IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HENRY BRICENO,

Defendant.

Case No. 1:25-cv-23617

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant Henry Briceno, ("Mr. Briceno"), by counsel and under Federal Rule of Civil Procedure 12(b)(6), moves the Court for an order dismissing the Complaint. The grounds for this motion are in the attached memorandum incorporated here by reference.

Date: December 1, 2025

Respectfully submitted,

By: */s/ Lindsay M. Vick*
LINDSAY M. VICK
Kuck Baxter LLC
P.O. Box 501359
Atlanta, GA 30350
(o) 404-382-8794
(f) 404-816-8615
Lvick@immigration.net

By: */s/ Jeffrey A. Devore*
Devore Law Group, P.A.
4100 RCA Blvd., Suite 110
Palm Beach Gardens, FL 33410
(o) 561-478-5353
(f) 561-478-2144
jdevore@devorelawgroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court and that to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served electronically through the Court's ECF system to all counsel of record this 1st day of December, 2025.

DEVORE LAW GROUP, P.A.
Local Counsel
4100 RCA Boulevard, Suite 110
Palm Beach Gardens, Florida 33410
Telephone: (561) 478-5353
Facsimile: (561) 478-2144

By :s/ Jeffrey A. Devore
JEFFREY A. DEVORE
Florida Bar No. 0845493
jdevore@devorelawgroup.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HENRY BRICENO,

Defendant.

Case No. 1:25-cv-23617

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

INTRODUCTION

The Court should dismiss the Complaint to revoke Defendant Henry Briceno's naturalization because it fails to state a claim for denaturalization. Mr. Briceno became a naturalized U.S. citizen on January 29, 2010. Prior to that time between 2008 and 2009, he assisted his family with operating one of his sister's medical clinics, primarily by providing customer and janitorial services. His sister also asked him to sign documents of incorporation and checks on behalf of the clinic, which he did. Mr. Briceno was, and still is, a pastor and man of faith who values hard work and family. When his sister asked him to help her run one of her medical clinics by signing various documents, he did not think twice because she was family, and he believed she was doing the best she could to support her own family.

Unfortunately, Mr. Briceno later learned—after becoming a U.S. citizen and after he stopped his involvement in the clinic—that the clinic he helped his sister operate was involved in criminal activity involving Medicare fraud. However, despite not having had any knowledge of the criminal activity while he was working at the clinic, the government served Mr. Briceno with a criminal indictment in February 2011, and in August 2012, he pled guilty to one count of conspiracy to commit healthcare fraud pursuant to 18 U.S.C. § 1349. While Mr. Briceno pled guilty to the charge, he maintained on the record, and still maintains, that he did not become aware of the criminal nature of the clinic until after he became a citizen in January

2010. Mr. Briceno has no other criminal record or arrest other than the conviction for a single count of conspiracy, which occurred after he naturalized.

Thirteen years after he was convicted, and more than fifteen years after he naturalized, the government filed a civil Complaint to Revoke Naturalization pursuant to 8 U.S.C. § 1451(a). According to the Complaint, the government contends that Mr. Briceno illegally procured his citizenship through fraud and concealment of a material fact or by willful misrepresentation. The basis the government identifies for its allegations is Mr. Briceno's conviction, his activities assisting in the operation of the medical clinic, and his statements on two immigration benefit applications.

What the government fails to acknowledge or identify in its Complaint is that Mr. Briceno stated under oath at his plea hearing that he did not become aware of the criminal activity related to the clinic until after he became a U.S. citizen. Thus, the government's own evidence attached to the Complaint shows that the government has not plausibly alleged that it can prove by clear, unequivocal, and convincing evidence that Mr. Briceno knowingly or willfully engaged in fraud or other unlawful activity prior to his naturalization in January 2010 during the good moral character period. Therefore, the Court should dismiss the Complaint in its entirety.

Mr. Briceno submits this memorandum of law in support of his Motion to Dismiss Plaintiff's Complaint.

