No. 19-

IN THE

Supreme Court of the United States

ELEAZAR CORRAL VALENZUELA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION OF WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: October 4, 2019

QUESTIONS PRESENTED FOR REVIEW

1. Whether the equitable doctrine of *laches* applies in civil denaturalization proceedings?

2. Whether the District Court erred in refusing Petitioner's request for discovery and a hearing on potentially dispositive Constitutional issues prior to granting the Government's Rule 12(c) Summary Judgment Motion?

PARTIES

ELEAZAR CORRAL VALENZUELA is the Petitioner herein.

The UNITED STATES OF AMERICA is the Respondent herein.

Neither party is a corporation.

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The Seventh Circuit Court of Appeals issued an Order affirming the Judgment of the District Court on July 26, 2019. A copy of the Seventh Circuit's Order is contained in Appendix A (A. 1a) attached hereto.

The United States District Court for the Northern District of Illinois Eastern Division, the Honorable Matthew F. Kennelly presiding, issued its Judgment Order on August 18, 2018 a copy of which is contained in Appendix B (A. 8a) attached hereto. Judge Kennelly's Order granting the Government's Summary Judgment Motion and denying Petitioner's Motion to Dismiss/Strike was entered on July 29, 2018 a copy of which is contained in Appendix C (A. 10a) attached hereto.

JURISDICTION

The Seventh Circuit Court of Appeals issued an Order affirming the judgment of the District Court on July 26, 2019.

This petition is timely filed pursuant to Supreme Court Rule 13.1 in that it is being filed within ninety (90) days of the Circuit Court's final order.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In March 1991, Mr. Corral married a lawful permanent resident of the United States. Thereafter, on February 10, 1994, he applied for an immigrant visa at the U.S. consulate in Ciudad Juarez, Mexico. His visa was approved on the same day and Mr. Corral entered the United States as a lawful permanent

resident. Mr. Corral applied for naturalization in 1999 and was naturalized as a United States citizen on June 15, 2000.

On August 8, 2000, Mr. Corral was indicted in the Circuit Court of Kane County, IL alleging seven (7) counts of aggravated criminal sexual abuse. Pursuant to a plea agreement, on November 2, 2000, he entered a plea of guilty to one count and was sentenced to forty-eight months probation and ordered to register as a sex offender. The count of conviction charged an act that occurred sometime between June 9, 1998 and February 26, 2000. Mr. Corral's conviction was known to the Government at least as early as 2005 because of his travels to Mexico.

On November 21, 2017, the Government filed the five (5) count Complaint in the instant cause. Jurisdiction was proper in the District Court pursuant to 28 U.S.C. § 1345. Defendant's Motion to Dismiss/Strike the Complaint sought dismissal of the Government's Complaint based on (1) *laches* and (2) Due Process and Equal Protection grounds that, in essence, raised selective prosecution claims. Defendant requested a hearing be held on the claims as raised in the Motion and, prior thereto, discovery authorized to secure evidence on those claims since relevant information would be in the exclusive control of the Government.

The Government filed a Motion for Judgment on the Pleadings as to Counts 1, 2 and 5 and a Motion to Stay Discovery pending resolution of the Motion for Judgment on the Pleadings.

The District Court granted the Motion to Stay Discovery. Thereafter, the District Court denied Mr. Corral's Motion to Dismiss/Strike the Complaint and granted the Government's Motion for Judgment on the

Pleadings with respect to Count 1, but denied the Motion as to Counts 2 and 5. On August 9, 2018, the remaining counts 2 thru 5 were dismissed as moot. Judgment was entered on August 15, 2018.

The Seventh Circuit Court of Appeals affirmed the judgment of the District Court on July 26, 2019. (A. 1a). Jurisdiction was proper in the Court of Appeals pursuant to 28 U.S.C. § 1291.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. The District Court erred in refusing Petitioner's request for discovery and a hearing on potentially dispositive Constitutional issues prior to granting the Government's Summary Judgment Motion.

The reasons for the Government's seventeen (17) year delay in filing denaturalization proceedings and the reasons for the Government targeting Mr. Corral as one of only a handful of individuals for denaturalization have never been answered. Constitutional claims were raised in the District Court that, had Mr. Corral been afforded discovery and a hearing, would have required dismissal of the Complaint. The Motion was brought pursuant to the equitable doctrine of *laches* and the Fifth Amendment. Had Mr. Corral prevailed on any of the grounds as raised, the proceedings should have been terminated.

Mr. Corral agreed with the Government that "[a]s a threshold matter, the [Appellate] Court should resolve in this Circuit whether laches is an available defense in cases brought under 8 U.S.C. §1451." (Gov't Brief on Appeal at page 20). The Seventh Circuit refused to address the issue.

The District Court found Mr. Corral's Equal Protection claims to be "conjectural" "on the present record." Of course, the evidence of any Equal Protection violation was totally and exclusively in the hands of the Government. Thus, Mr. Corral sought discovery in support of his claims.

This Court should grant *Certiorari* (1) to address and determine whether *laches* applies in denaturalization proceedings, and (2) to remedy the denial of Mr. Corral's Constitutional rights that resulted from the District Court's denial of discovery in support of the specific allegations that would have required the dismissal of the Complaint.

A. The District Court Erred in Denying Petitioner's Request For Discovery That Sought Relevant Information Regarding Potentially Dispositive Equitable and Constitutional Claims.

The District Court characterized the Motion to Dismiss/Strike as "not so much a motion to dismiss as a request for discovery and a hearing on certain issues that [Petitioner] contends may warrant dismissal of the action." [A. 15a-16a]. Without the benefit of any discovery, the District Court concluded it need not determine if *laches* is a valid defense to a denaturalization proceeding because Defendant could not prove prejudice with respect to counts 1 or 2. [A. 19a].

The District Court found Mr. Corral's Due Process/Equal Protection/selective prosecution claims "on the present record, conjectural" and denied discovery and a hearing. [A. 20a]. Realizing the "present record" was insufficient, Mr. Corral requested discovery and a hearing to obtain and present relevant

evidence that was in the exclusive possession and control of the Government.

Parties may obtain discovery regarding any matter relevant to the litigation whether it relates to the claim or defense of a party including information that would "help define and clarify the issues." *Oppenheimer Funds, Inc. v. Sanders*, 437 U.S. 340, 350-51, 98 S.Ct. 2380 (1978).

In the *habeas* context, where a party makes specific allegations that may, if the facts are developed, show that he is entitled to relief, it is the duty of the court to provide the necessary procedures for an adequate inquiry. *Bracey v. Gramley*, 520 U.S. 899, 905-10, 117 S.Ct. 1793 (1997). The purpose of *habeas corpus* is to safeguard a person's freedom from detention in violation of constitutional guarantees. *Blackledge v. Allison*, 431 U.S. 63, 72, 97 S.Ct. 1621 (1974). The Constitutional guarantees afforded Mr. Corral herein should entitle him to similar procedures for the enforcement of his basic constitutional rights.

1. *Laches*

Laches is principally a question of the inequity of permitting a claim to be enforced. *Laches* is based upon changes of conditions or relationships involved with the claim. In order to support a claim of *laches*, there must be a showing of both a lack of diligence by the party against whom the defense is asserted and prejudice to the defending party. *Lingenfelter v. Keystone Consolidated Industries, Inc.*, 691 F.2d 339, 340 (7th Cir. 1982). Courts have recognized two chief forms of prejudice in the *laches* context - evidentiary and expectations based. The latter can be demonstrated by a showing that the party claiming *laches* took actions or suffered consequences that it

would not have had the plaintiff brought suit properly. *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 955 (9th Cir. 2001).

