application Contained Various Material Misrepresentations*

The statute governing adjustment of status leaves the decision whether to adjust an alien's status to the Attorney General "in his discretion and *under such regulations as he may prescribe*." 8 U.S.C. § 1255(a) (emphasis added).[12] One such regulation required an applicant to certify under penalty of perjury that the benefit request *and all evidence submitted with it*, either at the time of filing or thereafter, was true and correct. 8 C.F.R. § 103.2(a)(2) (emphasis added).

[12] Authority over adjustment of status, along with the adjudication of most immigration and naturalization benefits was transferred to the Secretary of Homeland Security by the Homeland Security Act of 2002, P.L. 107-296, 116 Stat. 2135, 2195 (Nov. 25, 2002). Whether to grant adjustment of status remains a matter of executive discretion.

An adjustment application containing a material misrepresentation is not "true and correct," and, therefore, does not comply with 8 C.F.R. § 103.2(a)(2). *Injeti*, 737 F.2d at 319. If an alien obtains permanent resident status via such an application, then the alien has not satisfied one of the substantive legal requirements for adjusting status under 8 U.S.C. § 1255, *viz.* to submit a true and correct adjustment application, and is not *lawfully* admitted for permanent residence. *Injeti*, 737 F.2d at 318.

Here, Defendant's adjustment application contained two material misrepresentations. First, in response to the question "have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States, or any other immigration benefit?", Defendant answered "no." SMF # 13; Ex. B, att. 1 at 12 (Part 3, Q. 10). That response was materially false. As shown above, Defendant had in fact procured entry into the United States, and had sought to procure asylum, by fraud and willful misrepresentation of material facts.

Second, on his adjustment application, Defendant said he had last entered the United States from Canada without being inspected by an immigration officer Ex. B, att. 1 at 11 (Part 3.A.). Defendant has admitted in this action, however, that he had last entered the United States at New York, New York, using another's passport and visa. SMF ## 9, 10. In fact, as Defendant told the FBI, he had never been to Canada. SMF # 15. Defendant's misrepresentation regarding his method and location of entry was material as it had a natural tendency to affect the decision whether to grant his adjustment application. Had Defendant told the truth about how he entered the United States, immigration officials would have discovered he was inadmissible and therefore not eligible to adjust status and would have denied his application. Ex. C ¶ 15.

C. DEFENDANT ILLEGALLY PROCURED HIS NATURALIZATION BECAUSE HE LACKED THE REQUIRED GOOD MORAL CHARACTER DUE TO HAVING TESTIFIED FALSELY WITH THE INTENT TO OBTAIN AN IMMIGRATION BENEFIT DURING THE STATUTORY PERIOD

To be eligible to naturalize, Defendant had to show he was a person of good moral character for the period beginning three years before he filed his Form N-400, and running until he took the oath of allegiance (the "statutory period"). 8 U.S.C. §§ 1427(a)(3), 1430(a); 8 C.F.R. § 316.10(a)(1). Here, the statutory period ran from January 14, 1996, until Defendant naturalized on December 16, 1999. 8 U.S.C. § 1430(a); Ex. B, att. 1 at 14; Ex. C ¶ 10. An applicant is statutorily precluded from establishing the good moral character necessary to naturalize if, during the statutory period, he has given false testimony to obtain an immigration benefit. 8 U.S.C. § 1101(f)(6). Such testimony must be oral and made both under oath and "with the subjective intent of obtaining immigration or naturalization benefits." *Kungys*, 485 U.S. at 781. In distinction to willful misrepresentation, false testimony need not be material to trigger the bar in 8 U.S.C. § 1101(f)(6). *Id*. at 782.