BACKGROUND

Mr. Briceno, a Venezuelan native, became a U.S. citizen by naturalization in January 2010. ECF No. 1, Compl., Ex. H, Certificate of Naturalization. At the time, Mr. Briceno was living in Michigan and was a pastor in a church, *see* Ex. 1, Sentencing Tr. 28:1, and he owned a medical clinic, but he generally considered himself to be self-employed, *see* Compl., Ex. G at 5. Between 2008 and 2009, he assisted his sister, Marieva Briceno, and his niece, Karina Hernandez, in the operation of one of their medical clinics in Michigan. *See* Sentencing Tr. 9:6-14; *see also* Compl., Ex. B at 2 (indictment naming defendants). Specifically, he signed documents of incorporation for the medical clinic and signed checks, in addition to providing general janitorial, maintenance, and customer service. *See* Compl., Ex. D, Plea Hrg. Tr. at 8:9-25; Sentencing Tr. 9:6-14.

In February 2011, Mr. Briceno was indicted on charges involving conspiracy to commit healthcare fraud. Compl., Ex. A, Affidavit of Good Cause by Ralph Reichard ("Reichard Aff.") ¶ 29. And in August 2012, he was convicted of one count of conspiracy to commit healthcare fraud. Compl., Ex. E. At his plea hearing, Mr. Briceno proffered that "he became aware of the illegality after he became a naturalized citizen; and therefore, there would not have been any misstatements pertaining to the immigration or naturalization process." Plea Hrg. Tr. at 5:13-17; *see also id.* at 9:11-13 ("MR. WEISS: And you found out about this after you became a United States citizen? Mr. BRICENO: Yes."). Although the plea agreement admitted that he was involved in the events alleged to be conspiracy, it did not state that Mr. Briceno knowingly engaged in, or intended to engage in, a conspiracy during the statutory period for good moral character for naturalization—here, October 2004 to January 2010. Compl. ¶ 72. Nor did it state a precise date Mr. Briceno joined either conspiracy.

The Sentencing Guidelines recommendation for Mr. Briceno's conviction was 37-46 months' imprisonment. Ex. 1, Sentencing Tr. 20:19-20. But because he had no prior record, his "attitude [was] good," he was of advanced age, and was in poor health and financial circumstances, the judge sentenced him to a term well below the Sentencing Guidelines recommendation; a term of 24 months with 2 years' supervised release. *See* Sentencing Tr. at 21:24-25; 22:25; 23:1-5, 11-19.

On August 12, 2025, over fifteen years after he naturalized and thirteen years after his conviction, the government filed a complaint to revoke Mr. Briceno's naturalization. The Complaint alleges four counts, all of which fail to state a claim. Count I alleges that Mr. Briceno knowingly committed or was convicted of a crime involving moral turpitude ("CIMT"), Compl. ¶¶ 71-80; Count II alleges that he knowingly committed unlawful acts without attendant extenuating circumstances, Compl. ¶¶ 81-92; Count III alleges that he knowingly gave false statements in support of his applications for immigration benefits, Compl. ¶¶ 93-101; and finally, Count IV alleges that he willfully concealed or misrepresented a material fact to procure his naturalization, Compl. ¶¶ 102-111. The Court should dismiss the

Complaint as to each Count because the government fails to plausibly allege it can meet its high burden to show by clear, unequivocal, and convincing evidence that Mr. Briceno illegally procured his naturalization or procured his naturalization by concealment or willful misrepresentation of a material fact. 8 U.S.C. § 1451(a).

LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b)(6) requires plaintiffs to include "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" meaning that it must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While a court must accept well-pleaded allegations as true, "conclusory allegations . . . are not entitled to an assumption of truth—legal conclusions must be supported by factual allegations." *Randall v. Scott*, 610 F.3d 701, 709–10 (11th Cir. 2010).

Along with the allegations in the complaint, the Court should also consider "the facts derived from a complaint's exhibits as part of the plaintiff's basic factual averments." *F.T.C. v. AbbVie Prods. LLC*, 713 F.3d 54, 63 (11th Cir. 2013); *Gill as Next Friend of K.C.R. v. Judd*, 941 F.3d 504, 511 (11th Cir. 2019) (same). When those exhibits contradict the complaint's allegations, the exhibits themselves control. *Id.*; *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1205 (11th Cir. 2007) (same). And where an exhibit appended to the Complaint "reveals facts which foreclose recovery as a matter of law, dismissal is appropriate." *Associated Builders, Inc. v. Ala. Power Co.*, 505 F.2d 97, 100 (5th Cir. 1974).