Denaturalization proceedings are equitable in nature. *United States v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986), *citing*, *Federenko*, 449 U.S. 516. *Laches* is a defense developed by the courts of equity. Its principal application was, and remains, to claims of an equitable cast for which the Legislature has provided no fixed time limitation. *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 678, 134 S.Ct. 1962 (2014), *citing*, 1 D. Dobbs, Law of Remedies, §2.4(4), p. 104 (2d ed. 1993)("laches ... may have originated in equity because no statute of limitations applied ... suggest[ing] that laches should be limited to cases in which no statute of limitations applies.").

An emerging trend allows the defense of *laches* in suits brought by the government. *In re: Santos*, 589 B.R. 413, 423 (2018).

> For instance, in *N.L.R.B. v. P*I*E Nationwide*, 894 F.2d 887, 894 (7th Cir. 1990), Judge Richard Posner stated "government suits in equity are subject to the principles of equity," and "laches is generally, and we think correctly, assumed to be applicable to suits by government agencies as well as by private parties." *Id.* Judge Posner later identified three situations where the doctrine of laches might justifiably be applied against the government, in *United States v. Admin. Enter., Inc.*, 46 F.3d 670 (7th Cir. 1995): 1) when the instance of laches is particularly egregious; 2) where there is no applicable

> statute of limitations; or 3) when the government "as a holder of commercial paper" is enforcing a private right. *Id.* at 672-73. *See also Cayuga Indian Nation v. Pataki*, 413 F.3d 266, 278 (2nd Cir. 2005)(following the Seventh Circuit and finding all three circumstances applied to subject the United States to the doctrine of laches). *Santos*, *Id.*

"Equity does not wait upon precedent which exactly squares with the facts in controversy, but will assert itself in those situations where right and justice would be defeated but for its intervention." *Santos*, *Id.* at 424, quoting, *Times-Mirror Co. v. Super. Ct.*, 3 Cal. 2d 309, 44 P.2d 547, 557 (1935).

This Court has never directly addressed the question of whether *laches* applies in a denaturalization proceeding. *Costello v. United States*, 365 U.S. 265, 282, 81 S.Ct. 534 (1961). The Seventh Circuit has followed the approach of this Court in *Costello* in addressing the facts of a particular case instead of holding there is an absolute bar to assertion of the defense of *laches* in a denaturalzation proceeding. *See United States v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986). Judge Posner has made clear, though, that in cases when the instance of *laches* is particularly egregious and where there is no statute of limitations, as in denaturalization proceedings, the defense of *laches* is "assumed to be applicable."

This Court should grant *Certiorari* to address whether *laches* applies in civil denaturalization proceedings.

2. Due Process and Equal Protection

The Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups. *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040 (1976). Even an individual "class of one" can successfully bring an equal protection claim where a party alleges that he has been intentionally treated differently from others similarly situated and there is no rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 1074 (2000).

The District Court's denial of discovery deprived Mr. Corral of the ability to show a set of facts and circumstances that would have been sufficient to grant his requested relief. Material questions of fact existed regarding why the Government waited seventeen (17) years to file the Complaint, what motivated the Government's actions and whether the actions were based on or motivated by improper considerations such as a changed Executive policy. The Government was in complete control of this relevant information. Information held exclusively by the Government would have given insight into not only the Government's delay in bringing the prosecution, but information relevant to the decision to target and prosecute Mr. Corral and the motivations therefore that were relevant to his Constitutional claims.

Mr. Corral was substantially prejudiced in the presentation of his case and defenses by the District Court's denial of his request for discovery and a hearing on issues that should have been the basis for the Court to grant Mr. Corral's Motion to Dismiss/Strike. The District Court should have

authorized discovery to afford Mr. Corral the opportunity to present favorable evidence held in the exclusive control of the Government in support of his *laches* and constitutional claims that properly would have been the basis for dismissal of the Complaint.

Had the discovery request been granted, the District Court could not have found that Mr. Corral could not prove any set of circumstances that would have entitled him to relief. Mr. Corral made specific allegations that, if the facts were developed, would have shown he was entitled to relief.

CONCLUSION

The District Court erred in not addressing the potentially dispositive issues as raised in Mr. Corral's "Motion to Dismiss/Strike" prior to moving on to address the Government's Rule 12(c) Motion. The Government even tacitly recognized this by asking the Seventh Circuit to address the application of the *laches* defense to denaturalization proceedings. As the evidence of the Constitutional violations was in the exclusive control of the Government, Mr. Corral's request for discovery should have been granted.

For these reasons, Mr. Corral asks this Honorable Court grant the Writ of Certiorari, reverse the decision of the Seventh Circuit Court of Appeals and Order the District Court to authorize discovery and hold a hearing prior to addressing any Motions as filed by the Government.

Respectfully submitted,

/s/ Stephen E. Eberhardt

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Dated: October 4, 2019

APPENDIX

APPENDIX A

In the

United States Court of Appeals
For the Seventh Circuit

No. 18-2789

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ELEAZAR CORRAL VALENZUELA,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:17-cv-08423 — **Matthew F. Kennelly**, *Judge*.

ARGUED APRIL 15, 2019 —
DECIDED JULY 26, 2019

Before WOOD, *Chief Judge,* and BAUER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Seventeen years after Eleazar Corral Valenzuela (Corral) was convicted of aggravated criminal sexual abuse of a minor family member in Illinois state court, the United States filed a civil complaint to revoke his naturalized

citizenship and cancel his certificate of naturalization. 8 U.S.C. § 1451(a). The district court granted the government judgment on the pleadings, *see* Fed. R. Civ. P. 12(c), after dismissing Corral's affirmative defenses. We affirm.

I

Corral, a native of Mexico, was admitted to the United States as a lawful permanent resident in 1994. In January 1999, he applied for naturalization, and he became a United States citizen in June 2000.

Shortly after, a grand jury in Kane County, Illinois indicted Corral on seven counts of aggravated criminal sexual abuse. Less than five months after becoming a United States citizen, Corral pleaded guilty to one count of the indictment, which charged:

> On or about June 9, 1998 through February 26, 2000, Eleazar Corral committed the offense of Aggravated Criminal Sexual Abuse, Class 2 Felony in violation of Chapter 720, Section 5/12-16(b) of the Illinois Compiled Statutes, as amended, in that said defendant committed an act of sexual conduct with [redacted] in that the defendant knowingly touched the vagina of [redacted] for the purpose of the sexual gratification of the defendant.

Corral was convicted under Illinois's aggravated criminal sexual abuse statute, 720 ILCS 5/12-16(b), which at the time of his conviction stated:

> The accused commits aggravated criminal sexual abuse if he or she

> commits an act of sexual conduct with a victim who was under 18 years of age when the act was committed and the accused was a family member.

