

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	Civil Action No. 7:26-cv-283
Plaintiff,	)	
	)	
v.	)	COMPLAINT TO REVOKE
	)	NATURALIZATION
OMAR CANTU-MONTALVO	)	
a/k/a OMAR CANTU	)	
a/k/a FRESA	)	
a/k/a DIABLO	)	
	)	
Defendant.	)	
_____	)	

I. PRELIMINARY STATEMENT

1. The United States of America brings this civil action against Defendant Omar Cantu-Montalvo, a/k/a Omar Cantu, a/k/a Fresa, a/k/a Diablo (“Defendant”) to revoke his naturalized United States citizenship. This action under 8 U.S.C. § 1451(a) is based on Defendant’s unlawful conduct prior to naturalizing. Specifically, before he became a citizen of the United States in December 2005, Defendant had engaged in criminal activity that he concealed throughout the naturalization process and that disqualified him from United States citizenship (“U.S. citizenship”).

2. Beginning as early as April 2005, Defendant conspired with others to possess with intent to distribute a controlled substance in violation of 21 U.S.C. § 846, 841(a)(1), (b)(1)(A). In December 2005, Defendant illegally procured U.S. citizenship by knowingly concealing material facts and willfully misrepresenting his criminal conduct during his naturalization process. On December 5, 2007, the United States indicted Defendant for his crime, and, on April 29, 2016, Defendant pleaded guilty to a violation of 21 U.S.C. § 846, 841(a)(1), (b)(1)(A).

On January 3, 2017, the U.S. District Court for the Southern District of Texas sentenced him to 100 months of imprisonment. *United States v. Cantu-Montalvo*, M-07-1270 (S.D. Texas 2016). Accordingly, as shown below, Defendant unlawfully naturalized and this Court must order the denaturalization of Defendant.

II. JURISDICTION, PARTIES, AND VENUE

3. This action is filed under 8 U.S.C. § 1451(a) to revoke and set aside the order admitting Defendant to U.S. citizenship and to cancel Defendant's Certificate of Naturalization Number .

4. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345 for this cause of action under 8 U.S.C. § 1451(a).

5. Plaintiff is the United States of America.

6. Defendant is a naturalized U.S. citizen and a native of Mexico.

7. Venue is proper in this district under 8 U.S.C. § 1451(a) and 28 U.S.C. § 1391 because Defendant resides in Hidalgo, Texas, which is within the jurisdiction of this Court.

III. FACTUAL BACKGROUND

A. Defendant's Immigration History and Naturalization Application

8. On March 19, 1996, Defendant was admitted to the United States as a lawful permanent resident,. *See* Exhibit ("Ex.") A, Affidavit of Good Cause, ¶ 3.

9. On or about July 11, 2005, Defendant filed an application for naturalization, Form N-400, Application for Naturalization ("N-400"), with the U.S. Citizenship and Immigration Services ("USCIS"), a true and complete copy of Form N-400, except for redactions of personally identifying information immaterial to this action, is attached hereto as Ex. B.

10. Part 10, Question 15 asks, “Have you **EVER** committed a crime or offense for which you were NOT arrested?” In his response, the Defendant checked the box for “No.” *Id.*, p. 8.; *see also*, Ex. A, ¶ 4. (emphasis in original)

11. On November 2, 2005, a USCIS officer placed Defendant under oath and conducted an interview regarding his N-400 to determine his eligibility for naturalization. Ex. B, pp. 1, 10.

12. During the interview, and consistent with his responses on the N-400, Defendant orally testified under oath that he had never committed a crime or offenses for which he was not arrested. Ex. A, ¶ 5.

13. At the conclusion of his naturalization interview, Defendant signed his N-400 at Part 13, swearing for a second time that the contents of his naturalization application were true to the best of his knowledge and belief. Ex. B, p. 10.

14. On November 2, 2005, based on Defendant’s representations in his naturalization application and his own sworn testimony during his naturalization interview, USCIS approved Defendant’s naturalization application. *Id.*, p. 1.

15. On or about November 17, 2005, Defendant prepared the final pre-naturalization paperwork by filing a form N-445, Notice of Naturalization Ceremony (“N-445”), a true and complete copy of which, except for redactions of personally identifying information immaterial to this action, is attached hereto as Ex. C.

