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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

The United States of America,)
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 Plaintiff,)
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 v.)
)
 Fernando Arango,)
)
 Defendant.)
 _____)

CV 09-178 TUC DCB
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

13 Plaintiff brings this action under 8 U.S.C. § 1451(a) to revoke and set aside the order
14 admitting Defendant Fernando Arango (Arango) to United States citizenship and to cancel
15 his certificate of naturalization. On December 2 and 3, 2014, this action was tried before this
16 Court, sitting without a jury. The Court having heard the testimony and having examined
17 the proofs offered by the parties, and having heard the arguments of counsel and being fully
18 advised herein, the Court now finds generally in favor of Plaintiff and against the Defendant,
19 and hereby makes the following special Findings of Fact and Conclusions of Law pursuant
20 to the Federal Rules of Civil Procedure, Rule 52(a) and (c) which constitutes the decision of
21 the Court herein:

FINDINGS OF FACT

22
23 To the extent these Findings of Fact are also deemed to be Conclusions of Law, they
24 are hereby incorporated into the Conclusions of Law that follow.

A. Arango’s Sham Marriage

25
26 1. Arango was born in Cali, Columbia in 1954. (Stipulation (Doc. 111) ¶ 1. He
27 originally came to the United States in 1972 on a student visa, *id.* ¶ 2; he returned in 1973
28 to the United States for approximately two years on a new student visa to attend college in

1 New York State and graduated in 1975, *id.* ¶ 3. After graduating, Arango obtained a
2 Canadian student visa to attend Ryerson University in Toronto, Canada, for four years.
3 Arango’s Canadian student visa expired in 1980. *Id.* ¶ 4.

4 2. In 1979, while Arango was still living in Canada, Arango’s sister, Amparo
5 Valbuena, a.k.a. Amparo Arango (“Valbuena”), told Arango he could become a lawful
6 permanent resident by marrying a U.S. citizen, and that she knew a man, Miguel Diaz
7 (“Diaz”), who would arrange a marriage for Arango.

8 3. Valbuena had obtained her permanent resident status through Diaz’s marriage
9 fraud ring in May 1979. She paid Diaz and one of his associates to handle the immigration
10 paperwork and arrange her marriage to a U.S. citizen named Eladio Santiago (“Santiago”).
11 Valbuena was aware at the time that it was illegal to obtain her immigration status in this
12 manner.

13 4. Arango knew in 1979 that Diaz would arrange his marriage to a U.S. citizen in
14 exchange for payment, as Diaz had done for Valbuena. Around December 1979, Arango
15 paid \$2,000 to Valbuena to give to Diaz and paid another \$1500 in February, 1980. (P’s Ex.
16 11.)

17 5. Diaz applied for a marriage license in New York as Arango by pretending to be
18 Arango at the marriage license bureau and forging Arango’s signature on the Affidavit and
19 Application for License to Marry. Arango did not go to the marriage license bureau himself
20 to apply for a marriage license. *Id.* ¶ 6.

21 6. On March 21, 1980, Arango purportedly married Vicky Tirado (“Tirado”), a U.S.
22 citizen. *Id.* ¶ 7. Neither Arango nor Tirado attended the March 21, 1980, wedding ceremony.
23 *Id.* ¶ 8. Arango knew that Diaz had stood in as him at the March 21, 1980, wedding
24 ceremony. Valbuena stood in as Tirado during the March 21, 1980, wedding ceremony.
25 Arango never met Tirado in person. *Id.* ¶ 9. Arango never lived with Tirado. *Id.* ¶ 10.

1 7. From 1975 through the duration of his purported marriage to Tirado, Arango was
2 in a romantic relationship with a woman who was a Canadian citizen and who resided in
3 Canada.

4 8. Arango and Tirado did not intend to establish a life together at the time of the
5 purported marriage, therefor, Arango's marriage to Tirado was a sham.

6 **B. Arango's Permanent Resident Status**

7 9. On April 7, 1980, Tirado (or someone pretending to be Tirado) filed with the
8 Immigration and Naturalization Service ("INS")¹ a Petition to Classify Status of Alien
9 Relative for Issuance of Immigrant Visa, Form I-130, on Arango's behalf. *Id.* ¶ 11.

10 10. Along with the Form I-130, Tirado (or someone pretending to be Tirado)
11 submitted a putative certificate of marriage memorializing the marriage between Arango and
12 Tirado. *Id.* ¶ 12.

13 11. On the Form I-130, Tirado (or someone pretending to be Tirado) identified
14 Arango as her spouse, *id.* ¶ 13, claimed that, from March 21, 1980, through March 23, 1980
15 (i.e., the weekend of the purported wedding), she and Arango lived together at 82-66 159th
16 Street, Jamaica, New York, *id.* ¶ 14, and claimed Tirado resided at 82-66 159th Street,
17 Jamaica, New York, *id.* ¶ 15.

