UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA	**CASE NO. 2:25-CV-00201**
VERSUS	**JUDGE JAMES D. CAIN, JR.**
ELLIOTT DUKE	**MAGISTRATE JUDGE LEBLANC**

MEMORANDUM RULING

Before the court is a Motion for Judgment on the Pleadings [doc. 5] filed by the United States, seeking the denaturalization of defendant Elliott Duke. The motion is regarded as unopposed.

I. BACKGROUND

Defendant Elliott Duke is a native of the United Kingdom who obtained U.S. citizenship through naturalization. Doc. 1, ¶¶ 4–5. Under 8 U.S.C. § 1440(a), a foreign national may obtain naturalization as a U.S. citizen by serving honorably in the U.S. armed forces during certain conflicts. *Id.* at ¶ 14. Duke began serving in the U.S. Army on November 17, 2009, and filed his Form N-400, Application for Naturalization ("N-400") on November 13, 2012. *Id.* at ¶¶ 9, 13; *see* doc. 1, att. 2. Part 10, Section D "Good Moral Character", Question 15 of the N-400 asked, "Have you **ever** committed a crime or offense for which you were not arrested?" Doc. 1, att. 2, p. 9 (emphasis in original). Duke answered "Yes" and in the space provided to explain his answer stated only that he had been cited for speeding in August 2012, "no fine required, chain of command informed." *Id.* Questions

23 and 24 of the same section asked, respectively, "Have you **ever** given false or misleading information to any U.S. Government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal?" and "Have you **ever** lied to any U.S. Government official to gain entry or admission in the United States?" *Id.* (emphasis in original). Duke answered "No" to both. *Id.* He provided the same answers to Questions 15, 23, and 24, as restated by the immigration services officer during his Naturalization Interview on January 18, 2013. Doc. 1, ¶¶ 26–31. At the conclusion of his Naturalization Interview, Duke signed the N-400 in the presence of the immigration officer and swore under penalty of perjury that "I know the contents of this application for naturalization subscribed by me," including four handwritten changes therein, "are true and correct to the best of my knowledge and belief." *Id.* at ¶ 32; doc. 1, att. 2, p. 11. Based upon the information that Duke provided in his N-400 and during his Naturalization Interview, USCIS approved Duke's application and he took the oath of naturalization on the same date as his Naturalization Interview. Doc. 1, ¶¶ 33, 34.

On May 14, 2013, law enforcement officers executed a search warrant at Duke's apartment. *Id.* at ¶ 35. During the search Duke admitted that he possessed child sexual abuse material ("CSAM") on his computer and had exchanged CSAM with other individuals via the internet. *Id.* at ¶ 36. Officers executing the search warrant found such images on Duke's computer and took him into custody. *Id.* at ¶ 37. Duke was interviewed later that day, after being advised of his *Miranda* rights. *Id.* at ¶¶ 38–39. He admitted that he possessed CSAM on his computer, [redacted] *Id.* at ¶ 39. He also admitted that he began receiving CSAM on his computer approximately one year prior, while stationed in Germany in service of the U.S. Army. *Id.* at ¶ 40. He allowed law enforcement officers to access his email account to identify others involved in exchanging CSAM. *Id.* at ¶ 41.

Subsequently, a Homeland Security Investigations ("HSI") agent examined Duke's electronic devices and identified over 50 emails between Duke and another account concerning the trading of CSAM. *Id.* at ¶ 42. One email sent by Duke in December 2012 included four still images, two of which depicted juvenile girls performing oral sex on adult men. *Id.* at ¶ 43. The recipient of that email then sent Duke two videos of CSAM and one video of child erotica. *Id.* at ¶ 44. [redacted] *Id.* HSI reviewed similar email messages from March 2013 that Duke had sent to or received from three other email accounts. *Id.* at ¶ 45. In at least one such email, Duke requested in graphic terms images of "young girls" engaged in sexual intercourse. *Id.* In other email messages, Duke had sent or received videos and still images of CSAM, [redacted] *Id.* On June 6, 2013, HSI conducted a forensic review of a laptop computer seized from Duke. There it found 168 videos and 187 still images of minor boys and girls engaged in [redacted] *Id.* at ¶ 46.