To denaturalize a U.S. citizen, the government must prove that the order and certificate for naturalization were "illegally procured or were procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451. Denaturalization has '"severe and unsettling consequences."' *United States v. Jean-Baptiste*, 395 F.3d 1190, 1191 (11th Cir. 2005) (quoting *Fedorenko v. United States*, 449 U.S. 490, 505 (1981)). The requirements are strict, and to prevail the government must prove its case "by clear, unequivocal and convincing evidence which does not leave the issue in doubt." *Klapprott v. United States*, 335 U.S. 601, 612 (1949). This burden is substantially identical with that required in criminal cases—proof beyond a reasonable doubt." *United States v. Coloma*, 535 F. Supp. 3d 1279, 1283–84 (S.D. Fla. 2021) (quoting *Klapprott*, 335 U.S. at 612). An applicant for naturalization must be "a person of good moral character" from five years before filing the application up to the time it is granted (hereinafter, "statutory period"). 8 U.S.C. § 1427(a).

ARGUMENT

I. The Court Should Dismiss Counts I, II, III, and IV for Failure to State a Claim Under Rule 12(b)(6)

a. The Government's Exhibits Attached to the Complaint Contradict its Allegations Concerning the Timing of Mr. Briceno's Awareness of, and Involvement in, the Conspiracy (Counts I, II, III, and IV)

The government's own exhibits, incorporated by reference into the Complaint, fail to plausibly allege that Mr. Briceno knowingly committed a CIMT, or that he was even aware of the conspiracy, during the statutory period. *United States v. Munoz*, 112 F.4th 923, 932 (11th Cir. 2024). Nor has the government alleged facts or pointed to facts in the exhibits that could plausibly show that Mr. Briceno was aware of the conspiracy prior to attaining U.S. citizenship. To sustain Counts I and II, the government must allege that the "crimes involving moral turpitude" or "unlawful acts" occurred during the good moral character statutory period. *Id.*

Here, the Complaint against Mr. Briceno relies primarily on pleadings from the criminal case, which plausibly show that Mr. Briceno was not aware of the conspiracy until after he became a U.S. citizen in January 2010. In fact, Mr. Briceno made it clear on the record during his plea hearing that "he became aware of the illegality after he became a naturalized citizen," Plea Hrg. Tr. 5:12-15, directly contradicting the government's allegations that "starting in July 2008," Compl. ¶ 106, Mr. Briceno "was aware," *id.* ¶ 14, that the medical clinic where he worked for his sister was established to defraud Medicare. Nor do the pleadings allow the government to plausibly allege precise or consistent dates of Mr. Briceno's involvement in the conspiracy. *See e.g.*, Compl., Ex. A (indictment alleging activity began in May 2007); Ex. B (Rule 11 Plea Agreement stating that activity began around July 2008); Ex. D (arraignment and plea hearing transcript providing no start date for the conspiracy); and Ex. E (judgment providing no start date for the conspiracy). Although the Complaint provides conclusory allegations about the date Mr. Briceno joined the conspiracy, they contradict the referenced exhibits. And they do not show that Mr. Briceno committed a CIMT at all given his lack of awareness or commission of a CIMT prior to becoming a U.S. citizen.

Where the exhibits attached to a Complaint contradict its allegations, the exhibits control. *See Griffin Indus., Inc.*, 496 F.3d at 1205. That is exactly the case we have here. The Complaint sets forth the conclusory allegation that Mr. Briceno "willfully misrepresented and concealed his involvement in a criminal conspiracy to commit healthcare fraud between July 2008 until on or about December 2010," Compl. ¶ 104, but the plea agreement says, "From the outset, [Mr. Briceno] was aware that this clinics [*sic*] was established for the sole purpose of defrauding Medicare," Compl., Ex. C at 3. The plea agreement does not provide a date when Mr. Briceno became "aware" other than the vague term "from the outset." The plea agreement further states that on some unknown date "Defendant knew that the purpose of Manuel was not to treat sick patients, but to make money by defrauding Medicare." Compl., Ex. C at 3. Thus, the Complaint mistakenly alleges as though it is a concrete fact that Mr. Briceno was aware of the conspiracy beginning in July 2008, whereas the exhibits to the Complaint do not reflect as such and instead contradict the Complaint and the plausibility of its allegations. *See Munoz*, 112 F.4th at 933 ("the date of the offense is not an essential element of the offense" (cleaned up)). Since the allegations contradict the exhibits the government incorporates by reference, the exhibits govern. *See Griffin Indus., Inc.*, 496 F.3d at 1205.

