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APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 18a0257n.06

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 17-4046

[Filed May 24, 2018]

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

MOHAMED AHMED, Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BEFORE: CLAY, STRANCH, and LARSEN, Circuit Judges.

CLAY, Circuit Judge. Defendant Mohamed Ahmed ("Ahmed") appeals from the judgment entered by the district court revoking Ahmed's citizenship and cancelling his Certificate of Naturalization under 8 U.S.C. § 1451(a). For the reasons set forth below, we **AFFIRM** the district court's judgment.

BACKGROUND

I. Factual History

Ahmed is a native of Somalia. He is an imam employed in Columbus, Ohio who travels to different Somali communities around the world giving speeches, sermons, and lectures, and providing counseling.

Ahmed immigrated to the U.S. on June 21, 1997, as a lawful permanent resident. In May 2002, Ahmed sought U.S. citizenship, executing an Application for Naturalization on May 28, 2002. In order to obtain assistance in completing that application, Ahmed went to WIN Translation Services ("WIN"). A WIN employee completed Ahmed's application. Ahmed signed and dated the application, certifying under penalty of perjury that all of the information contained within the application was "true and correct." (R. 59, Trial Tr., PageID # 1484–85.) WIN filed the form for Ahmed. The parties dispute who filled out Ahmed's application and what occurred during the preparation of the application.

The application asked about Ahmed's foreign travel in the five years preceding his application, from May 28, 1997 to May 28, 2002. Foreign travel is relevant to certain statutory requirements for naturalization. Under 8 U.S.C. § 1427(a)(1), an applicant must be physically present for at least 30 months of the five years (60 months) preceding the date of filing the application (the "physical presence" requirement). Under 8 U.S.C. § 1427(b), an applicant cannot have been absent for a continuous period exceeding six months during that five-year period (the "continuous residence" requirement). Ahmed's

application indicated that he had taken no trips outside of the U.S. during the relevant statutory time. This information was incorrect because Ahmed did travel abroad during those five years. In fact, he made thirteen trips outside of the U.S. as part of his work and to visit his family. Ahmed testified that those trips averaged from two to four months and one of those trips may have been over six months.

The application also asked about Ahmed's marital history and children. Ahmed's application indicated that he had one wife and listed the children that he had with that wife. The government contended that this information was also inaccurate because Ahmed had what he referred to as a "religious" or "cultural" wife and children with her as well.

On February 27, 2003, after submitting his naturalization application, Ahmed appeared for a naturalization interview. While the parties dispute what occurred during the interview, they do not dispute that the interview was conducted by Yvonne Jarrett ("Jarrett") (formerly Valenzuela). During that interview, Ahmed affirmed under oath that all the information in the application was true and correct. Another immigration officer, Terence Lee ("Lee"), re-verified Ahmed's application the same day. The Immigration and Naturalization Service ("INS") (now United States Citizenship and Immigration Services) approved Ahmed's naturalization application on February 27, 2003, and administered his oath of allegiance, granted him U.S. citizenship, and issued a Certificate of Naturalization on March 3, 2003.

II. Procedural History

On October 16, 2012, the United States filed a complaint to revoke and set aside Ahmed's citizenship and to cancel his Certificate of Naturalization pursuant to 8 U.S.C. § 1451(a). The government alleged that Ahmed had provided false information in his Application for Naturalization, which was "reaffirmed under penalty of perjury at the conclusion of [his] naturalization interview." (R. 1, Complaint, PageID # 7.) The government cited the false statements and testimony regarding Ahmed's trips outside of the U.S. and his marital history. The government argued that denaturalization was required because Ahmed illegally procured his naturalization and procured his naturalization by concealment of a material fact or by willful misrepresentation.

A two-day bench trial was held from April 26–27, 2016. On September 20, 2017, the district court issued its findings of fact and conclusions of law. The court found that Ahmed had "procured his naturalization by concealment of material facts and willful misrepresentations based on his travel outside of the United States." (R. 65, Findings, PageID # 1619.) The district court did not address the government's other arguments that Ahmed had failed to disclose his marital history and had given false testimony. The court granted the government's request to revoke and set aside Ahmed's citizenship and to cancel his Certificate of Naturalization.

On October 3, 2017, Ahmed timely filed a notice of appeal.

DISCUSSION

I. Misrepresentation or Concealment

Standard of Review

This Court reviews the district court's conclusions of law *de novo*, its findings of fact for clear error, and its evidentiary rulings for abuse of discretion. *United States v. Mandycz*, 447 F.3d 951, 957 (6th Cir. 2006).

A factual finding is clearly erroneous when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) (citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Id*. at 573–74. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 574 (citing *United States v. Yellow Cab Co.*, 338 U.S. 338, 342 (1949)). This is true whether the district court's finding rests on credibility determinations, physical or documentary evidence, or inferences from other facts. *Id*. "[W]hen a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." *Id*. at 575. "A finding that is 'plausible' in light of the full

record—even if another is equally or more so—must govern." *Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (citing *Anderson*, 470 U.S. at 574).

Analysis

"No alien has the slightest right to naturalization unless all statutory requirements are complied with . . . ." *United States v. Ginsberg*, 243 U.S. 472, 475 (1917). However, "the right to acquire American citizenship is a precious one and . . . once citizenship has been acquired, its loss can have severe and unsettling consequences." *Fedorenko v. United States*, 449 U.S. 490, 505 (1981). Consequently, the government "carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship." *Costello v. United States*, 365 U.S. 265, 269 (1961). And the evidence justifying revocation of citizenship must be "clear, unequivocal, and convincing" and "not leave the issue in doubt." *Schneiderman v. United States*, 320 U.S. 118, 125 (1943) (citation and internal quotation marks omitted).

Under 8 U.S.C. § 1451(a), a citizen may be denaturalized when the order and certificate of naturalization was "procured by concealment of a material fact or by willful misrepresentation." "[T]he provision plainly contains four independent requirements: the naturalized citizen must have misrepresented or concealed some fact, the misrepresentation or concealment must have been willful, the fact must have been material, and the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment." *Kungys v. United States*, 485 U.S. 759, 767 (1988).

After considering the first requirement, the district court concluded that Ahmed's application contained misrepresentations or concealments regarding his international travel. On appeal, Ahmed argues that the district court clearly erred in finding that Ahmed misrepresented his foreign travel. He argues "it was undisputed at trial that Mr. Ahmed disclosed his foreign travel during his naturalization interview" by bringing his passport to the immigration interview and the district court erred in concluding otherwise. (Ahmed Br. at 14.)

As an initial matter, Ahmed's own testimony does support his contention that he provided his passport to the naturalization officer. Ahmed testified that he received an appointment letter which specifically instructed him to bring his passport to the interview. He testified that he did in fact bring his passport, which reflected foreign travel, to the interview and gave it to Jarrett. He testified that she reviewed the passport, took it out of the room with her, and brought it back. He did not know whether she made a copy of the passport. Ahmed testified that Jarrett did not ask any questions about his travel or go over the questions in the application regarding foreign travel or amount of time spent outside the U.S.

However, the evidence is not nearly as one-sided as Ahmed suggests. The district court also heard from government witnesses whose testimony supported the government's view that Ahmed did not bring his passport to, or verbally disclose his foreign travel during, the naturalization interview. For example, although she did not specifically remember Ahmed or

his interview,[1] Jarrett testified that she always asked

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[1] Ahmed seems to suggest that it was improper for the district court to rely on Jarrett's and Lee's testimony regarding their standard and customary practices during naturalization interviews because they had no recollection of him. In one sentence, he notes that the government presented witnesses who had no memory of Ahmed, his application, or his interview. In the next sentence, he says, "The witnesses testified generally as to their standard procedures – over 13 years earlier." (Ahmed Br. at 13–14.) Ahmed does nothing more than hint at this argument. He also does not cite a single legal authority to support this argument. "[I]t is not the job of an appellate court to make these arguments for him." *United States v. Brownlee*, 716 F. App'x 472, 477 (6th Cir. 2017). "Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones." *McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) (alterations omitted) (quoting *Citizens Awareness Network, Inc. v. United States Nuclear Regulatory Comm'n*, 59 F.3d 284, 293–94 (1st Cir. 1995)).