In 2017, the United States filed a five-count civil complaint seeking to revoke Corral's citizenship on the grounds that he obtained his citizenship illegally and by willful misrepresentation or concealment of a material fact. *See* 8 U.S.C. § 1451(a). We focus on the first count of the government's complaint, which alleged that Corral lacked good moral character because he committed a crime involving moral turpitude within the statutory period. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1). In other words, the government sought to revoke Corral's citizenship based on his failure to comply with a statutory prerequisite for naturalization, namely, having good moral character during the five years preceding his application for citizenship until the time he took the oath of allegiance to the United States. *See Fedorenko v. United States*, 449 U.S. 490, 506 (1981) ("Failure to comply with any of these conditions renders the certificate of citizenship 'illegally procured,' and naturalization that is unlawfully procured can be set aside.").

Corral filed an answer and a motion to dismiss/strike seeking discovery and an evidentiary hearing. Around the same time, the United States filed its motion for judgment on the pleadings. The district court denied Corral's motion and granted the government's motion with respect to the first count of the complaint. The district court dismissed the remaining counts as moot and granted Corral's motion to stay execution of the judgment. This appeal followed.

II

We first turn to the district court's grant of the government's motion for judgment on the pleadings, which we review *de novo*. *Kanter v. Barr*, 919 F.3d 437, 440-41 (7th Cir. 2019).

We have described a crime involving moral turpitude as "conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Sanchez v. Holder*, 757 F.3d 712, 715 (7th Cir. 2014) (quotations omitted). Corral concedes that his Illinois conviction for aggravated criminal sexual abuse of a minor is a crime of moral turpitude under our precedent, but he nonetheless makes a half-hearted request that we reconsider. His argument is waived—and doubly so.

Corral cites to *Quintero-Salazar v. Keisler*, 506 F.3d 688, 692-94 (9th Cir. 2007), and argues that there the Ninth Circuit "decided differently" than we have "based on similar facts." He failed, however, to cite *Quintero-Salazar* or make this argument to the district court. We therefore cannot consider it. *Wheeler v. Hronopoulos*, 891 F.3d 1072, 1073 (7th Cir. 2018). If that were not enough, the argument Corral now makes is woefully underdeveloped. He cites *Quintero-Salazar* without explaining or defending its rationale. What is more, for the argument to succeed, Corral would likely need to show that his crime, 720 ILCS 5/12-16(b), is *categorically* not one of moral turpitude. *See Garcia-Martinez v. Barr*, 921 F.3d 674, 681 (7th Cir. 2019) (explaining that the categorical approach applies, unless the underlying statute is divisible, in which case a modified categorical approach applies). That

is often a complicated question in any case, *id.* at 675, and it is one with which Corral does not even attempt to wrestle. For this reason, too, the argument is waived. *Riley v. City of Kokomo*, 909 F.3d 182, 190 (7th Cir. 2018).

III

Corral's other arguments concern his laches and selective prosecution affirmative defenses. He raised these defenses in his "Motion to Dismiss / Strike Complaint," which, as the district court recognized, was "not so much a motion to dismiss as a request for discovery and a hearing." The district court's denial of Corral's motion involved purely legal questions, so we review it *de novo*.

A

To establish his laches defense, Corral must show the government's lack of diligence and resulting prejudice. *Navarro v. Neal*, 716 F.3d 425, 439 (7th Cir. 2013). Assuming the government did not exercise diligence in bringing this revocation action, Corral argues that the government's 17-year delay caused evidentiary prejudice due to the government's failure to provide an affidavit of the immigration officer who conducted his naturalization interview and the subsequent unavailability of the immigration officer. He argues that had the immigration officer provided testimony, he would have clarified whether Corral made misrepresentations or concealed material facts during the naturalization process, thus supporting a violation of 8 U.S.C. § 1451(a).

Whether Corral made a willful misrepresentation or concealed a material fact is irrelevant because these factors do not relate to the ground for Corral's

denaturalization. Recall that Corral's citizenship was revoked based on his failure to comply with a statutory prerequisite for naturalization—having good moral character during the five years preceding his application for citizenship until the time he took the oath of allegiance to the United States. His citizenship was not revoked for willfully mispresenting or concealing a material fact. Therefore, Corral's "evidentiary prejudice" argument fails.[1]

Still, the government asks us to clarify that laches never applies in civil denaturalization actions. We are reluctant to adopt such a categorical rule in light of possible changes to criminalization standards and public mores. And we decline to do so here given that resolution of this case does not require it.

B

Corral further asserts a selective prosecution defense under equal protection standards, arguing that the government's decision to denaturalize him 17 years after his criminal conviction is suspicious based on perceived changes in executive policy. *See United States v. Armstrong*, 517 U.S. 456, 465 (1996); *Wayte v. United States*, 470 U.S. 598, 608-09 (1985). Assuming that any such defense applies in the context of civil denaturalization proceedings, by challenging the exercise of broad prosecutorial discretion, Corral encounters "a formidable obstacle." *United States v. Moore*, 543 F.3d 891, 899 (7th Cir. 2008). Corral cannot merely challenge the exercise of

[1] We need not address Corral's "expectational prejudice" argument raised for the first time on appeal. *See Duncan Place Owners Assoc. v. Danze, Inc.*, 927 F.3d 970, 973 (7th Cir. 2019) ("Arguments not raised in the district court are waived.").

prosecutorial discretion on the ground that it was irrational, but rather he must show that the decision to prosecute was deliberately based on invidious criteria such as race, religion, or other arbitrary classifications. *Armstrong*, 517 U.S. at 464; *Moore*, 543 F.3d at 900.

Corral argues that the government targeted only a handful of child sexual abusers for denaturalization, including himself, and that "[i]t would seem to defy simple logic that in seventeen (17) years, the Government had only become aware of these five (5) individuals who had been naturalized and later convicted of felony offenses who they then chose to target." Not only is Corral's argument based on a questionable premise, namely, that the United States selectively sought to denaturalize convicted child sexual abusers in only five instances in the last 17 years, but he fails to explain how the government's decision was deliberately based on invidious criteria. Indeed, all he has shown is that the government brought denaturalization actions against some individuals who were convicted of the sexual abuse of children. Otherwise, Corral's position that a change in executive policy might have had something to do with the timing of his denaturalization proceedings, alone, simply does not support a selective prosecution defense.

For these reasons, we AFFIRM the district court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17 C 8423

ELEAZAR CORRAL VALENZUELA,

Defendant.

JUDGMENT ORDER

MATTHEW F. KENNELLY, District Judge:

It is hereby ordered, adjudged, and decreed as follows, consistent with 8 U.S.C. § 1451(f):

In accordance with its order of July 29, 2018, the Court enters judgment on Count I of the complaint in favor of plaintiff United States of America and against defendant Eleazar Corral Valenzuela ("Corral"). The Court dismisses the remaining counts of the complaint as moot, without prejudice to refiling.

The Court revokes and sets aside the order admitting Corral to U.S. citizenship, effective as of the original date of the certificate, June 15, 2000. The Court cancels Corral's Certificate of Naturalization No. 24018015. Corral is forever restrained and enjoined from claiming any rights, privileges, benefits, or advantages under any document which evidences United States citizenship obtained as a result of his June 15, 2000 naturalization.

Under 8 U.S.C. § 1451(f), Corral is ordered to surrender, by August 31, 2018, his Certificate of Naturalization, No. 24018015, and any copies thereof in his possession, to counsel for the United States, Timothy M. Belsan. Corral is further ordered to surrender any and all United States passports, whether current or expired. Corral is further ordered to make good faith efforts to recover any copies of the foregoing documents that he knows are in the possession of others and surrender them to the Attorney General, or his representative, including Mr. Belsan.

