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

CASE NO. 1:26-cv-21064-Moore/Elfenbein

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PHILIPPE BIEN-AIME,)
a/k/a JEAN PHILIPPE JANVIER,)
)
Defendant.)
______________________________________)

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff, the United States of America, responds in opposition to Defendant Philippe Bien-Aime's motion to dismiss Counts II, III, and V, and Count VI, in part, of the Complaint to Revoke Naturalization. Contrary to Defendant's assertions, the government has pleaded sufficient facts in each count in support of cognizable legal claims under Federal Rule of Civil Procedure 12(b)(6). The Court therefore should deny Defendant's motion to dismiss in its entirety.

FACTUAL AND LEGAL BACKGROUND

The United States filed this civil action under 8 U.S.C. § 1451(a) seeking to revoke and set aside Defendant's naturalization and to cancel his certificate of naturalization. Compl., ECF No. 1. The government alleges that, before Defendant naturalized under the identity of Philippe Bien-Aime, he fraudulently entered the United States, was placed in removal proceedings, and was ordered removed under the identity of Jean Philippe Janvier. He failed to report for removal and, instead, using the name Philippe Bien-Aime, married a U.S. citizen, applied for adjustment of status based on the marriage, and naturalized as a U.S. citizen. At no time during his adjustment or naturalization proceedings under the Bien-Aime identity did Defendant reveal that he was subject to a final removal order under the Janvier identity.

The Complaint's six independent counts allege that Defendant illegally procured his naturalization and procured naturalization through concealment of material facts and willful misrepresentation, each of which warrants his denaturalization under 8 U.S.C. § 1451(a). Defendant seeks to dismiss four of the six counts for failure to state claims upon which the government is entitled to relief. ECF No. 10. The Court should deny his motion in its entirety because the government supports each count by well-pleaded facts, presents plausible claims, and provides fair notice to Defendant of those claims.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint fails to state a claim if it does not "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

To survive a Rule 12(b) motion to dismiss, a complaint must contain enough facts to plausibly allege the required elements of the claims. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). The complaint need only "state a claim to relief that is plausible on its face," alleging no more than the "factual content" necessary 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) (internal citation omitted). At the pleading stage, plaintiffs must "nudge[] their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 563.

ARGUMENT

The Court should deny Defendant's motion because it fails to explain how the facts and legal arguments the government pleads in the Complaint do not give Defendant fair notice of its well-pleaded claims.

As an initial matter, Defendants' motion itself proves that the government did not fail to meet the Rule 8(a) pleading standard because it shows Defendant "has little difficulty knowing what [he] allegedly [did (or did not do)] and why [he is] allegedly liable for doing (or not doing) it." *Doe v. School Bd. of Miami-Dade Cnty.*, 403 F. Supp. 3d 1241, 1257 (S.D. Fla. 2019) (denying Rule 12(b)(6) motion). In addition, Defendant fails to show how any particular count failed to provide sufficient facts in plain statements such that he does not understand the government's claims against him. Defendant argues that Counts II and III provide insufficient facts and legal analysis to support the government's claims. But his motion fails to demonstrate, as he must, that Plaintiff's pleadings are in any way factually "anemic" or too vague to provide notice of the government's legal theories that he did not lawfully adjust status because the Immigration and Naturalization Service ("INS")[1] lacked jurisdiction to adjudicate his adjustment

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[1] On March 1, 2003, the INS ceased to exist as an independent agency within the Department of Justice, and most of its functions were transferred to the newly formed Department of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 441, 451, 471, 116 Stat.

application (Count II) and because he was not lawfully married to the U.S. citizen who filed a petition seeking immediate relative status on Defendant's behalf. Defendant argues for dismissal of Count V because the government failed to attach evidence of the interview questions for which he provided false testimony. His claim is without merit for two reasons: first, a plaintiff is not required to attach evidence to a complaint to prove the claims and, second, even though it was not required, the government did, in fact, attach evidence of the questions asked and his answers. Finally, he moves to dismiss Count VI, at least in part, based on an allegation that the government provided an inaccurate description of one of the four questions for which Defendant gave false answers about material facts in his naturalization proceedings. Although the description was inaccurate in a minor way, the allegation, as a whole, provides sufficient facts that gives Defendant fair notice of the claim in satisfaction of the pleading requirements.

None of Defendant's arguments negates the fact that each Count, viewing the facts most favorable to the United States, includes simple and plain statements of the government's claims for relief. The Court, therefore, should dismiss the motion in its entirety.

