**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 REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT

INTRODUCTION

The Court should dismiss the Complaint to revoke Defendant Henry Briceno's naturalization because he has consistently maintained for over thirteen years that he did not have knowledge of the fraud or conspiracy related to his work at a medical clinic until after he became a U.S. citizen. The government's own evidence directly supports Mr. Briceno's position. *See* Compl. Ex. D, 9:11-13.

As the government points out, Mr. Briceno's sister, Marieva Briceno, recently agreed to a consent judgment revoking her naturalization based on her similar conviction for healthcare fraud. Pl.'s Opp. to Mot. to Dismiss (Pl.'s Opp.) Exs. 1, 2. However, Marieva's consent judgment adds significant context to Mr. Briceno's case in that it corroborates his position that he was simply helping his younger sister run one of her clinics and was not involved to such an extent that he would have known about the criminal activity related to the clinic. In contrast with Mr. Briceno who was sentenced to 24 months in prison and a forfeiture money judgment of $70,530.66, Compl. Ex. E at 3; Ex. D at 15:24-25, Marieva was sentenced to 60 months in prison and ordered to forfeit $513,200.65. Pl.'s Opp. Ex. 1 at 2. Mr. Briceno did not receive a sentence as great as Marieva's because she was the one running several clinics whereas Mr. Briceno was involved in helping out at only one clinic. *See* Pl.'s Opp. Ex. D at 8:19-25; 9:1-13 (discussing how he helped his sister at the clinic that was named after him). Thus, Marieva's consent to revocation of her naturalization should have little bearing, if any, on the merits of Mr. Briceno's denaturalization. To the extent it is relevant at all, Marieva's sentence only lends context and support for Mr. Briceno's position that he did not play a significant role in running the medical clinic with which he was involved.

ARGUMENT

I. Collateral estoppel does not bar Mr. Briceno's claim that he did not know about the criminal activity related to the Manuel clinic.

At the outset of the government's opposition, the government attempts to frame Mr. Briceno's argument as though he agreed to commit healthcare fraud prior to his naturalization. Pl.'s Opp. 1. However, nowhere in Mr. Briceno's motion or in the Complaint and its exhibits does Mr. Briceno make such a statement. To the contrary, Mr. Briceno has always maintained "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. As noted in Defendant's Motion to Dismiss, ECF

No. 11 at 9, the sentencing transcript—which the Court should consider incorporated by reference into the Complaint—demonstrates that Mr. Briceno played a low-level role in running or working at the relevant clinic. That Mr. Briceno had such a role corroborates his claim that he was not aware of criminal activity related to the clinic until after he was a U.S. citizen.[1] Mr. Briceno was not aware of the healthcare fraud related to the Manuel clinic until after he became a U.S. citizen, and the doctrine of collateral estoppel does not preclude that claim. The government contends that collateral estoppel precludes Mr. Briceno's claim about the timing of his knowledge and awareness of the relevant crime because the timing of when he committed the crime is an element of conspiracy and was necessary to the final outcome of his conviction. *See* Pl.'s Opp. 8-12.

However, collateral estoppel does not apply to Mr. Briceno's claim because the timing of when he became aware, or start date, of the criminal activity was not an element of the offense nor did the outcome of proceedings hinge on it. *See Bobby v.*

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[1] The government contends that the Court should not consider Mr. Briceno's claim regarding his role in the clinic because he relies on the sentencing hearing transcript he attached to his Motion rather than the four corners of the Complaint and its exhibits. Pl.'s Op. 6 n.3. However, the sentencing transcript for Mr. Briceno's conviction is certainly referenced in the Complaint both within the four corners and in the attached exhibits. *See* Compl. ¶¶ 28-30 (references Mr. Briceno's sentencing); Compl. Aff. of Good Cause ¶ 15 (citing the date of Mr. Briceno's sentencing hearing and discussing his sentence); *id.* ¶ 32 (same); Compl. Ex. E (Judgment that includes Mr. Briceno's sentence and cites the "Date of Imposition of Judgment" as the date of Mr. Briceno's sentencing hearing). Thus, the Court may consider the sentencing hearing transcript attached to Defendant's Motion as properly incorporated by reference into the Complaint. *See Moreno v. Carnival Corp.*, 488 F. Supp. 3d 1233, 1236 (S.D. Fla. 2020).