16. The N-445 requests, in relevant part, information regarding an applicant’s conduct between the time of their naturalization interview and the time of their naturalization ceremony.

17. Question 3 of the N-445 reads, in relevant part, “**AFTER the date you were first interviewed on your Application for Naturalization, Form N-400 ...**(3) Have you knowingly committed any crime or offense, for which you have not been arrested”? (Emphasis in document).

In his response, Defendant checked the box for “No.” *Id.*, p. 2.

18. The final N-445 requires the applicant to “certify that each of the answers shown above were made by me or at my direction, and that they are true and correct.” Defendant signed the application on December 7, 2005. *Id.*

19. On December 7, 2005, Defendant took the oath of allegiance and was admitted to U.S. citizenship. In addition, USCIS issued Defendant his Certificate of Naturalization No.  attached hereto as Ex. D.

B. Defendant’s Criminal History

20. On December 5, 2007, the United States filed an Indictment in the U.S. District Court for the Southern District of Texas charging Defendant with six criminal counts, including conspiracy, drug, and money laundering charges. *See* Ex. E, Indictment; *See also U.S. v. Cantu-Montalvo*, M-07-1270, ECF. 1 (*S.D. Texas* 2007).

21. On April 29, 2016, Defendant pleaded guilty to conspiracy to possess with the intent to distribute more than 5 kilograms of cocaine, as charged in count 1 of the Indictment. *See* Ex. F, Notice of Plea Agreement.

22. On December 8, 2016, this Court accepted Defendant’s plea agreement and imposed a judgment against him. This Court sentenced Defendant to 100 months of imprisonment followed by a five-year term of supervised release. *See* Ex. G, Judgment in a Criminal Case.

IV. GOVERNING LAW

A. Congressionally Imposed Prerequisites to the Acquisition of Citizenship

23. No applicant has a right to naturalization “unless all statutory requirements are complied with.” *United States v. Ginsberg*, 243 U.S. 472, 474-75 (1917). Indeed, the Supreme Court underscored that “[t]here must be strict compliance with all the congressionally imposed

prerequisites to the acquisition of citizenship.” *Fedorenko v. United States*, 449 U.S. 490, 506 (1981) (An individual “who seeks political rights as a member of the Nation can rightfully obtain them only upon the terms and conditions specified by Congress.”) (quoting *Ginsberg*, 243 U.S. at 474).

24. Congress mandated that an individual may not naturalize unless that person “during all periods referred to in this subsection has been and still is a person of good moral character . . .” *See* 8 U.S.C. § 1427(a)(3).

25. The required “statutory period” for good moral character begins five years before the date the applicant files the application for naturalization, and it continues until the applicant takes the oath of allegiance and becomes a U.S. citizen. *Id.*; 8 C.F.R. § 316.10(a)(1).

26. Although Congress has not specifically defined what constitutes good moral character for naturalization purposes, the Immigration and Nationality Act lists certain classes of applicants who cannot be found to have the requisite good moral character. *See* 8 U.S.C. § 1101(f).

27. Congress has explicitly precluded an individual from establishing the good moral character necessary to naturalize if during the statutory period he commits certain offenses described in 8 U.S.C. § 1182, of which he was convicted of to which he admits. 8 U.S.C. § 1101(f)(3)

28. Among the offenses described in 8 U.S.C § 1182 that preclude an individual from establishing the required good moral character is a violation of (or a conspiracy or attempt to violate) any law or regulation of ... the United States ... relating to a controlled substance. 8 U.S.C § 1182(a)(2)(A)(i)(ii).

29. Congress also has explicitly precluded individuals who give false testimony for the purpose of obtaining immigration benefits from establishing the good moral character necessary to naturalize. 8 U.S.C. § 1101(f)(6).

30. Further, Congress created a “catch-all” provision, which states, “The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” 8 U.S.C. § 1101(f) (catch-all provision).

31. Thus, an individual who, during the statutory period, commits an unlawful act adversely reflecting upon his or her moral character cannot meet the good moral character requirement unless he or she proves that extenuating circumstances existed. *See* 8 C.F.R. § 316.10(b)(3)(iii); 8 U.S.C. § 1101(f).

