

APPENDIX "A"

FILED: October 18, 2019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-6829
(1:16-cr-00130-LMB-1)
(1:18-cv-01408-LMB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

IJAZ KHAN

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-6829

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IJAZ KHAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:16-cr-00130-LMB-1; 1:18-cv-01408-LMB)

Submitted: October 15, 2019

Decided: October 18, 2019

Before GREGORY, Chief Judge, and THACKER and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ijaz Khan, Appellant Pro Se. Lauren Roscoe Snook, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ijaz Khan appeals the district court's order construing his Fed. R. Civ. P. 60(b) motion for relief from judgment as an unauthorized successive 28 U.S.C. § 2255 (2012) motion and dismissing it for lack of jurisdiction. Our review of the record confirms that the district court properly construed Khan's Rule 60(b) motion as a successive § 2255 motion over which it lacked jurisdiction because Khan failed to obtain pre-filing authorization from this court. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h) (2012); *United States v. McRae*, 793 F.3d 392, 397-400 (4th Cir. 2015). Accordingly, we affirm the district court's order.*

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Khan's notice of appeal and informal brief as an application to file a second or successive § 2255 motion. Upon review, we find that Khan's claims do not meet the relevant standard. *See* 28 U.S.C. § 2255(h). We therefore deny authorization to file a successive § 2255 motion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* We deny as unnecessary a certificate of appealability. *McRae*, 793 F.3d at 400.

Appendix A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT INFORMAL BRIEF FOR HABEAS AND SECTION 2255 CASES

No. 19-6829, US v. Ijaz Khan

1:16-cr-00130-LMB-1, 1:18-cv-01408-LMB

1. Declaration of Inmate Filing

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

Declaration of Inmate Filing

Date NOTICE OF APPEAL deposited in institution's mail system: 06-25-2019

I am an inmate confined in an institution and deposited my notice of appeal in the institution's internal mail system. First-class postage was prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Signature: [Signature] Date: 06-25-2019

[Note to inmate filers: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).]

2. Jurisdiction

Name of court from which you are appealing:

U.S. District Court for the Eastern District of Virginia
Date(s) of order or orders you are appealing:

3. Certificate of Appealability

Did the district court grant a certificate of appealability? Yes No

If Yes, do you want the Court of Appeals to review additional issues that were not certified for review by the district court? Yes No

If Yes, you must list below the issues you wish to add to the certificate of appealability issued by the district court. If you do not list additional issues, the Court will limit its review to those issues on which the district court granted the certificate.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Ijaz Khan
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

No. 1:16-cr-00130-LMB
1:18-cv-01408
19-6829

OPENING BRIEF FOR C.O.A.

COMES NOW, Ijaz Khan, pro se, and files the above styled motion.

BACKGROUND

Petitioner filed a "Motion for Relief Pursuant to Fed. R. Civ. P 60(b)(6) and Rule 52(a)(5)" on 05-17-2019, with the District Court for the Eastern District of Virginia. The motion was denied. A Notice of Appeal followed. This honorable court responded with instructions for an opening brief to be submitted by 07-08-2019.

STATEMENT OF THE CASE

The aforementioned motion stems from the denial to Petitioner's motion filed pursuant to 28 U.S.C. §2255 on November 19, 2018.

In the District Court's opinion and order, the court makes the conclusion or reference as to,

"evidence sufficiently established that Khan was in fact married to Shabnam at the time he applied for naturalization".

(See Attachment "A")

Also, the District Court stated that "a §2255 motion cannot be used to 'relitigate questions which were raised and considered on direct appeal'".

Petitioner, a pro se litigant, untrained in the art and science of the law, mischaracterized his §2255 filing and as such, the motion was denied on procedural grounds.

Accordingly, Petitioner brings the following question to this honorable court in effort to clarify his earlier filings and prays that his Motion pursuant to Rule 60(b) (6) is granted.

WHETHER A CONSTRUCTIVE AMENDMENT OCCURRED
AT TRIAL, WHEN THE GOVERNMENT WAS ALLOWED
TO RAISE ISSUES REGARDING MULTIPLE MARRIAGE

The Fourth Circuit has ruled on issues regarding constructive amendment claims as follows:

"A constructive amendment occurs where the indictment is altered to change the elements of the offense charged, such that the defendant is actually convicted of a crime other than that charged in the indictment. When the government, through its presentation of evidence or its argument, or the district court through its instructions to the jury,

or both, broadens the bases for conviction beyond those charged in the indictment, a constructive amendment--sometimes referred to as a fatal variance--occurs."

Petitioner submitts to this court and reiterates that he was never on trial for multiple marriages or polygamy. The instructions to the jury never mentioned anything as such. The Superseding Indictment stated the opposite on page No. 21,

"In or about September 2011, Vera signed the divorce decree that ended her marriage with IJAZ"

"In or about October 2011, IJAZ obtained a marriage registration certificate for him and SHAB, which stated that they were married on October 21, 2011."

(See Attachment "B")

The District court also stated during trial that,

"And the defendants are not on trial for any act or any conduct not specifically charged on on the indictment"

(See Attachment "C")

The government at trial requested certain testimony to be allowed by a culture expert about certain traditions in particular "ramifications if you weren't married at least in an informal fashion, regardless of whehter its registered or not"

The court was reluctant to allow this testimony at first as issues regarding Petitioner's marriage prior to October 2011 to SHABNAM were already resolved and outlined on the indictment. (See Exhibit "D")

Nevertheless, the Government argued twice more about the subject, and the district court allowed the evidence or testimony to be proffered by the culture expert. In turn this evidence allowed the government to argue about a multiple marriage or polygamy situation, something that was not charged in the indictment. (See Exhibit "E")

The District Court's opinion and order also refer's to the Fourth Circuit's decision filed on 04-04-2018 and states,

"Specifically, the Fourth Circuit found that the evidence sufficiently established that Khan was in fact married to Shabnam at the time he applied for naturalization,"

Petitioner argues that this conclusion by both, the District Court in the denial of Petitioner's §2255 and the Fourth Circuit's conclusion that Petitioner was "in fact married to Shabnam" contravenes this Circuit's precedent on issues regarding constructive amendment claims. See, e.g., *Malloy v. United States*, 568F.3d 166 (4th Cir. 2009)

The provisions of the Fifth Amendment against double jeopardy is designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense.