18 12. Valbuena resided at 82-66 159th Street, Jamaica, New York, in March 1980 when
19 the I-130 Alien Relative for Issuance of Immigrant Visa form was filed with the INS; Tirado
20 did not live at that address with Valbuena.

21 13. The INS approved Tirado's Form I-130 on April 22, 1980. *Id.* ¶ 16.

22 14. On November 4, 1980, Arango filed a State Department Optional Form 230,
23 Application for Immigrant Visa and Alien Registration, Form 230. *Id.* ¶ 17.

24
25 ¹The INS ceased to exist as an independent agency within the United States
26 Department of Justice and its functions moved to the Department of Homeland
27 Security ("DHS") on March 1, 2003. *See* Homeland Security Act of 2002, Pub.L.No. 107-
28 296, 110 Stat. 2135 (Nov. 25, 2002).

1 15. On his Form 230, Arango claimed that he was eligible for an immigrant visa
2 based on the approved Form I-130, as the spouse of a U.S. citizen, *id.* ¶ 18, listed Tirado as
3 his wife, *id.* ¶ 19, stated that his purpose in going to the United States was to join his wife,
4 *id.* ¶ 20, and stated that he lived at 82-66 159th Street, Jamaica, NY, when he really still lived
5 in Canada, *id.* ¶ 21.

6 16. In conjunction with Arango’s Form 230, Tirado (or someone pretending to be
7 Tirado) filed an Affidavit of Support, Form I-134, with the INS, which: (1) identified
8 Tirado’s residence at the time as 82-66 159th Street, Jamaica Hills NY; (2) identified Arango
9 as her spouse; and (3) stated that the reason she was submitting the affidavit was “[t]o enable
10 my husband Fernando to join me permanently in the United States.” (P’s Ex. 3)

11 17. On November 4, 1980, a consular officer interviewed Arango in person in
12 Toronto, Canada. *Id.* ¶ 22.

13 18. Arango swore under oath that all of the statements in the Form 230 were true and
14 complete. (P’s Ex. 4 at 4.)

15 19. The State Department approved Arango’s Form 230 on November 4, 1980, and
16 Arango was admitted to the United States as a permanent resident on December 1, 1980. *Id.*
17 ¶ 23.

18 20. Arango divorced Tirado on March 27, 1984, by commencing a legal action in
19 Dade County Circuit Court in Florida. Arango served Tirado with legal process by publishing
20 a notification in a newspaper because he did not know her whereabouts. The divorce was
21 granted by default against Tirado. *Id.* ¶ 24.

22 **C. Arango’s Sworn Statement to INS Re: Diaz Marriage Fraud Ring**

23 21. Former INS Senior Special Agents Gary Hittelman (“Agent Hittelman”) and
24 Peter Candemeres (“Agent Candemeres”) worked for the INS in its New York, NY, office
25 and led an INS’s investigation into the marriage fraud ring Diaz orchestrated and operated.
26
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1 Agents Hittelman and Candemeres were tasked with developing a criminal case against Diaz
2 and others, including both Arango and Valbuena.

3 22. Former Program Manager with U.S. Immigration and Customs
4 Enforcement (“ICE”) Charles Ferrigno (“Agent Ferrigno”), who in 1982 was a junior
5 investigator in the INS’s office in New York, NY, assisted Agents Hittelman and
6 Candemeres.

7 23. Valbuena had worked with Diaz to further the marriage fraud ring; thus, she was
8 an important witness in the case against Diaz. As such, Agents Hittelman and Candemeres
9 interviewed Valbuena on multiple occasions in connection with their investigation.

10 24. On March 1, 1982, Valbuena met with Agents Hittelman and Candemeres at the
11 INS office at 26 Federal Plaza, New York, NY, dictated and signed a sworn statement,
12 admitting, *inter alia*, that: (1) because her student visa would soon expire, she knowingly
13 paid a marriage broker associated with Diaz to arrange a sham marriage to Santiago;(2) she
14 then applied for and received her permanent resident status on the basis of that sham
15 marriage; (3) she never resided with Santiago; and (4) after she obtained her permanent
16 resident status, she drove Diaz and other individuals around in connection with Diaz’s
17 marriage fraud ring, and she referred other individuals to Diaz to arrange sham marriages for
18 immigration benefits.

19 25. On May 21, 1982, Diaz pleaded guilty to one count of conspiracy to violate
20 18U.S.C. § 1001 (false statement), five counts of violating 18 U.S.C. § 1001 (false
21 statement), and one count of violating 18 U.S.C. § 1505 (obstruction). Diaz was sentenced
22 on July 29, 1982, to 2 years’ imprisonment, with 5 years’ probation thereafter, and fined
23 \$30,000. *Id.* ¶ 25.

24 26. Agent Hittelman prepared an investigation report on August 13, 1982, discussing
25 the Diaz investigation and the marriage fraud ring conspiracy. In his report, Agent Hittelman
26 identified the primary participants in the scheme, described the scheme generally, and
27

1 explained that the INS intended to initiate administrative immigration proceedings against
2 aliens who had either obtained permanent residence status or a visa as a result of a sham
3 marriage to a U.S. citizen, or were in the process of doing so. (P's Ex. 14.)