Furthermore, even if the Court were to consider this argument, there is no authority to support Ahmed's suggestion. *See United States v. Syouf*, No. 3:98CV7175, 1999 WL 689953, at *3 (N.D. Ohio Mar. 26, 1999) ("The defendant contends that lesser weight should be given to testimony that is based on an INS examiner's 'invariable practice' instead of personal recollection. Testimony about habit is expressly sanctioned by Fed. R. Evid. 406, and, contrary to the defendant's argument, testimony about an examiner's invariable practice may be determinative."), *aff'd*, 238 F.3d 425 (6th Cir. 2000) (Table); *United States v. Rossi*, 319 F.2d 701, 702 (2d Cir. 1963) ("The Government produced . . . various officers who conducted the several [naturalization] inquiries. These officers testified as to the practice and procedure in conducting the inquiries. . . . Such evidence was admissible and determinative."); *United States v. Oddo*, 314 F.2d 115, 117 (2d Cir. 1963) ("Testimony as to custom and practice [in naturalization interviews] is admissible as circumstantial evidence [in

applicants every question on the naturalization application. She was confident that she asked Ahmed all questions and that Ahmed personally confirmed the answers to those questions based on the fact that she approved his application. Jarrett testified that if Ahmed had disclosed his international trips or presented her with his passport, she would have confronted him about his travel and would have asked follow up questions, annotated the application, and made a copy of the passport. The district court also heard from Lee, who conducted a quality review of Ahmed's naturalization application to make sure all the statutory requirements and policy requirements had been fulfilled. He testified that he believed Jarrett asked Ahmed the questions related to foreign travel because there was a red mark at the top of the page containing those questions by Ahmed's alien number ("A number") and because of the significance of the questions. Lee testified that had a copy of Ahmed's passport been in the file, he would have brought the application back to Jarrett because it reflected "multiple" travel dates. (R. 58, Trial Tr., PageID # 1283–84.)

As a result, Ahmed is simply incorrect that there was "only one permissible conclusion from the evidence presented at trial." (Ahmed Br. at 14.) Another permissible conclusion from Jarrett's and Lee's testimony was that Ahmed neither presented his passport during his interview nor verbally disclosed his travel during the immigration interview. Consequently, the record does support a finding that Ahmed had

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denaturalization proceedings], subject to the usual condition that its probative value outweigh any possible prejudicial impact.").

misrepresented his foreign travel. Accordingly, we affirm the district court's conclusion that Ahmed misrepresented and concealed his international travel.[2]

II. Willfulness

Standard of Review

This Court reviews the district court's conclusions of law *de novo*, its findings of fact for clear error, and its evidentiary rulings for abuse of discretion. *Mandycz*, 447 F.3d at 957.

The parties dispute the appropriate standard of review on this question. Ahmed asserts that the standard is *de novo*, while the government asserts that it is clear error. But because Ahmed argues that the district court's finding is legally insufficient to constitute willfulness, this question is properly characterized as a mixed question of law and fact. *See Byrne v. United States*, 857 F.3d 319, 326 (6th Cir.

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[2] Ahmed also makes an argument that the materiality requirement was not met because the statements in his application "had no bearing at all on the decision to award citizenship" because he disclosed his foreign travel to the government by providing it with his passport. (Ahmed Br. at 15–16.) This argument seems more appropriately characterized as another challenge to the district court's misrepresentation finding because it is based on Ahmed's assertion that there is only one permissible view of the facts and that he disclosed his foreign travel by handing over his passport. And other than disputing the underlying facts, Ahmed does not argue that the district court erroneously concluded that the responses to the foreign travel questions were material. The government characterizes Ahmed's argument as "another attack on the district court's factual finding of misrepresentation dressed up in 'materiality' clothing." (Gov't Br. at 27.) We agree and dispose of the argument here as well.

2017) ("[W]e believe that, at least in this context, willfulness is a question of ultimate fact because finding that someone was willful requires the application of a legal standard to underlying facts. [Plaintiffs] do not challenge the district court's factual findings regarding their conduct; they challenge whether this conduct satisfies the legal standard of willfulness. We therefore review de novo the district court's holding [regarding willfulness]."). Thus, we review the district court's findings of fact related to willfulness for clear error, but review *de novo* whether those findings satisfy the legal standard of willfulness. *United States v. Demjanjuk*, 367 F.3d 623, 636 (6th Cir. 2004) (citing *United States v. Harris*, 246 F.3d 566, 570 (6th Cir. 2001)).

Analysis

The second of the requirements under § 1451(a) is that the misrepresentation or concealment must have been willful. *Kungys*, 485 U.S. at 767. A misrepresentation is willful if it was deliberate and voluntary. *Parlak v. Holder*, 578 F.3d 457, 463–64 (6th Cir. 2009); *see also United States v. Arango*, 670 F.3d 988, 995 (9th Cir. 2012); *Toribio-Chavez v. Holder*, 611 F.3d 57, 63 (1st Cir. 2010); *Mwongera v. I.N.S.*, 187 F.3d 323, 330 (3d Cir. 1999). Knowledge of falsity is sufficient to show willfulness. *Parlak*, 578 F.3d at 463. An intent to deceive is not necessary. *Id*.

The district court concluded that Ahmed willfully misrepresented his foreign travel. On appeal, Ahmed argues that the record does not support a finding that he deliberately misrepresented his foreign travel as there is "no evidence on record to show that Mr. Ahmed intended to misrepresent his foreign travel, or that he

knew that his foreign travel had been misrepresented." (Ahmed Rep. Br. at 7.)

In this case, Ahmed knew that he had traveled internationally during the five years preceding the filing of his application. Further, evidence in the record supports a finding that Ahmed knew that his application had misrepresented his foreign travel and that he failed to verbally disclose his travel during his naturalization interview. For instance, Bich Khue Truong ("Truong") from WIN testified that she was certain she completed Ahmed's application even though she did not specifically remember Ahmed. Truong testified that she would have asked Ahmed all of the questions on the application, filled in the answers as provided by Ahmed, and then reviewed the application with him to make sure everything was correct. She testified that Ahmed would have read the application for the purposes of catching any errors. Truong testified that she had never seen Ahmed's passport. She testified that if Ahmed had presented her with his passport, she would have reflected on the form the travel indicated on the passport. She said she would not have written zero international trips on the application form if Ahmed had told her he had traveled or if she had seen his passport. Additionally, as detailed above, Jarrett testified that, based on her normal procedures, Ahmed did not bring his passport to the interview or verbally disclose his travel during the naturalization interview, even though she asked him questions about it. Furthermore, Ahmed signed Part 13 of his application certifying "under penalty of perjury . . . that I know that the contents of this application for naturalization subscribed by me . . . are true and correct to the best of my knowledge and belief"

and the district court found that he did so during his naturalization interview. (R. 65, Findings, PageID # 1613 n.6.; R. 22-3, Application, PageID # 283.)

The record considered in its entirety does support finding that Ahmed knew he had traveled internationally, that Ahmed knew his application misrepresented his extensive foreign travel, and that Ahmed confirmed his travel history during the interview. Accordingly, we affirm the district court's conclusion that Ahmed willfully misrepresented his foreign travel.

III. Procurement

Standard of Review

This Court reviews the district court's conclusions of law *de novo*, its findings of fact for clear error, and its evidentiary rulings for abuse of discretion. *Mandycz*, 447 F.3d at 957. "To the extent that the questions of law are predicated on factual findings, this Court reviews the factual findings for clear error." *Demjanjuk*, 367 F.3d at 636 (citing *Harris*, 246 F.3d at 570).