Duke was charged by indictment in this district with nine counts of receiving and distributing CSAM. *See United States v. Elliott*, No. 2:13-cr-297 (W.D. La. June 2, 2014), doc. 1. On January 23, 2014, pursuant to a plea agreement, he pled guilty to Count 9 of the indictment and the government dismissed the remaining charges. *Id.* at docs. 20, 21. In the

Stipulated Factual Basis for Guilty Plea, signed by Duke and his attorney, Duke admitted that on May 14, 2013, authorities executed a search warrant at his home and that, after receiving a *Miranda* rights advisement, he had admitted to downloading, possessing, and distributing CSAM via his email account, to which he had given the authorities access. *Id.* He also admitted that he used this email account to trade CSAM in December 2012. *Id.* On May 22, 2014, Duke was sentenced to a 20-year term of imprisonment.[1] *Id.* at doc. 32. He remains incarcerated with a projected release date of September 15, 2030.

On February 19, 2025, the government filed a complaint against Duke, contending that he illegally procured his naturalization by misrepresenting and concealing facts during the naturalization process. Doc. 1. Accordingly, it maintains that Duke's citizenship is subject to revocation under 8 U.S.C. § 1451(a). *Id.* Duke has filed no answer to the complaint despite being properly served. *See* doc. 4. The government now brings a motion for judgment on the pleadings, seeking an order revoking Duke's naturalization process pursuant to Federal Rule of Civil Procedure 12(c). Doc. 5. Duke has likewise filed no response to the motion, which is now regarded as unopposed.

[1] Duke was discharged from the Army under "other than honorable conditions" in April 2014. Doc. 1, ¶ 57. He was also initially sentenced to a lifetime term of supervised release, but the district court was overturned on this aspect and resentenced him to a five-year term of supervised release. *Duke*, No. 2:13-cr-297, at docs. 32, 38, 45.

II.
LAW & APPLICATION

A. Legal Standards

A motion for judgment on the pleadings permits a party to raise the defense of failure to state a claim upon which relief may be granted after the pleadings have closed. FED. R. CIV. P. 12(c). These motions are "designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002) (quoting *Hebert Abstract Co. v. Touchstone Props., Ltd.*, 914 F.2d 74, 76 (5th Cir. 1990) (per curiam)). Accordingly, it should only be granted "if there is no issue of material fact and if the pleadings show that the moving party is entitled to judgment as a matter of law." *Van Duzer v. U.S. Bank Nat'l Ass'n*, 995 F.Supp.2d 673, 683 (S.D. Tex. 2014) (citing *Greenberg v. General Mills Fun Grp., Inc.*, 478 F.2d 254, 256 (5th Cir. 1973)). Such motions are decided under the standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6). *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). The reviewing court will therefore "accept all facts pleaded by the non-moving party as true and grant all reasonable inferences from the pleadings in favor of the same." *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1228 (10th Cir. 2012) (cleaned up).

B. Application

Ordinarily, Federal Rule of Civil Procedure 55 provides the avenue for obtaining a judgment against a defendant like Duke who ignores a lawsuit. As the government acknowledges, however, the Supreme Court has expressed disfavor against revoking naturalization through default judgment. *See Klapprott v. United States*, 335 U.S. 601, 611 (1949) ("It seems peculiarly appropriate that a person's citizenship should be revoked only after evidence has established that the person has been guilty of prohibited conduct justifying revocation."). Several lower courts have thus held that, even when a properly served defendant fails to appear, the government must still satisfy its burden under 8 U.S.C. § 1451 rather than seeking default judgment. *E.g.*, *United States v. Georgieff*, 100 F.Supp.3d 15, 19 (D.D.C. 2015); *United States v. Merino*, 2021 WL 4976248, at *2 (S.D. Fla. Jul. 26, 2021); *United States v. Flores*, 2024 WL 245534, at *5 (N.D. Okla. Jan. 23, 2024); *cf. United States v. Gayle*, 996 F.Supp.2d 42, 48 (D. Conn. 2014) (Default judgments are "valid and permissible in denaturalization actions," but "a careful review of the evidence is warranted in order to best serve the interests of justice."). This is because "the [g]overnment 'carries a heavy burden of proof'" in a denaturalization proceeding and "must provide 'clear, unequivocal, and convincing evidence justifying revocation.'" *United States v. Mohammad*, 249 F.Supp.3d 450, 457 (D.D.C. 2017) (quoting *Fedorenko v. United States*, 449 U.S. 490, 505 (1981)). A defendant's failure to respond to a complaint amounts to an admission of the allegations even in denaturalization proceedings, however. *See, e.g.*, *United States v. Gorshkow*, 2002 WL 34543318, at *4 (N.D. Fla. Aug. 6, 2002) ("When a defendant fails to defend such an action, the Government is still held to a heavy burden, but the burden becomes all but academic since the defendant is considered to have admitted the factual averments of the complaint."); *accord Flores*, 2024 WL 245534 at *1.