4 27. Agent Ferrigno testified that Agent Hittelman was attempting to get the aliens
5 who had received their status through the marriage fraud ring deported and was very
6 frustrated because he couldn't get any action from the higher-ups who made the decision that
7 work force requirements didn't permit that to be done.

8 28. On September 15, 1982, after Diaz had been convicted and sentenced, Agents
9 Hittelman and Candemeres met with Arango and he dictated a sworn statement admitting:
10 "My true & correct name is Fernando Arango. I was born on August 22, 1954 in Cali,
11 Colombia. I am a native + citizen of Colombia. I last entered the US as a permanent resident
12 of the US on August 22 [corrected to August 26], 1982. Before I became a residence, I came
13 as a student from Canada. In 1979 my sister Amparo told me I could become a resident by
14 marrying a citizen. She said she knew a man who would arrange it. I'd have to pay about
15 \$2500 to him. I wouldn't have to live with the girl. Around December of 1979 I paid \$2000
16 to Amparo to give to Miguel Diaz & around Feb, 1980 I paid another \$1500. I never met
17 Miguel or Vicky Tirado, my wife. I never got married. Somebody else took my place at the
18 marriage bureau. My sister told me Miguel Diaz took my place at the ceremony. Amparo
19 gave me all the Immigration papers from Miguel & I went to the American Consulate in
20 Toronto for my green card." (P's Ex. 11.)

21 29. Agents Candemeres and Hittelman both remember the Diaz investigation. They
22 also both specifically remember Valbuena, who was a more important witness than Arango.

23 30. The U.S. Attorney prosecuting Diaz was prepared to grant Valbuena criminal
24 immunity in exchange for her cooperation in the Diaz investigation, but he did not do so.
25 That criminal immunity would not have extended to grant Valbuena immunity from any

1 administrative immigration proceedings, and it would not have provided Arango with any
2 immunity whatsoever.

3 31. Valbuena played a more important role in the Diaz investigation because
4 Valbuena worked with Diaz to further the marriage fraud ring; she received her permanent
5 resident status; she handled immigration paperwork for Diaz, and she drove Diaz and other
6 aliens in connection with the marriage fraud ring. Arango does not recall ever meeting Diaz.

7 32. Agents Hittelman, Candemeres and Ferrigno have never seen or heard of a
8 cooperation agreement offering an alien immunity from immigration proceedings in
9 exchange for the alien's cooperation in an investigation.

10 33. Agents Hittelman, Candemeres and Ferrigno have never offered any alien a
11 verbal or written cooperation agreement offering any immunity from immigration
12 proceedings, or offering the ability to naturalize despite an alien's ineligibility to do so, in
13 exchange for the alien's cooperation in an investigation.

14 34. Valbuena assumed that she would be permitted to remain in the United States in
15 exchange for her cooperating with the INS regarding the Diaz investigation. But Valbuena
16 never asked the INS for anything in return for her cooperation. Nor did Agents Hittelman,
17 Candemeres and/or Ferrigno enter into a written or oral cooperation agreement with
18 Valbuena allowing her (or Arango) to remain in the United States or naturalize in exchange
19 for her cooperation.

20 35. According to Arango when he and his sister decided to proceed with their
21 naturalization, Agent Hittelman affirmed there would be no problem. Arango's testimony
22 conflicted with Valbuena's testimony that Agent Hittelman changed the subject when she
23 questioned him about whether she could proceed with naturalization. The August 13, 1982,
24 Investigation Report by Hittelman and testimony from witness Ferrigno that Hittelman
25 expected criminal and deportation proceedings would be instituted with respect to the aliens
26 who were party to the scheme., support Valbuena's testimony. The Court finds Arango's
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1 testimony to be not credible in respect to the existence of a cooperation agreement between
2 himself and the United States.

3 36. Agents Hittelman, Candemeres and/or Ferrigno did not enter into a written or
4 oral cooperation agreement with Arango allowing him to remain in the United States or
5 naturalize in exchange for his cooperation.

6 **D. Arango's Naturalization**

7 37. On June 13, 1988, Arango filed with the INS an Application for Naturalization,
8 Form N-400, *id.* ¶ 28, signed by Arango on March 30, 1988, *id.* ¶ 29.

9 38. Question 23 of his Form N-400 asked for the total number of times Arango had
10 been married. Arango left the answer to this question blank. *Id.* ¶ 30.

11 39. Question 23 required Arango to list any former spouses and to provide the dates
12 of any such marriage, divorce, the way the marriage ended, and the former spouse's INS
13 status, *id.* ¶ 31; Arango answered that he had been married to Tirado from March 21, 1980,
14 until March 27, 1984, *id.* ¶ 32.

15 40. In response to Question 51 on his Form N-400, Arango stated that he had never
16 provided false testimony to obtain an immigration benefit. *Id.* ¶ 33.