The government could not argue and should not have been allowed to argue about multiple marriages because this leads Petitioner, as in this case, to be possibly found guilty of polygamy, a charge not in the indictment.

The government could easily subject Petitioner to a charge of Polygamy in the future because a Polygamy charge was never in the original indictment, but nevertheless the jury found him guilty and the Fourth Circuit affirmed that he was married to SHABNAM at the time he married VERA back in 2001.

WHETHER A CERTIFICATE OF APPEALABILITY IS WARRANTED WHERE PETITIONER HAS MADE A SUBSTANTIAL SHOWING OF FIFTH AMENDMENT CONSTITUTIONAL VIOLATION

The standard for determining when a Certificate of Appealability is warranted was explained by the Supreme Court in *Miller-El v. Cokrell*, 537 U.S. 322, 123 S. Ct. 1029, 154 L. Ed. 2d 68 (U.S. 2006). As the court noted, that a COA does not require that the appeal will succeed. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in Slack would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges that he or she would prevail. The court also noted that a Petitioner does not have to prove before the issuance of a COA that some jurists

would grant the petition.

CONCLUSION

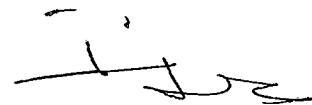
Petitioner respectfully asserts that he raises factual and legal claims of a constitutional magnitude in arguing that he suffered a "Constructive Amendment or Fatal Variance" and as a result he was found guilty of being married to SHABNAM and VERA back in 2001, even when there was no Polygamy charge.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that a certificate of appealability be issued so the issues stated in the instant motion can be expanded to this honorable court.

Respectfully submitted,

Dated: 06-25-2019



Ikaz Khan
No. 90171-083
805 N. Ave. F
Post, TX 79356

This attachment for the 60 (b)(6) motion
ATTACHMENT "A" Appeal cont

immigration officials because that information was submitted by Lautt. Id. at 9. In addition, Khan argues that the government failed to produce sufficient evidence to prove that he obtained his permanent residence and naturalization fraudulently. Id. at 10. Finally, Khan simply argues that his conviction for conspiring to commit naturalization fraud “is unsupported and without any facts, merit or material evidence.” Id. at 12.

These issues were fully litigated before the Fourth Circuit on direct appeal, which held that the evidence was sufficient to sustain Khan’s convictions. Khan, 729 F. App’x at 238–39. Specifically, the Fourth Circuit found that the “evidence sufficiently established that Khan was in fact married to Shabnam at the time he applied for naturalization,” id. at 239, such that the government had met its burden of proof with respect to Counts 1 through 11.

It is “well established” that a § 2255 motion cannot be used to “relitigate questions which were raised and considered on direct appeal.” United States v. Linder, 552 F.3d 391, 397 (4th Cir. 2009) (quoting United States v. Sanin, 252 F.3d 79, 82 (2d Cir. 2001)). An issue “fully considered” on direct appeal may not be re-raised “under the guise of collateral attack.” Boeckenhaupt v. United States, 537 F.2d 1182, 1183 (4th Cir. 1976). Although “exceptional circumstances” may warrant an exception to this rule, see Davis v. United States, 417 U.S. 333, 342 (1974) (permitting § 2255 movant to relitigate claims after an intervening change in law), none are present here. See Beyle v. United States, 269 F. Supp. 3d 716, 740 n.27 (E.D. Va. 2017). Because the Fourth Circuit has fully considered these issues on appeal, Khan’s collateral challenge to his conviction fails. For the reasons stated above, it is hereby

ORDERED that Ijaz Khan’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody [Dkt. No. 253] be and is DISMISSED.

ATTACHMENT "B" the Appeal court motion

- u. On or about November 2010, IJAZ, DS, and VERA, using sis97526@aim.com, exchanged emails about submitting documentation in support of the pending Form I-130 petitions for IJAZ's four oldest children.
- v. On or about December 31, 2010, IJAZ signed Applications for Immigration Visa and Alien Registration, Forms DS-230, for IJAZ's four oldest children that were submitted to DOS.
- w. On or about May 4, 2011, IBRAR and IJAZ's four oldest children appeared for an interview at the U.S. Embassy in Islamabad, Pakistan, regarding the children's pending applications for immigrant visas.
- x. On or about May 5, 2011, IJAZ forwarded a Refusal Worksheet from DOS to VERA at sis97526@aol.com.
- y. On or about July 28, 2011, IJAZ told DS in an email that he was divorcing VERA and then marrying the "kids mom" so she can have an "ID card" and go to the "interview," referring to the visa process. DS responded the next day, stating "Is this something you decided to do to get the kids here, or are you two not getting along well?"
- z. On or about July 30, 2011, IJAZ sent an email to the U.S. Embassy in Islamabad, Pakistan regarding the DOS request for DNA testing.

aa. In or about September 2011, VERA signed the divorce decree that ended her marriage with IJAZ.

bb. In or about October 2011, IJAZ obtained a marriage registration certificate for him and SHAB, which stated that they were married on October 21, 2011.