Further, the government neglected to attach a relevant document from Mr. Briceno's criminal proceedings, which sheds more light on Mr. Briceno's low-level role in the medical clinic, and supports his under-oath statement that he was not aware of the conspiracy when the clinic was operating before January 2010. The sentencing transcript from Mr. Briceno's sentencing hearing reflects that he played a minor role in the clinic. For example, he performed administrative and janitorial services as well as customer service for those visiting the clinic. *See* Sentencing Tr. 9:6-14. He also signed his name to forms. *Id.* at 6:6-8. The government alleges no other evidence of the specific time-period for his involvement or extent of involvement such that it can rebut his statement under oath that he did not know about the conspiracy before he naturalized. Importantly, the government has not alleged any facts that would show Mr. Briceno was aware of the conspiracy or commission of a CIMT prior to obtaining U.S. citizenship.

To recap, Mr. Briceno assisted with Manuel Clinic between 2008 and 2009, ceasing involvement before his naturalization. *See* Sentencing Tr. 9:6-14; *see also* Compl., Ex. B at 2. He naturalized on January 29, 2010. Compl., Ex. H. The statutory period ran from October 2004 to January 2010. Compl. ¶ 72. The government's own plea transcript of the plea hearing that took place in March 2012 establishes Mr. Briceno did not learn of illegality until after naturalization. *See* Plea Hrg. Tr. 5:12-15. The government cannot plausibly meet its burden when its own evidence defeats its claim that Mr. Briceno was aware of the conspiracy such that he could have committed a CIMT or unlawful act. Thus, the Court should dismiss Counts I and II because they fail to state a claim for relief which can be granted.

b. A Conviction for Conspiracy to Commit Healthcare Fraud Under 18 U.S.C. §§ 1347 & 1349 Does Not Categorically Involve Moral Turpitude (Counts I and II)

A conviction for conspiracy to commit healthcare fraud does not categorically involve moral turpitude because the statute is overbroad and criminalizes some conduct which does not necessarily require specific intent, and therefore it is not a CIMT for which Mr. Briceno may be denaturalized.

i. CIMTs and the categorical approach

A CIMT is an offense that involves "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Zarate v. U.S. Att'y Gen.*, 26 F.4th 1196, 1201 (11th Cir. 2022) (quoting *Smith v. U.S. Att'y Gen.*, 983 F.3d 1206, 1210 (11th Cir. 2020)).[1] Further, a CIMT involves "conduct that not only violates a statute but also independently violates a moral norm." *Id.* (quoting *Mohamed v. Holder*, 769 F.3d 885, 888 (4th Cir. 2014)).

Fraud offenses qualify as CIMTs. *Zarate v. U.S. Att'y Gen.*, 26 F.4th at 1201-02 (discussing *Jordan v. De George*, 341 U.S. 223, 232 (1951) and expressing reluctance to declare fraud offenses categorically CIMTs). "Fraud requires that a

[1] The courts used to defer to the Board of Immigration Appeals' ("BIA") definition of a CIMT, *see id.*; however, such deference is no longer required. *See Loper Bright v. Raimondo*, 603 U.S. 369 (2024).

misrepresentation be made to obtain a benefit from someone or cause a detriment to someone." *Id.* at 1202. However, just as the Eleventh Circuit held in *Zarate*, declaring fraud offenses to be CIMTs is not the end of the analysis. While "*De George* holds that fraud offenses are categorically CIMTs, [] it does not go further than that." *Id.* at 1207. If the statute also covers non-fraud conduct, such as a false representation for any purpose, then the statute is not categorically a CIMT. *Zarate*, 26 F.4th at 1207 (concluding that false representation of a Social Security number with intent to deceive for any purpose was not categorically a CIMT). The Court must analyze the statute of conviction using the categorical approach to determine whether Mr. Briceno was indeed convicted of a CIMT.

In denaturalization cases that ask whether a crime involves moral turpitude, courts first apply the categorical approach. *See United States v. Lopez*, 75 F.4th 1337, 1341 (11th Cir. 2023). Under this approach, courts examine the elements of the offense the naturalized citizen was convicted of committing—not his actual conduct—to determine if every means of committing that crime necessarily involves moral turpitude. *Id.* If the statute of conviction is indivisible in that it defines one crime with one set of elements, the court looks to whether the least culpable conduct constitutes a CIMT. *Id.* However, if the statute sets forth several different crimes by listing multiple, alternative elements or subparts, then the Court may apply the modified categorical approach and review a discrete set of documents to determine which crime or subpart in the divisible statute was the basis for conviction. *Id.* For our purposes here, if the relevant subpart criminalizes both fraud and non-fraud conduct, then Mr. Briceno's statute of conviction was overbroad and he was not convicted of a CIMT. *Id.* With respect to conspiracy convictions, courts look to the underlying statute of conviction to determine whether the statute is divisible or otherwise overbroad and not a categorical CIMT. *Id.* at 1342.