17 41. In connection with his Form N-400, Arango filed with the INS a Biographic
18 Information Form, Form G-325, signed on March 29, 1988, which identified Vicky Tirado
19 as his former wife, and indicated that they had: (1) been married on March 21, 1980; and (2)
20 divorced on March 27, 1984. (P's Ex. 6.)

21 42. On June 15, 1989, Johnnie Fripp, who was at that time a District Adjudications
22 Officer with the INS ("DAO Fripp"), interviewed Arango regarding his Form – 400
23 application for citizenship. She placed Arango under oath at the beginning of the interview,
24 and asked him to review, confirm or correct his answers to the questions on the Form N-400.
25 (P's Ex. 5.)

1 43. Consistent with her standard practice as required by the Adjudicator's Field
2 Manual and in accordance with her training, each time Arango confirmed an answer she
3 checked it in red pen and if he provided an oral answer that differed from that which he wrote
4 on his Form N-400, Fripp used a red pen to make annotate the new or corrected answer. *Id.*

5 44. Arango did not make any corrections to his Form N-400 regarding his marriage,
6 except to add "1" in response to Question 23, asking how many times Arango had been
7 married. *Id.*

8 45. Arango answered no to Question 28, which asked whether he had knowingly
9 committed any crime for which he had not been arrested. (P's Ex. 5: Form N-400 at 3.)
10 arrested

11 46. At the conclusion of the interview, Arango signed a sworn statement averring
12 that the contents of his Form N-400 were true to the best of his knowledge and belief. *Id.* ¶
13 34.

14 47. The INS approved Arango's Form N-400 on June 15, 1989. *Id.* ¶ 35.

15 48. Arango filed a Petition for Naturalization, Form N-405, with the United States
16 District Court for the Southern District of Florida on June 15, 1989. *Id.* ¶ 36.

17 49. On September 12, 1989, Arango took the oath of allegiance at a naturalization
18 ceremony, was admitted to United States citizenship, and received Certificate of
19 Naturalization No.14208736. *Id.* ¶ 37.

20 50. During Arango's citizenship interview, DAO Fripp possessed a temp-alien file
21 from Miami, Florida for Arango; she did not possess Arango's originating file from New
22 York, NY, which contained his September 15, 1982, sworn affidavit admitting the fraudulent
23 marriage to Tirado.

24 51. It was typical to conduct interviews for citizenship using temporary files while
25 awaiting receipt of a permanent file because it could take up to a year to receive the
26 permanent file. Waiting for the permanent file would create a back log so the naturalization
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1 proceedings moved forward even to the point of the naturalization ceremony, with the
2 protocol being for the temporary file to be consolidated with the permanent file upon its
3 receipt, with the alien's file reviewed at that time for any derogatory or problematic
4 information to be referred for investigation.

5 52. In Arango's case the permanent New York A-file was ordered by the Miami INS
6 office on June 13, 1988. It had not arrived at the time of the citizenship interview, therefore,
7 DAO Fripp was relying on Arango's statements at the interview. The New York and Miami
8 files had not been consolidated in 2004 when the Miami A-file was obtained by Agent Ward
9 during a criminal investigation of Arango for a drug offense. (P's Ex. 10.)

10 53. The INS's record-keeping system was imperfect, particularly in 1982. As a
11 result, although Arango's September 15, 1982, affidavit was filed in his alien file originating
12 in New York, NY, the INS did not consolidate that alien file with Arango's Miami, Florida,
13 alien file.

14 54. Arango did not ask DAO Fripp if she had reviewed his file regarding how he had
15 obtained his legal permanent residence status, i.e., green card, or if she knew he had met with
16 INS investigators in New York about this. If he had made these inquires, she would have
17 been required her to ask followup questions, which if answered truthfully by Arango, would
18 have required her to discontinue the interview due to his sham marriage to Tirado. She did
19 not discontinue the interview.

20 55. Arango deliberately did not inform DAO Fripp that his marriage to Tirado was
21 fraudulent and that in 1982, he had admitted as much and that it was a sham, and he
22 deliberately failed to correct the misrepresentation on his Form 400 application that he was
23 a legal permanent resident through his marriage to a United States, Tirado.

24 56. Had Arango told DAO Fripp that he obtained his lawful permanent resident
25 status from a sham marriage, which did not conform with the requisites for a legal marriage,
26 she would have noted that information on his naturalization application, she would not have
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1 recommended granting his naturalization application, she would have discontinued his
2 interview and referred his application for investigation into his bad moral character based on
3 his having entered into a fraudulent marriage.

4 57. Because DAO Fripp did not have the information that Arango's marriage was
5 not legally binding and a sham, she recommended citizenship because he was a lawful
6 permanent resident, through marriage to a United States citizen, Tirado, lasting for three
7 years, and residing in the United States for five years.