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

Date: August 15, 2018

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case
	)	No. 17
ELEAZAR CORRAL VALENZUELA,	)	C 8423
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

The United States seeks to denaturalize Eleazar Corral Valenzuela (Corral), a naturalized U.S. citizen, under 8 U.S.C. § 1451(a) on the ground that he obtained U.S. citizenship illegally or by willful misrepresentation or concealment of a material fact. Corral has filed a "Motion to Dismiss / Strike Complaint" in which he requests discovery and a hearing on certain issues that he claims may warrant dismissal of the action, and the United States has moved under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings on three of the five claims in its complaint. For the reasons stated below, the Court denies Corral's motion and grants the government's motion for judgment on the pleadings in part.

Background

Corral, who was born in Mexico, was admitted to the United States as a lawful permanent resident on February 10, 1994. In January 1999, Corral applied for naturalization using a Form N-400 Application for Naturalization. The form is stamped January 14, 1999. *See* Compl., Ex. E at 3. Part 7, Question 15(a) of the Form N-400 asks "Have you ever . . . knowingly committed any crime for which you have not been arrested?" *Id.* at 3. On Corral's Form N-400, that question is answered in the negative. *Id.* The certification in Part 11 of the form states "I certify . . . under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct." *Id.* at 4. Corral signed this certification on December 30, 1998. *Id.* In May 2000, an Immigration and Naturalization Service (INS)[1] officer interviewed Corral under oath regarding his naturalization application. On May 10, 2000, the INS approved his naturalization application. Corral took the oath of allegiance and was naturalized as a United States citizen on June 15, 2000.

Two months later, in August 2000, a grand jury in Kane County, Illinois indicted Corral on seven counts of aggravated criminal sexual abuse in

[1] Congress transferred the functions of the INS to the Department of Homeland Security (DHS) on March 1, 2003. *Mendoza v. Sessions*, 891 F.3d 672, 674 n.1 (7th Cir. 2018). The Court refers to the INS throughout this opinion because that is the agency that was responsible for naturalization proceedings during the relevant time.

violation of chapter 720, section 5/12-16(b)[2] of the Illinois Compiled Statutes. *See* Compl., Ex. B (Aug. 9, 2000 Indictment); 720 ILCS 5/12-16(b) (1998). On November 2, 2000, Corral pled guilty to count 1 of the indictment, which charged the following:

> On or about June 9, 1998 through February 26, 2000, Eleazar Corral committed the offense of Aggravated Criminal Sexual Abuse, Class 2 Felony[,] in violation of Chapter 720, Section 5/12-16(b) of the Illinois Compiled Statutes, as amended, in that said defendant, [redacted] committed an act of sexual conduct with [redacted] in that the defendant knowingly touched the vagina of [redacted] for the purpose of the sexual gratification of the defendant.

Aug. 9, 2000 Indictment at 1; *see also* Compl., Ex. C (Nov. 2, 2000 Plea Hearing Tr.). The state court entered a judgment finding Corral guilty of aggravated criminal sexual abuse in violation of 720 ILCS 5/12-16(b), sentenced him to 48 months of sex offender probation, and ordered him to register as a sex offender. *See* Compl., Ex. D (Nov. 2, 2000 Judgment).

In November 2017, the United States filed the present denaturalization action against Corral. The government's complaint to revoke naturalization contains five counts:

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[2] Renumbered as 720 ILCS 5/11-1.60(b) and amended effective July 1, 2011. 2010 Ill. Legis. Serv. P.A. 96-1551, Art. 2, § 5.

1. Illegal procurement of naturalization: lack of good moral character (crime involving moral turpitude)

2. Illegal procurement of naturalization: lack of good moral character (unlawful act adversely reflecting on moral character)

3. Illegal procurement of naturalization: lack of good moral character (false testimony)

4. Illegal procurement of naturalization: lack of good moral character (unlawful act of providing false testimony)

5. Procurement of naturalization by concealment of a material fact or by willful misrepresentation

Compl. at 7-12. In January 2018, Corral filed a motion entitled "Defendant's Motion To Dismiss / Strike Complaint," in which he asks the Court to authorize discovery and hold a hearing on whether the complaint should be dismissed as barred by laches or as a violation of Corral's due process or equal protection rights. In February 2018, the United States moved for judgment on the pleadings on counts 1, 2, and 5 of the complaint, arguing that because Corral is estopped from denying the essential elements of the offense to which he pled guilty, there is no genuine dispute of material fact and it is entitled to judgment as a matter of law on those counts.

Discussion

Under 8 U.S.C. § 1427(a), an individual may not be naturalized as a citizen of the United States unless he or she (1) meets certain residence and physical presence requirements during the five-year period immediately preceding the date of filing the

naturalization application, (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." 8 U.S.C. § 1427(a). The applicant for naturalization "bears the burden of demonstrating that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance." 8 C.F.R. § 316.10(a)(1).

Under 8 U.S.C. § 1451(a), the United States may institute denaturalization proceedings "for the purpose of revoking and setting aside the order admitting [a] 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." 8 U.S.C. § 1451(a). A certificate of naturalization is "illegally procured" if "the congressionally imposed prerequisites to the acquisition of citizenship," including the good moral character requirement, are not met when naturalization is granted. *Fedorenko v. United States*, 449 U.S. 490, 506 (1981); *see also United States v. Kairys*, 782 F.2d 1374, 1376 n.1 (7th Cir. 1986) ("Naturalization is illegally procured if any statutory requirement is not met at the time naturalization is granted.").

The right of citizenship is a precious one. *Costello v. United States*, 365 U.S. 265, 269 (1961); *see also Schneiderman v. United States*, 320 U.S. 118, 122 (1943) (explaining that "[i]t would be difficult to exaggerate" the value and importance of

the right of citizenship). The Supreme Court has repeatedly recognized that "severe consequences may attend" the loss of citizenship and that those consequences are especially dire for those who have lived and worked in the United States as citizens for many years. *See Costello*, 365 U.S. at 269; *Fedorenko*, 449 U.S. at 505; *Chaunt v. United States*, 364 U.S. 350, 353 (1960); *Schneiderman*, 320 U.S. at 122; *see also Knauer v. United States*, 328 U.S. 654, 659 (1946) ("[D]enaturalization, like deportation, may result in the loss of all that makes life worth living.") (internal quotation marks and citation omitted).

Given the importance of the right of citizenship—and the potentially devastating toll that loss of that citizenship is likely to take on a naturalized citizen and his or her family—it is little wonder that the Supreme Court has held that "such a right once conferred should not be taken away without the clearest sort of justification and proof." *Schneiderman*, 320 U.S. at 122. Accordingly, the government carries a heavy burden of proof when attempting to divest a naturalized citizen of citizenship after it has been granted: denaturalization is warranted only if the evidence is "clear, unequivocal, and convincing," such that it does not "leave the issue in doubt." *Costello*, 365 U.S. at 269 (internal quotation marks and citations omitted); *see also United States v. Firishchak*, 468 F.3d 1015, 1023 (7th Cir. 2006); *Kairys*, 782 F.2d at 1378.