A. COUNT II—Final Order of Removal Outstanding at Time of Adjustment

Defendant argues that the Court should dismiss Count II because the government made an "unsupported legal conclusion" as to why the INS lacked jurisdiction to adjudicate his adjustment application while he was subject to a final removal order. This argument must

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2135 (Nov. 25, 2002). The INS was divided into three separate agencies: USCIS, Immigration and Customs Enforcement, and Customs and Border Protection. USCIS assumed the INS's authority to adjudicate adjustment and naturalization applications. *Id.* at § 451.

necessarily fail because Count II provides a simple and plain statement of a plausible claim for relief in accordance with the law.

Defendant argues "[t]hat chain of reasoning is not adequately pleaded" and does not "allege facts demonstrating why an administratively final removal order, standing alone, necessarily vested exclusive adjustment jurisdiction in the immigration court and divested INS of adjudicatory authority." ECF No. 10 at 9. The government need not provide a thorough legal analysis, however, but only a claim that is "plausible on its face" that alleges no more "factual content" than necessary to "draw the reasonable inference" that Defendant's naturalization should be revoked. *Iqbal*, 556 U.S. at 678. Indeed, the government provided all the facts necessary for Count II: Defendant was subject to a final removal order when he filed an application for adjustment of status, which the INS adjudicated and approved. Compl. ¶ 151. Moreover, it is undisputed that Defendant was placed in removal proceedings as a non-arriving alien and is subject to a final removal order.

In addition, the government's claims in Count II are justly founded in law. It was well settled in 2002, when Bien-Aime applied for adjustment of status, that immigration courts had exclusive jurisdiction to adjudicate any applications for adjustment of status by aliens, other than arriving aliens, who are in removal proceedings. 8 C.F.R. § 245.2(a)(1) (2002) ("After an alien, other than an arriving alien, is in deportation or removal proceedings, his or her application for adjustment of status . . . shall be made and considered only in those proceedings."); *see, e.g.*, *Wang v. Ashcroft*, 260 F.3d 448, 450 (5th Cir. 2001) (explaining that INS regulations require alien with a final removal order to file an adjustment application in the "ongoing deportation proceedings"). Count II involves the circumstance where an alien placed in removal proceedings as a non-arriving alien and subject to a final removal order applies for adjustment of status.

Because an alien with an unexecuted removal order may move to reopen proceedings, he is still considered to be subject to removal proceedings and, therefore, the immigration courts would still have exclusive jurisdiction over any adjustment application he might file.[2] *See Scheerer v. U.S. Att'y Gen.*, 513 F.3d 1244, 1254 (11th Cir. 2008) ("[A] motion to reopen may be granted to provide an alien the opportunity to pursue an adjustment application based on a marriage entered into after the commencement of proceedings."). Thus, because the INS lacked jurisdiction to adjudicate Defendant's adjustment application, he did not lawfully adjust status and was not eligible for naturalization. *Koszelnik v. Sec. of Dep't of Homeland Sec.*, 828 F.3d 175, 180 (3d Cir. 2016) ("Since Koszelnik had a final order of deportation pending against him, INS lacked jurisdiction [to adjudicate his adjustment application], and therefore its approval of the application did not conform to substantive legal requirements.").

Defendant further argues for dismissal of Count II because it cites 8 C.F.R. §§ 245(a)(1) and 1245(a)(1) instead of "[t]he regulation relevant to the issue," 8 C.F.R. § 1245.2(a)(1), "which addresses the immigration judge's jurisdiction over adjustment applications in the removal context," ECF No. 10 at 9. However, after further review, neither Parties' citations are correct. In 2002, when Bien-Aime applied for and was granted conditional adjustment of status, Compl.

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[2] "Removal proceedings" is the title given to 8 U.S.C. § 1229a, the authorizing statute for proceedings to decide the inadmissibility or deportability of an alien. *See* 8 U.S.C. § 1229a (entitled "Removal proceedings"). Section 1229a mandates various procedures for these proceedings, including the right of an alien to file a motion to reconsider and motion to reopen. *See* 8 U.S.C. § 1229a(c)(6)(A) ("The alien may file one motion to reconsider a decision …") and (c)(7)(A) ("The may file one motion to reopen proceedings …").