8 58. Because the INS did not have the information that Arango's marriage was not
9 legally binding and a sham, on September 12, 1989, Arango's Petition for Naturalization was
10 granted, he took the oath of allegiance, and was admitted to United States citizenship and
11 received Certificate of Naturalization No.14208736. *Id.* ¶ 37.

12 **E. Arango's Federal Employment, Criminal Conviction, and Denaturalization**

13 59. Arango became a Border Patrol Agent in 2003.

14 60. In confirming Arango's status as a U.S. citizen, a prerequisite for his
15 employment with the United States Customs and Border Protection (CBP), CBP confirmed
16 that Arango possessed a certificate of naturalization that had not been forged and that bore
17 his identity.

18 61. In 2005, Arango was arrested for attempted possession with intent to distribute
19 cocaine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(ii)(II) and 846. *Id.* ¶ 38.

20 62. On February 13, 2007, Arango was sentenced to nine years in prison for
21 attempted possession with intent to distribute cocaine in violation of 21 U.S.C. §§
22 841(a)(1),841(b)(1)(A)(ii)(II) and 846. *Id.* ¶ 39.

23 63. Stanley Ward, former Senior Special Agent with the United States Immigration
24 and Customs Enforcement (ICE) in the Office of Professional Responsibility ("Agent
25 Ward"), was the primary investigator assigned to Arango's criminal drug investigation.

1 **A. Arango Illegally Procured his Citizenship.**

2 1. This is an action under section 340(a) of the Immigration and Nationality Act of
3 1952 (INA), to revoke and set aside the order admitting Defendant Fernando Arango to
4 citizenship and to cancel Defendant’s certificate of naturalization, with an affidavit showing
5 good cause for this action provided by Stanley Ward, a Senior Special Agent of ICE.
6 (Complaint to Revoke Naturalization (Doc. 2) (citing 8 U.S.C. § 1451(a)). The Court has
7 jurisdiction pursuant to 28 U.S.C. § 1345.

8 2. To prevail in a denaturalization proceeding, the government must prove its case
9 “by clear, unequivocal, and convincing evidence which does not leave the issue in doubt.”
10 *Klapprott v. United States*, 335 U.S. 601, 612 (1949).

11 3. Congress authorized the government to seek denaturalization for a naturalized
12 citizen who either: (1) illegally procured his naturalization; or (2) procured his naturalization
13 by concealing material facts or by willful misrepresentation. 8 U.S.C. § 1451(a).

14 4. An individual has “illegally procured” citizenship if he was statutorily ineligible
15 to be naturalized when he became a naturalized citizen. See *Fedorenko v. United States*, 449
16 U.S.490, 506 (1981).

17 5. An individual has procured his naturalization by either concealment or
18 misrepresentation, if the concealment or misrepresentation was willful, and if the fact at issue
19 was material. *Kungys v. United States*, 485 U.S. 759, 767 (1988)(citing *Fedorenko*, 449U.S.
20 at 507n.28).

21 6. When a court determines the government has met its burden of proving that a
22 naturalized citizen obtained his citizenship illegally, or by willful concealment or
23 misrepresentation, it lacks discretion to excuse the conduct, and it must enter a judgment of
24 denaturalization. *Fedorenko*, 449U.S. at 517(citing 8 U.S.C. § 1429).

1 See 8 U.S.C. § 1255(a). Once “immediate relative” status is conferred, an immigrant visa
2 issues. 8 U.S.C. § 1151(b)(2)(A)(i).

3 13. A sham marriage cannot confer immigration benefits, including permanent
4 resident status, to an alien spouse. See 8 U.S.C. §1154(c); *Biggs v. INS*, 55 F.3d1398,
5 1401(9th Cir. 1995)(holding that an alien who obtained lawful permanent resident status
6 through a fraudulent marriage was not lawfully admitted).

7 14. A marriage is a sham “if the bride and groom did not intend to establish a life
8 together at the time they were married.” *United States v. Orellana-Blanco*, 294 F.3d
9 1143,1151 (9thCir. 2002)(quoting *Bark v. INS*, 511 F.2d1200, 1201 (9th Cir. 1975)); *see also*
10 *United States v. Arango*, 670 F.3d 988, 993 n.2 (9th Cir.2012) (“If Arango was not a lawful
11 permanent resident at the time of his naturalization because of his fraudulent marriage, then
12 his citizenship was illegally procured.”).

13 15. Arango testified that he married Tirado because marrying a United States citizen
14 was the fastest and easiest way to get his citizenship, he and Tirado never met, not even on
15 the day of the purported marriage, never lived together, and after four years when he filed
16 for divorce he served her by publication because he had no knowledge of her whereabouts.

17 16. Arango’s marriage to Tirado was a sham because he and Tirado did not intend
18 to establish a life together at the time they were married. *Orellana-Blanco*, 294 F.3d at 1151
19 (quoting *Bark*, 511 F.2d at 1201 (9th Cir. 1975) (explaining motivation for marriage as
20 evidence of intent, therefore, motive to marry to get a green card may raise inference of
21 sham, but sham arises from intent to not establish a life together).