Analysis

The final requirement under § 1451(a) is that the naturalized citizen "procured citizenship as a result of the misrepresentation or concealment." *Kungys*, 485 U.S. at 767. The materiality and procurement elements are separate, and "satisfaction of one does not necessarily mean satisfaction of the other." *United States v. Latchin*, 554 F.3d 709, 713 (7th Cir. 2009); *see Kungys*, 485 U.S. at 767. Procurement requires that "citizenship be obtained as a result of the application

process in which the misrepresentations or concealments were made." *Kungys*, 485 U.S. at 776. The Supreme Court split on what more procurement requires in a "maddeningly fractured" opinion. *Latchin*, 556 F.3d at 713. The Seventh Circuit summarized the division as follows:

> Justice Stevens, speaking for two others, advocated what amounts to a "but for" test-that the government has to establish that citizenship would not have been conferred but for the misrepresentation. Justice Scalia, joined by two others, rejected this construction because it would make the materiality requirement meaningless, "requiring, in addition to distortion of the decision [(procurement)], a natural tendency to distort the decision [(materiality)]." [*Kungys*, 485 U.S.] at 776, 108 S. Ct. 1537. But Justice Scalia and company did agree that procurement requires more than just obtaining citizenship "as a result of the application process in which the misrepresentations or concealments were made." To them, proof of a material misrepresentation created a presumption that citizenship was procured on that basis. However, the citizen could rebut that presumption by showing that she was actually eligible for citizenship. Justice Brennan wrote a separate concurrence joining in Justice Scalia's opinion to make a controlling plurality. Justice Brennan's controlling opinion stressed that citizenship is a "most precious right" and added a more restrictive gloss to Justice Scalia's view. *Id.* at 783, 108 S. Ct. 1537 (Brennan, J., concurring). Although Justice Brennan agreed that a

> material falsehood can raise a presumption of ineligibility, he said that presumption does not arise unless the government produces evidence sufficient to raise a "fair inference of ineligibility." *Id.* at 783, 108 S. Ct. 1537 (Brennan, J., concurring).

Latchin, 554 F.3d at 713–14 (first and second alterations in original).

Applying the Seventh Circuit's rationale, Justice Brennan's concurring opinion controls on this point.[3] *See id*.; *United States v. Hirani*, 824 F.3d 741, 751 (8th Cir. 2016); *United States v. Alferahin*, 433 F.3d 1148, 1155 (9th Cir. 2006). So, as the *Latchin* court put it, "[a]t the end of the day, then, the government only wins if it shows that the citizen misrepresented a material fact *and* it is 'fair to infer that the citizen was actually ineligible.'" *Latchin*, 554 F.3d at 714 (footnote omitted) (citing *Kungys*, 485 U.S. at 784 (Brennan, J., concurring)). The rebuttable "presumption of ineligibility does not arise unless the Government produces evidence sufficient to raise a fair inference that a statutory disqualifying fact actually existed." *Kungys*, 484 U.S. at 783 (Brennan, J., concurring). "Evidence that simply raises the possibility that a disqualifying fact might have existed does not entitle the Government to the benefit of a presumption that the citizen was ineligible, for as we have repeatedly emphasized, citizenship is a most precious right and as such should never be forfeited on the basis of mere speculation or suspicion." *Id*. (citation omitted).

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[3] Both parties agree with this.

The district court correctly found that Ahmed procured his naturalization as a result of his misrepresentation about his foreign travel. Ahmed misrepresented a material fact and it is fair to infer that he was actually ineligible for citizenship. As noted by the district court, Ahmed admitted that he took thirteen international trips during the relevant time period, and that each trip lasted two to four months and one may have lasted more than six months. This testimony implicates two separate statutory requirements for eligibility. An applicant cannot have been absent for a continuous period exceeding six months during the five-year period preceding his application. 8 U.S.C. § 1427(b). But Ahmed indicated he may have been on a trip that exceeded six months. An applicant must also have been physically present in the U.S. for at least thirty months of the preceding five year period. 8 U.S.C. § 1427(a)(1). But as the district court noted, "[g]iven that one trip possibly exceeded six months, if even one of the remaining twelve trips exceeded two months, Defendant's cumulative foreign travel would have exceeded thirty months." (R. 65, Findings, PageID # 1631.) Alternatively, the district court noted that "even if one of the trips did not exceed six months, if only three or four of the thirteen trips were three or four months in duration, Defendant's cumulative travel would have exceeded thirty months." (*Id*. at # 1631 n.9.) Ahmed's travel was sufficient to break both the continuous residence requirement and the physical presence requirement, rendering him statutorily ineligible for citizenship. Because the evidence in this case raises a fair inference of actual ineligibility, the rebuttable presumption of ineligibility arises. Ahmed failed to rebut this presumption.

Accordingly, we affirm the district court's conclusion that Ahmed procured citizenship as a result of his misrepresentation.

CONCLUSION

For the reasons set forth above, we **AFFIRM** the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 2:12-cv-951

Judge Michael H. Watson
Magistrate Judge Jolson

[Filed September 20, 2017]

United States of America,
Plaintiff,

v.

Mohamed Idris Ahmed,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Government filed this action pursuant to 8 U.S.C. § 1451(a) to revoke Mohamed Idris Ahmed's ("Defendant") citizenship and to cancel his Certificate of Naturalization No. 27327489. Compl., ECF No. 1.

After a two-day bench trial, and for the following reasons, the Court **GRANTS** the Government's requested relief and enters judgment in favor of the Government. In so doing, the Court makes the

following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52.

I. FINDINGS OF FACT

A. Events Preceding Application for Naturalization

Defendant is a native of Somalia who can understand, speak, read, and write English. Tr. Trans. 4, 39–41, ECF No. 59. In 1995, Defendant applied for an immigrant visa to come to the United States. Tr. Trans. 40, ECF No. 59; Gov't Ex. 1. (visa application).[1] Thereafter, Defendant obtained an F41 immigrant visa, and, on June 21, 1997, he entered the United States as a lawful permanent resident. Gov't Ex. 2. (visa). His Immigration and Naturalization Service ("INS")[2] file number is A46078961. *Id.*

Defendant is an Imam employed at a mosque in Columbus, Ohio, and travels to different Somali communities globally, giving speeches and lectures, and providing counseling. Tr. Trans. 5, ECF No. 59. As part of his work and to visit family, Defendant traveled outside of the United States at least thirteen times between November 27, 1997, and February 23, 2003, including travel on the following dates:

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[1] All of the parties' exhibits except for Government Exhibit 17, which is not cited herein, were admitted into evidence. Tr. Trans. 4, ECF No. 58.

[2] Although the former INS is now the United States Citizenship and Immigration Services, the Court refers to it as INS for ease of reference.

November 27, 1997
June 23, 1998
July 9, 1999
February 8, 2000
April 13, 2000
July 4, 2000
December 5, 2000
March 15, 2001
August 29, 2001
March 31, 2002
July 7, 2002
October 17, 2002
February 23, 2003

Gov't Ex. 11 (travel records);[3] Tr. Trans. 182-84, ECF No. 58; Tr. Trans. 60, ECF No. 59; Ahmed Depo. 44, 53-54, ECF No. 22-10; Myers Aff. of Good Cause ¶ 10, ECF No. 1-1. The record reflects some ambiguity as to whether there were additional international trips on three dates—June 2, 1998, August 15, 2002, and August 21, 2002—as reflected in the printout from the Treasury Enforcement Communication System ("TECS"). Gov't Ex. 11 at 3–4.[4]

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[3] This exhibit contains printouts from a travel database, TECS, operated by Homeland Security Investigations. *Id.;* Tr. Trans. 181–82. The TECS printout is a summary of Defendant's re-entry into the United States as reflected by TECS. Gov't Ex. 11 at 3–5; Tr. Trans. 182–83, ECF No. 58. The exhibit also includes travel information from another system, Automated Transportation System ("ATS"), which pulls information from TECS. *Id.* at 6–18. The ATS printouts provide a more detailed account of the information that is in TECS. Tr. Trans. 183–84, ECF No. 58.