_ii._ Section 1347 contains an indivisible subpart and therefore is overbroad; thus, Mr. Briceno was not convicted of a CIMT

Here, Mr. Briceno was convicted of just one count under the conspiracy statute at 18 U.S.C. § 1349[2] and the underlying crime fell under 18 U.S.C. § 1347. *See* Compl., Ex. C. Section 1347 is divisible between two offenses: (1) defrauding any healthcare benefit program; or (2) obtaining "by *means* of *false* or fraudulent *pretenses, representations, or promises*, any of the money or property owned by, or under the custody or control of, any healthcare benefit program." (emphasis added). Subpart 1 undoubtedly sets forth the elements of one separate fraud offense, but subpart 2 involves several "means" of committing one offense of obtaining money from a healthcare benefit program. *Id.* Because subpart 2 sets forth one crime that may be committed by various means as opposed to elements, it is not divisible. *See Lopez*, 75 F.4th at 1343. Further, § 1347 does not require an intent to obtain a benefit from or

[2] Notably, § 1349 criminalizes conspiracy without adding any element of deceit, specific intent to defraud, or even an overt act.

cause a detriment to someone. It merely covers conduct involving obtaining money or property by false or fraudulent means. *See Zarate*, 26 F.4th at 1207.

Applying the modified categorical approach to § 1347 as a divisible statute, we look to the conviction records to determine under which subpart Mr. Briceno was convicted. *See Mathis v. United States*, 579 U.S. 500, 517 (2016). However, if the Court cannot determine which subpart formed the basis for Mr. Briceno's conspiracy conviction, and one subpart is indivisible and overbroad, then Mr. Briceno's conviction is not categorically a CIMT. And that's exactly the case here. Neither the Second Superseding Indictment nor the Judgment of conviction specify under which subpart Mr. Briceno was convicted. *See* Compl., Exs. B, E. And the plea hearing and sentencing transcripts also do not specify under which subpart Mr. Briceno was convicted and instead refer to fraud generally. *See* Compl., Ex. D; Ex. 1.

Indeed, § 1347 criminalizes fraud but it goes beyond that and also criminalizes "false . . . representations," which the Eleventh Circuit has held is not categorically a CIMT. *Zarate*, 26 F.4th at 1206-07. Despite § 1347's "healthcare fraud" title, the statute does not require specific, fraudulent intent as an element of subparts 1 or 2, which would be required for a fraud offense. *Zarate*, 26 F.4th at 1203 (noting that the Board of Immigration Appeals ("BIA") has held that "non-fraud offenses involving deception are not automatically CIMTs"); *id.* at 1204 (discussing a BIA decision in which the BIA explained that "the fact that the word 'fraudulent' appears does not compel the conclusion that every offense under this clause would involve moral turpitude since the offense may have consisted only of a false and not a fraudulent statement." (internal quotation marks omitted)). Since subpart 2 of § 1347 can cover fraudulent conduct, which would be a CIMT, and false representations or non-fraud conduct, which is not categorically a CIMT, subpart 2 is indivisible and overbroad, and therefore is not a categorical CIMT. And since the record of conviction does not reveal which subpart of § 1347 formed the basis of Mr. Briceno's conviction, the Court cannot conclude that he was convicted of a CIMT.

iii. Section 1347 does not require fraudulent intent and cannot be a CIMT

Although § 1347 requires that the acts in subpart 1 and 2 be "knowingly and willfully" done, 18 U.S.C. § 1347(a), it also says, "a person need not have actual knowledge of this section or specific intent to commit a violation of this section." 18 U.S.C. § 1347(b). Congress added the language in part (b) in 2010 to clarify that specific intent is not required, and one court has since found that this amendment "arguably lessens the mens rea" for healthcare fraud. *United States v. Houser*, No. 4:10-CR-012-HLM, 2011 WL 2118847, at *5 (N.D. Ga. May 23, 2011). While some courts have disagreed, *see, e.g.*, *United States v. Ricard*, 922 F.3d 639, 648 (5th Cir. 2019), the 2010 statutory amendment is nevertheless best read as lessening the mens rea for healthcare fraud by removing the specific intent requirement to the extent there was one; therefore, the minimum conduct under the statute does not *categorically* involve moral turpitude. *See, e.g.*, *Ramos v. U.S. Atty. Gen.*, 709 F.3d

1066, 1071 (11th Cir. 2013) (holding that Georgia's theft statute did not categorically involve moral turpitude because a "specific intent" to deprive was not required).