22 17. Under New York law, individuals who intend to marry must, in accordance with
23 New York law, obtain a marriage license and deliver it to the officiant of the marriage
24 ceremony, N.Y. Domestic Relations Law § 13 (McKinney 1977), each applicant must, in
25 person, sign and verify a statement or affidavit containing personal identifying information,
26 *id.* § 15, a marriage must be solemnized by, among other things, the spouses entering into a
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1 written contract of marriage, signed by both spouses and at least two witnesses and
2 acknowledged before a judge “of a court of record of” New York by the spouses and
3 witnesses, *id.* § 11(4).

4 18. Under New York law, the spouses “must solemnly declare in the presence of a
5 clergyman or magistrate and the attending witnesses that they take each other as husband and
6 wife,” and at least one witness must be present at the ceremony. *Id.* § 12.

7 19. The purported marriage between Arango and Tirado on March 21, 1980, was
8 not a legal marriage because neither Arango nor Tirado attended the marriage ceremony in
9 New York. Instead, Diaz stood in as Arango, and Valbuena stood in as Tirado. Arango did
10 not procure the marriage license; Diaz fraudulently procured the licence. The personal
11 identifying information was false in regard to Arango’s address being at 82-66 159th Street,
12 Jamaica, New York, when he was actually residing in Canada.

13 20. Pursuant to New York law, a spouse petitioning for divorce may serve the
14 divorce petition and summons on his or her spouse by publication “if service cannot be made
15 by another prescribed method with due diligence.” New York Domestic Relations Law §232
16 (McKinney’s 1962); New York Civil Practice Law & Rules §§ 314 & 315 (McKinney’s 1962);
17 *see also Caban v. Caban*, 497 N.Y.S.2d 175, 176 (N.Y.App. Div. 1986). “[S]ervice by
18 publication should be utilized only as a last resort where all other methods of service are
19 unavailable, including possible methods of expedient service.” *Caban*, 497 N.Y.S.2d at 176.
20 If the defendant spouse does not appear or plead, the Court may enter judgment in favor of
21 spouse seeking the divorce. New York Domestic Relations Law § 232. Arango served the
22 divorce notice on Tirado by publication.

23 **B. Arango Willfully Concealed and Misrepresented a Material Fact.**

24 21. Additionally, an alien who “by fraud or willfully misrepresenting a material
25 fact...has procured...a visa, other documentation, or other admission to the United States or
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1 other benefit provided under this chapter is inadmissible” to the United States. 8 U.S.C. §
2 1182(a)(6)(C)(i); 8 U.S.C. § 1182(a)(19) (1980).

3 22. “This ground for denaturalization ‘plainly contains four independent
4 requirements: the naturalized citizen must have misrepresented or concealed some fact, the
5 misrepresentation or concealment must have been willful, the fact must have been material,
6 and the naturalized citizen must have procured citizenship as a result of the misrepresentation
7 or concealment.’” *Arango*, 670 F.3d at 994-995) (quoting *Kungys*, 485 U.S. at 767).

8 23. Proof of intent to deceive is not required to meet the willfulness element. *See*
9 *Forbes v. INS*, 48 F.3d439, 442 (9thCir. 1995) (citing *Espinoza-Espinoza v. INS*, 554F.2d
10 921, 925 (9th Cir. 1977)). Rather, knowledge of the falsity of a representation is sufficient.
11 *Id.*; *Hernandez-Robledo v. INS*, 777F.2d 536, 539 (9th Cir.1985) (the government “need only
12 show that ‘the misrepresentation was deliberate and voluntary’”)(quoting *Espinoza-Espinoza*,
13 554 F.2d at 925); *Witter v. INS*, 113 F.3d 549, 554 (5thCir. 1997); *Matter of Healy*, 17 I. &
14 N. Dec. 22, 28 (BIA1979); *see also U.S. v. Nunez-Garcia*, 262 F. Supp. 2d1073, 1085(C.D.
15 Cal.2003)(defendant’s misrepresentations were willful where he “spoke, read, wrote, and
16 understood English” and signed the form under penalty of perjury).

17 24. An alien willfully misrepresents a fact within the meaning of 8 U.S.C.§
18 1182(a)(6)(C)(i) if “the misrepresentation was deliberate and voluntary.”*Espinoza-Espinoza*,
19 554 F.2d at 925. “[T]here is no requirement that an intent to deceive must be shown.” *Id.*

20 25. Whether a concealment or misrepresentation is material under
21 section1182(a)(6)(C)(i)“is whether they ha[ve] a natural tendency to influence the decisions
22 of the immigration and Naturalization Service.” *Forbes v. INS*, 48 F.3d 439, 442 (9thCir.
23 1995)(quoting *Kungys*, 485 U.S. at 772), including where honest representations would
24 predictably have disclosed other facts relevant to [the applicant’s] qualifications.” *Id.*
25 (internal quotations and citations omitted).