¶¶ 43, 64, the only regulation governing which entity had jurisdiction to adjudicate adjustment applications was 8 C.F.R. § 245.2(a)(1) (2002).[3] Before the Department of Homeland Security was created, both the INS and the immigration courts were part of the Department of Justice and, therefore, subject to the same regulations, but after the reorganization, their regulations were separated into different Chapters. *Compare* 8 C.F.R. Title 8, Chapter I (Immigration and Naturalization Service, Department of Justice) (2002), *with* Title 8 Chapter I (Department of Homeland Security) and Chapter 5 (Executive Office for Immigration Review, Department of Justice) (2026); *see also, supra*, note 1. When the new regulations took effect on February 8, 2003, 8 C.F.R. § 245.2 defined USCIS's jurisdiction, and 8 C.F.R. § 1245.2 defined the immigration court's jurisdiction over adjustment applications.

In sum, the Complaint alleges the relevant factual elements: that Defendant was subject to a final removal order when he applied for adjustment of status with INS, which approved his application. Compl. ¶ 151. The Complaint describes the relief sought and the grounds for the relief: the revocation of Defendant's illegally procured naturalization because he could not have lawfully adjusted due to the INS's lack of authority to grant him permanent resident status. Compl. ¶¶ 152–56.

Thus, despite the government's error regarding the regulation, Count II includes a short and plain statement of a plausible claim that provides Defendant fair notice of the government's request for the Court to revoke his naturalization because it was illegally procured as a result of

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[3] The government intends to ask Defendant to stipulate or, if he will not stipulate, ask the Court for leave to correct this and other inadvertent errors on all remaining claims after the Court decides this motion.

his unlawful adjustment to permanent resident. *See Twombly*, 550 U.S. at 555. The Court, therefore, should deny the motion as to Count II and allow the government to litigate the claim by offering evidence consistent with the allegations.

B. COUNT III—Not Eligible to Receive an Immigrant Visa because Marriage not Legally Valid

Defendant argues for dismissal of Count III because the claim relies on "a critical factual conclusion that the Complaint does not plausibly plead: that Defendant remained legally married to [his Haitian wife] when he married [a U.S. citizen]." ECF No. 10 at 10. Thus, because Defendant "was not legally divorced from [his Haitian wife] . . . his later marriage to [a U.S. citizen] was invalid, and . . . he therefore lacked a qualifying spousal relationship necessary for adjustment of status." ECF No 10 at 10 (citing Compl. ¶¶ 164–68). But Defendant's own summation of the claim evidences that the government provided a sufficient statement to provide him with fair notice of the claim for relief. The government, further, provides a plausible basis for the claim, such that it withstands relevant scrutiny.

Defendant argues that the Complaint should have alleged that "Haitian authorities determined that no divorce judgment existed; that "no valid decree was ever entered;" that "no alternate official record of dissolution existed;" and/or that "facts regarding Haitian divorce procedures that would make the alleged fraudulence of one extract dispositive of whether the underlying divorce occurred." ECF No. 10 at 11. Defendant's expectations far exceed the pleading standards in the Federal Rules. In effect, he expects the Complaint to include a full-bodied analysis of all possible facts, when the Federal Rules require only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As the Supreme Court has clarified, a plaintiff must plead "only enough facts to state a claim of relief that is plausible on its face." *Twombly,* 550 U.S. at 570. A complaint "does not need detailed factual allegations," but, instead, the allegations "must be enough to raise a right to relief above the speculative level." *Id.* at 555. Here, the government asserts a right to relief that exceeds the speculative level.

Finally, Defendant argues that Count III includes "conclusory allegations that skip over the facts necessary to make a claim plausible." ECF No. 10. Count III, however, includes the necessary facts supporting the claim that he did not lawfully adjust due to the fraudulent and legally invalid nature of his qualifying marriage to a U.S. citizen: he was lawfully married to a Haitian citizen—and not legally divorced—when he married a U.S. citizen and sought adjustment of status based on the subsequent marriage. Compl. ¶¶ 163–65. These are not unsupported factual conclusions; they are facts that, by cross-reference, support the government's claim. *Id.* (cross-referencing Compl. ¶¶ 42–62, 116–17.).[4]

Thus, Count III includes a short and plain statement of the claim that provides Defendant fair notice of the plausible grounds upon which it rests. *See Twombly*, 550 U.S. at 555. The Court, therefore, should deny the motion as to Count III and allow the government to litigate the

[4] The Federal rules allow such cross-references. Fed. R. Civ. P. 10(c) ("A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion."). Adopting previous factual allegations by reference avoids repetition. *See, e.g.*, *Moors v. Carnival Corp.*, No. 22-cv-22262-EIS, 2023 WL 2866391, at *3 (S.D. Fla. Feb. 9, 2023) ("Plaintiff's cross-references in Counts I through V to paragraphs 17 and 19 and the factual allegations contained therein are neither improper nor a basis for dismissal.").