[4] While the Government refers to only thirteen trips taken before February 27, 2003, Gov't's Post-Trial Brief 1, 10, 21, 29 n.15, ECF

The record also reflects ambiguous testimony about whether Defendant took additional trips that were not listed. The time period relevant to this case is the five-year period preceding the date of Defendant's Application for Naturalization, *i.e.*, May 28, 1997, through May 28, 2002. Defendant testified at trial that he traveled outside of the United States thirteen times during this five-year period, Tr. Trans. 59-60, ECF No. 59, and Defendant's post-trial filings do not dispute that he took thirteen trips during that five-year period. *See* Def.'s Post-Trial Brief, ECF No. 60; Def.'s Supp. Post-Trial Brief, ECF No. 63. As such, and having considered all of the evidence in the record, the Court finds as a matter of fact that Defendant took thirteen trips during the five-year period between May 28, 1997, and May 28, 2002.

According to Defendant, each of the thirteen trips lasted, on average, "two months, three months, four months." Ahmed Depo. 45–46, ECF No. 22-10; Tr. Trans. 60, ECF No. 59. At least one of these trips, however, may have been over six months in duration. *Id.*

No. 62, and does not provide ATS printouts for these dates, the TECS printout reflects travel from London Gatwick International Airport on August 15, 2002. Gov't Ex. 11 at 3–5. It may be that the travel on the dates of June 2, 1998, and August 21, 2002, was not international, but is not apparent from the record why the Government excludes the London travel on August 15, 2002, in its recitation of international trips.

B. Application for Citizenship—Written Answers

On May 28, 2002,[5] Defendant executed a Form N-400, Application for Naturalization, based on having been a permanent resident for at least five years. Gov't Ex. 4 (Form N-400 application) ("the application").

1. International Travel

Part 7 of the application, captioned "Time Outside the United States," seeks information regarding Defendant's travel outside of the United States during the five years preceding the filing of his application on May 28, 2002, and his international travel since becoming a lawful permanent resident on June 21, 1997. Gov't Ex. 4 at 4 (Form N-400 application). Specifically, in response to the question, "How many total days did you spend outside of the United States during the past 5 years," the application indicates "0" days. *Id.* In other words, this response reflects that Defendant did not spend any days outside of the United States between the dates of May 28, 1997 and May 28, 2002. *Id.*; Tr. Trans. 181, ECF No. 58.

In response to the question, "How many trips of 24 hours or more have you taken outside the United States during the past 5 years," the application indicates "0" trips. Gov't Ex. 4 at 4. This response

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[5] In its Post-Trial Brief, the Government repeatedly refers to May 31, 2002, as the date Defendant executed and submitted the application, *see* Gov't's Post-Trial Brief 2–3, 10–11, 13, 20, ECF No. 62, but the record reflects that Defendant executed the application on May 28, 2002. Gov't Ex. 4; Tr. Trans. 37, 181, ECF No. 58; Tr. Trans. 21, 55, ECF No. 59.

similarly reflects that Defendant did not take any trips of 24 hours or more outside of the United States during the same time period, *i.e.*, between the dates of May 28, 1997 and May 28, 2002. *Id.*; Tr. Trans. 181, ECF No. 58.

In response to the question, "List below all of the trips of 24 hours or more that you have taken outside the United States since becoming a Lawful Permanent Resident," the application indicates "None." Gov't Ex. 4 at 4. This response reflects that Defendant did not take any trips of 24 hours or more between the dates of June 21, 1997 (the date Defendant became a lawful permanent resident) and May 28, 2002. *Id.*; Tr. Trans. 181–82, ECF No. 58.

However, the documentary evidence and Defendant's own admissions at trial and during his deposition contradict these responses. Gov't Exs. 11 & 14 (travel records & passport, respectively); Tr. Trans. 59–60, ECF No. 59; Ahmed Depo. 45, ECF No. 22-10. Specifically, as noted above, Defendant took at least thirteen trips outside of the United States between May 28, 1997, through May 28, 2002. On average, these trips lasted two to four months in duration, and one of these trips may have lasted as long as six months. Tr. Trans. 60, ECF No. 59; Ahmed Depo. 45, ECF No. 22-10.

2. Certification

On the final page of the application in Part 11, Defendant's signature, dated May 28, 2002, appears in the signature block under the statement "I certify, under penalty of perjury under the laws of the United States of America, that this application, and the

evidence submitted with it, are all true and correct." *Id.* at 10. Defendant testified that he signed and dated the certification in Part 11. Tr. Trans. 55–56, ECF No. 59. Defendant understood that at the time he signed his name in Part 11, he was representing that everything in the application was accurate. *Id.* at 55–56.

Defendant testified that he did not review the completed naturalization application. The facts relevant to that testimony are as follows.

C. Application for Naturalization—Preparation

To prepare his application for naturalization, Defendant used the assistance of a translator at WIN Translation Service ("WIN") in Seattle, Washington. Tr. Trans. 12, ECF No. 59. WIN, which is no longer operating, was run by Mr. Truong. Tr. Trans. 9, ECF No. 58. Both he and his wife, Bich Khue Truong, prepared naturalization applications. *Id.* at 9, 40.

The parties dispute whether Mrs. Truong or someone else (perhaps Mr. Truong) prepared Defendant's naturalization application.

1. Government's Position

The Government adduced evidence indicating that Mrs. Truong prepared Defendant's naturalization application. Although Mrs. Truong does not remember Defendant, she is confident that she prepared his application because (1) her handwriting appears throughout the application, (2) her printed name and signature appear on the portion of the application identifying the application's preparer, and (3) a stamp on the application identifies WIN as the preparer's

organization. Tr. Trans. 10–11, 19, 39, ECF No. 58.; Gov't Ex. 4 at 10 (Form N-400 application). Additionally, Mrs. Truong is confident that she alone prepared the application because she and her husband did not split up responsibility for this task; whoever met with the client prepared the entire application. Tr. Trans. 12, ECF No. 58.

2. Defendant's Position

Defendant testified that a "man" at WIN prepared his application. Tr. Trans. 13, ECF No. 59. That man was of Asian descent, and it appeared that English was a foreign language for him. *Id.* Defendant testified that the preparation of his application proceeded as follows.

Defendant followed the man into an office and handed over his passport, Green Card, Social Security card, and all other documents he had brought to WIN. *Id.* The man began filling out the application. *Id.* Regarding specific questions on the application, Defendant did not orally disclose his travel, but he did provide a copy of his passport, and the man copied it. *Id.* at 21, 57. After answering questions on the application, Defendant signed the application form in Part 11. *Id.* at 13, 20–21, 55. The man never showed Defendant the application, nor did he ask Defendant to review it after it was complete. *Id.* at 14, 20. As noted earlier, however, Defendant knew that he was representing in Part 11 that everything in the application was "true and correct[.]" yet he elected not to review the completed application. *Id.* at 55–56, 58.

D. Naturalization Interview

After submitting his naturalization application to INS, Defendant received a letter scheduling his

interview and instructing him that he "MUST BRING" his passport and/or any other documents that he used in connection with any entries into the United States. Gov't Ex. 7 (notice) (emphasis in original).

INS District Adjudications Officer Yvonne Valenzuela (now Yvonne Jarrett) ("Officer Jarrett") conducted Defendant's interview on February 27, 2003. Gov't Ex. 4 at 10 (Form N-400 application); Tr. Trans. 120, ECF No. 58. Officer Jarrett does not, however, remember the interview. *Id.* at 123. Rather, she testified only as to her regular practice in conducting naturalization interviews. Officer Jarrett would meet with the applicant in person. *Id.* at 115–16. Before beginning the interview, she would place the applicant under oath. *Id.* The applicant would then present his or her Green Card and passport, and Officer Jarrett would compare the information on those documents to the completed application. *Id.* If the applicant did not bring a passport and represented that he or she forgot the passport or did not possess a passport, Officer Jarrett would take the applicant's statement at "face value" because the applicant is under oath. *Id.* at 129. She would not conduct any independent investigation if no passport or an "empty passport" was presented at the interview because the applicant has "already had this done by the FBI[.]" *Id.* at 129–30. Instead, she would "ask people, never? Really? You've never gone anywhere, not even to Canada? That was even my standard question[] I would ask people. Really, not even to Mexico, Canada?" *Id.* at 130.