1 previously admitted alien is deportable if the alien committed marriage fraud as defined in
2 *Bark*, 511 F.2d at 1201). Arango was never lawfully admitted to the United States as a
3 permanent resident. He was consequently ineligible to naturalize, and he illegally procured
4 his naturalization. *See Arango*, 670 F.3d at 993.

5 **2. No cooperation agreement existed to allow Arango to naturalize.**

6 30. Arango argues that, even if he was not lawfully admitted as a permanent resident,
7 Agents Hittelman and Candemeres entered into a cooperation agreement with him whereby
8 the INS would permit him to remain in the United States and eventually naturalize in
9 exchange for his cooperation and assistance with the ongoing Diaz investigation.

10 31. The Government can be bound by a cooperation agreement in the immigration
11 context if the person making the promise is authorized to make the promise and the promisee
12 relies on the promise to his detriment. *Thomas v. INS*, 35 F.3d 1332, 1337 (9th Cir. 1994).

13 32. Agents Hittelman, Candemeres, and Ferrigno testified they had no authority to,
14 and did not, offer Arango any kind of cooperation agreement, either verbally or in writing.
15 Agents Hittelman, Candemeres, and Ferrigno testified they have never offered any other
16 alien such an agreement, or seen their colleagues at the INS do so. The Report of
17 Investigation Agent Hittelman prepared in connection with the Diaz
18 investigation/prosecution, dated August 13, 1982, and Ferrigno's testimony indicated that
19 Hittelman believed the INS would initiate administrative immigration proceedings against
20 aliens who had received visas or lawful permanent resident status as a result of the Diaz
21 marriage fraud ring, as well as those for whom applications and/or petitions were still
22 pending.

23 33. Agents Hittelman, Candemeres, and Ferrigno, where investigating agents and did
24 not have prosecutorial authority to bind the INS regarding denaturalization. *Cf., United*
25 *States v. Flemmi*, 225 F.3d 78, 84-87 (1st Cir. 2000) (generally law enforcement officers do
26 not have authority to bind prosecutorial authorities by way of cooperation agreements
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1 because doctrines of estoppel and apparent authority not available to bind the sovereign so
2 there must be actual authority; authority to perform investigatory duties compliments but
3 cannot curb prosecutorial authority).

4 34. A cooperation agreement would have served little purpose for the Government
5 because Arango could not have played an important role in the Diaz investigation given that,
6 by the time he provided his sworn statement to the INS in September 1982, Diaz had already
7 been arrested, charged, convicted and sentenced.

8 35. The Court also rejects Arango's assertion that a "cooperation agreement" resulted
9 from the fact that his sister, Valbuena, cooperated with the INS, and that she had negotiated
10 this agreement on his behalf because Valbuena was a more important witness than Arango,
11 and Agents Candemeres, Hittelman and Ferrigno did not offer Valbuena a cooperation
12 agreement. She testified she cooperated without asking for anything in exchange.

13 36. Arango testified that he went with his sister to speak with the agents in 1982
14 because they wanted to talk to him. She told him everything had been taken care of and
15 would be ok. According to Arango the agents told him to tell them about his marriage and
16 that his statements were just a formality and he did not need to worry about it. Arango
17 believed that the agents intended to do what they could to keep him and his sister in the
18 United States. Arango's testimony reflects he did not make the 1982 admissions about his
19 sham marriage based on the Government's agreement to allow his naturalization and/or
20 citizenship.

21 37. Agents Hittelman, Candemeres, and Ferrigno acted within the scope of their
22 investigative authority by obtaining Arango's September 15, 1982 affidavit admitting his
23 sham marriage and placing it in his alien file originating in New York, NY. Agent Hittelman
24 prepared the August 13, 1982, Investigation Report. Higher-ups were responsible for
25 deciding whether to pursue criminal and immigration proceedings against Arango.

1 status and 2) he would have been of bad moral character for having engaged in the fraudulent
2 sham marriage. His disclosures would have caused DAO Fripp to terminate the interview
3 and refer the case for investigation.

4 46. No statute places a time limit on an action to revoke naturalization. The United
5 States may institute denaturalization proceedings against a defendant at anytime, regardless
6 of how much time has passed since the defendant naturalized. *See Fedorenko*, 449U.S. at
7 497(seven years); *Kungys*, 485 U.S. at 765 (34 years); *United States v. Szehinskyj*, 277 F.3d
8 331 (3d Cir.2002) (four decades); *United States v. Costello*, 275 F.2d 355, 356-57(2d
9 Cir.1960) (27 years).

10 **4. Arango cannot rely on laches.**

11 47. “[I]t remains an open question in [the Ninth] circuit as to whether laches is a
12 permissible defense to a denaturalization proceeding.” *Dang*, 488 F.3dat 1143-44.

13 48. The defense of laches requires a defendant to prove “(1) lack of diligence by the
14 party against whom the defense is asserted, and (2) prejudice to the party asserting the
15 defense.” *Id.* at1444 (citing *Costello*, 365 U.S. at 282).