An individual is subject to denaturalization under 8 U.S.C. § 1451(a) if his naturalization was "illegally procured" or if it was "procured by concealment of a material fact or by willful misrepresentation." Once the government has met its burden of showing that either basis applies, "the Court has no discretion to excuse the conduct and must enter a judgment of denaturalization." *Flores*, 2024 WL 245534 at *3 (citing *Fedorenko*, 449 U.S. at 517). The government asserts that both bases apply, due to Duke's failure to disclose his criminal conduct at the time he completed his N-400 and naturalization interview.

1. Illegal procurement due to lack of good moral character

On the first basis, no alien may naturalize "unless all statutory requirements are complied with." *United States v. Ginsberg*, 243 U.S. 472, 474–75 (1917). Among these, the applicant "bears the burden of demonstrating that . . . he or she has been and continues to be a person of good moral character" for a period ending with his naturalization. 8 U.S.C. § 1427(a)(3). For servicemembers and veterans applying for naturalization pursuant to 8 U.S.C. § 1440(a), this period begins one year prior to filing the application for naturalization.[2] 8 C.F.R. § 329.2(d). Duke's statutory period thus began on November 13, 2011, one year before he filed his N-400, and ended with his naturalization on January 18, 2013.

During this time, the government maintains, three separate factors precluded Duke from satisfying the good moral character requirement: (1) he committed a crime involving

[2] The timeline for the good moral character requirement under § 1427(a)(3) is set forth in 8 C.F.R. § 329.2(d), supra. The Fifth Circuit recognized that the statutory moral character requirement applied to § 1440(a) applicants in *Lopez v. Henley*, 416 F.3d 455, 457–58 (5th Cir. 2005), but did not reach the question of when it began. "Presumably," however, the court "would also find reasonable the one-year statutory period contained in 8 C.F.R. § 329.2(d)." *Kariuki v. Tarango*, 2012 WL 12897207, at *3 n. 8 (N.D. Tex. Jan. 17, 2012), *aff'd*, 709 F.3d 495 (5th Cir. 2013).

moral turpitude ("CIMT") to which he later admitted; (2) he committed unlawful acts that adversely reflected on his moral character without extenuating circumstances; and (3) he provided false testimony to obtain an immigration benefit.

a. Crime Involving Moral Turpitude

Any individual who commits a CIMT during his statutory period and later either admits to that crime or is convicted of it is precluded from establishing good moral character. *See* 8 U.S.C. § 1101(f)(3) (precluding an individual from establishing good moral character if he meets the criteria related to commission of a CIMT set forth at 8 U.S.C. § 1182(a)(2)(A))); *see also* 8 C.F.R. § 316.10(b)(2)(i), (iv) (providing that an applicant "shall be found to lack good moral character" if he committed and was convicted of one or more CIMTs or admitted to same even if never charged and convicted). Only the commission of the CIMT need occur during the statutory period; the bar still applies even if the conviction or admission occurs later. *United States v. Suarez*, 664 F.3d 655, 659–60 (7th Cir. 2011).