32. “[A] conviction during the statutory period is not necessary for a finding that an applicant lacks good moral character. It is enough that the offense was ‘committed’ during that time.” *United States v. Suarez*, 664 F.3d 655, 661 (7th Cir. 2011) (discussing 8 U.S.C. § 1101(f)(3) and 8 C.F.R. § 316.10(b)(3)(iii)); *United States v. Al-Aqaili*, 550 F. App'x 356, 358 (8th Cir. 2014) (reiterating that, for good moral character analysis, “it is of no consequence that [Al-Aqaili’s] conviction occurred after he was already naturalized.”) (citing *United States v. Jean-Baptiste*, 395 F.3d 1190, 1192 (11th Cir. 2005), *cert. denied*, 546 U.S. 852 (2005)).

B. The Denaturalization Statute

33. Congress enacted 8 U.S.C. § 1451 in recognition of the fact that there are situations where an individual has naturalized despite failing to comply with all congressionally imposed prerequisites to the acquisition of citizenship or by concealing or misrepresenting facts that are material to the decision on whether to grant his or her naturalization application.

34. Under 8 U.S.C. § 1451(a), the Court must revoke an order of naturalization and cancel the individual's Certificate of Naturalization if his naturalization was either:

- a. illegally procured; or,
- b. procured by concealment of a material fact or by willful misrepresentation.

35. Failure to comply with any of the congressionally imposed prerequisites to the acquisition of citizenship renders the citizenship "illegally procured." *Fedorenko*, 449 U.S. at 506.

36. Naturalization will be deemed procured by concealment of a material fact or by willful misrepresentation, where: (1) the naturalized citizen misrepresented or concealed some fact during the naturalization process; (2) the misrepresentation or concealment was willful; (3) the fact was material; and (4) the naturalized citizen procured citizenship as a result of the misrepresentation or concealment. *Kungys v. United States*, 485 U.S. 759, 767 (1988).

37. Where the government establishes that the defendant's citizenship was procured illegally or by willful misrepresentation or concealment of a material fact, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization." *Fedorenko*, 449 U.S. at 517.

V. CAUSES OF ACTION

COUNT I
ILLEGAL PROCUREMENT OF NATURALIZATION
LACK OF GOOD MORAL CHARACTER
(Controlled Substance Offense)

38. Plaintiff re-alleges and incorporates by reference paragraphs 1 – 37 of this complaint as if set forth herein.

39. To qualify for naturalization, Defendant was required to establish that he was a person of good moral character from July 11, 2000 (five years prior from the date of his naturalization application) until the date he became a U.S. citizen on December 7, 2005. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

40. An applicant for naturalization who committed crimes during his statutory period that violate a law relating to a controlled substance cannot be found to be a person of good moral character. 8 U.S.C. § 1101(f)(3) (cross referencing 8 U.S.C § 1182(a)(2)(A)(i)(ii)).

41. Defendant committed crimes involving drug-related offenses during his naturalization process and pleaded guilty to that criminal conduct.

42. Pursuant to 8 U.S.C. § 1101(f), an applicant for naturalization is precluded from establishing the required good moral character if, during the statutory period, he commits a controlled substance offense and is at some point convicted of the offense or admits its commission.

43. Because Defendant was not a person of good moral character, he was ineligible for naturalization under 8 U.S.C. § 1427(a)(3).

44. Because Defendant was ineligible to naturalize, he illegally procured his naturalization, and this Court therefore must revoke his naturalization as provided under 8 U.S.C. § 1451(a).

COUNT II
ILLEGAL PROCUREMENT OF NATURALIZATION
LACK OF GOOD MORAL CHARACTER
(Unlawful Acts)

45. Plaintiff re-alleges and incorporates by reference paragraphs 1 – 44 of this complaint as if set forth herein.

46. As outlined above, Defendant was required to establish that he was a person of good moral character from July 11, 2000, until the date he became a U.S. citizen on December 7, 2005. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

47. Defendant could not establish the requisite good moral character for naturalization because he committed unlawful acts during the statutory period that reflected adversely upon his moral character, and there were no extenuating circumstances that would lessen his guilt. *See* 8 C.F.R. § 316.10(b)(1)(3)(iii); 8 U.S.C. § 1101(f) (catch-all provision).