Officer Jarrett would then go over the completed application, question by question, with the applicant.

Id. at 117, 122. Officer Jarrett would place a red mark next to the questions as she went. *Id.* at 118. The absence of a red mark next to a question, however, does not indicate that she did not ask a question. Rather, it more likely indicates that she simply forgot to place the mark. *Id.* at 122–23. She would answer any follow-up questions that the applicant had about the application. *Id.* at 117–18.

At the end of the interview, Officer Jarrett would instruct the applicant to sign Parts 13 and 14 swearing that all of the responses are "true and correct to the best of [the applicant's] knowledge and belief." *Id.* at 119; Gov't Ex. 4 at 10 (Form N-400 application).[6] She

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[6] Part 13 requires the applicant's signature swearing "under penalty of perjury . . . that the contents of the application for naturalization subscribed by me . . . are true and correct to the best of my knowledge and belief." Gov't Ex. 4 at 10 (Form N-400 application). Part 14 requires the applicant to sign acknowledging his willingness to take the oath of allegiance. *Id.* Parts 13 and 14 instruct applicants not to complete those sections until instructed to do so by an INS Officer. *Id.* The Government's witnesses' testimony was inconsistent as to the signature appearing in these sections. Mrs. Truong testified that she wrote in Defendant's name in the signature blocks in Parts 13 and 14 of the application before it was filed. Tr. Trans. 34, 41, ECF No. 58. Conversely, Officer Jarrett testified that she observed Defendant personally sign Parts 13 and 14 at the end of his INS interview. *Id.* at 163. Officer Jarrett does not remember interviewing Defendant specifically, but requiring him to sign the application in her presence would have been consistent with her general practice. *Id.* at 119. Defendant likewise testified that he wrote his name in the signature blocks in Parts 13 and 14 at the instruction of Officer Jarrett. Tr. Trans. 37–38, 66–67, ECF No. 59. After considering this evidence, the Court finds as a matter of fact that Defendant signed his name in Parts 13 and 14 during his interview.

also would sign the application to verify that she was the interviewing officer. Tr. Trans. 119, ECF No. 58. Officer Jarrett conducted thousands of naturalization interviews with the INS, each in the same manner described above. *Id.*

With respect to Defendant's application, Officer Jarrett is confident that, although there are not red marks next to each question, she asked all of the questions on the application because that was her standard procedure. *Id.* at 122. She further testified that she would not have approved the application unless Defendant had answered all of the questions. *Id.* at 124.

As to the questions in Part 7 of Defendant's application, captioned "Time Outside the United States," Officer Jarrett is confident that she asked Defendant the questions because "one of the main criteria in becoming a citizen is to provide proof of your physical presence in the United States." *Id.* at 126. Moreover, travel to certain countries may raise red flags impacting the eligibility decision. *Id.* at 127. There is no red check mark next to those questions, but there is one at the bottom of the page. *Id.* at 127. Officer Jarrett testified that, if Defendant had disclosed that he had traveled outside of the United States thirteen times during the statutory period, she would have annotated it on the application and asked follow-up questions. *Id.* at 128, 131, 134–35. Officer Jarrett further testified that, if she had seen Defendant's passport reflecting foreign travel, she would have asked follow-up questions, made a copy of the passport, and perhaps continued the interview. *Id.* at 132–34.

Defendant testified that Officer Jarrett did not ask him any questions in Part 7 regarding his foreign travel. Tr. Trans. 27, ECF No. 59. Defendant further testified that, in accordance with the INS's instructions in his Notice of Interview Letter, he took his then-current passport with him to his interview, which, Defendant claims, reflects thirteen trips outside of the United States. *Id.* at 24, 58. Defendant testified that Officer Jarrett took the passport, left the room, and came back. Tr. Trans. 28–29, 59, ECF No. 59. Defendant does not know what Officer Jarrett did with the passport or whether she made a copy of it. *Id.* at 59. Defendant's INS file does not contain a copy of the passport. *See* Def. Ex. A (file).

E. Re-verification of Naturalization Application

Immigration Officer Terence Lee ("Officer Lee") re-verified Defendant's naturalization application. Tr. Trans. 59, ECF No. 58. Officer Lee does not recall doing so, however. *Id.*

Before explaining his role as a re-verifier, Officer Lee testified that he spent eighteen years as an INS Adjudications Officer and conducted over 15,000 interviews. *Id.* at 48. As to his experience and custom in that capacity, Officer Lee testified that applicants were instructed to bring their passport to the interview; however, he would proceed with an interview even absent a passport if the applicant claimed no travel on his or her application. *Id.* at 48–49. If an applicant did bring his or her passport, Officer Lee would confirm that the information therein matched that on the application. *Id.* at 51. If there were major discrepancies, he would make a copy of the

passport and request more information. *Id.* If there was minimal or no travel and no discrepancies, he would not make a copy. *Id.*

He also testified that, regardless of whether an applicant presented a passport, every interviewing officer would ask about foreign travel because continuous presence in the United States during the statutory period is a requirement for naturalization. *Id.* at 50.

Turning to his duties as a re-verifier, Officer Lee testified that his role was "[t]o verify that the process and all the interview process went through and that all the statutory requirements and policy requirements have been fulfilled." *Id.* at 56. When re-verifying an application, Officer Lee looked for and reviewed copies of passports in the file. *Id.* at 66. If he saw an application that listed no travel and a copy of a passport that reflected multiple trips, he would have noted the discrepancy and returned the file to the adjudicator. *Id.* at 67. In the event of such a discrepancy, Officer Lee would be particularly interested in the dates of travel, the destinations, the purpose of the travel, and a written statement as to why the applicant did not submit that information when he or she submitted the Application for Naturalization. *Id.* at 69–70.

F. Naturalization

The INS approved Defendant's application for naturalization on February 27, 2003. Gov't Ex. 4 at 1 (Form N-400 application); Gov't Ex. 9 (notice of oath ceremony). The INS administered the oath of allegiance to Defendant on March 3, 2003, granted him United

States citizenship, and issued Certificate of Naturalization No. 27327489.

II. STANDARD OF REVIEW

"[T]he right to acquire American citizenship is a precious one," and the loss of citizenship once acquired "can have severe and unsettling consequences." *Fedorenko v. United States*, 449 U.S. 490, 505 (1981). Nevertheless, there must "be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Id.* at 506. For example, an applicant must have "resided continuously, after being lawfully admitted" to the United States "for at least five years" and "resided continuously within the United States from the date of the application up to the time of admission to citizenship[.]" 8 U.S.C. § 1427(a)(1), (2). An applicant must also "during the five years immediately preceding the date of filing his application . . . [be] physically present in the United States for periods totaling at least half of that time[.]" 8 U.S.C. § 1427(a)(1); *see also* 8 C.F.R. § 316.2(a)(4) (requiring an applicant to be "physically present in the United States for at least 30 months of the five years preceding the date of filing the application"); 8 C.F.R. § 316.5(c)(1)(i) ("Absences from the United States—(i) for continuous periods of between six (6) months and one (1) year . . . shall disrupt" the continuous residence requirement.). "Failure to comply with any of these conditions [citizenship prerequisites] renders the certificate of citizenship 'illegally procured,' and naturalization that is unlawfully procured can be set aside." *Fedorenko*, 449 U.S. at 506.