A. Corral's "motion to dismiss / strike complaint"

As previously indicated, Corral's "Motion to Dismiss / Strike Complaint" is not so much a motion

to dismiss as a request for discovery and a hearing on certain issues that he contends may warrant dismissal of the action. In support of this motion, Corral first questions whether the crime to which he pled guilty is necessarily a crime involving moral turpitude. Corral also argues that the government has failed to adequately support its contentions that he lied or made a material misrepresentation to the INS agent who conducted his naturalization interview and that the agent would have been precluded from approving his application had Corral disclosed his crime during the application process.[3]

As previously explained, there is no doubt that the government bears a heavy burden of proof in a denaturalization proceeding. But the fact that the government has not proven all of the elements of each count in the complaint at this stage does not mean that additional discovery and a hearing are necessarily warranted. In its complaint, the government has presented five separate (albeit overlapping) grounds for denaturalization. Any of the five counts alleged—if proven by clear, unequivocal, and convincing evidence—would

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[3] Corral further argues that such issues are properly resolved by a jury. As the government notes, however, the case Corral cites in support of this argument, *Maslenjak v. United States*, 137 S. Ct. 1918 (2017), deals not with 8 U.S.C. § 1451, which is a civil statute, but with its criminal counterpart, 18 U.S.C. § 1425(a). *Id.* at 1928 ("[T]he proper causal inquiry under § 1425(a) is framed in objective terms: To decide whether a defendant acquired citizenship by means of a lie, a jury must evaluate how knowledge of the real facts would have affected a reasonable government official properly applying naturalization law."). The Seventh Circuit has long held that there is no right to a jury trial in civil denaturalization proceedings. *See, e.g.*, *Firishchak*, 468 F.3d at 1026; *Kairys*, 782 F.2d at 1384.

provide an independent basis for revoking Corral's citizenship.

As an initial matter, the issue of whether a crime is properly classified as a crime involving moral turpitude is a question of law. *See Lagunas-Salgado v. Holder*, 584 F.3d 707, 710 (7th Cir. 2009). Secondly, to establish that denaturalization is warranted on counts 1 or 2 of the complaint, the government need not prove either (1) that Corral lied or made a material misrepresentation to the INS agent who conducted his naturalization interview or (2) that the agent would have been precluded from approving his application had Corral disclosed his crime during the application process.

Specifically, the question of whether Corral lied or otherwise made a material misrepresentation to the INS agent who conducted his naturalization interview has no bearing on whether Corral committed a crime involving moral turpitude (count 1) or an unlawful act adversely reflecting on moral character (count 2) that would prevent him from establishing that he possessed the requisite good moral character during the relevant statutory period. And if the crime to which Corral pled guilty in 2000 is indeed a crime involving moral turpitude, given the timing of the crime, there is no question that he would have been precluded from establishing that he possessed the requisite good moral character through June 15, 2000, the date he became a citizen. *See* 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I) ("[N]o 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," was convicted of or admits having committed "a crime involving moral turpitude (other than a purely political offense)" unless one of the

exceptions enumerated in sub-section 1182(a)(2)(A)(ii) apply); *see also* 8 C.F.R. § 316.10(b)(2)(i) ("An applicant shall be found to lack good moral character if during the statutory period the applicant: (i) Committed one or more crimes involving moral turpitude, other than a purely political offense, for which the applicant was convicted, except as specified in section 212(a)(2)[A](ii)(II) of the Act. . . ."). Because the Court does not need to decide the issues raised by Corral to determine whether the government is entitled to judgment as a matter of law on certain counts of the complaint that provide an independent basis for denaturalization, the Court denies Corral's request for additional discovery and a hearing on those issues.[4]

Corral also argues that the Court should allow discovery and hold a hearing on whether the present action is barred by laches, in light of the fact that the government did not initiate denaturalization proceedings until seventeen years after Corral's conviction, pursuant to a guilty plea, of aggravated criminal sexual abuse. In order for the defense of laches to apply, there must be proof of both (1) lack of diligence by the party against whom the defense is asserted and (2) prejudice to the party asserting the defense. *Costello*, 365 U.S. at 282; *see also Navarro v. Neal*, 716 F.3d 425, 429 (7th Cir. 2013). Corral contends that the government should have to explain why it took seventeen years to bring this suit and

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[4] As discussed below, the judgment granted by way of this decision is not final because it does not dispose of all of the government's claims. The remaining claims will have to be disposed of in some way in order to permit entry of a final judgment. If the government pursues the remaining claims, Corral may renew his request for discovery.

that he will be prejudiced if the INS agent who conducted his naturalization interview in 2000 is no longer available to testify as a result of the delay. The government primarily argues in response that the defense of laches does not apply against the United States in a civil denaturalization action. Alternatively, the government contends that a laches defense does not apply in this particular case because Corral cannot show prejudice.

The Court need not decide whether laches is a valid defense to a denaturalization action. Even if it is, and even if the seventeen-year lapse between Corral's conviction and the initiation of the present suit reflects a lack of diligence, Corral cannot establish that he has been prejudiced by this delay with respect to counts 1 or 2 of the complaint. Even if the INS agent who conducted Corral's naturalization interview is, as Corral suggests, unavailable to testify, as previously explained, counts 1 and 2 of the complaint do not depend on the agent's testimony or what happened during the naturalization interview, and Corral has suggested no other source of prejudice. *See Costello*, 365 U.S. at 282-83. For that reason, the Court concludes that additional discovery and a hearing on Corral's claimed defense of laches is unwarranted.

Lastly, Corral contends that the government's attempt to revoke his citizenship raises due process and equal protection concerns. Corral suggests that the government's decision to target him for denaturalization after seventeen years is constitutionally suspicious in light of the change in administration earlier in the year and the likelihood that the government has not initiated proceedings against other naturalized citizens who are known child sex abusers and felons. These allegations are,

on the present record, conjectural, and as such they are insufficient to warrant discovery or a hearing. Corral's contention that to deny him a hearing on this issue violates his due process rights is likewise without merit.

The Court therefore denies Corral's "Motion to Dismiss / Strike Complaint."

B. Government's motion for judgment on the pleadings

Under Federal Rule of Civil Procedure 12(c), a party may move for judgment on the pleadings after the pleadings are closed. Fed. R. Civ. P. 12(c). On a motion for judgment on the pleadings, the Court considers the complaint, the answer, and any written instruments attached as exhibits,[5] and it views the facts in the light most favorable to the non-moving party. *See N. Indiana Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998); *Alexander v. City of Chicago*, 994 F.2d 333, 336 (7th Cir. 1993). Judgment on the pleadings is appropriate only if there is no disputed issue of material fact and the moving party is clearly entitled to judgment as a matter of law. *Unite Here Local 1 v. Hyatt Corp.*, 862 F.3d 588, 595 (7th Cir. 2017).

As previously noted, the United States has moved for judgment on the pleadings with respect to counts 1, 2, and 5 of the complaint.

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[5] To the extent that Corral objects to the Court's reference to the unredacted versions of the exhibits attached to the complaint, the Court notes that it may take into consideration documents incorporated by reference to the pleadings and may take judicial notice of matters of public record. *See, e.g.*, *Milwaukee Police Ass'n v. Flynn*, 863 F.3d 636, 640 (7th Cir. 2017).

1. Count 1 (illegal procurement of naturalization: lack of good moral character—crime involving moral turpitude)

The United States first contends that it is entitled to judgment on the pleadings on count 1. The government argues that there is no genuine dispute that Corral illegally procured his naturalization, because he committed a crime involving moral turpitude within the statutory period during which he was required to establish good moral character.