In the immigration context, the Fifth Circuit defers to the interpretation of the Board of Immigration Appeals ("BIA") for "moral turpitude." BIA construes that term as referring to conduct that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Cisneros-Guerrerro v. Holder*, 774 F.3d 1056, 1058 (5th Cir. 2014) (quoting *In re Sejas*, 24 I. & N. Dec. 236, 237 (BIA 2007)). Thus, any CSAM offense likely constitutes a CIMT. *See Torres v. Lynch*, 578 U.S. 452, 479 n. 2 (2016) (Sotomayor, J., dissenting) (noting the breadth of definition, and that BIA thereunder "has held that **any** child pornography offense is a 'crime involving moral turpitude,' rendering a noncitizen removable in many cases.") (emphasis added). While no reported case squarely examines whether the crimes of receipt and distribution of CSAM constitute a CIMT, multiple federal courts have held that the lesser crime of possession of CSAM is a CIMT. *See, e.g.*, *Moreno v. Att'y Gen. of United States*, 887 F.3d 160, 165 (3d Cir. 2018); *United States v. Santacruz*, 563 F.3d 894, 896 (9th Cir. 2009); *In re Olquin-Rufino*, 23 I. & N. Dec. 896, 897 (BIA 2006).

Duke admitted in his May 2013 police interview and in the stipulated factual basis to his guilty plea to trading CSAM with his email account in December 2012, during the statutory period. The stipulation states, in relevant part:

> On 5/14/2013, agents with the Louisiana State Police (LSP) and the Vernon Parish Sheriff's Office (VPSO) conducted a consent search at DUKE'S residence located in Leesville, LA, after receiving information that DUKE was currently in possession of child pornography. DUKE signed a consent search form, and during the initial examination, child pornography was located on a laptop computer owned by DUKE. DUKE was then *Mirandized* and admitted to downloading, possessing, and distributing child pornography via his email account, [redacted] DUKE also agreed to allow law enforcement to take over his email account in an effort to identify other email accounts trading in child pornography.
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> Homeland Security Investigations (HIS) [*sic*] Special Agent (SA) [redacted] reviewed emails sent and received in DUKE'S email account and identified over 50 emails between DUKE'S account and another account, discussing or completing the trading or child pornography. DUKE also created a "Christy" folder to save emails which contained numerous emails to and from this email account. SA Link located [a] string of emails between the 2 accounts from 12/22/2012, which included an email from [redacted] sending 4 still images to the email account with which he was corresponding. [redacted], and 2 of the images depicted images of only adult females. In response, the email account to which he was corresponding sent 2 videos of child pornography and 1 video of child erotica to [redacted] 1 of the child pornography videos depicts a [redacted]

Doc. 1, att. 3, p. 2. Under 18 U.S.C. § 2252A(a)(2)(B), it is a crime to knowingly receive or distribute any "material that contains child pornography" that has been mailed or shipped by means or facility of interstate or foreign commerce, including computer. To obtain a conviction, the government must show: (1) that the defendant knowingly received or distributed material that contained child pornography; (2) the mailing, transport, shipping, or distribution of the material in a means or facility affecting interstate or foreign commerce, including by computer; and (3) that when the defendant received or distributed the material, he knew it contained child pornography. Fifth Circuit Pattern Jury Instructions (Criminal), § 2.85E (2024 ed.). The factual admissions of Duke's stipulation satisfy these elements, and show that Duke committed the offense during the statutory period relating to his naturalization. Additionally, it is self-evident to this court that Duke's knowing exchange of images depicting the sexual abuse of children constitutes an "inherently base, vile, or depraved" act that is "contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Cisneros-Guerrerro*, 774 F.3d at 1058. The government thus satisfies this basis for denaturalization.

b. Admission to unlawful acts

An applicant for naturalization is also statutorily barred from showing that he is a person of good moral character if, during the statutory period, he commits unlawful acts that adversely reflect on his moral character and he cannot establish "extenuating circumstances" for such acts. 8 C.F.R. § 316.10(b)(3)(iii). No admission or conviction is required to trigger this bar. *See United States v. Okoro*, 852 F. App'x 798, 800 (5th Cir. 2021) (affirming denaturalization under § 316.10(b)(3)(iii) where defendant was not convicted of offense but government proved that he committed it during statutory time). An "unlawful act" includes a "bad act[] that would rise to the level of criminality, regardless of whether a criminal prosecution was actually initiated." *Amin v. I.N.S.*, 2010 WL 2034802, at *3 (N.D. Tex. May 21, 2010) (quoting *Meyersiek v. U.S. Citizenship & Immig. Servs.*, 445 F.Supp.2d 202, 205–06 (D.R.I. 2006)).