1 As stated before, the law never imposes upon a
2 defendant in a criminal case the burden or duty of calling any
3 witnesses or of producing any evidence.

4 Now, I'm going to talk to you a little bit about the
5 indictment. An indictment is only a formal method used by the
6 government to accuse a person of a crime. It is not evidence
7 of any kind against the defendant. The defendants are presumed
8 to be innocent of the crimes charged. Even though this
9 indictment has been returned against the defendants; each
10 defendant begins this trial with absolutely no evidence against
11 him or her.

12 The defendants have pleaded not guilty to this
13 indictment, and therefore, they deny that they are guilty of
14 the charges.

15 And the defendants are not on trial for any act or
16 any conduct not specifically charged in the indictment.

17 Now, the indictment charges that the offenses alleged
18 were committed on or about a certain date. Although it is
19 necessary for the government to prove beyond a reasonable doubt
20 that the offenses were committed on a date reasonably near the
21 dates alleged in the indictment, it is not necessary for the
22 government to prove that the offenses were committed precisely
23 on the dates charged.

24 And you are here to determine whether the government
25 has proven the guilt of the defendants for the charges in the

ATTACHMENT "C"

The Appeal Court Motion

1 given the nature of the country and how conservative that is,
2 and I bring that up because some of the ramifications, as the
3 government understands it to be from speaking to people who
4 work at the U.S. Embassy and who investigate these sort of
5 cases, are quite severe, so the honor killings, there's
6 actually laws in Pakistan about stoning and such like that. So
7 I wanted to apprise the Court and let defense counsel know as
8 well.

9 THE COURT: Well, we'll see if we get to that point.
10 I may or may not let that come in because, I mean, the only
11 evidence we have so far, and there's been nothing that's
12 impeached it, is that there was no formal wedding until the
13 certificate -- you know, the only evidence we have is that
14 marriage certificate, and all the other evidence from your own
15 people is that under Pakistani law, a common law marriage is
16 not considered a lawful marriage.

17 MS. WONG: Correct, Your Honor. And the reason I
18 raise it is only to the extent that the defense witness,
19 because if he's going to be opining on sort of general cultural
20 matters and he's being offered as an expert on sort of the
21 traditions and the mores and what's acceptable in that
22 particular region, I believe that was part of the expert notice
23 in Swat, that obviously implicates the ramifications if you
24 weren't married at least in an informal fashion, regardless of
25 whether it's registered or not.

ATTACHMENT "D"
Appeal Court motion

Appeal court motion

EXHIBIT "E"

1223

1 THE COURT: But it has no relevance to the issues
2 you're raising about whether there is a polygamous situation or
3 a -- as to the marital status, an issue that would disqualify
4 the defendant from being naturalized.

5 MS. WONG: No, but it would cast -- well, it would go
6 to the issue of his statements in various representations where
7 he's claiming he was not married, because it would go to
8 whether or not the likelihood of that occurring in that part of
9 the world, even if -- because we believe that the, that the
10 evidence that we understand as to Pakistan and marriages is
11 that many are not registered with the official government in
12 part because it's a tribal region, but that doesn't mean that
13 people are not married in religious ceremonies, just as in the
14 United States.

15 THE COURT: Oh, all right. All right, I understand.
16 All right. Well, that's notice on the defense, all right?

17 MS. WONG: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MS. WONG: Nothing further from the government.

20 THE COURT: We'll see you-all then tomorrow at noon.

21 (Recess from 6:00 p.m., until 12:00 p.m., February 3, 2017.)

22

23

24

25

Issue 4.

Supporting Facts and Argument

SEE ATTACHMENT

5. Relief Requested

Identify the precise action you want the Court of Appeals to take:

SEE ATTACHMENT

6. Prior appeals (for appellants/petitioners only)

A. Have you filed other cases in this Court? Yes No B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

No. 17-4301 Conviction Affirmed on 04-04-2018


Signature

[Notarization Not Required]

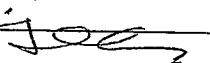
Ijaz Khan

[Please Print Your Name Here]

CERTIFICATE OF SERVICE

I certify that on 06-25-2019 I served a copy of this Informal Brief on all parties, addressed as shown below:

U.S. ATTORNEY
2100 Jamieson Ave.
Alexandria, VA 22314


Signature

NO STAPLES, TAPE OR BINDING PLEASE

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)
)
 v.) 1:16-cr-130-1 (LMB)
)
 IJAZ KHAN,)
)
 Defendant.)

ORDER

Before the Court is pro se defendant Ijaz Khan's ("Khan" or "defendant") Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6)¹ in which he focuses on alleged errors in his trial. Specifically, he argues that evidence and argument concerning a prior marriage to Shabnam was not accurate and should not have been admitted during his trial.

On November 13, 2018, Khan filed a Motion to Vacate under 28 U.S.C. § 2255 in which he raised similar complaints about the evidence concerning his marriage status with Shabnam. By an Order issued on November 19, 2018, the motion was summarily dismissed, and Khan was given a clear notice explaining his right to appeal that decision and warning that failure to file a timely notice of appeal and to request a certificate of appealability ("COA") within 60 days waived the right to appeal that decision. Khan has filed neither a notice of appeal nor a request for a COA. Instead, on May 21, 2019, he filed the pending motion.