The Immigration and Nationality Act ("INA") "provides for the denaturalization of citizens whose

citizenship orders and certificates of naturalization 'were illegally procured or were procured by concealment of a material fact or by willful misrepresentation.'" *Kungys v. United States*, 485 U.S. 759, 772–73 (1988) (quoting 8 U.S.C. § 1451(a)). In a Section 1451(a) proceeding,

> [t]he government has the initial burden to adduce "clear, unequivocal, and convincing" proof that the naturalized citizen has procured his naturalization by one of the improper means listed in § 1451(a), including the concealment of a material fact. *Fedorenko v. United States*, 449 U.S. 490, 505, 101 S. Ct. 737, 66 L. Ed. 2d 686 (1981). "Any less exacting standard would be inconsistent with the importance of the right that is at stake in a denaturalization proceeding." *Id.* at 505–06.

United States v. Maslenjak, 821 F.3d 675, 684 (6th Cir. 2016), *rev'd on other grounds*, 137 S. Ct. 1918 (June 22, 2017).

After the Government has met its burden and shown that a naturalized citizen improperly obtained his or her naturalization, the naturalized citizen has an opportunity to rebut the Government's case. *Maslenjak v. United States*, 137 S. Ct. 1918, 1930 (June 22, 2017) (quoting *Kungys*, 485 U.S. at 777). The naturalized citizen may do so "by showing, through a preponderance of the evidence, that the statutory requirement as to which the misrepresentation *had* a *natural tendency* to produce a favorable decision was in fact met." *Kungys*, 485 U.S. at 777 (emphasis in original). Stated differently, the naturalized citizen has a chance to show that he or she was qualified for

citizenship and should not be denaturalized even though he or she concealed or misrepresented facts that implied otherwise. *Maslenjak*, 137 S. Ct. at 1930 ("[A]ll of our denaturalization decisions share this crucial feature: We have never read a statute to strip citizenship from someone who met the legal criteria for acquiring it.").

III. CONCLUSIONS OF LAW

The Government advances several arguments in support of its demand that Defendant's citizenship should be revoked, one of which is that Defendant procured his naturalization by concealment of material facts and willful misrepresentations under 8 U.S.C. § 1451(a). Because the Court finds that Defendant procured his naturalization by concealment of material facts and willful misrepresentations based on his travel outside of the United States, the Court need not, and does not, address the Government's other arguments.

Section 1451(a) provides for denaturalization where the order and certificate of naturalization were "procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a). "[This] provision plainly contains four independent requirements: the naturalized citizen must have misrepresented or concealed some fact, the misrepresentation or concealment must have been willful, the fact must have been material, and the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment." *Kungys*, 485 U.S. at 767. The Court will consider each element in turn.

A. Misrepresentation or Concealment

As noted, Defendant admitted that he signed his name in Part 11 and understood that he was certifying that everything contained in the application was true and correct. The Court, in accordance with this admission and the findings above, concludes that Defendant's naturalization application contained misrepresentations or concealments regarding his international travel. Given that Defendant signed the certification, the Court finds that the misrepresentations are Defendant's notwithstanding his claim that he did not review the completed application. *Cf. United States v. Hirani*, 824 F.3d 741, 748 (8th Cir. 2016) ("Appellant admits he signed the Form N-400, certifying its contents were correct. That certification is sufficient to show, clearly, unequivocally, and convincingly, that Appellant made the misrepresentations."). Accordingly, the first requirement under Section 1451(a) has been met. *Cf. id.*

B. Willfulness

"Willful misrepresentation itself requires no more than 'knowledge of the falsity' of facts presented to an immigration officer; unlike fraud, misrepresentation requires no intent to deceive." *Bazzi v. Holder*, 746 F.3d 640, 645 (6th Cir. 2013) (citing *Parlak v. Holder*, 578 F.3d 457, 463–64 (6th Cir. 2009)). Accordingly, the sole issue before the Court is whether Defendant knew that the statement that he did not take any foreign trips was false.

Here, Defendant knew that he traveled internationally during the five years preceding the

filing of his application as well as after he became a lawful permanent resident (collectively, "the relevant periods"). Defendant therefore knew that his statements in Part 7 of his application that he did not take any international trips during the relevant periods were false.

Defendant, however, insists that the misrepresentations were not willful because of the ambiguity in the record regarding whether he presented a passport reflecting foreign travel during his interview and because there is no evidence that he had an intent to deceive. Def.'s Post-Trial Brief, 16–22, 30, 39, ECF No. 60.

Defendant's arguments miss the mark. As stated above, all that is required is "knowledge of the falsity" of the facts presented; an intent to deceive is not required. *Bazzi*, 746 F.3d at 645. Ambiguity as to what happened during the interview is irrelevant. Here, Defendant knew that he traveled internationally during the relevant periods. Gov't Exs. 11 & 14 (travel records & passport, respectively); Tr. Trans. 59–60, ECF No. 59; Ahmed Depo. 45, ECF No. 22-10. Defendant therefore knew that his statements in the application that he did not take any foreign trips during the relevant periods were false. Accordingly, the willfulness requirement has been met.

C. Materiality

Materiality may be shown in two ways: when "the facts the defendant misrepresented are themselves disqualifying" or when the defendant's lie "could have led to the discovery of other facts" that would justify denial of citizenship. *Maslenjak*, 137 S.Ct. at 1928–29

(internal quotation marks and citations omitted). As to the first method, "[a] fact's materiality is determined according to the effect that the fact would have had on the ultimate immigration decision had the truth been known." *Bazzi*, 746 F.3d at 645–46. In making this materiality determination, courts consider "whether the misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a natural tendency to affect, the [INS] official decision." *Kungys*, 485 U.S. at 771 (explaining, *inter alia*, that "[i]t has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision, or even that it would *more likely than not* have triggered an investigation" (emphasis in original)). Accordingly, "the test more specifically is whether the misrepresentation or concealment had a natural tendency to produce the conclusion that the applicant was qualified. This test must be met, of course, by evidence that is clear, unequivocal, and convincing." *Id.* at 771–72; see *id.* at 783 ("Proof by clear, unequivocal, and convincing evidence that the misrepresentation had this [natural] tendency raises a presumption of ineligibility[.]" (Brennan, J., concurring)). In other words, in determining the natural tendency of a misrepresentation to affect an official decision, "what is relevant is what would have ensued from official knowledge of the misrepresented fact[,]" and not what would have followed from official knowledge of an inconsistency between an applicant's statements. *Id.* at 775.

As to the second way of showing materiality, while such facts may not by themselves justify a denial of citizenship, discovery of those facts may have revealed other facts that would support such a denial.

Maslenjak, 137 S. Ct. at 1922 (addressing situations where an applicant's lies "throw investigators off a trail leading to disqualifying facts [and the applicant] gets her citizenship by means of those lies"]. When relying on this kind of "an investigation-based theory," the Government must make a two-part showing to meet its burden. *Id.* First, the Government "has to prove that the misrepresented fact was sufficiently relevant to one or another naturalization criterion that it would have prompted reasonable officials, 'seeking only evidence concerning citizenship qualifications,' to undertake further investigation." *Id.* (quoting *Kungys*, 485 U.S. at 774, n.9). If so, then "the inquiry turns to the prospect that such an investigation would have borne disqualifying fruit." *Id.* As to this second part of its showing, the Government "need not show definitively that its investigation would have unearthed a disqualifying fact (though, of course, it may)." *Id.* Instead, the Government must "only establish that the investigation 'would predictably have disclosed' some legal disqualification." *Id.* (quoting *Kungys*, 485 U.S. at 774); see *also United States v. Demjanjuk*, 367 F.3d 623, 636–37 (6th Cir. 2004) ("Although the government must prove its case by evidence that is clear, convincing and unequivocal, it is not necessary for the government to prove that the defendant would not have received a visa if he had not made the misrepresentation."). In articulating this standard, the United States Supreme Court acknowledged the "difficulty of proving that a hypothetical inquiry would have led to some disqualifying discovery, often several years after the defendant told her lies" and the fact that the defendant, and not the Government, was to blame for the "evidentiary predicament[.]" *Maslenjak*, 137 S. Ct. at 1929; *see also id.* at 1930 ("A yet-stricter

causal requirement, demanding proof positive that a disqualifying fact would have been found, sets the bar so high that 'we cannot conceive that Congress intended' that result." (quoting *Kungys*, 485 U.S. at 777)).