Bies, 556 U.S. 825, 835 (2009); *United States v. Munoz*, 112 F.4th 923, 928 (11th Cir. 2024). As noted by the government, Pl.'s Opp. 9, the relevant condition of collateral estoppel here—were the doctrine to apply—is whether the relevant "issue's determination must have been a critical and necessary part of the prior proceeding." Pl.'s Opp. 8-9. But the moving target of the start date of the conspiracy noted in Defendant's Motion to Dismiss at 8-10, demonstrates how the date Mr. Briceno became aware of it was not essential to his conviction. Indeed, at the beginning of Mr. Briceno's plea hearing, his attorney discussed how it would be part of his proffer "that he became aware of the illegality after he became a naturalized citizen." Compl. Ex. D at 5:13-15. Mr. Briceno was asked about this fact during the plea colloquy as well, Compl. Ex. D at 9:11-13, but at no point did the government or the judge question or contest the fact. This fact was only relevant for purposes of making sure Mr. Briceno understood the immigration consequences of his conviction under *Padilla v. Kentucky*, 559 U.S. 356 (2010). *See* Compl. Ex. D at 5:1-25. Thus, the plea colloquy shows that Mr. Briceno's conviction did not hinge on the timing of his awareness or start date of the offense.

The government argues that the elements of conspiracy were critical to Mr. Briceno's guilty plea and that an element of conspiracy is knowing the unlawful purpose of a plan and willfully agreeing to join the plan. Pl.'s Opp. 9. Then the government cites several cases setting forth the elements of conspiracy. *Id.* at 9-10. But none of these cases stand for the proposition that the starting date of an offense or of conspiracy is an essential element of the offense. Instead, the Court should conclude just as the Eleventh Circuit Court of Appeals did in *Munoz* that "collateral estoppel is unavailable because [Mr. Briceno's] conviction did not hinge on the starting date of [Mr. Briceno's] criminal conduct." 112 F.4th at 933.

In *Munoz*, the government sought to denaturalize the defendant after his conspiracy conviction. 112 F.4th at 928. There was also an issue about when the defendant's criminal conduct began. In its collateral estoppel analysis, the Eleventh Circuit noted its prior holding that the date of an offense is not an essential element of the offense. *Id.* at 933. Then, the court found that the government did not need to prove, as an element of the offense, when the conspiracy began. *Id.* The same analysis applies here. Just as in *Munoz*, the district judge in Mr. Briceno's case heard the facts that Mr. Briceno did not become aware of criminal activity until after he became a U.S. citizen. *See* Compl. Ex. D at 5:13-15; Ex. D at 9:11-13. However, at no point during the plea hearing did anyone discuss the dates or date ranges of the conspiracy. *See generally* Compl. Ex. D. The court went through the elements that the government would need to prove to convict him, and none of those elements involved the date of the offense. *See* Compl. Ex. D. at 12:15-25; 13:1-11. Therefore, just as in *Munoz*, "[r]egardless of whether the district court in fact relied on the starting date, it was legally immaterial to the conviction. The district court's acceptance of [Mr. Briceno's] guilty plea cannot hinge on a legally immaterial issue, so the starting date must be unnecessary for collateral estoppel purposes." 112 F.4th at 933-34.

The government cites *United States v. Dor*, 729 F. App'x 793 (11th Cir. 2018), to support its argument that collateral estoppel applies to Mr. Briceno's case, and therefore he cannot relitigate when he became aware of the criminal activity regarding the medical clinic. Pl.'s Opp. 10. However, that case is unpublished and therefore not binding. Further, the Eleventh Circuit stated in its published *Munoz* decision that the *Dor* opinion lacks any reasoning for its application of collateral estoppel; thus, the Eleventh Circuit saw no reason to consider it. *See* 112 F.4th at 934 n.4. Likewise, the Court should not consider it here.