When a defendant files a motion characterized as brought under Rule 60(b) after filing a habeas petition, the district court must determine whether it is "functionally equivalent to a

¹ Federal Rule of Civil Procedure 60(b) permits the court to "relieve a party . . . from a final judgment, order, or proceeding" for certain enumerated reasons or, under Rule 60(b)(6), for "any other reason that justifies relief." Fed. R. Civ. P. 60(b). Defendants cannot rely on Rule 60(b) because it does not apply to criminal proceedings. See, e.g., United States v. Corrigan, 557 F. App'x 212 (4th Cir. 2014) (per curiam).

successive [habeas] application.” United States v. Winestock, 340 F.3d 200, 206 (4th Cir. 2003).

A motion that attacks “the substance of the federal court’s resolution of a claim on the merits is not a true Rule 60(b) motion, but rather a successive habeas petition,” and is therefore subject to the preauthorization requirement of 28 U.S.C. §§ 2244(b) and 2255(h) for successive applications.

Gonzalez v. Crosby, 545 U.S. 524, 531-32 (2005); United States v. McRae, 793 F.3d 392, 397 (4th Cir. 2015). In contrast, “[a] Rule 60(b) motion that challenges some defect in the integrity of the federal habeas proceedings,” for example, by alleging fraud on the court, is a true Rule 60(b) motion, and is not subject to the preauthorization requirement. McRae, 793 F.3d at 397. If the motion is construed as a successive habeas petition, the district court is without jurisdiction to consider it absent authorization from a panel of the appropriate court of appeals. 28 U.S.C. § 2255(h).

Because defendant’s motion clearly challenges his underlying conviction, the motion is properly construed as a successive habeas petition, which the Court lacks jurisdiction to consider absent the motion being authorized by the Fourth Circuit. 28 U.S.C. § 2255(h); Burton v. Stewart, 549 U.S. 147, 157 (2007). Accordingly, it is hereby

ORDERED that Khan’s motion [Dkt. No. 268] be and is DISMISSED WITHOUT PREJUDICE to allow him to seek authorization from the Fourth Circuit to file a second or successive motion to vacate.

To appeal this decision, a written notice of appeal must be filed with the Clerk of this court within 60 days. Failure to file a timely notice of appeal waives the right to appeal this decision.

The Clerk is directed to forward copies of this Order to counsel of record and defendant, pro se.

Entered this 29th day of May, 2019.

Alexandria, Virginia

lmb
/s/
Leonie M. Brinkema
United States District Judge

APPENDIX "C"

SUPREME COURT OF THE UNITED STATES OFFICE OF THE CLERK WASHINGTON, DC 20543-0001

April 5, 2019

Ijaz Khan
#90171-083
805 North Avenue F.
Post, TX 79356

RE: Khan v. United States
USCA4 No. 19-120

Dear Mr. Khan:

The above-entitled petition for a writ of certiorari was postmarked April 2, 2019 and received April 5, 2019. The papers are returned for the following reason(s):

The denial of authorization by a court of appeals to file a second or successive petition for writ of habeas corpus may not be reviewed on certiorari. See 28 USC Section 2244(b)(3)(E).

Sincerely,
Scott S. Harris, Clerk
By:
Lisa Nesbitt
(202) 479-3038

Enclosures

APPENDIX "D"

FILED: February 5, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-120
(1:16-cr-00130-LMB-1)

In re: IJAZ KHAN

Movant

O R D E R

Movant has filed a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2255.

The court denies the motion.

Entered at the direction of Judge Niemeyer with the concurrence of Judge King and Judge Agee.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX "E"
Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 1, 2018

Mr. Ijaz Khan
Prisoner ID 90171-083
Giles W. Darby Correctional Institution
805 North Avenue F.
Post, TX 79356

Re: Ijaz Khan
v. United States
No. 18-5170

Dear Mr. Khan:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

APPENDIX "F"

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IJAZ KHAN,)
)
 v.)
)
 UNITED STATES OF AMERICA,) 1:16-cr-00130 (LMB)
) 1:18-cv-01408 (LMB)
)
)

ORDER

Movant Ijaz Khan ("movant" or "Khan"), acting pro se, has filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody [Dkt. No. 253] ("§ 2255 Motion"), in which he challenges the sufficiency of the evidence introduced at trial to support his conviction of naturalization fraud. Having reviewed the entire record, the Court finds that there is no need for an evidentiary hearing and concludes based on the record that the § 2255 Motion is without merit and, therefore, will be summarily dismissed.¹

On May 26, 2016, Khan was indicted on 18 counts: citizenship and naturalization fraud and conspiracy (Counts 1–11), 18 U.S.C. §§ 371, 1425; misuse of evidence of citizenship or naturalization (Count 12), 18 U.S.C. § 1423; smuggling goods into the United States and conspiracy (Counts 13–14), 18 U.S.C. § 545; mail fraud (Counts 15–16), 18 U.S.C. § 1341; and obstruction of an official proceeding and conspiracy (Counts 17–18), 18 U.S.C. §§ 371, 1512.² Dkt. No. 1. The indictment alleged that Khan and his then-wife Vera Lautt ("Lautt"),³ a United

¹ Under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, a court "must promptly examine" a § 2255 motion and dismiss it "[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief."

² A superseding indictment was returned on October 12, 2016, charging Khan with the same 18 counts. Dkt. No. 39.

³ Khan and Lautt divorced in 2011.

States citizen who met Khan online and married him in a Pakistani civil ceremony in 2002, submitted immigration documents with materially false information in furtherance of Khan's citizenship application. After being granted citizenship in 2009, Khan submitted immigration petitions for other family members residing in his native Pakistan. Those family members included four children of Khan and a Pakistani woman named Shabnam, Khan's other wife. Khan was also a member of a group that smuggled artifacts from Pakistan into the United States with false customs documents and he obstructed the investigation involving the origins of those seized artifacts by submitting false information to government officials.

A jury trial began on January 20, 2017 and lasted for seven days, with the government calling over a dozen witnesses. The jury deliberated for two days and returned a verdict of guilty as to all counts. Dkt. No. 172. On May 5, 2017, Khan was sentenced to 36 months incarceration, significantly below his Guidelines range of 70 to 87 months,⁴ and this Court entered an Order of Denaturalization. Dkt. No. 199.

Khan filed a Notice of Appeal on May 12, 2017. Dkt. No. 209. On appeal, Khan raised two issues: first, whether there was sufficient evidence to sustain his convictions for conspiracy (Count 1), naturalization fraud (Counts 2–11), and obstruction of an official proceeding (Count 17); and second, whether the district court erred in applying a four-level enhancement based on his leadership role when calculating the offense level. The Fourth Circuit affirmed Khan's conviction and sentence on April 4, 2018, finding that there was sufficient evidence to support Khan's convictions and that the district court did not err in applying the leadership role enhancement. United States v. Khan, 729 F. App'x 236, 239–40 (4th Cir. 2018). The Supreme

⁴ Khan's total offense level included a four-level enhancement for his leadership role in the offense. Sent. Hr'g Tran. 17:16–18. [Dkt. No. 245].

Court denied cert on October 1, 2018. Khan v. United States, No. 18-5170, 2018 WL 3368970 (U.S. Oct. 1, 2018). Khan timely filed this § 2255 motion on November 13, 2018. Dkt. No. 253.

A motion to vacate under 28 U.S.C. § 2255 provides for a collateral attack on a conviction or sentence when the conviction or sentence was imposed in violation of the United States Constitution or laws, when the court lacked jurisdiction to impose the sentence, when the sentence was in excess of the maximum authorized by law, or when the conviction or sentence is otherwise subject to a collateral attack. See 28 U.S.C. § 2255(a). Relief under § 2255 is reserved for situations in which failing to grant relief would be “inconsistent with the rudimentary demands of fair procedure or constitute[] a complete miscarriage of justice.” United States v. Vonn, 535 U.S. 55, 64 (2002) (quoting United States v. Timmreck, 441 U.S. 780, 783 (1979)). To prevail on a § 2255 motion, the movant bears the burden of proving his grounds for collateral relief by a preponderance of the evidence. See Jacobs v. United States, 350 F.2d 571, 574 (4th Cir. 1965).

Under § 2255(b), a movant is to be granted an evidentiary hearing on his motion “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” Whether to hold an evidentiary hearing is a decision left to the “sound discretion of the district court.” United States v. Woodard, No. 18-6259, 2018 WL 4237454, at *1 (4th Cir. Sept. 6, 2018) (citing Gordon v. Braxton, 780 F.3d 196, 204 (4th Cir. 2015)).

Although Khan lists five discrete grounds in his § 2255 Motion, the thrust of all his arguments is that there was insufficient evidence to convict him of conspiracy to commit naturalization fraud. First, Khan argues that his marriage with Lautt was neither fraudulent nor bigamous or polygamous because he had not been married to Shabnam at the time. § 2255 Motion at 5–7. He next argues that he did not commit fraud in the submission of documents to

immigration officials because that information was submitted by Lautt. Id. at 9. In addition, Khan argues that the government failed to produce sufficient evidence to prove that he obtained his permanent residence and naturalization fraudulently. Id. at 10. Finally, Khan simply argues that his conviction for conspiring to commit naturalization fraud “is unsupported and without any facts, merit or material evidence.” Id. at 12.

These issues were fully litigated before the Fourth Circuit on direct appeal, which held that the evidence was sufficient to sustain Khan’s convictions. Khan, 729 F. App’x at 238–39. Specifically, the Fourth Circuit found that the “evidence sufficiently established that Khan was in fact married to Shabnam at the time he applied for naturalization,” id. at 239, such that the government had met its burden of proof with respect to Counts 1 through 11.

It is “well established” that a § 2255 motion cannot be used to “relitigate questions which were raised and considered on direct appeal.” United States v. Linder, 552 F.3d 391, 397 (4th Cir. 2009) (quoting United States v. Sanin, 252 F.3d 79, 82 (2d Cir. 2001)). An issue “fully considered” on direct appeal may not be re-raised “under the guise of collateral attack.” Boeckenhaupt v. United States, 537 F.2d 1182, 1183 (4th Cir. 1976). Although “exceptional circumstances” may warrant an exception to this rule, see Davis v. United States, 417 U.S. 333, 342 (1974) (permitting § 2255 movant to relitigate claims after an intervening change in law), none are present here. See Beyle v. United States, 269 F. Supp. 3d 716, 740 n.27 (E.D. Va. 2017). Because the Fourth Circuit has fully considered these issues on appeal, Khan’s collateral challenge to his conviction fails. For the reasons stated above, it is hereby

ORDERED that Ijaz Khan’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody [Dkt. No. 253] be and is DISMISSED.

To appeal this decision, Khan must file a written Notice of Appeal with the Clerk of this Court within 60 days of the date of this Order. A written Notice of Appeal is a short statement indicating a desire to appeal an order and including the date of the order movant wants to appeal. Khan need not explain the grounds for appeal until so directed by the Court. Khan must also request and obtain a Certificate of Appealability ("COA") from a circuit justice or judge. See 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). This Court expressly declines to issue such a certificate for the same reasons stated herein. Failure to file a timely Notice of Appeal and to apply for a COA waives the right to obtain appellate review of this Order.

The Clerk is directed to enter judgment in the respondent's favor pursuant to Fed. R. Civ. P. 58 and to forward copies of this Order to movant, pro se, and counsel of record.

Entered this 19th day of November, 2018.

Alexandria, Virginia


/s/ 
Leonie M. Brinkema
United States District Judge

APPENDIX "G"

FILED: April 4, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4301
(1:16-cr-00130-LMB-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

IJAZ KHAN

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4301

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IJAZ KHAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:16-cr-00130-LMB-2)

Submitted: March 28, 2018

Decided: April 4, 2018

Before NIEMEYER, KING, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jonathan A. Simms, SIMMS LAW FIRM PLC, Fairfax, Virginia, for Appellant. Dana J. Boente, United States Attorney, Katherine L. Wong, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ijaz Khan was convicted by a jury of all 18 counts of an indictment charging him with citizenship and naturalization fraud and conspiracy (Counts 1-11), 18 U.S.C. §§ 371, 1425 (2012); misuse of evidence of citizenship or naturalization (Count 12), 18 U.S.C. § 1423 (2012); smuggling goods into the United States and conspiracy (Counts 13 and 14), 18 U.S.C. § 545 (2012); mail fraud (Counts 15 and 16), 18 U.S.C. § 1341 (2012); and obstruction of an official proceeding and conspiracy (Counts 17 and 18), 18 U.S.C. §§ 371, 1512 (2012). The district court imposed a below-Guidelines sentence of 36 months' imprisonment. Khan appeals, challenging the sufficiency of the evidence as to Counts 1-11 and 17 and the procedural reasonableness of his sentence. We affirm.

The evidence presented at Khan's trial, viewed in the light most favorable to the Government, *see United States v. Burgos*, 94 F.3d 849, 854 (4th Cir. 1996) (en banc), was as follows. In 2002, Vera Lautt—a United States citizen and resident of Oregon—travelled to Pakistan and married Khan, whom she had met on-line the prior year, in a Pakistani civil ceremony. On the Petition for Alien Relative (form I-130) and accompanying forms, Khan wrote "none" in response to questions asking for the names of prior spouses and children. In fact, Khan was then married to a woman in Pakistan named Shabnam and, at the time, had four children with her.

Khan's immigration visa application was approved in 2003. Khan ultimately obtained U.S. citizenship in 2009 and he and Lautt began the process of bringing Shabnam, the children, and Khan's other family members to the U.S. as well. Although Khan had failed to disclose the existence of his children on the many forms completed

before and after his arrival in the U.S., he made a correction to the N-400 (Application for Naturalization), identifying his children as “born out of wedlock.” However, two of his sons later signed sworn statements that Khan was married to Shabnam and that Khan actually had “two wives.” Nevertheless, immigrant visas were granted for Khan’s four oldest children (he fathered two more children with Shabnam during visits to Pakistan while he was married to Lautt). The children were later granted automatic U.S. citizenship.

With respect to the smuggling charges (Counts 13, 14, 17 and 18), the Government presented evidence that Khan engaged in shipping ancient artifacts—coins, pottery, arrowheads, etc.—without disclosing the nature of the items or their true value, and that he submitted fraudulent paperwork, purportedly from the Government of Pakistan, attesting to his authority to export the artifacts. On appeal, Khan challenges the sufficiency of the evidence only with respect to Count 17—conspiracy to obstruct an official proceeding, based on an October 13, 2013, shipment from Pakistan that was inspected and intercepted by federal law enforcement officials at Dulles Airport. After the shipment was seized, Khan and his sons filed a petition for return of the items, falsely declaring the value at \$500 (as opposed to a value estimated at greater than \$10,000) and supported by forged certificates from the Government of Pakistan.

After a seven-day trial involving over 30 witnesses, Khan was convicted of all counts in the indictment. The presentence report (PSR) assigned a total offense level of 25, including a four-level enhancement because Khan was an organizer or leader of an offense involving five or more participants, U.S. Sentencing Guidelines Manual

(“USSG”) § 3B1.1(a) (2016). The district court imposed a below-Guidelines sentence of 36 months.

Khan argues, first, that the evidence was insufficient to support the jury’s guilty verdict as to Counts 1-11. A defendant challenging the sufficiency of the evidence faces “a heavy burden.” *United States v. McLean*, 715 F.3d 129, 137 (4th Cir. 2013) (internal quotation marks omitted). The jury’s verdict must be sustained if, viewed in the light most favorable to the Government, there is substantial evidence in the record to support the convictions. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *United States v. Jaensch*, 665 F.3d 83, 93 (4th Cir. 2011). “Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” *Jaensch*, 665 F.3d at 93 (internal quotation marks and brackets omitted). “Reversal for insufficient evidence is reserved for the rare case where the prosecution’s failure is clear.” *United States v. Ashley*, 606 F.3d 135, 138 (4th Cir. 2010) (internal quotation marks omitted).

To prove conspiracy to defraud the United States by impairing, obstructing, and defeating the lawful functions of the Government in the immigrant visa and immigrant benefits process, the Government must demonstrate: “(1) the existence of an agreement, (2) an overt act by one of the conspirators in furtherance of the objectives, and (3) an intent on the part of the conspirators to agree, as well as to defraud the United States.”