As previously noted, in November 2000—less than five months after becoming a citizen—Corral pled guilty to one count of aggravated criminal sexual abuse in violation of 720 ILCS 5/12-16(b), and the state court entered judgment on the same. *See* Aug. 9, 2000 Indictment; Nov. 2, 2000 Plea Hearing Tr.; Nov. 2, 2000 Judgment. At that time, section 5/12-16(b) read as follows: "The accused commits aggravated criminal sexual abuse if he or she commits an act of sexual conduct with a victim who was under 18 years of age when the act was committed and the accused was a family member." 720 ILCS 5/12-16(b) (1998). The unredacted version of the indictment leaves no doubt that the victim was both a minor and one of Corral's family members. The government contends that, by virtue of his guilty plea and subsequent conviction, Corral is collaterally estopped from denying that he sexually abused a minor child who was also a family member.

There is no question that federal courts are obligated to give state court judgments the "same effect as they would have in the courts of the state

rendering them." *Brown v. Green*, 738 F.2d 202, 205 (7th Cir. 1984) (citing 28 U.S.C. § 1738). The Court is not persuaded, however, that it is appropriate to invoke the doctrine of collateral estoppel in this context. In *American Family Mutual Insurance Co. v. Savickas*, 193 Ill. 2d 378, 739 N.E.2d 445 (2000), the Illinois Supreme Court[6] explained that "estoppel effect may be accorded to a prior criminal conviction in an appropriate case." *Id.* at 387, 739 N.E.2d at 451. Three threshold requirements must be met before the doctrine of collateral estoppel may be applied: (1) the issue decided in the prior adjudication must be identical to the issue in the present suit; (2) there must have been a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted must have been a party (or in privity with a party) to the prior adjudication. *Id.* Additionally, the party against whom estoppel is asserted "must actually have litigated the issue in the first suit and a decision on the issue must have been necessary to the judgment in the first litigation." *Id.* Even when the threshold requirements for collateral estoppel are satisfied, "the doctrine should not be applied unless it is clear that no unfairness will result to the party sought to be estopped." *Id.* at 388, 739 N.E.2d at 451.

The problem here is that the issue in question—whether Corral sexually abused a minor child who was also a family member between June 1998 and February 2000— was not "actually litigated" in Corral's criminal case. Rather, Corral pled guilty to the offense, and the state court entered

[6] "Federal courts must apply a state's preclusion rules to a state court's decision unless the federal statute being sued under explicitly provides otherwise." *Brown*, 738 F.2d at 205-06.

a judgment accordingly. Thus the doctrine of collateral estoppel is not an appropriate fit in this case.

That, however, is not the end of the matter. Under Illinois law, "[a] judgment rendered by a court having jurisdiction of the parties and the subject matter" is "binding upon . . . all parties and privies to it, until it is reversed in a regular proceeding for that purpose." *Malone v. Cosentino*, 99 Ill. 2d 29, 32, 457 N.E.2d 395, 397 (1983) (internal quotation marks omitted). Such a judgment, "unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment, in respect of its validity, verity, or binding effect . . . in any collateral action or proceeding." *Id.* (internal quotation marks omitted); *see also Work Zone Safety, Inc. v. Crest Hill Land Dev., LLC*, 2015 IL App (1st) 140088, ¶ 13, 29 N.E.3d 520, 526 ("'Once a court with proper jurisdiction has entered a final judgment, that judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute'—namely, habeas corpus, relief from judgment under section 2-1401, or a postconviction hearing.") (quoting *Malone*, 99 Ill. 2d at 32-33, 457 N.E.2d at 397). The state court entered a final judgment finding Corral guilty, pursuant to his plea, of aggravated criminal sexual abuse in violation of 720 ILCS 5/12-16(b). *See* Nov. 2, 2000 Judgment; 720 ILCS 5/12-16(b) (1998). That judgment is binding on Corral, and the government is entitled to rely on it in this case. Corral may not collaterally attack the judgment in the present proceeding (nor has he sought to attack it in state court via one of the mechanisms established under state law). *See, e.g.*, *Village of Vernon Hills v. Heelan*, 2014 IL App (2d) 130823, ¶ 29, 14 N.E.3d

1222, 1230; *see also United States v. Ep*, No. 02 CV 780, 2003 WL 22118926, at *4 (N.D. Ill. Sept. 11, 2003) (noting that the court is "not in a position to entertain" the defendant's collateral attack on the underlying judgment of criminal conviction in denaturalization proceedings based in part on that conviction).

Corral contends that "the purported State court 'conviction' was void *ab initio*" because count 1 of the indictment did not state either that the alleged victim was under 18 years of age or that Corral was a family member, both of which are elements of the offense charged. Def.'s Resp. to Pl.'s Mot. for J. on the Pleadings at 2. This is incorrect. Although it is not possible to discern from the redacted version of the indictment filed with the complaint that the victim was a minor or a family member of Corral, the unredacted version of count 1 of the indictment states unequivocally that the victim was both a minor and a family member.[7] The Court notes that count 1 of the indictment is less than clear in another way: it states that Corral committed this offense "on or about June 9, 1998 through February 26, 2000." Aug. 9, 2000 Indictment at 1. Corral could not have committed the discrete act of aggravated criminal sexual abuse described in count 1 "on or about June 9, 1998 *through* February 26, 2000." *Id.* (emphasis added). Nonetheless, "[t]he date of the offense is not an essential factor in child sex offense cases." *People v. Guerrero*, 356 Ill. App. 3d 22, 27, 826 N.E.2d 485, 489 (2005) ("In cases involving the sexual abuse of a child, flexibility is permitted regarding the date requirement necessary

[7] Out of respect for the victim's privacy, the Court will not specify the familial relationship in this opinion.

under the Code."). Accordingly, Corral's conviction is not void *ab initio* as Corral suggests. Nor is the lack of specificity regarding the date of the crime material to the questions to be decided in the present case—the entire period from June 9, 1998 through February 26, 2000 falls within the statutory period during which Corral was required to prove good moral character, because although Corral filed his naturalization application in January 1999, he did not take the oath of citizenship until June 2000. *See* 8 U.S.C. § 1427(a); 8 C.F.R. § 316.10(a)(1).

The November 2000 judgment conclusively establishes that Corral committed the crime of aggravated criminal sexual abuse of a minor child who was also a family member between June 1998 and February 2000.

The government contends that Corral illegally procured his June 2000 naturalization because the crime of which he was convicted is a crime involving moral turpitude and he committed it during the statutory period during which he was required to establish good moral character. An individual shall be found to lack good moral character if, among other things, "during the period for which good moral character is required to be established," he or she was convicted of or committed "a crime involving moral turpitude (other than a purely political offense). . . ." 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I); *see also* 8 C.F.R. § 316.10(b)(2)(i). The term "crime involving moral turpitude" is not defined by statute. *Marin-Rodriguez v. Holder*, 710 F.3d 734, 737 (7th Cir. 2013). The Board of Immigration Appeals has described a crime of moral turpitude as "including 'conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of

morality and the duties owed between persons or to society in general.'" *Lagunas-Salgado*, 584 F.3d at 710 (quoting *In re Solon*, 24 I. & N. Dec. 239, 240 (BIA 2007)). In determining whether a particular crime involves moral turpitude, the Seventh Circuit asks "whether the act is ethically wrong without any need for legal prohibition (acts wrong in themselves, or *malum in se*) or only ethically neutral and forbidden only by positive enactment (acts wrong because they are so decreed, or *malum prohibitum*)." *Id.* at 710-11 (internal quotation marks and citation omitted).