Further, the "willfulness" standard that 18 U.S.C. § 1347 requires does not involve moral turpitude, because "willfulness" only requires "knowledge that the conduct is unlawful." *Ricard*, 922 F.3d at 648 (internal quotation marks omitted). One only needs to have intended to do *something* unlawful, not necessarily to have committed fraud. *Id.* And under this view, a conviction under 18 U.S.C. § 1347 explicitly does not require a specific intent to commit healthcare fraud or to violate the healthcare fraud statute at all—it only requires "willful" intent to do something unlawful.

The question, then, is whether a crime with this reduced mens rea, which minimally requires only the intent to do *something* unlawful, rather than an intent to defraud or to violate a specific fraud statute, categorically involves moral turpitude. The Court should find, as the Eleventh Circuit did in *Lopez*, that the statute underlying Mr. Briceno's conspiracy conviction is divisible, and even taking the least culpable conduct encompassed by the statute's offenses, his offense did not categorically involve moral turpitude. 75 F.4th at 1342-44. Since § 1347 can be violated without intent to defraud or knowledge of unlawful activity, just like the underlying statute of conviction in *Lopez*, Mr. Briceno's offense covered by that statute generally could not categorically involve moral turpitude. *See id.* at 1344-45.[3]

iv. *Offenses covered by § 1347 are not inherently base, vile, or depraved*

Nothing about the offenses listed in § 1347 is inherently base, vile, or depraved such that Mr. Briceno's conviction may be considered a CIMT. Again, a person may violate the statute by making a false representation for an unspecified purpose and with unspecified intent, which is similar to conduct that other circuits have found is not morally reprehensible. *See Nunez-Vasquez v. Barr*, 965 F.3d 272, 286 (4th Cir. 2020) (holding violation of identity theft law was not a CIMT when law lacked any ingredient of fraud or interference with government function); *Flores-Molina v. Sessions*, 850 F.3d 1150, 1168 (10th Cir. 2017) (same). Obtaining money or property from a health program by making a false representation involves a similar false representation and does not necessarily involve fraud or interference with a government function. The statute explicitly disclaims a specific intent requirement.

---

[3] While the Court does not need to consider deference to the BIA, the BIA has considered whether a conspiracy conviction necessarily involved moral turpitude, and it resolved that question by considering the same "willfulness" standard that applies here. *See Matter of Gaglioti*, 10 I. & N. Dec. 719, 721 (BIA 1964). The BIA explained that where "[t]he corrupt motive or criminal intent required for such a conviction" only requires an agreement "to commit the unlawful act," it does not necessarily involve moral turpitude. *Id.* This is because not every unlawful act involves moral turpitude, and the mere intent to break any law, does not necessarily involve moral turpitude. *Id.* Thus, under the standard in *Matter of Gaglioti*, the minimum conduct required by 18 U.S.C. § 1347 would not categorically involve moral turpitude.

See § 1347(b). Therefore, the Court should conclude that a conviction under § 1347 generally is not categorically a CIMT.[4]

v. The government failed to state a claim that Mr. Briceno illegally procured his citizenship by committing unlawful acts during the statutory period

Just as the government has not plausibly alleged Mr. Briceno was aware of or committed a CIMT during the statutory period, it cannot show that he committed unlawful acts and that he is subject to the regulatory naturalization bar. Compl. ¶¶ 81-92. While this bar may apply even if the Court determines that the government has not plausibly alleged a CIMT during the statutory period, the government's exhibits contradict its allegations concerning Mr. Briceno's awareness and involvement in the conspiracy offense. *See Griffin Indus., Inc.*, 496 F.3d at 1205. Thus, for the same reasons the government has not plausibly alleged a CIMT, it has not plausibly alleged unlawful acts pursuant to 8 C.F.R. § 316.10(b)(3)(iii).[5] *See supra* Part I.a. & b.