Further, the government contends that this case is distinguishable from *Munoz* because there, "the start date of the conspiracy alleged in the indictment was not a critical and necessary part of his guilty plea." Pl.'s Opp. 10. Whereas here, the government argues, the elements of Mr. Briceno's crime were necessary and critical to his guilty plea and he is estopped from denying them in this litigation. *Id.* Thus, the government argues that timing of the agreement is an element of a conspiracy offense. As noted above, the plea hearing demonstrates otherwise. The court read the elements of his offense to Mr. Briceno and none of those elements involved a date of involvement or agreement. *See* Compl. Ex. D. at 12:15-25; 13:1-11. No dates were discussed at the plea hearing where Mr. Briceno entered his guilty plea. As such, there is no basis for the government's argument that the issue was "actually litigated" such that collateral estoppel applies. *See Islam v. Sec'y, Dep't of Homeland Sec.*, 997 F.3d 1333, 1340-41 (11th Cir. 2021).

The government also argues that collateral estoppel should apply because he should not benefit from both the guilty plea and then later from asserting his innocence or minimizing his guilt. Pl.'s Opp. 10-11. Mr. Briceno has done nothing of the sort. Mr. Briceno does not assert innocence nor seek to minimize his guilt. The conviction at issue is over 13 years old and he served his sentence. The time for proclaiming guilt or innocence has long past. Mr. Briceno simply asserts what he has asserted for over 13 years, which is that he did not become aware of criminal activity or any conspiracy until after he became a U.S. citizen. And this fact was not contested, debated, or raised during his criminal proceeding. *See Islam*, 997 F.3d at 1340.

Finally, the government argues that collateral estoppel precludes Mr. Briceno from denying the basis for the false testimony (Count III) and the willful misrepresentation allegations (Count IV). Pl.'s Opp. 12. For the same reasons collateral estoppel does not apply to Mr. Briceno's challenge to Counts I and II, the doctrine of collateral estoppel does not apply to Counts III and IV.

II. Mr. Briceno's conviction for conspiracy to commit healthcare fraud is not a crime involving moral turpitude.

The government contends that Mr. Briceno's conviction is categorically a crime involving moral turpitude (CIMT). Pl.'s Opp. 13. They contend that under *United States v. Scott*, 61 F.4th 855, 863–64 (11th Cir. 2023), both subdivisions of 18 U.S.C. § 1347 involve fraudulent intent and are therefore CIMTs. However, *Scott* is not on point with the issues in this case. In *Scott*, a defendant challenged the sufficiency of the government's evidence to convict him under § 1347. 61 F.4th at 863. Then, the court set forth the elements of § 1347 as though they were one count or a single offense. *See id.* at 863-64. At no point in the court's opinion did it reference the two subparts of § 1347, and the distinction between the two was not at issue. Nor was the categorical approach at issue as it is here. Thus, while *Scott* is a case that lists the elements of the entire statute, it conflates the two subparts and is not instructive for purposes of the categorical approach.

"Courts have repeatedly held that 'where a statute defines two or more ways in which an offense may be committed, all may be alleged in the conjunctive in one count.'" *United States v. Felts*, 579 F.3d 1341, 1344 (11th Cir. 2009). Further, the Eleventh Circuit has held that it is permissible for district courts to submit two offenses as a single charge on a general verdict form, such as the offenses of promotional money laundering and concealment money laundering. *Id.* And a district court is not required, the Eleventh Circuit has held, "to instruct the jury that it must unanimously agree as to which mens rea the defendant possessed at the time of the offense," or in other words, the district court is not required to treat two mental states as separate violations. *Id.* As a result, *Scott* and the other cases the government cites to argue that the two subparts of § 1347 require the same intent are inapposite. *See* Pl.'s Opp. 14-15. The government also notes that the Eleventh Circuit pattern jury instructions involve an intent to defraud for both means of committing an offense under § 1347. Pl.'s Opp. 14. However, *Felts* demonstrates the way in which pattern jury instructions are merely instructive and are often crafted to fit a particular case. *See Felts*, 579 F.3d at 1343 n.1.

As argued in the Motion to Dismiss, *see* Def.'s Mot. 10-15, the Eleventh Circuit's decision in *Zarate v. U.S. Att'y Gen.*, 26 F.4th 1196, 1201 (11th Cir. 2022), is most on point here with respect to whether Mr. Briceno has been convicted of a CIMT. This Court should conclude based on *Zarate* that § 1347 is not categorically a CIMT, and therefore Mr. Briceno was not convicted of a CIMT.

CONCLUSION

For the above factual and legal reasons, the Court should dismiss the Complaint with prejudice.

Dated: December 22, 2025

Respectfully submitted,

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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 22nd day of December, 2025.

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