As previously noted, the relevant subsection of the criminal statute under which Corral was convicted defined aggravated criminal sexual abuse as "an act of sexual conduct with a victim who was under 18 years of age when the act was committed and the accused was a family member." 720 ILCS 5/12-16(b) (1998). At the time, the statute defined "sexual conduct" as follows:

> any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.

720 ILCS 5/12-12(e) (2000). The sexual abuse of a minor child—one who is a family member, no less—is undoubtedly depraved and contrary to the accepted rules of morality. *See, e.g.*, *Ashcroft v. Free*

Speech Coal., 535 U.S. 234, 244 (2002) ("The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people."); *United States v. Dave*, No. 13 C 8867, 2015 WL 5590696, at *2 (N.D. Ill. Sept. 21, 2015) ("The inherent impropriety of sexual contact between an adult and a child, which animates statutory rape laws, has led numerous courts to conclude that even strict liability sex offenses involving minors are morally turpitudinous."); *United States v. Gayle*, 996 F. Supp. 2d 42, 51 (D. Conn. 2014) ("Sexual abuse against a minor constitutes a crime of moral turpitude because of its inherently vile and depraved nature."); *Ep*, 2003 WL 22118926, at *5 ("[C]rimes involving sexual abuse, especially those involving children, have generally been recognized as crimes involving moral turpitude."); *see also Matter of Silva-Trevino*, 26 I. & N. Dec. 826, 834 (BIA 2016) (a crime involving intentional sexual conduct by an adult with a child is one that involves moral turpitude as long as the perpetrator knew or should have known the victim was a minor). It is therefore plain to this Court that the crime of which Corral was convicted is one of moral turpitude.

Because Corral committed this crime between June 1998 and February 2000, there is likewise no question that he was precluded from establishing good moral character for the relevant statutory period, which began in January 1994 (five years before the filing date of Corral's application for naturalization) and did not end until he took the oath of allegiance to the United States in June 2000. *See* 8 U.S.C. § 1427(a); 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I); 8 C.F.R. §§ 316.10(a)(1), (b)(2)(i). Accordingly, Corral was not eligible to become a naturalized citizen. The Court concludes that there

is no genuine factual dispute and that Corral's June 2000 naturalization was illegally procured based on his inability to establish good moral character during the requisite period due to having committed a crime involving moral turpitude. The government has proven by clear, unequivocal, and convincing evidence that it is entitled to judgment as a matter of law on this count. The Court therefore grants the United States' motion for judgment on the pleadings with respect to count 1 of the complaint.

2. Count 2 (illegal procurement of naturalization: lack of good moral character—unlawful acts adversely reflecting on moral character)

The government has also moved for judgment on the pleadings on count 2. It argues that even if Corral's crime had not been one involving moral turpitude, he nonetheless would have been unable to establish good moral character during the statutory period, because his aggravated criminal sexual abuse conviction is an unlawful act that adversely reflects upon his moral character.

An individual who commits "unlawful acts that adversely reflect upon [his or her] moral character" during the statutory period shall also be found to lack good moral character unless he or she establishes "extenuating circumstances." 8 C.F.R. § 316.10(b)(3)(iii); *see also United States v. Suarez*, 664 F.3d 655, 660-61 (7th Cir. 2011) (according *Chevron* deference to 8 C.F.R. § 316.10(b)).

For the reasons explained above, the November 2000 judgment conclusively establishes that Corral committed an unlawful act of aggravated criminal sexual abuse between June 1998 and February 2000. There is no question that Corral's

crime adversely reflects upon his moral character, but the pleadings do not establish by clear, unequivocal, and convincing evidence that there were no extenuating circumstances that mitigate the severity of that crime. *See Suarez*, 664 F.3d at 662 ("Extenuating circumstances are those which render a crime less reprehensible than it otherwise would be, or 'tend to palliate or lessen its guilt.'") (quoting Black's Law Dictionary, Sixth Edition (1990)). The government has alleged that no such extenuating circumstances exist. *See* Compl. ¶ 51 ("Corral has not established, and cannot establish, extenuating circumstances with regard to the crime he committed, and he therefore cannot avoid the regulatory bar on establishing good moral character found in 8 C.F.R. § 316.10(b)(3)(iii)."). But Corral denied this in his answer, *see* Def.'s Answer to Compl. ¶ 51, and neither his guilty plea nor the state court judgment establish the absence of extenuating circumstances, because that issue was not before the state court at the time it accepted Corral's plea.

Because the pleadings do not clearly, unequivocally, and convincingly establish the absence of extenuating circumstances, the government has not proven that it is clearly entitled to judgment as a matter of law that Corral would have been ineligible for naturalization due to unlawful acts adversely reflecting on his moral character. Accordingly, the government is not entitled to judgment on the pleadings with respect to count 2 of the complaint.

3. Count 5 (procurement of naturalization by concealment of a material fact or by willful misrepresentation)

Lastly, the government has moved for judgment on the pleadings on count 5. The government contends that the pleadings clearly and unequivocally demonstrate that Corral willfully misrepresented or concealed the material fact of his crime and that he procured citizenship as a result of the misrepresentation.

Citizenship orders and certificates of naturalization are "procured by concealment of a material fact or by willful misrepresentation" if four independent requirements are met: (1) the naturalized citizen misrepresented or concealed some fact; (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. *Kungys v. United States*, 485 U.S. 759, 767 (1988). As the Seventh Circuit has since explained, this means that the government must show that "it is 'fair to infer that the citizen was actually ineligible'" for naturalization.[8] *United States v. Latchin*, 554 F.3d 709, 714 (7th Cir. 2009) (quoting *Kungys*, 485 U.S. at 784 (Brennan, J., concurring)); *United States v. Romero-Ramirez*, No. 14-C-0522, 2015 WL 4492352, at *4 (E.D. Wis. July 23, 2015).

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[8] Like *Maslenjak*, *Latchin* dealt with section 1451(a)'s criminal counterpart, 18 U.S.C. § 1425(a). *Latchin*, 554 F.3d at 712. The Seventh Circuit explained, however, that the distinction between the two statutes was trivial on this point, because "both require a material misrepresentation and procurement of citizenship." *Id.* at 713 n.3.

Corral has denied that the INS agent who conducted his May 2000 naturalization interview asked him, in accordance with Question 15(a) in Part 7 of the Form N-400, if he had ever knowingly committed any crime for which he had not been arrested. *See* Def.'s Answer to Compl. ¶ 19. Corral further contends that the fact that the INS agent made a number of red marks through that question on the Form N-400 raises a material issue of fact regarding whether he actually asked Corral the question during the interview. *See* Compl., Ex. E at 3. Corral argues that the government has not met its burden to show that the INS agent asked the relevant question because the government's affidavit of good cause for this denaturalization action was prepared by someone other than the agent who interviewed Corral. *See* Compl., Ex. A at 9. The government responds that even if Corral did not make a misrepresentation or willfully conceal his crime during the naturalization interview, the pleadings nonetheless constitute clear, unequivocal, and convincing evidence that Corral procured his naturalization by concealment or willful misrepresentation of a material fact because he did not disclose his crime when he first filed his signed naturalization application in January 1999.