16 49. The United States did not lack diligence in filing this denaturalization action
17 against Arango merely because of the number of years that have elapsed since his
18 naturalization. *See Dang*, 488 F.3d at 1144 (citing *Costello*,365 U.S. at 268 (27years);
19 *Kungys*, 485U.S. at 764 (34years); *Fedorenko*, 449U.S. at 497 (seven years)). Depriving an
20 individual “of his fraudulently acquired privilege, even after the lapse of many [(27)]years,
21 is not so unreasonable as to constitute a denial of due process.”*Costello*, 365U.S. at 285.

22 50. Agents Hittelman and Candemeres acted diligently by obtaining Arango’s sworn
23 affidavit admitting his sham marriage and placing it in his A-file; the decision to not proceed
24 to revoke Arango’s lawful permanent residence status was discretionary.

25 51. Because of Arango’s concealment and misrepresentations regarding his sham
26 marriage, DAO Fripp did not refer his case for investigation. Given the inaccurate record
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1 keeping system which existed in 1982, the INS acted diligently when it granted Arango's
2 Application for Naturalization based on his representations.

3 52. The fact that Arango became a Customs officer does not indicate that the United
4 States lacked diligence in initiating denaturalization proceedings because, when Arango was
5 hired as a border patrol agent, Customs confirmed that he had a naturalization certificate that
6 was issued in his name.

7 53. Once the sham marriage came to the attention of Agent Ward during his criminal
8 investigation into Arango's 2005 drug offense, the United State acted diligently by initiating
9 these alien immigration proceedings in 2009.

10 54. Removal proceedings are independent from denaturalization actions, and "the
11 decision to place an alien in immigration proceedings, and when to do it, belongs to the INS.
12 . . . and is akin to prosecutorial discretion." *Martinez-Garcia*, 366 F.3d at 735 (citing
13 *Cortez-Felipe v. INS*, 245 F.3d1054, 1057 (9th Cir.2001)).

14 55. The delay in filing for denaturalization did not prejudice Arango in his defense
15 because the evidence of Arango's fraudulent marriage to Tirado reflecting his ineligibility
16 for citizenship – is primarily based on records, the validity of which has not diminished with
17 the passage of time. *See Costello*, 365U.S. at 283.

18 56. The witnesses' memories were excellent in this case and they were competent
19 to testify regarding the matters upon which they offered testimony.

20 CONCLUSION

21 Based on the above Findings of Fact and Conclusions of Law, the Court finds that
22 Arango was not eligible to naturalize because he was not Vicky Tirado's spouse under the
23 laws of the State of New York and, therefore, was not eligible to obtain permanent residence
24 through her; Arango could not be naturalized under the laws of the United States because he
25 obtained his permanent resident status through a sham marriage and by misrepresentations
26 and concealment; and Arango obtained his naturalization by willfully misrepresenting and
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1 concealing the truth about his sham marriage and that he was not a lawful permanent
2 resident.

3 **Accordingly,**

4 **IT IS ORDERED** that the Clerk of the Court shall enter Judgment for Plaintiff the
5 United States and against Defendant Arango.

6 **IT IS FURTHER ORDERED** that the Court revokes, sets aside, and cancels the
7 Certificate of Naturalization Number 14208736, issued to Defendant on September 12, 1989,
8 and forever restrains and enjoins Defendant from claiming any rights, privileges, or
9 advantages under any document that evidences U.S. citizenship obtained as a result of his
10 naturalization.

11 **IT IS FURTHER ORDERED** that Defendant’s counsel and counsel for Plaintiff
12 or her duly authorized representative are directed to appear before this Court on Monday,
13 January 5, 2015, at 11:00 a.m., in Courtroom 6B, Sixth Floor, Evo A. DeConcini United
14 States Courthouse, 405 W. Congress Street, Tucson, Arizona, for the purpose of surrendering
15 and delivering Defendant’s Certificate of Naturalization and any other indicia of his U.S.
16 citizenship (including, but not limited to, U.S. passports, voter registration cards, and
17 other voting documents), and any copies thereof in his possession, to Plaintiff’s counsel
18 or her duly authorized representative. Defendant is also directed to recover any such
19 documents and materials that he knows are in the possession of others and to deliver
20 them to his attorney to bring to this hearing for delivery to Plaintiff’s counsel or her duly
21 authorized representative. Alternatively, the documents may be delivered to the Government

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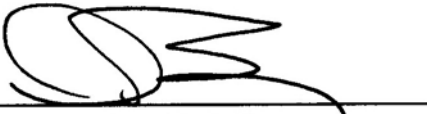
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1 prior to the above scheduled date and the hearing will be vacated. Failure to produce this
2 documentation will result in the imposition of sanctions, including an order to the U.S.
3 Marshal Service to immediately bring Defendant before this Court.

4 DATED this 16th day of December, 2014.

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7 David C. Bury
8 United States District Judge
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