1. *Defendant Testified Falsely at His Adjustment-of-Status Interview*

Defendant provided false testimony for the purpose of obtaining an immigration benefit on February 20, 1996, when he was interviewed under oath in connection with his adjustment-of-status application, and again on September 16, 1999, when he was interviewed under oath in connection with his naturalization application. Defendant submitted an adjustment application in December 1995; he stated on that form that he had last entered the United States from Canada without inspection by an U.S. immigration officer, and had never sought to procure or procured a visa, other documentation, entry into the United States, or any other immigration benefit by fraud or willful misrepresentation. SMF ## 12, 13. He was interviewed under oath in connection with his application on February 20, 1996. SMF # 16.

At that interview, Defendant testified consistently with what he had previously written on his application, as indicated by the red check marks. SMF ## 16-17; Ex. C ¶¶ 8, 9. In fact, contrary to what Defendant indicated on his application and in his testimony, he had never been to Canada, and had entered the United States at New York, New York, in March 1994. SMF ## 9, 10, 15.

Defendant's testimony at his adjustment interview was false in that he confirmed to the interviewing immigration officer, under oath, that, as he had written on his adjustment application, he had last entered the United States from Canada and had last arrived in the United States on "6-94," when in fact he had never been to Canada, and had last entered the United States at New York, New York in March 1994.[13] This testimony was part of Defendant's effort to adjust status to permanent resident, and concealed his fraudulent entry into the country. His intent to obtain an immigration benefit by this false testimony is reflected in the materiality of his false statements, and that the matters about which he testified falsely were in the relatively recent past, not lost in the mists of time. Further, his false testimony concerned affirmative acts of fraud he had knowingly and deliberately undertaken; his entire pattern of conduct demonstrates deliberate and purposeful action oriented toward getting into the United States and then staying. *See United States v. Ciurinskas*, 976 F. Supp. 1167, 1189 (N.D. Ill. 1997) *aff'd*, 148 F.3d 729 (7th Cir. 1998). Because Defendant gave false testimony during the statutory period, he was barred from establishing the good moral character required to naturalize. 8 U.S.C. § 1101(f)(6). As a result, he was ineligible to naturalize, and his naturalization was illegally procured.

[13] Notably, Defendant asserted the Fifth Amendment, refusing to answer questions, regarding every fact in this sentence. *See* Ex. N at 34:4-18, 38:24-39:12, 40:22-41:10.

2. *Defendant Testified Falsely at His Naturalization Interview*

Likewise, Defendant testified falsely at his N-400 interview, when he said he had never given false testimony to obtain an immigration benefit and had not committed any crimes for which he had not been arrested.[14] In fact, Defendant had previously testified falsely to obtain adjustment of status, and by willfully and knowingly using another's passport to enter the country in 1994, he had violated 18 U.S.C. §§ 1544 & 1028, both crimes for which he had not been arrested. As above, the materiality of Defendant's false testimony and the recentness and deliberateness of his conduct demonstrate his intent to obtain naturalization by his false statements under oath. Because Defendant gave this false testimony to obtain an immigration benefit, he was statutorily barred from establishing the good moral character, and therefore ineligible to naturalize, and his naturalization was illegally procured.

V. **CONCLUSION**

The undisputed facts establish by clear, unequivocal, and convincing evidence that Defendant procured his naturalization by willful misrepresentation and concealment of material facts, and that he illegally procured his citizenship because he was not, in fact, eligible to naturalize at the time he naturalized. The Court must, therefore, grant summary judgment to Plaintiff, revoke Defendant's naturalization, and cancel his certificate of naturalization, effective as of the original date of the order and certificate, December 16, 1999.

[14] Defendant asserted the Fifth Amendment to refuse to answer questions regarding every fact in this sentence. *See* Ex. N at 42:12-43:8, 43:14-18. He did admit, however, that during his N-400 interview "[an] INS officer[] reviewed with [him] many if not all of the questions that are on the N-400." *Id*. at 43:9-13.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2019, I served the foregoing Plaintiff's Motion for Summary Judgment and its exhibits on Counsel for Defendant by via the Court's CM/ECF system.

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