As this Court has already noted, however, the aggravated criminal sexual abuse charge to which Corral pled guilty and of which he was subsequently convicted could have taken place any time between June 9, 1998 and February 26, 2000. *See* Aug. 9, 2000 Indictment at 1. Thus, Corral could have committed the crime *after* he signed and filed his naturalization application on January 14, 1999, in which case, his negative answer to Question 15(a) on the Form N-400 would not necessarily have been a

willful concealment or misrepresentation. The Court therefore finds that there is a genuine factual dispute regarding whether Corral procured his citizenship by willful misrepresentation or concealment of a material fact. For this reason, the Court denies the government's motion for judgment on the pleadings on count 5 of the complaint.

Conclusion

For the foregoing reasons, the Court denies Corral's motion to dismiss / strike the complaint (and his request for discovery and a hearing) [dkt. no. 8]. The Court grants the government's motion for judgment on the pleadings with respect to count 1 of the complaint, but denies the motion with respect to counts 2 and 5 [dkt. no. 10]. The case is set for a status hearing on August 8, 2018 at 9:30 a.m. The government should be prepared to discuss at that time how it proposes to deal with the remaining claims in its complaint.

/s/ Matthew F. Kennelly

MATTHEW F. KENNELLY
United States District Judge

Date: July 29, 2018

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ELEAZAR CORRAL VALENZUELA,
Defendant.

Docket No. 17 C 8423

Chicago, Illinois
February 22, 2018
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff:

UNITED STATES DEPARTMENT OF JUSTICE
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(The following proceedings were held in open court:)

THE CLERK: Case No. 17 C 8423, USA *v.* Corral Valenzuela.

THE COURT: Good morning.

MR. EBERHARDT: Good morning, Judge.

MR. PLATT: Good morning, your Honor.

THE COURT: Are you waiting for somebody else to come up?

MR. EBERHARDT: I am waiting for my client, who is here.

THE COURT: Well, they don't necessarily need to step up. Give me just a second here to grab my -- Why has this disappeared from my docket? Bear with me, sorry. There it is.

Give me your names.

MR. PLATT: I'm Steven Platt from the Department

of Justice for the plaintiff, your Honor.

MR. EBERHARDT: Steve Eberhardt on behalf of the defendant, your Honor.

THE COURT: Okay. So there's already a motion to dismiss that was filed by the defendant that's -- have you responded to it yet?

MR. PLATT: Yes, your Honor.

THE COURT: And the reply is due in like a week and a half.

MR. EBERHARDT: The reply is due and I'd like to address that when we talk about our scheduling.

THE COURT: Okay. And so then the motion I've got now or at least one of the two motions is a motion by the plaintiff, in other words, the government, for judgment on the pleadings, and then you also asked me to stay discovery.

So is anybody trying to do any discovery? Is there something actually on the table that needs to be stayed?

MR. EBERHARDT: We've done initial disclosures.

THE COURT: You've done 26(a)s?

MR. EBERHARDT: Yes.

THE COURT: Let me ask you your view on what I should do with all of this and how it should all be set up, and then I'll ask Mr. Platt's view.

MR. EBERHARDT: My suggestion, Judge, is because I only have a few more days left to reply on the motion to dismiss, where I'm at on my research is the motion for the stay on discovery is going to be intertwined and mixed in with the issues on the

motion to dismiss. So what I would like to do at least is have the same day set for my response to the two government motions and my reply on the motion to dismiss.

Basically, I wouldn't want to get into a position where I reply to the motion to dismiss, and then two or three weeks later, I come up with something that I want to say in opposition to our motion to stay discovery because I think we need discovery on the motion to dismiss.

THE COURT: Time out. You'll need discovery on the motion to dismiss. You filed the motion to dismiss.

MR. EBERHARDT: Right.

THE COURT: If you need discovery on the motion to dismiss, why would you have filed it? You must not be - - you must not have said what you meant.

MR. EBERHARDT: Well, based on the grounds.

THE COURT: You're asking me to dismiss the complaint.

MR. EBERHARDT: Yes.

THE COURT: Okay. Which means you want me to dismiss the complaint without doing any discovery, so why would you -- you're saying that if I deny the motion, you're going to need discovery; that's what you're saying, right?

MR. EBERHARDT: Well, this is not a 12(b)(6) motion to dismiss just on the pleadings. This raises the issue of latches and equal protection. All I can say is it's unusual, and I don't think your Honor would be able to rule - - once the burden shifts on latches --

THE COURT: Finish the sentence.

MR. EBERHARDT: -- once the burden shifts on latches, then it's up to the plaintiff to come in here and basically justify a 17-year delay, and if the Court wants to rule on that without them doing that, I guess we don't need discovery.

THE COURT: That's what you kind of asked me to do by filing a motion to dismiss. That's what a motion to dismiss means, dismiss the complaint because they waited too long or whatever the ground is.

MR. EBERHARDT: True.

THE COURT: I must be missing something fairly basic here. Okay. I heard your view.

What do you think I should do?

MR. PLATT: Your Honor, for the reasons that we expressed in our opposition to the motion to dismiss --

THE COURT: Which I haven't read because it's not fully briefed yet.

MR. PLATT: Which is fair.

THE COURT: Just tell me.

MR. PLATT: Sure. We don't think that your Honor should grant judgment to the defendant on the basis of latches, we don't believe that the defendant has carried its burden of showing that the government was not diligent in bringing this action.

THE COURT: So you are not arguing that it's not a viable legal defense; you are saying it's not supported in this case.

MR. PLATT: That's correct. There's a couple other issues in the motion to dismiss that we think, you know, for the reasons that your Honor -- you know, I think what's tripping up your Honor is what we seize on in our opposition brief and we talk about that. In essence, the latches defense we don't think is viable, but we don't need discovery on that.

That's a purely legal issue that wouldn't require any sort of discovery.

THE COURT: What I got here or the way I see this is I have one side moving to dismiss, which asks me to decide the case based on the pleadings that have been filed, and I got the other side moving for judgment on the pleadings, which asks me to do the same thing. So I'm going to stay discovery until I've ruled on both of those. And if somebody needs -- if what I conclude is that this can't be decided without discovery, that's when we are going to do discovery. The motion to stay discovery is granted.

So it sounded like to me, Mr. Eberhardt, that you wanted to file your response to their motion and your reply on your motion at the same time. Am I getting that right?

MR. EBERHARDT: Yes.

THE COURT: When do you want to do that by?

MR. EBERHARDT: Can I have 28 days, Judge?

THE COURT: The date for the defendant's response or reply on the motion to dismiss is extended to the 22nd of March. That's also the due date for the defendant's response on the motion for judgment on the pleadings, and the reply on that is due two weeks after that which would be the 5th of April.

I am going to have you come back on the 12th of April at 9:30. I am not setting that as a ruling date, but once I get all this stuff, I want to just kind of eyeball it, and it's conceivable I may have some thoughts about it at that point, so that will just be a status date. Don't expect a ruling on it. Okay?

Great. Thanks a lot.

MR. EBERHARDT: Very good, Judge. Thanks a lot.

(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

Carolyn R. Cox Date
Official Court Reporter
Northern District of Illinois

/s/ Carolyn R. Cox, CSR, RPR, CFR, FCRR