Count by offering evidence of Defendant's fraudulent and invalid marriage to a U.S. citizen to procure permanent resident status.

C. COUNT V – False Testimony

Defendant's motion to dismiss Count V must fail because, as above, he imputes requirements of the Complaint that far exceed the pleading standard of Rule 8(a). Defendant alleges that the Court should dismiss Count V because the government did not attach to the Complaint any evidence proving the questions that Defendant was asked and the answers he gave in his naturalization interview in which the government asserts that he gave disqualifying false testimony. ECF No. 10 at 12. The Court should summarily reject this argument. The Complaint explains exactly which questions are at issue.

Citing a Second Circuit denaturalization case for the proposition that the government would have to produce evidence of the questions asked and his answers to be able to prove that Defendant misrepresented facts, Defendant proffers that the Complaint does not include "any transcript, recording, sworn officer memorandum, or other interview record memorializing the specific oral questions and answers alleged in Count V." ECF No. 10 at 12–13 (citing *United States v. Sokolov*, 814 F.2d 864 (2d Cir. 1987)). Neither the Federal Rules nor any precedent requires the government to produce evidence at the pleading stage.

Instead, the pleading standard under Rule 8(a) "simply calls for enough fact[s] to raise a reasonable expectation *that discovery will reveal evidence of*" the claim's elements. *Twombly*, 550 U.S. at 556 (emphasis added). Thus, "Plaintiff need not present evidence to support her claim at this juncture—she need only state a colorable claim." *Hartsing v. BB&T Corporation*, No. 19-cv-60098-BB, 2019 WL 1515204, at *2 (S.D. Fla. Apr. 8, 2019).

Moreover, although the government was not *required* to attach documents evidencing the questions that Defendant was asked and his answers, the government nonetheless attached such evidence. Count V alleges that Defendant gave false testimony when he was interviewed orally and under oath on his adjustment and naturalization applications. Compl. ¶¶ 189–91 (adjustment interview), 192–95 (naturalization interview). The government attached Defendant's adjustment and naturalization applications to the Complaint. Compl. Ex. L, ECF No. 1-14 (adjustment application); Compl. Ex. P, ECF No. 1-18 (naturalization application). To further quash Defendant's argument as to any deficiency regarding Count V, each application contains red ink marks evidencing the specific questions that Defendant was asked and his answers to those questions. *See id.*

The Eleventh Circuit has explained that a naturalization application with red ink marks recording an applicant's interview answers does not contain hearsay because it is a "routinely and mechanically kept" immigration record whose primary purpose is "to aid USCIS in obtaining and verifying the ministerial information the agency needs to administer the naturalization process." *Santos*, 947 F.3d at 727; *see also, e.g., United States v. Khan*, No. 17-cv-965-PDB, 2020 WL 1650599, at *16 (M.D. Fla. Apr. 3, 2020) (concluding defendant provided false, oral answers in is naturalization interview based on the red ink marks next to the answers on his naturalization application). The Eleventh Circuit has further provided a clear description of the process and significance of recording naturalization interviews answers with red ink marks:

> All applicants for naturalization must participate in an interview under oath with an USCIS adjudicator to be naturalized. And, during the naturalization interview, the adjudicator, in accordance with USCIS policy and training, reviews the information in the [naturalization application] with the applicant, placing a checkmark next to each confirmed answer and noting any corrections using red

> ink. At the conclusion of the interview, every applicant must again sign the annotated [naturalization] application in either blue or black ink, certifying under penalty of perjury the accuracy of its contents, including the adjudicator's notations in red ink.

Id. The same principal applies to red ink marks on adjustment applications that evidence questions asked and the applicant's answers at the adjustment interview. *Khan*, 2020 WL 1650599, at *13 n.4 (addressing the red ink marks on defendant's adjustment application).

Finally, Defendant alleges that Paragraph 194 in Count V has a "facial defect" in how it describes Defendant's false testimony on one of four questions at issue. ECF No. 10 at 14. Paragraph 194 describes defendant's adjustment proceedings as an effort "to gain admission into the United States." Compl. ¶ 194. The government agrees that the description of the spousal adjustment interview as an effort "to gain admission to the United States" is inaccurate, but it does not cloud the fact that Paragraph 194 cross-references the question "described in Paragraph 99." Compl. ¶ 194. Paragraph 99 clearly summarizes the question at issue: "Part 10, Question 23 of the naturalization application asked the applicant if he had '**EVER** given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent removal, exclusion, or removal?' (emphasis in original)." Compl. ¶ 99. The question can also be readily found in the naturalization application itself, which is attached to the Complaint as Exhibit P. Compl. Ex. P at 8.