Here, the parties dispute whether Defendant's trips outside of the United States are material. Defendant contends that his foreign trips were not material because they were less than six months in duration and because he was absent from the United States for less than two and a half of the five years prior to his application for citizenship. Def's Post-Trial Brief 25, 35–36, ECF No. 60; *cf.* Def.'s Supp. Post-Trial Brief, ECF No. 63. He goes on to argue that Officer Jarrett's testimony that foreign travel in and of itself does not disqualify an applicant supports his position. Def's Post-Trial Brief 25, 35–36, ECF No. 60 (citing Tr. Trans. 134–35, ECF No. 58.)[7]

The Government, however, contends that Defendant's travel outside of the United States is material to his eligibility for naturalization because it relates to the continuous residency and physical presence requirements, 8 U.S.C. § 1427(a)(1), and because Officer Jarrett would have questioned Defendant about the purpose and length of his trips and why he did not disclose the international travel on

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[7] Officer Jarrett testified that if she had seen a passport that reflected no travel, she does not know if she would have approved it that day. Tr. Trans. 133, ECF No. 58. She further testified that "just because you travel outside the United States does not necessarily mean that you're going to be denied. It just has to—you have to be honest and say why you've gone out and for how long." *Id.* at 135.

his application. Gov't's Post-Trial Brief 21–22, 25–26, ECF No. 62 (citing 8 U.S.C. § 1427(a)(2)[8] and 8 C.F.R. § 316.2(a)(4)). The Court considers these arguments in turn.

Section 1427 requires an applicant to reside continuously in the United States for five years preceding the date of the filing of the application for naturalization. 8 U.S.C. § 1427(a)(1). This means two things: (1) an applicant must be physically present for at least 30 months of the five years preceding the date of filing the application, 8 C.F.R. § 316.2(a)(4), and (2) an applicant cannot have been absent for a continuous period exceeding six months during that five-year period, 8 C.F.R. § 316.5(c)(1)(i)); 8 U.S.C. § 1427(b).

As set forth above, Defendant took thirteen international trips in the five years preceding the date of his application during the period between May 28, 1997, and May 28, 2002. *See* Gov't Ex. 11 (travel records); Tr. Trans. 182–84, ECF No. 58; Tr. Trans. 60, ECF No. 59; Ahmed Depo. 44, 53–54, ECF No. 22-10; Myers Aff. of Good Cause ¶ 10, ECF No. 1-1. Defendant, when testifying at trial and at his deposition regarding the thirteen international trips in the five years preceding the date of his application stated that the trips lasted, on average, two to four

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[8] The Government cites to 8 U.S.C. § 1427(a)(2) (requiring continuous residency within the United States "from the date of the application up to the time of admission to citizenship"), but its descriptive parenthetical after this cite that the "applicant must reside continuously within the United States for five years preceding their application for naturalization" reflects that the Government intended to cite to § 1427(a)(1).

months and at least one of those trips "may" have been over six months in duration. Ahmed Depo. 45–46, ECF No. 22-10; Tr. Trans. 60, ECF No. 59.

Defendant takes the position that his international travel during the five-year period is immaterial because it was insufficient to break his continuous residence in the United States. Specifically, Defendant cites to his testimony at trial where he denied that he spent more than two and a half years (30 months) outside of the United States in the five years preceding the date of his application. Def.'s Post-Trial Brief 25, ECF No. 60. However, the Government need not prove by clear and convincing evidence that this travel disrupts the continuous residence requirement such that Defendant was ineligible for citizenship. *See Kungys*, 485 U.S. at 771 ("It has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision, or even that it would *more likely than not* have triggered an investigation.") (emphasis in original). *Cf. Demjanjuk*, 367 F.3d 623, 636–37 (stating that the Government need not prove that the defendant would not have received a visa had he not made the misrepresentation). Instead, the Government must show simply that such travel had a "natural tendency to influence" INS's decision. *Kungys*, 485 U.S. at 772.

Defendant's foreign trips had a natural tendency to influence the decision and were therefore material because the evidence reflects that (1) one of the thirteen trips may have been longer than six months, which itself disrupts the continuous residency requirement, *see* 8 U.S.C. § 1427(b); 8 C.F.R. § 316.5(c)(1)(i), and (2) the thirteen trips, averaging two

to four months in duration with one possibly exceeding six months, likely exceeded a period of thirty months when added together, which also is sufficient to break the continuous residence requirement. *See* 8 U.S.C. § 1427(a)(1); 8 C.F.R. § 316.2(a)(4); 8 C.F.R. § 316.5(c)(1)(i)); *Kungys,* 485 U.S. at 771; see *also* Tr. Trans. 131, 166–67, ECF No. 58 (Officer Jarrett's testimony regarding the relevancy of travel within the statutory period and continuous residency requirement). Although Defendant denied at trial that he spent more than two and a half years (30 months) outside of the United States in the five years preceding the date of his application, Tr. Trans. 25, ECF No. 59, the Court finds this testimony not credible in light of his other testimony at trial and during his deposition regarding the duration and frequency of his international trips. Defendant's concealment or misrepresentation of the international travel on his application therefore "had a natural tendency to produce the conclusion that [Defendant] was qualified." *Kungys*, 485 U.S. at 771–72.

Moreover, even if the number and duration of the trips are not themselves disqualifying, the international travel is still material under an investigation-based theory. *Maslenjak*, 137 S. Ct. at 1929. While Officer Jarrett acknowledged that foreign travel, standing alone, does not necessarily disqualify an applicant for citizenship, she also testified that foreign travel is nevertheless material to an applicant's eligibility for citizenship. Tr. Trans. 126–28, 135, ECF No. 58. According to Officer Jarrett, such travel is material to whether the applicant's duration of time outside of the United States broke the continuous residency requirement during the relevant five-year

statutory period. *Id.* at 127, 135, 167. Officer Jarrett specifically testified thirteen trips within the statutory period would prompt additional questions. *Id.* at 131. Officer Lee also testified that international travel is material to citizenship eligibility because of the continuous residency requirement, warranting additional inquiry. *Id.* at 55, 69–70.

In addition, Officer Jarrett testified that travel to certain regions, including "anywhere in the middle east or perhaps North Africa, North Korea, areas that basically are known for anti-American terrorism[,]" would, as the Government argues, raise flags and warrant further inquiry. *Id.* at 127–28. Officer Lee also testified that the purpose and destination of international travel was material to the eligibility inquiry because of the need to discover potential terrorist affiliations. Tr. Trans. 55, 69–70, 103, ECF No. 58. According to Officer Lee,

> [d]estination and purpose of travel is also [important] if they're going outside the United States to meet for nefarious reasons, we would want to know that. And why they didn't submit that information when they—on that question when they submitted the application is possible they're trying to hide something about the travel for some reason possibly and it could affect misrepresentation of a material fact regarding a statutory requirement of the N-400.

Tr. Trans. 69–70, ECF No. 58.

Here, Defendant admitted that he traveled to Saudi Arabia and Somalia during the statutory period, Ahmed Depo. 44, 53–54, ECF No. 22-10, regions that

Officer Jarrett specifically identified as warranting further inquiry. Tr. Trans. 127–28, ECF No. 58. Based on this record, the Government satisfied the first prong of its showing that these destinations as well as the duration and number of Defendant's international trips during the five-year period preceding the date of Defendant's application were "sufficiently relevant to one or another naturalization criterion that it would have prompted reasonable officials . . . to undertake further investigation." *Maslenjak*, 137 S. Ct. at 1929.