As shown above, Duke admitted to actions showing that he received and distributed CSAM in December 2012, in violation of 18 U.S.C. § 2252A(a)(2)(B). These acts constituted a CIMT. "Crimes involving moral turpitude are unlawful acts that adversely reflect on one's moral character." *United States v. Martinez*, 2017 WL 6550854, at *3 (C.D. Cal. Aug. 21, 2017) (citing *United States v. Teng Jiao Zhou*, 815 F.3d 639, 642 (9th Cir. 2016)). Because Duke admitted to actions that amount to a CIMT within the statutory period, he has likewise committed unlawful acts that adversely reflect on his moral character. He identifies no extenuating circumstances to justify these actions, and a careful review of the pleadings identifies no such circumstances. *See United States v. Okeke*, 671 F.Supp.2d 744, 751 (D. Md. 2009) ("[T]he Defendant, not the government, has the burden of showing whether he faced extenuating circumstances at the time of the crime."). The government thus satisfies another basis for denaturalization.

c. Providing false testimony

Finally, an applicant who gave "false testimony for the purpose of obtaining" an immigration benefit within the statutory period is likewise precluded from meeting the good moral character requirement. 8 U.S.C. § 1101(f)(6). The primary purpose of this provision "is not . . . to prevent false pertinent data from being introduced into the naturalization process, but to identify lack of good moral character." *United States v. Kungys*, 485 U.S. 759, 780 (1988). Accordingly, the testimony need not be "material" and the provision instead "denominates a person to be of bad moral character if he has told even the most immaterial of lies with the subjective intent of obtaining immigration and naturalization benefits." *Id.* at 779–80.

In completing his immigration interview, Duke stated under oath that he had only committed one crime for which he had not been arrested—speeding. Doc. 1, att. 2, p. 9. That answer was false because Duke knowingly received and distributed CSAM while stationed overseas, as he later admitted, and was not arrested until after his naturalization. Duke's admission shows that he concealed these facts in his naturalization interview. The most plausible purpose for such concealment—even drawing all evidentiary inferences in Duke's favor—is to obtain the citizenship benefits that would be denied to an applicant who admitted to committing such a serious uncharged crime. The government has thus shown a third basis on which Duke cannot meet the good moral character requirement. His naturalization was therefore illegally procured and must be revoked.

2. Willful misrepresentation or concealment

An additional, independent basis for naturalization arises because Duke procured naturalization "by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a). "This basis for denaturalization has been interpreted to include four requirements: (1) 'the naturalized citizen must have misrepresented or concealed some fact'; (2) 'the misrepresentation or concealment must have been willful'; (3) 'the fact must have been material'; and (4) 'the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment." *United States v. Ledesma*, 33 F.Supp.3d 734, 745 (S.D. Tex. 2012) (quoting *Kungys*, 485 U.S. at 767). Again, the government's evidence readily satisfies all elements even when construed in a light most favorable to Duke. Duke misled the immigration officer into thinking that the only uncharged crime he had ever committed was a traffic violation. He thereby concealed the highly material fact that he had recently engaged in criminal actions involving the exchange of CSAM. Because the questions regarding his past conduct were plainly and directly stated, the court must conclude that his answer concealing another and much more serious offense was willful. Finally, there can be no doubt that Duke obtained citizenship as a result of this concealment. As described above, Duke was ineligible for naturalization because of this conduct but was granted citizenship after concealing it in his interview. Accordingly, the government has likewise satisfied its burden for showing that naturalization must be revoked due to this basis of 8 U.S.C. § 1451(a).

III.
CONCLUSION

For the reasons stated above, the Motion for Judgment on the Pleadings [doc. 5] will be **GRANTED** and judgment will be entered for the United States of America on Counts I, II, III, and IV of the Complaint, resulting in the revocation of defendant Elliott Duke's United States citizenship.

THUS DONE AND SIGNED in Chambers on the 12th day of June, 2025.

JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE