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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ED CV 10 - 00894 VAP (DTBx)
CASE NO.

TAREK HAMDI,

Plaintiff,

vs.

PETITION FOR *DE NOVO* REVIEW
OF DENIAL OF APPLICATION FOR
NATURALIZATION AND REQUEST
FOR A HEARING PURSUANT TO 8
U.S.C. § 1421(c)

15 UNITED STATES CITIZENSHIP
16 AND IMMIGRATION SERVICE;
17 DEPARTMENT OF HOMELAND
18 SECURITY; IRENE MARTIN,
19 DIRECTOR, SAN BERNARDINO
20 FIELD OFFICE, UNITED STATES
21 CITIZENSHIP AND IMMIGRATION
22 SERVICE, in her official capacity;
23 JANE ARELLANO, DIRECTOR, LOS
24 ANGELES OFFICE, UNITED
25 STATES CITIZENSHIP AND
26 IMMIGRATION SERVICE, in her
27 official capacity; ALEJANDRO
28 MAYORKAS, DIRECTOR, UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICE, in his
official capacity; JANET
NAPOLITANO, SECRETARY,
DEPARTMENT OF HOMELAND
SECURITY, in her official capacity,

Defendants.

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INTRODUCTION

1. Petitioner, Tarek HAMDI, files this Petition for Review pursuant to 8 U.S.C. § 1421(c), Immigration and Naturalization Act (“INA”) § 310(c), seeking *de novo* review of the U.S. Citizenship and Immigration Service’s (“USCIS”) denial of his application for naturalization and a plenary hearing on that application. This Court also has jurisdiction pursuant to 28 U.S.C. § 2201 (Declaratory Judgment Act), 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act), and 28 U.S.C. § 1331.

2. Mr. Hamdi is a citizen of Egypt and a lawful permanent resident of the United States. Mr. Hamdi meets all the requirements for naturalization, yet nevertheless has endured a nine-year battle to naturalize as a U.S. citizen, the country of citizenship of his wife and four children, and the country he has resided in for over thirty-years – practically his entire adult life.

3. Mr. Hamdi first filed for naturalization in 2001 and was approved for citizenship after passing his naturalization examination in 2002. For four subsequent years, his application was lost in the administrative black-hole of naturalization backlogs.¹ Finally, in 2006, USCIS sent Mr. Hamdi a notice scheduling him for a second naturalization interview, but by the time Mr. Hamdi received the notice, upon returning home from a business trip, the interview date had passed. Six days later, USCIS denied Mr. Hamdi’s naturalization application for failure to appear at the interview.

¹ Tens of thousands of naturalization applicants around the country suffered unreasonable and unlawful delays in the naturalization process because of pending FBI “name checks,” a background check on all naturalization applicants. *See, e.g.,* Anna Gorman, *Groups Sue Over Citizenship Delays*, L.A. TIMES, Dec. 5, 2007; H.G. Reza, *For Citizenship Delayed, 10 Taking U.S. to Court*, L.A. TIMES, Aug. 1, 2006.

1 4. In 2007, Mr. Hamdi filed a new application for naturalization. In
2 2008, he again passed the naturalization examination, but again there was no
3 further action on his application. Finally, on March 16, 2009, he filed a
4 mandamus action under 8 U.S.C. § 1447(b) to compel the agency to adjudicate
5 his application. As a result, on June 8, 2009, USCIS adjudicated Mr. Hamdi's
6 application for the first time on the merits, but denied him naturalization
7 claiming that he gave false testimony on his application and during his
8 interviews, and is therefore ineligible for naturalization.

9
10 5. The government claims that Mr. Hamdi made a false statement by failing
11 to disclose an "association" with a charitable organization, Benevolence
12 International Foundation ("BIF"). It asserts that he was associated with BIF
13 based on a single donation made in the year 2000. The BIF is an Islamic charity
14 that the Treasury Department designated as a financier of terrorism in 2002,
15 long after the donation was made. Mr. Hamdi does not believe that he is or ever
16 was "associated" with BIF, just as he has never understood that his charitable
17 donations, whether to the BIF or to the American Cancer Society, make him
18 associated with those charities.

19
20 6. Federal immigration law renders ineligible an applicant for naturalization
21 who has made a false statement under oath with the intent to obtain
22 naturalization. *See* 8 U.S.C. § 1101(f)(6); 8 C.F.R. § 316.10(b)(2)(iv). Mr.
23 Hamdi spoke truthfully as to his associations and at no point intentionally
24 misrepresented his lack of an association with BIF.² He reasonably read the

25
26 ² Indeed, even if Mr. Hamdi were actually "associated" with BIF, he would have no
27 immigration related reason to misrepresent this fact because the alleged association
28 with BIF would not render him ineligible for naturalization. Donating money to an
organization while it was legally operating, seven years prior to the filing of the
naturalization application, does not independently render an applicant ineligible for
naturalization. *See* 8 U.S.C. § 1427(a)(3) (an applicant must have been "a person of

1 question to not require that he list every organization to which he had ever made
2 a donation. In addition, the Due Process Clause of the Fifth Amendment of the
3 U.S. Constitution prohibits Respondents from applying an interpretation of
4 “association” to the question on the naturalization application in a vague
5 manner, such that an ordinary person would not know what the question intends.
6 This prohibition also protects against arbitrary and discriminatory government
7 enforcement. Interpreting the word “association” to require applicants to list all
8 organizations to which they have donated money renders the word
9 unconstitutionally vague. An ordinary naturalization applicant would not
10 understand the question about their associations to require them to list any
11 organization to which they had ever made a donation. Respondents surely do
12 not apply this interpretation of association to deny naturalization to every
13 applicant who fails to disclose, in response to questioning about their
14 organizational “associations,” all of the organizations to which they have made
15 donations.

16
17 7. Mr. Hamdi has battled for nearly a decade for the citizenship to which he
18 is legally entitled, enduring needless delays and apparent discriminatory
19 treatment. Respondent’s unlawful conduct has deprived Mr. Hamdi of the basic
20 privileges of citizenship: the right to vote, to serve on a jury, to travel abroad
21 and return to the U.S. without fear of exclusion from this country, or to receive
22 business and educational loans and benefits reserved for citizens. He now
23 petitions this Court to conduct a *de novo* review of his naturalization application
24 and requests a hearing pursuant to 8 U.S.C. § 1421(c), which confers on this
25 Court the authority to make its own findings of fact and conclusions of law.

26
27 good moral character” for five years before the filing of the naturalization
28 application); 8 U.S.C. § 1101(f) (listing nine grounds for a required finding that a
person lacks good moral character, none of which include association with an
organization designated as a financier of terrorism prior to its designation).

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JURISDICTION AND VENUE

8. This Court has jurisdiction over the present action pursuant to 8 U.S.C. § 1421(c) (denial of a naturalization application may be reviewed by the United States District Court); 28 U.S.C. § 2201 (Declaratory Judgment Act); 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act) and 28 U.S.C. § 1331.

9. Venue is properly with this Court pursuant to 8 U.S.C. § 1421(c) and 28 U.S.C. § 1391(e) because the Petitioner resides within the Central District of California. *See also* 8 C.F.R. § 336.9.

10. Petitioner timely files this Petition for Review within 120 days of Respondent’s April 8, 2010 final decision denying his application for naturalization. *See* 8 C.F.R. §§ 310.5(b), 336.9(b).

PARTIES

11. Petitioner Tarek HAMDI is a citizen and national of Egypt, and a lawful permanent resident of the United States. Petitioner resides within the jurisdiction of this Court.

12. Respondent UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE (“USCIS”), which is a division of the Department of Homeland Security, is the federal agency responsible for the adjudication of naturalization applications. The USCIS is the successor agency to the Immigration and Naturalization Service (“INS”) in the area of naturalization adjudications.³ *See* 8 C.F.R. § 336.9(b) (“The petition for review shall be brought against the

³ The INS was abolished and replaced by the Department of Homeland Security, pursuant to the Homeland Security Act of 2002, 107 Pub. L. 296, 116 Stat. 2135 (Nov. 25, 2002). The enforcement arm of the former INS is now the U.S. Immigration and Customs Enforcement (“ICE”) and the adjudications arm is now the U.S. Citizenship and Immigration Service (“USCIS”).

1 Immigration and Naturalization Service”).

2

3 13. Respondent DEPARTMENT OF HOMELAND SECURITY (“DHS”) is
4 the federal parent agency of the USCIS and agency responsible for the
5 administration and enforcement of the country’s immigration and naturalization
6 laws.

7

8 14. Respondent Irene MARTIN is the Director of the San Bernardino Field
9 Office of the USCIS, which is a division of the DHS, and is the official in
10 charge of the Service office where Petitioner’s hearing was held pursuant to 8
11 C.F.R. §336.2. *See* 8 C.F.R. § 336.9(b) (“The petition for review shall be
12 brought against the . . . official in charge of the Service office where the
13 hearing was held pursuant to § 336.2”).

14

15 15. Respondent Jane ARELLANO is the Director of the Los Angeles District
16 Office of the USCIS, which oversees the San Bernardino Field Office, and is
17 responsible for the adjudication of naturalization applications.

18

19 16. Respondent Alejandro MAYORKAS is the Director of USCIS, which is a
20 division of the DHS and is responsible for the administration and adjudication of
21 naturalization applications.

22

23 17. Respondent Janet NAPOLITANO is the Secretary of the DHS, and is
24 responsible for the administration and enforcement of the immigration and
25 naturalization laws.

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LEGAL FRAMEWORK FOR NATURALIZATION

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18. To naturalize as a U.S. citizen, an applicant must be a lawfully admitted permanent resident alien, 8 U.S.C. § 1429, who has continuously resided in the United States for at least five years prior to the filing of his or her naturalization petition; has been physically present for at least half of that time; and between the filing of his petition and his admission to citizenship, has resided continuously in the United States. 8 U.S.C. § 1427(a)(1), (2).

19. An applicant must also have been “a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States” for five years before the filing of the petition and up to the time of admission to citizenship. *Id.* § 1427(a)(3). Finally, he must not fall into any of the categories described in 8 U.S.C. § 1424(a) (listing categories such as membership in the Communist Party or those who advocate opposition to organized government).

20. Under the statute and the governing regulations, an applicant for naturalization is precluded from establishing “good moral character” if he or she intentionally provides false testimony “for the purpose of obtaining any [immigration] benefits.” 8 U.S.C. § 1101(f)(6); 8 C.F.R. § 316.10(b)(2)(iv) (“an applicant shall be found to lack good moral character if during the statutory period the applicant [] [h]as given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit.”). To constitute false testimony under 8 U.S.C. § 1101(f)(6), it is not sufficient that a given statement be incorrect. Rather, an applicant gives false testimony only where he or she provides an intentionally misleading response, and only when it is done for the specific purpose of obtaining immigration benefits, not where the misrepresentation is made for

1 other reasons. *See Kungys v. United States*, 485 U.S. 759, 780 (1988) (“Willful
2 misrepresentations made for other reasons, such as embarrassment, fear, or a
3 desire for privacy” do not constitute false testimony because they lack the
4 invalidating intent) (quoting from the Government’s Brief); *see also id.* at 781
5 (“the false testimony provisions of § 1101(f)(6) do not apply to
6 ‘concealments.’”). Although § 1101(f)(6) does not contain a materiality
7 requirement, where a true answer would not render the applicant ineligible for
8 the immigration benefit, “it will be relatively rare that the Government will be
9 able to prove that [the] misrepresentation . . . was nonetheless made with the
10 subjective intent of obtaining those benefits.” *Id.* at 781.

11
12 **21.** Form N-400 of the USCIS is the Application for Naturalization. Part
13 10(B)(8)(a) of the N-400 asks “Have you ever been a member of or associated
14 with any organization, association, fund, foundation, party, club, society or
15 similar group in the United States or in any other place?” If the applicant’s
16 answer is “yes,” Part 10(B)(8)(b) instructs the applicant to list the names of each
17 group.

18
19 **FACTS**

20 **22.** Petitioner, Tarek Hamdi, age 50, is a citizen of Egypt. Mr. Hamdi came
21 to the United States as a student in 1977. He has resided in the United States
22 ever since and currently resides in Riverside, California.

23
24 **23.** Mr. Hamdi attended college at North Shore Community College and
25 Northeastern University in Boston, Massachusetts.

26
27 **24.** In 1987, Mr. Hamdi married Linda Mary Carriere (maiden name), a U.S.
28 born citizen. *See* Exh. A (marriage certificate). They have four U.S. born

1 children: Nurah (age 20), Dahlia (age 17), Ameenah (age 14), and Roqayah (age
2 12). Mr. Hamdi is a practicing Muslim.

3
4 25. On February 25, 1988, Mr. Hamdi applied for Lawful Permanent
5 Residence on the basis of his marriage to Ms. Carriere. This application was
6 granted.

7
8 26. In the late 1990s, Mr. Hamdi learned about Benevolence International
9 Foundation (“BIF”) and their humanitarian relief efforts through flyers and
10 announcements he saw at the mosques he attended in and outside Boston. In
11 2000, Mr. Hamdi attended a BIF fundraiser and was given money by friends
12 who could not attend the fundraiser. He compiled the donations friends gave
13 him and wrote a check in the amount of \$8,000 to the BIF. In November 2002,
14 the Treasury Department designated BIF a financier of terrorism and shut down
15 the charity.

16
17 27. As a practicing Muslim, Mr. Hamdi donates money to charitable
18 organizations every year in accordance with *zakat*. *Zakat*, the Muslim charitable
19 giving practice, is one of the five pillars of Islam and a religious obligation for
20 all observant Muslims. In fulfillment of *zakat*, Mr. Hamdi has lawfully donated
21 money to numerous charities for humanitarian purposes over the course of many
22 years.

23
24 28. On October 1, 2001, Mr. Hamdi applied for naturalization in
25 Massachusetts. *See* Exh. B (Receipt). On April 18, 2002, Mr. Hamdi attended
26 and passed his naturalization examination. The examination officer told him
27 that no further action was required on his application and that he would receive a
28 notice scheduling him for an oath ceremony in the mail.

1 29. In or around May 2002, Mr. Hamdi moved to Stockton, California.
2 Before moving, an INS officer informed him that he would be scheduled for an
3 oath ceremony in California.
4

5 30. Mr. Hamdi never received a notice scheduling an oath ceremony.
6

7 31. Instead, Mr. Hamdi received a notice dated February 23, 2006 scheduling
8 him for a second naturalization interview on March 10, 2006. *See* Exh. C
9 (Request that Applicant Appear for Naturalization Initial Interview). Mr. Hamdi
10 was out of town on a business trip when the notice arrived and did not receive it
11 until after March 10, 2006 had passed.
12

13 32. In a letter dated March 16, 2006, Mr. Hamdi wrote to the USCIS
14 explaining that he missed the appointment because he was out of town and
15 requested that the interview be rescheduled.
16

17 33. In a notice issued March 17, 2006, six days after the scheduled interview,
18 the USCIS denied Mr. Hamdi's application for naturalization due to his failure
19 to appear for the appointment. The decision stated that it was "made without
20 prejudice to the filing of a new application in the future."
21

22 34. On February 15, 2007, Mr. Hamdi applied for naturalization anew with
23 the San Bernardino Field Office of the USCIS. *See* Exh. D (N-400 Application
24 for Naturalization). The USCIS received his application on February 23, 2007.
25 *See* Exh. E (Receipt with Exception). In response to the question in Part
26 10(B)(8) of the naturalization application, Mr. Hamdi listed his memberships
27 and associations as: (1) Al Hamra Academy School Board, (2) Islamic Society
28 of Greater Worcester, and (3) Islamic Society of Corona/ Norco. This

1 statement was made in accordance with his understanding of the question. The
2 response was truthful, and Mr. Hamdi intended it to be entirely accurate.

3
4 35. On November 3, 2008, Mr. Hamdi passed the naturalization examination
5 but was told that a decision could not yet be made on his application. *See* Exh.
6 F (N-652, Naturalization Results).

7
8 36. On March 16, 2009, Mr. Hamdi filed a mandamus action pursuant to 8
9 U.S.C. § 1447(b), INA § 336(b) to compel the USCIS to finally adjudicate his
10 naturalization application.

11
12 37. On June 8, 2009, USCIS denied his application for naturalization on the
13 asserted ground that he failed to demonstrate that he is a person of good moral
14 character, as required by 8 C.F.R. § 316.10(b), § 316(a)(3), and § 316.2(a)(7),
15 because he gave false testimony on his naturalization application and during his
16 naturalization interview. The USCIS alleged that he failed to reveal his
17 “affiliation”⁴ with BIF, without disclosing what basis it had for believing he was
18 affiliated with that organization. It also alleged that a “source of public
19 information revealed that your last employer was LIM & Nascimento
20 Engineering Corp., Lan Engineering Corp,” stating that he had “failed to reveal
21 the aforementioned employer on your N-400 application and at your interview.
22 Furthermore, the same public source reveals that you are currently unemployed
23 and have no source of income which is contrary to your statements made during
24 the interview.”

25
26 ⁴ Respondents state that Mr. Hamdi failed to disclose his “affiliation” with BIF.
27 However, the N-400 question at issue here does not ask about “affiliations” but
28 rather about memberships and associations. *See* Exh. F (N-400 Application for
Naturalization). Counsel for Petitioner, therefore, assume that when Respondents
refer to “affiliation,” they actually mean “association.”

1 38. Mr. Hamdi testified truthfully on his application and during his interview
2 as to all matters, including his employment. Mr. Hamdi did not begin work with
3 Lim & Nascimento Engineering Corp. until on or around January 2009, nearly
4 two years *after* filing his naturalization application and approximately two
5 months *after* his naturalization interview. At the time of the decision, June
6 2009, Mr. Hamdi was gainfully employed by Lim & Nascimento.

7
8 39. On July 13, 2009, Mr. Hamdi appealed the denial by filing a request for a
9 hearing before an immigration officer (Form N-336), as required under 8 U.S.C.
10 § 1447(a), INA § 336. *See* Exh. G (N-336 Request for a Hearing on a Decision
11 in Naturalization Proceedings). On September 24, 2009, he appeared for his
12 scheduled hearing on the appeal.

13
14 40. On April 8, 2010, the USCIS again denied his naturalization request. The
15 decision states that he failed to establish “good moral character” under 8 C.F.R.
16 § 316.10(b) and § 316.2(a)(7) because he gave false testimony during his
17 interviews when he failed to reveal his “affiliation” with BIF. It explains that
18 “[d]ocuments in your file revealed evidence, in the form of cancelled checks
19 made out by you to the BIF, that you have made monetary contributions to the
20 financial support of the Benevolent International Foundation (BIF).” The
21 second denial makes no mention of the allegedly false statements concerning
22 employment.

23
24 41. Mr. Hamdi has never been a member of the BIF or associated with it in
25 any ordinary sense of that word. Mr. Hamdi acknowledged at his interview, and
26 continues to acknowledge, that he made donations to BIF. However, he did not
27 understand his donations to BIF to constitute an “association” with that
28 organization, any more than he should be associated with any charitable

1 organization to which he has ever given a donation.

2

3 42. Mr. Hamdi has never been arrested for or convicted of any crime. *See*
4 Exh. H (police reports).

5

6 43. Mr. Hamdi has exhausted all of his administrative remedies by
7 administratively appealing the denial in accordance with 8 U.S.C. § 1447(a),
8 attending the appeal hearing before an immigration officer, and receiving a
9 decision on the administrative appeal. *See* Exh. G (N-336 Request for a Hearing
10 on a Decision in Naturalization Proceedings). *See also* 8 U.S.C. § 1421(c) (“A
11 person whose application for naturalization [] is denied, after a hearing before
12 an immigration officer under section 336(a) [], may seek review of such denial
13 before the United States district court”).

14

15

CAUSES OF ACTION

16

FIRST CLAIM FOR RELIEF

17

Violation of Immigration and Naturalization Act and Administrative

18

Procedures Act

19

(false testimony)

20

21 44. The allegations contained in paragraphs 1 through 43 are repeated and
22 realleged as though fully set forth herein.

23

24 45. Respondents violated the INA in concluding that Mr. Hamdi made a false
25 statement and thus lacked the requisite “good moral character” required for
26 naturalization. In order for the statement to be false under the INA, the speaker
27 must specifically intend to give false testimony for the purpose of obtaining an
28 immigration benefit. 8 C.F.R. § 316.10(b)(2)(iv) (“an applicant shall be found

1 to lack good moral character if during the statutory period the applicant [] [h]as
2 given false testimony to obtain any benefit from the Act, if the testimony was
3 made under oath or affirmation and with an intent to obtain an immigration
4 benefit.”); 8 U.S.C. § 1101(f)(6), INA § 101(f)(6). *See also Kungys v. United*
5 *States*, 485 U.S. 759, 780 (1988) (“§ 1101(f)(6) applies to only those
6 misrepresentations made with the subjective intent of obtaining immigration
7 benefits.”). Mr. Hamdi spoke truthfully on all matters, including his
8 associations, on his naturalization application and in his interviews. Mr. Hamdi
9 does not believe himself to be “associated” with the Benevolence International
10 Foundation and, therefore, did not intend to make a false statement at the time
11 that he failed to list BIF on his application, let alone a false statement in order to
12 obtain an immigration benefit.

13
14 46. Respondents also violated the APA because their conclusion that Mr.
15 Hamdi made a false statement is “arbitrary, capricious, an abuse of discretion, or
16 otherwise not in accordance with law” within the meaning of the APA, and there
17 is therefore no basis for concluding that he is ineligible for naturalization. 5
18 U.S.C. § 706(2)(A) (setting forth the standard for setting aside agency actions
19 under the APA).

20
21 **SECOND CLAIM FOR RELIEF**

22 **Violation of the Due Process Clause of the Fifth Amendment**
23 **(vagueness)**
24

25 47. The allegations contained in paragraphs 1 through 43 are repeated and
26 realleged as though fully set forth herein.

27
28 48. Respondent’s application of the N-400 question on associations to

1 charitable organizations to whom an applicant gave money is unconstitutional
2 because it is void for vagueness under the Due Process Clause of the Fifth
3 Amendment. "It is a basic principle of due process that an enactment is void for
4 vagueness if its prohibitions are not clearly defined." *Grayned v. City of*
5 *Rockford*, 408 U.S. 104, 108 (1972). A law that implicates First Amendment
6 rights must be "sufficiently clear so as to allow persons of 'ordinary intelligence
7 a reasonable opportunity to know what is prohibited.'" *Foti v. City of Menlo*
8 *Park*, 146 F.3d 629, 638 (9th Cir. 1998) (quoting *Grayned*, 408 U.S. at 108).
9 An ordinary person would not understand the N-400 question on memberships
10 and associations to require them to list every charity to which they had made a
11 donation.

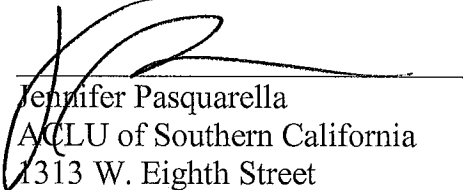
12 **PRAYER FOR RELIEF**

13 Wherefore, Petitioner respectfully prays that this Court to:

- 14
- 15 a. Assume jurisdiction over this matter;
 - 16 b. Order that a hearing take place in this matter;
 - 17 c. Review *de novo* Petitioner's application for naturalization and grant him
18 naturalization;
 - 19 d. Award reasonable costs and attorneys' fees; and
 - 20 e. Grant such further relief as the Court deems just and proper.
- 21

22 Dated: June 16, 2010

Respectfully submitted,

23
24 
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(213) 977-5236
Attorney for Petitioner