Because § 1347 contains an indivisible and overbroad subpart, and the conviction record does not tell us which subpart covered Mr. Briceno's offense, he was not convicted of a CIMT. Thus, his conviction under § 1349 for conspiracy to commit

---

[4] Even if the Court assumes, for purposes of this Motion, that conspiracy to commit healthcare fraud is a CIMT, the Complaint still fails because it does not plausibly allege that Mr. Briceno committed such a CIMT during the statutory period. *See supra* Part I.a.

[5] Even if he were subject to the regulatory bar, Mr. Briceno's complete lack of knowledge and intent to commit any unlawful acts during the statutory period, as well as his service as a pastor, would sufficiently palliate or mitigate any guilt.

an offense covered by § 1347 cannot be a CIMT as a matter of law. Finally, because § 1349 itself contains no fraudulent intent requirement, it is even less turpitudinous than the underlying statute. The Court should dismiss Counts I and II.

c. The Government Cannot Plausibly Allege Mr. Briceno Illegally Procured Naturalization by False Testimony or Willful Misrepresentation (Counts III and IV)

The government has not plausibly alleged facts or evidence that Mr. Briceno knowingly provided false testimony at his naturalization interview in January 2010, Compl. ¶¶ 93-101, nor that he willfully misrepresented and concealed his involvement in a conspiracy to commit healthcare fraud between July 2008 and December 2010, Compl. ¶¶ 102-111. With respect to Count III, as explained above, Mr. Briceno stated during his plea hearing under oath that he was not aware of the conspiracy or any criminal activity related to healthcare fraud until after he became a U.S. citizen. *See* Plea Hrg. Tr. at 5:13-17; 9:11-13; *supra* Part I.a. The government's exhibits on this fact contradict its allegations and so the exhibits control. *See Griffin Indus., Inc.*, 496 F.3d at 1205. There is no other allegation or plausible evidence tending to show that Mr. Briceno knew his testimony at his naturalization interview was false.

Further, and again as explained above, Mr. Briceno's under-oath statement at his plea hearing that he was not aware of the conspiracy or any criminal activity related to healthcare fraud until after he became a U.S. citizen rebuts any allegation that he willfully misrepresented and concealed his involvement in such activity on his naturalization application or interview, or on his Form I-751. *See* Plea Hrg. Tr. at 5:13-17; 9:11-13; *supra* Part I.a. Thus, the Court should dismiss Counts III and IV.

II. The Complaint Should Be Dismissed Under the Laches Doctrine

Because the government waited over 13 years since Mr. Briceno's conviction to sue with no justification for its delay, the Court should dismiss this action under the laches doctrine. Laches applies to a denaturalization claim upon a showing of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense. *Costello v. United States*, 365 U.S. 265, 282 (1961); *United States v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986) (laches in a denaturalization case requires "lack of diligence and prejudice"). Alternatively, the Eleventh Circuit has considered whether a long delay in bringing a denaturalization suit violates the defendant's right to due process. *United States v. Gkanios*, 536 F. App'x 854, 858 (11th Cir. 2013) (unpublished). The legal standard is the same for both: defendants must show prejudice. *Id.*

Here, the delay necessarily prejudiced Mr. Briceno who has built his life as a U.S. citizen in the United States for over 15 years. Thus, the delay violates his right to due process and the laches doctrine.

CONCLUSION

For the above factual and legal reasons, Defendant Mr. Briceno requests that these proceedings be dismissed with prejudice.

Dated: December 1, 2025

Respectfully submitted,

By: _/s/ Lindsay M. Vick_
LINDSAY M. VICK
Kuck Baxter LLC
P.O. Box 501359
Atlanta, GA 30350
(o) 404-382-8794
(f) 404-816-8615
Lvick@immigration.net

By: _/s/ Jeffrey A. Devore_
Devore Law Group, P.A.
4100 RCA Blvd., Suite 110
Palm Beach Gardens, FL 33410
(o) 561-478-5353
(f) 561-478-2144
jdevore@devorelawgroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court and that to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served electronically through the Court's ECF system to all counsel of record this 1st day of December, 2025.

DEVORE LAW GROUP, P.A.
Local Counsel
4100 RCA Boulevard, Suite 110
Palm Beach Gardens, Florida 33410
Telephone: (561) 478-5353
Facsimile: (561) 478-2144

By :s/ Jeffrey A. Devore
JEFFREY A. DEVORE
Florida Bar No. 0845493
jdevore@devorelawgroup.com