United States v. Tedder, 801 F.2d 1437, 1446 (4th Cir. 1986). To prove a conspiracy to commit other offenses under 18 U.S.C. § 371, including naturalization fraud, the Government must show an agreement to commit an offense, willing participation by the

defendant, and an overt act in furtherance of the conspiracy. *United States v. McNeal*, 818 F.3d 141, 149 (4th Cir. 2016). To sustain Khan's conviction under § 1425(a), the government was required to prove that: Khan "(i) knowingly (ii) misrepresented (iii) material facts and, (iv) procured his citizenship as a result." See *United States v. Haroon*, 874 F.3d 479 (6th Cir. 2017). Moreover, the Government "must establish that the defendant's illegal act played a role in [his] acquisition of citizenship." *Maslenjak v. United States*, 137 S. Ct. 1918, 1921 (June 22, 2017). In other words, "[w]hen the underlying illegality alleged in a § 1425(a) prosecution is a false statement to government officials, a jury must decide whether the false statement so altered the naturalization process as to have influenced an award of citizenship." *Id.* "An applicant who gives 'false testimony' for the purpose of obtaining immigration benefits does not have 'good moral character.' 8 U.S.C. § 1101(f)(6). And good moral character is a requirement for naturalization. *Id.* [8 U.S.C.] § 1427(a)." *Haroon*, 874 F.3d at 483. Khan "thus misrepresent[ed] facts that the law deems incompatible with citizenship." *Maslenjak*, 137 S. Ct. at 1928.

Khan argues that the evidence was insufficient to support his convictions on Counts 1 and 2 because the Government failed to produce definitive proof of his marriage to Shabnam and, therefore, could not prove that the statements he made regarding prior marriages was false. Contrary to Khan's assertion, however, the Government presented ample evidence of his lawful marriage to Shabnam. Multiple witnesses testified that Khan and Lautt referred to Shabnam as Khan's "wife." Moreover, a defense cultural expert testified that government-issued birth certificates for Khan's children were an

indication that the children were born in wedlock or they would not have been legitimized via official government records. Finally, Khan's own children provided sworn statements that Khan was married to their mother.

While Count 2 concerns Khan's own naturalization, the remaining counts relate to his procurement of citizenship for the various members of his family. Again, Khan argues that the Government failed to prove that he was lawfully married to Shabnam and, therefore, failed to show that he lied about his marital status or that he committed polygamy. We find that the evidence sufficiently established that Khan was in fact married to Shabnam at the time he applied for naturalization and, therefore, the Government met its burden of proof with respect to Counts 3 through 11 as well.

Count 17 charged Khan with conspiring, along with two others, to willfully corrupt, obstruct, influence or impede an official proceeding under 18 U.S.C. § 1512(c)(2) (2012) dealing with the seized shipment of goods from Pakistan in October 2013. To sustain a conviction under § 1512(c)(2), the Government must prove that Khan had notice of the official proceeding and acted with the intent to obstruct, influence, or impede the proceeding. After Khan received notice of the seizure and administrative forfeiture proceeding, he hired an attorney to prepare a petition seeking the return of the property in which Khan asserted that the contents of the shipment were family heirlooms, legally exported from Pakistan, and worth no more than \$500—none of which was true. Thus, we find this evidence sufficient to support Khan's conviction on Count 17.

Finally, Khan argues that the district court erred in applying the four-level enhancement based on his role in the offense. Under USSG § 3B1.1(a), a four-level

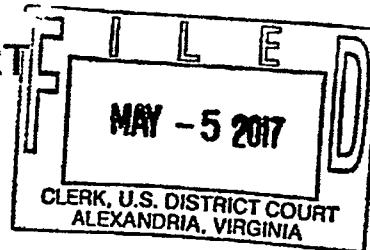
enhancement is applied “[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” USSG § 3B1.1(a). In distinguishing between a leadership and organizational role from one of mere management or supervision, the court should consider factors including “the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.” *United States v. Kellam*, 568 F.3d 125, 148 (4th Cir. 2009) (citing USSG § 3B1.1 cmt. 4). The burden is on the Government to prove by a preponderance of the evidence that the sentencing enhancement should be applied. *United States v. Steffen*, 741 F.3d 411, 414 (4th Cir. 2013). This court reviews the district court’s adjustment for role in the offense for clear error. See *United States v. Sayles*, 296 F.3d 219, 224 (4th Cir. 2002). We have reviewed the record on appeal with these standards in mind and conclude that the district court did not clearly err in applying the enhancement for Khan’s leadership role.

Accordingly, we affirm Khan’s conviction and sentence. We dispense with oral argument as the facts and legal contentions are adequately presented in the materials before this court and argument would not aid in the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA



v.

Case Number 1:16CR00130-001

IJAZ KHAN,

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant, IJAZ KHAN, was represented by Jonathan A. Simms, Esquire.

The defendant was found guilty by a jury as to Count(s) 1-18 of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of the following count(s), involving the indicated offense(s)

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 371	Conspiracy (Felony)	10/12/2016	1s
18 U.S.C. §§ 1425 and 2	Citizenship and Naturalization Fraud (Felony)	05/2009	2s
18 U.S.C. §§ 1425 and 2	Citizenship and Naturalization Fraud (Felony)	12/2013	3s
18 U.S.C. §§ 1425 and 2	Citizenship and Naturalization Fraud (Felony)	04/2014	4s-5s
18 U.S.C. §§ 1425 and 2	Citizenship and Naturalization Fraud (Felony)	06/2014	6s
18 U.S.C. §§ 1425 and 2	Citizenship and Naturalization Fraud (Felony)	10/12/2016	7s-11s
18 U.S.C. §§ 1423 and 2	Misuse of Evidence of Citizenship or Naturalization (Felony)	04/2014	12s
18 U.S.C. § 371	Conspiracy to Smuggle Goods into the United States (Felony)	05/2015	13s
18 U.S.C. § 545 and 2	Smuggling of Goods into the United States (Felony)	10/13/2013	14s
18 U.S.C. § 1341 and 2	Mail Fraud (Felony)	05/2014	15s-16s
18 U.S.C. § 371	Conspiracy to Obstruct an Official Proceeding (Felony)	10/13/2013	17s
18 U.S.C. §§ 1512 and 2	Obstruction of an Official Proceeding (Felony)	04/2014	18s

As pronounced on May 5, 2017, the defendant is sentenced as provided in pages 2 through 7* of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this 5 day of May, 2017.