48. As set forth above, Defendant pleaded guilty to conspiracy to possess with intent to distribute more than 5 kilograms of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(A) and was sentenced to 100 months of imprisonment followed by a five-year term of supervised release.

49. There are no extenuating circumstances regarding Defendant's unlawful activity that render his conduct less reprehensible than it otherwise would be or that would tend to lessen his guilt. As such, he cannot avoid the regulatory bar on establishing good moral character found at 8 C.F.R. § 316.10(b)(3)(iii).

50. Because Defendant committed unlawful acts that adversely reflected on his moral character during the statutory period, and he cannot demonstrate extenuating circumstances, he was barred under 8 U.S.C. § 1101(f) and 8 C.F.R. § 316.10(b)(3)(iii) from showing that he had the good moral character necessary to become a naturalized U.S. citizen.

51. Because Defendant was not a person of good moral character, he was ineligible for naturalization under 8 U.S.C. § 1427(a)(3).

52. Because Defendant was ineligible to naturalize, he illegally procured his naturalization, and this Court therefore must revoke his naturalization as provided under 8 U.S.C. § 1451(a).

COUNT III
PROCUREMENT OF NATURALIZATION BY CONCEALMENT
OF A MATERIAL FACT OR WILLFUL MISREPRESENTATION

53. Plaintiff re-alleges and incorporates by reference the paragraphs 1 – 52 of this complaint as if set forth herein.

54. Under 8 U.S.C. § 1451(a), this Court must revoke Defendant's citizenship and cancel his Certificate of Naturalization because he procured his naturalization by concealment of a material fact and by willful misrepresentation.

55. As set forth in paragraphs 9 through 18 above, throughout the naturalization process, Defendant willfully misrepresented and concealed his criminal conduct and presented false testimony to obtain an immigration benefit.

56. At no point during the naturalization process did Defendant disclose his criminal conduct, but instead knowingly presented false information that he had not committed any criminal acts.

57. Further, at no point during the naturalization process did Defendant disclose that he had given false testimony concerning his criminal conduct during his naturalization interview.

58. Defendant knew his misrepresentation and concealment were false and misleading, and he acted willfully in providing such misrepresentations and concealment.

59. Defendant's misrepresentations and concealment were material to determining his eligibility for naturalization because they did not allow USCIS to make an informed decision when approving his naturalization application. In addition, Defendant's conduct related directly to a determination of whether he could establish the good moral character required under 8 U.S.C. § 1427(a)(3).

60. Had Defendant disclosed the truth about his criminal conduct, USCIS would have denied Defendant's naturalization and would not have allowed him to take the oath of allegiance because of his ineligibility.

61. Defendant procured his naturalization by concealment of material facts and willful misrepresentation, and this Court must revoke his citizenship pursuant to 8 U.S.C. § 1451(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

- (1) A finding that Defendant illegally procured his citizenship;
- (2) A finding that Defendant procured his citizenship by concealment of material facts and by willful misrepresentation;
- (3) Judgment revoking and setting aside the order admitting Defendant to citizenship and canceling Certificate of Naturalization No. number  effective as of the original date of the order and certificate, December 7, 2005;
- (4) Judgment forever restraining and enjoining Defendant from claiming any rights, privileges, benefits, or advantages under any document which evidences U.S. citizenship obtained as a result of his December 7, 2005, naturalization;
- (5) Judgment requiring Defendant to surrender and deliver, within ten (10) days of Judgment, his Certificate of Naturalization, as well as any copies thereof in his possession

or control (and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession or control of others), to the Attorney General, or his representative, including undersigned counsel;

(6) Judgment requiring Defendant to surrender and deliver, within ten (10) days of Judgment, any other indicia of U.S. citizenship, including, but not limited to, U.S. passports and passport cards, voter registration cards, and other voting documents, as well as any copies thereof in his possession or control (and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession or control of others), to the Attorney General, or his representative, including undersigned counsel; and

(7) Judgment granting the United States any other relief that may be lawful and proper in the case.

Dated: June 15, 2026

JOHN G.E. MARCK
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Respectfully submitted,

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