As to the second prong of the Government's investigation-based theory, the record reflects that the investigation "'would predictably have disclosed' some legal disqualification" including, but not limited to, a break in the continuous residency requirement for the reasons previously discussed. *Id.* (quoting *Kungys*, 485 U.S. at 774); *see id.* (stating further that the Government "need not show definitively that its investigation would have unearthed a disqualifying fact (though, of course, it may)"). In other words, even if the evidence as it stands today does not definitely disqualify Defendant based on the continuous residency requirement, the investigation predictably would have allowed the Government to specify the length and duration of each trip, which is exactly the type of evidence that could have legally disqualified Defendant.

For all of these reasons, Defendant's misrepresentations and concealment regarding his foreign travel were material.

D. Procurement of Citizenship as a Result of Misrepresentation or Concealment and Defendant's Rebuttal

Finally, the Government must show that Defendant procured his citizenship "as a result of the application process in which the misrepresentations or concealments were made." *Kungys*, 485 U.S. at 767, 776; *see also* 8 U.S.C. § 1451(a). A plurality of the *Kungys* Court concluded the Government is not required to show that the defendant would not have been naturalized "but for" the misrepresentation and concealment. *Kungys*, 485 U.S. at 776–78 (rejecting Justice Stevens' concurrence requiring a "but for" causality). Instead, an applicant "who obtained his citizenship in a proceeding where he made material misrepresentations is *presumably* disqualified." *Id.* at 777 (emphasis in original). If the Government meets this burden, the defendant has the opportunity to rebut the Government's case "'by showing, through a preponderance of the evidence, that the statutory requirement as to which the misrepresentation had a natural tendency to produce a favorable decision was in fact met.'" *Maslenjak*, 137 S. Ct. at 1930 (quoting *Kungys*, 485 U.S. at 777).

Here, Defendant willfully concealed and misrepresented material information regarding foreign travel on his application. Having done so, the presumption arises that Defendant was disqualified from citizenship. *Kungys*, 485 U.S. at 777; *Maslenjak*, 137 S. Ct. at 1930.

Defendant insists that he "would have still been eligible for citizenship, for the travel was not such as to interrupt continuous residence." Def.'s Post-Trial

Brief 37, ECF No. 60; *see also* Def.'s Supp. Post-Trial Brief, ECF No. 63. Defendant's argument in this regard, however, fails to rebut the presumption that he was disqualified from citizenship. While Defendant denied at trial that he spent more than two and a half years (30 months) outside of the United States in the five years preceding the date of his application, Tr. Trans. 25, ECF No. 59, this testimony was not credible in light of his other testimony about the number and duration of his trips. Defendant admitted that he took thirteen international trips that each lasted "two months, three months, four months," and one trip possibly exceeded six months. Ahmed Depo. 45, ECF No. 22-10. The Court is not persuaded that this record establishes by a preponderance of the evidence that Defendant met the continuous residence requirement, *i.e.*, that he was present for at least thirty months of the five years preceding the date of the filing of his application. *See* 8 C.F.R. § 316.2(a)(4). Defendant's own testimony establishes that each of the trips lasted two to fourth months in duration. Given that one trip possibly exceeded six months, if even one of the remaining twelve trips exceeded two months, Defendant's cumulative foreign travel would have exceeded thirty months.[9] Such travel would be sufficient to break the continuous residence requirement, disqualifying Defendant from citizenship. *See* 8 C.F.R. § 316.2(a)(4). In these circumstances, Defendant has not shown through a preponderance of

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[9] Alternatively, even if one of the trips did not exceed six months, if only three or four of the thirteen trips were three or four months in duration, Defendant's cumulative travel would have exceeded thirty months.

the evidence that he in fact met the continuous residency requirement. *Id.* Accordingly, Defendant procured his citizenship as a result of his misrepresentation and concealment.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Government's request to revoke and set aside the order admitting Mohamed Idris Ahmed to citizenship and to cancel Certificate of Naturalization No. 27327489. The Court **REVOKES and SETS ASIDE** the grant of United States citizenship to Defendant Mohamed Idris Ahmed, and **CANCELS** his certificate of naturalization. The Court **ORDERS** Defendant to surrender and deliver his certificate of naturalization and all other indicia of United States citizenship, including his United States passport.

The Clerk is **DIRECTED** to enter final judgment in favor of the Government in this case.[10]

IT IS SO ORDERED.

/s/ Michael H. Watson
MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

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[10] The Government also requested that the Court set a hearing approximately twenty-one days from the date of judgment for the purpose of requiring Defendant to confirm that he has complied with the judgment, "unless the Government is satisfied prior to the hearing that Defendant has fully complied." Gov't's Post-Trial Brief 31, ECF No. 62. If the Government believes that Defendant has not complied with this judgment within thirty-five days from the date of this judgment, the Government remains free to file a motion requesting such relief.

**AO 450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Case Number 2:12cv951

[Filed September 20, 2017]

United States of America,	)
	)
vs.	)
	)
Mohamed Idris Ahmed,	)
	)

JUDGMENT IN A CIVIL CASE

Judge Michael H. Watson

[] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

[X] **Decision by Court.** This action was decided by the Court without a trial or hearing.

IT IS ORDERED AND ADJUDGED that pursuant to the September 20, 2017 Findings of Fact and Conclusions of Law, the Court **GRANTS** the Government's request to revoke and set aside the order admitting Mohamed Idris Ahmed to citizenship and to cancel Certificate of Naturalization No. 27327489. The Court **REVOKES and SETS ASIDE** the grant of

United States citizenship to Defendant Mohamed Idris Ahmed, and **CANCELS** his certificate of naturalization. The Court **ORDERS** Defendant to surrender and deliver his certificate of naturalization and all other indicia of United States citizenship, including his United States passport.

Date: **September 20, 2017**

Richard W. Nagel, Clerk

s/ Jennifer Kacsor
By Jennifer Kacsor/Courtroom Deputy

APPENDIX C

8 Code of Federal Regulations § 316.5(c)(1)(A)-(D)

(c) Disruption of continuity of residence -- (1) Absence from the United States. (i) For continuous periods of between six (6) months and one (1) year. Absences from the United States for continuous periods of between six (6) months and one (1) year during the periods for which continuous residence is required under § 316.2 (a)(3) and (a)(6) shall disrupt the continuity of such residence for purposes of this part unless the applicant can establish otherwise to the satisfaction of the Service. This finding remains valid even if the applicant did not apply for or otherwise request a nonresident classification for tax purposes, did not document an abandonment of lawful permanent resident status, and is still considered a lawful permanent resident under immigration laws. The types of documentation which may establish that the applicant did not disrupt the continuity of his or her residence in the United States during an extended absence include, but are not limited to, evidence that during the absence:

(A) The applicant did not terminate his or her employment in the United States;

(B) The applicant's immediate family remained in the United States;

(C) The applicant retained full access to his or her United States abode; or

(D) The applicant did not obtain employment while abroad.

8 U.S.C. § 1101(f)

(f) For the purposes of this Act-No person shall Be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was--

(1) a habitual drunkard;

(2) [Repealed]

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act [*8 USCS § 1182(a)*]; or subparagraphs (A) and (B) of section 212(a)(2) [*8 USCS § 1182(a)(2)*] and subparagraph (C) thereof [of such section] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43));

or

(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) [*8 USCS § 1182(a)(3)(E)*] (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) [*8 USCS § 1182(a)(2)(G)*] (relating to severe violations of religious freedom).

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. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was,

not of good moral character may be made based on it.

8 U.S.C. § 1427(a)

(a) Residence. No person, except as otherwise provided in this title, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time[,] and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

8 U.S.C. § 1451(a)

(a) Concealment of material evidence; refusal to testify. It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting

aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: *Provided,* That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

18 U.S.C. § 1425(a)

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing--

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title [18 USCS § 2331])), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title [18 USCS § 929(a)])), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.