Thus, despite any alleged imperfections, Count V is well-pleaded in accordance with Rule 8(a) because it gives Defendant fair notice of the government's claim that he provided disqualifying false testimony when he provided false answers, orally and under oath, to seven different questions during the statutory period of his naturalization. Compl. ¶¶ 189–195; *Twombly*, 550 U.S. at 555. The Court therefore should deny Defendant's motion as it relates to

Count V and allow the government to offer evidence showing that he provided false testimony on all seven questions.

D. COUNT VI—Concealment of a Material Fact or Willful Misrepresentation

Defendant argues for dismissal of Count VI under Rule 12(b)(6), at least in part, for an allegedly inaccurate description in Paragraph 201 of Defendant's failure to disclose his use of the name Jean Philippe Janvier in naturalization proceedings.[5] ECF No. 10 at 14. The Court should deny Defendant's motion because Count VI, including Paragraph 201, clearly includes a plausible claim for relief and provides Defendant with fair notice of the government's allegation. Specifically, Count VI proffers that, when Defendant failed to include the name "Jean Philippe Janvier" in response to an instruction on his naturalization application to list any other names used, he willfully concealed a material fact and, as a result, illegally procured his naturalization. Compl. ¶¶ 201–202.

Defendant's failure to disclose his use of the name Jean Philippe Janvier is an omission of a material fact that qualifies as a concealment for denaturization purposes. *See United States v. Palciauskas*, 734 F.2d 625, 628 (11th Cir. 1984) (revoking defendant's naturalization based on his willful omission of a fact throughout the immigration and naturalization process). Omissions are willful and material if they "thwarted any avenue of inquiry that would have led the agency to discover . . . information that would have disqualified [the applicant] from naturalization." *United States v. Javier*, No. 15-cv-14205-RLR, 2016 WL 7540585, at *6 (S.D. Fla. Aug. 25,

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[5] Defendant alleges a defect in only one of the four willful misrepresentations pleaded in Count VI. Thus, even if Defendant's allegation has merit, the defect would not warrant dismissal of the entire Count VI.

2016) (concluding defendant's "omissions and misrepresentations" in naturalization proceedings that concealed his ongoing sexual abuse of his minor stepdaughter thwarted USCIS from discovering that he was not qualified for naturalization).

Defendant challenges the government's description in Paragraph 201 that Defendant "indicated on his naturalization application that he had never used any name other than Philippe Bien-Aime." ECF No. 10 at 14–15 (citing Compl. ¶¶ 74–75, 201). That question—Question C of Part 1—states: "If you have ever used other names, provide them below." Compl. ¶ 74; Compl. Ex. P at 2. Defendant provided no response to Question C of Part 10. Compl. ¶ 75; Compl. Ex. P at 2. He argues that the government "cannot recast 'no response' as an affirmative statement that Defendant had never used another name." ECF No. 10 at 15. Defendant is unnecessarily parsing words because he cannot deny that crux of the issue: "At no point during his naturalization proceedings did Defendant disclose that he used the name Jean Philippe Janvier in removal proceedings." Compl. ¶ 202.

Regardless, Defendant's answer is, in effect, an omission that serves as an affirmative statement. He was asked to list any other names used, *see* Compl. ¶¶ 74–75, and he failed to disclose the truth. A truthful answer, viewing all facts most favorable to Plaintiff for purposes of this motion, would have necessarily included "Jean Philippe Janvier." His omission of "Jean Philippe Janvier" from his answer to Question C of Part 1 of his naturalization application "thwarted any avenue of inquiry" that would have led USCIS to discover that Defendant entered the United States and was ordered removed under the Janvier identity. *Javier*, 2016 WL 7540585, at *6.

Thus, Defendant's arguments as to Count VI are without merit. The Court should find that Count VI provides a plausible and well-pleaded claim for relief because it gives Defendant "fair notice of what the claim is and the grounds upon which it rests," *Twombly*, 550 U.S. at 555. Accordingly, the Court should deny Defendant's motion as to Count VI.

CONCLUSION

The Court should deny Defendant's Motion to Dismiss in its entirety. Defendant's well-pleaded facts in Counts II, III, V, and VI, if taken as true for purposes of this motion, provide fair notice to Defendant of the claims against him, are in no way anemic, and do much more than nudge the government's claims across the line from conceivable to plausible.

Dated: June 11, 2026

Respectfully submitted,

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