LMB
/s/
Leonie M. Brinkema
United States District Judge

Judgment--Page 2 of 7

Defendant: IJAZ KHAN

Case Number: 1:16CR00130-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of THIRTY-SIX (36) MONTHS, as to each of counts 1-18; all counts to run concurrently with each other, with credit for time served.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant to be designated to a facility as close to New Mexico as possible.

The defendant is remanded into the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

c: P.O. (2) (3)

Mshl. (4) (2)

U.S.Atty.

U.S.Coll.

Dft. Cnsl.

PTS

Financial

Registrar

ob

United States Marshal

By _____

Deputy Marshal

Judgment--Page 3 of 7

Defendant: IJAZ KHAN
Case Number: 1:16CR00130-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS, as to each of counts 1-18; all counts to run concurrently with each other,

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISED RELEASE

The defendant shall comply with the standard conditions that have been adopted by this Court (set forth below):

- 1) The defendant shall not leave the judicial district without the permission of the Court or probation officer.
- 2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the Probation Officer within 72 hours, or earlier if so directed, of any change in residence.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: IJAZ KHAN

Case Number: 1:16CR00130-001

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

1. The defendant must remain drug free and submit to mandatory drug testing. The defendant must satisfactorily participate in, and complete, any inpatient or outpatient drug treatment to which defendant is directed by the probation officer. The defendant shall waive all rights of confidentiality regarding drug treatment to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider. The defendant to pay all costs, as directed by the probation officer
2. If ordered removed, the defendant must fully cooperate with the Department of Homeland Security, Bureau of Immigration and Customs Enforcement with any removal proceedings.
3. If removed, the defendant may not re-enter the United States while on Supervised Release.
4. The defendant shall cooperate with and assist authorities in identifying artifacts subject to return to the Pakistani government.
5. The defendant shall surrender his certificate of naturalization.
6. The defendant shall pay the \$1800.00 special assessment within the first year of supervision.

AO 245 S (Rev. 3/99)(EDVA rev.) Sheet 5 - Financial Penalties

Defendant: IJAZ KHAN
Case Number: 1:16CR00130-001

Judgment—Page 5 of 7

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total monetary penalties in accordance with the schedule of payments set out below.

<u>Count</u>	<u>Special Assessment</u>	<u>Fine</u>
1s-18s	\$1800.00	\$0.00
Total	\$1800.00	\$0.00

FINE

No fines have been imposed in this case.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the Court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

FORFEITURE

Forfeiture is directed in accordance with the Consent Order of Forfeiture entered by this Court on May 5, 2017.

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Farah v. Farah

Farah v. Farah, 16 Va. App. 329; 429 S.E.2d 626 (1993)
Court: Court of Appeals of Virginia

The Court, in favor of the Husband, held that a proxy marriage held in England in accordance with Islamic Law was invalid.

The Court, in favor of the Husband, held that a proxy marriage held in England in accordance with Islamic Law was invalid.

Husband is a citizen of Algeria and Wife is a citizen of Pakistan. They signed a "nikah" (marriage form) by proxy. Then, a marriage ceremony was conducted in the presence of their proxy representatives in England. Neither the Husband nor the Wife was present in England, and no marriage certificate was issued in England. After a month after the proxy ceremony, the couple participated in a "Rukhsati" (ceremony symbolizing the sending away of the bride with her husband) in Pakistan. The couple, then, returned to Virginia, where they bought a home and lived as husband and wife.

One year later, they separated. The Husband filed to have the marriage void, and the Wife filed for divorce and equitable distribution of the couple's assets. In Virginia, a marriage is valid if it is valid in the jurisdiction where it was celebrated. At trial, the Husband presented evidence that the proxy ceremony did not meet the requirement under the laws of England, and so the marriage was not valid from the beginning. The Wife argued that even if the Husband is correct, the marriage was valid because the ceremony was completed in Pakistan with the Rukhsati and proxy marriages are valid in Pakistan. The trial court ruled in favor of the wife, granted the divorce, and ordered equitable division of their marital property.

The Husband appealed the trial court's decision. On appeal, the appellate court reversed and found in favor of the Husband. The court held that the Rukhsati did not have legal significance and was not a requirement for a legal marriage in Pakistan. The marriage was contracted and celebrated in England, and so, English law determines the validity of the marriage. Since the proxy ceremony did not meet the requirements under the laws of England, the couple had never entered into a valid marriage. The court also disagreed with the Wife that the couple had entered into a common-law marriage. "Virginia does not recognize common-law marriages where the relationship is created in Virginia." Because the relationship as husband and wife was created in Virginia, the couple did not enter into a recognized common-law marriage.

History: A petition for a rehearing was denied by the Court of Appeals of Virginia.

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1. INTERVIEW ✓

3458

2. KIDS (connected)

DIU. 2011

3. Surrounding

4. Sponsorship

WARRANTS, FINED \$700. ISSUED on 11-20-2006.

\$ 1751 APPROVED 11-14-2006

SUBSEQUENTLY on 07-28-2008 AN INVESTIGATION
FOR CITIZENSHIP & APPROVED ON 01-21-2009 N-445

& ON 01-27-2009 AGRINGY OF CITIZENSHIP

EXPERTS

STATE DEPT. USCIS FAIRMAX

Screening

05-05-2017

1-16-CR-00130-
LMS-

Submitted on CONV. 05-26-2016

17-4301

DENIED on

04-04-18

CONTINUE

18-5170

16-1-2018