

and does not control. An objecting party must serve a copy of the objections on all other parties. A party who fails to object to the magistrate judge's findings or recommendations contained in a report and recommendation waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions. *See* 11th Cir. Rule 3-1; 28 U.S.C. § 636.



Mohamed MATHIN, Plaintiff,

v.

Alejandro MAYORKAS, Secretary, U.S. Department of Homeland Security, Ur Mendoza Jaddou, Director, U.S. Citizenship & Immigration Services, Lisa Bradley, Acting Director, USCIS Orlando Field Office, Defendant

Case No: 6:24-cv-515-GAP-EJK

United States District Court,
M.D. Florida,
Orlando Division.

Signed August 16, 2024

Background: Applicant sought judicial review of a decision by the United States Citizenship and Immigration Services (USCIS) that, on re-determination, denied his application for naturalization. The Government moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim or, in the alternative, to stay the case.

Holdings: In a case of apparent first impression, the District Court, Gregory Presnell, J., held that:

- (1) proceedings seeking applicant's removal from United States were not initiated pursuant to warrant of arrest;
- (2) notices to appear issued to initiate removal proceedings are distinguishable from warrants of arrest;
- (3) statute prohibiting Attorney General from considering naturalization applications during removal proceedings does not strip district courts of their subject matter jurisdiction to review denials of naturalization; and
- (4) district court would exercise its discretion to review applicant's petition for judicial review of denial of application for naturalization despite pending removal proceedings.

Motion denied.

1. Federal Courts ⇌2015

Federal district courts are empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution and which have been entrusted to them by a jurisdictional grant authorized by Congress. U.S. Const. art. 3.

2. Federal Courts ⇌2081

Federal courts presumptively lack subject matter jurisdiction.

3. Federal Courts ⇌2081

The burden of establishing a federal court's subject matter jurisdiction rests upon the party asserting jurisdiction.

4. Federal Courts ⇌2078

Motions to dismiss that assert facial attacks on subject matter jurisdiction require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

5. Federal Courts ⇨2078, 2080

A court assessing a facial attack on subject matter jurisdiction on motion to dismiss assumes the allegations in the complaint are true and does not look outside the pleadings and attached exhibits. Fed. R. Civ. P. 12(b)(1).

6. Federal Courts ⇨2080

Motions to dismiss that assert factual attacks on subject matter jurisdiction challenge the factual basis asserted for jurisdiction. Fed. R. Civ. P. 12(b)(1).

7. Aliens, Immigration, and Citizenship ⇨337, 697

Regulation treating notices to appear issued in involuntary removal proceedings as warrants of arrest was inapplicable to notice to appear issued to naturalization applicant, and thus proceedings seeking applicant's removal from United States were not initiated pursuant to warrant of arrest, for purposes of determining whether statutory prohibition against considering applications for naturalization by persons against whom removal proceedings pursuant to warrants of arrest applied to bar applicant from seeking naturalization; notice to appear that Government issued to applicant stated that its removal proceedings had been brought under voluntary departure regulations. Immigration and Nationality Act § 318, 8 U.S.C.A. § 1429; 8 C.F.R. § 318.1.

8. Administrative Law and Procedure ⇨1746, 2210

Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority; courts need not and under the Administrative Procedure Act (APA) may not defer to an agency interpretation of the law simply because the statute is ambiguous. 5 U.S.C.A. § 551 et seq.

9. Aliens, Immigration, and Citizenship ⇨337, 697

A notice to appear issued to initiate removal proceedings is a written notice required to be given in person to the alien that describes the removal proceedings that is distinguishable from a warrant of arrest, for purposes of determining the applicability of the statutory prohibition against considering applications for naturalization by persons against whom removal proceedings pursuant to warrants of arrest are pending. Immigration and Nationality Act §§ 239, 318, 8 U.S.C.A. §§ 1229(a), 1429.

10. Aliens, Immigration, and Citizenship ⇨726

The statute prohibiting the Attorney General from considering naturalization applications during removal proceedings does not strip federal district courts of their statutory subject matter jurisdiction to review denials of naturalization. Immigration and Nationality Act §§ 310, 318, 8 U.S.C.A. §§ 1421(c), 1429.

11. Aliens, Immigration, and Citizenship ⇨726

District court would exercise its discretion to review applicant's petition for judicial review of denial of his application for naturalization despite pending proceedings in which Government sought applicants removal from United States; applicant first sought review of denial of naturalization nearly five years before United States Citizenship and Immigration Services (USCIS) instituted removal proceedings, applicant raised substantial questions regarding denial of his naturalization application. Immigration and Nationality Act § 310, 8 U.S.C.A. § 1421(c).

12. Aliens, Immigration, and Citizenship ⇨726

While the existence of overlapping proceedings does not diminish a district

court's power to review the denial of an application for naturalization, it does present a question on which the judge should exercise sound discretion, and courts should consider whether a multi-track course of litigation is the best way to resolve the dispute. Immigration and Nationality Act § 310, 8 U.S.C.A. § 1421(c).

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Lacy R. Harwell Jr., U.S. Attorney's Office, Tampa, FL, Craig Arthur Oswald, United States Attorney's Office, Chicago, IL, Robert Sowell, United States Attorney's Office, Orlando, FL, for Defendants Secretary, Department of Homeland Security, U.S. Department of Homeland Security, Director, U.S. Citizenship and Immigration Services, Lisa Bradley.

ORDER

GREGORY A. PRESNELL, UNITED STATES DISTRICT JUDGE

This cause came before the Court on the Government's¹ Motion to Dismiss or, Alternatively, to Stay the Case. Doc. 94. The

1. For the sake of the reader and judicial efficiency, the Court refers to the Defendants in this case, Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Ur Mendoza Jaddou, Director, U.S. Citizenship & Immigration Services, Lisa Bradley, Acting Director, USCIS Orlando Field Office, collectively as the "Government." See Doc. 58.

Court has also considered Plaintiff's Response in Opposition. Doc. 101.

I. Background

Plaintiff Mohamed Mathin ("Plaintiff") has been attempting to establish American citizenship since at least 1996—nearly thirty years ago. This odyssey has taken him through federal trial and appeals courts, the U.S. Department of State ("State" or "State Department"), the U.S. Customs and Immigration Service ("USCIS"), and countless hours of testimony and document retrieval. Before the Court analyzes the latest chapter in this epic, an appraisal of its predecessors is warranted.

A. *Illinois Delayed Birth Certificate*

Plaintiff's contention throughout his decades-long campaign has been that he was born in the United States on September 23, 1965, in Chicago, Illinois while his parents, Indian nationals, were staying with a friend whilst on a business trip. See Doc. 58, ¶¶ 33-51. It is unclear where Plaintiff spent his childhood,² but he returned to the United States as an adult on tourist visas in the late 1980s and early 1990s. *Id.*, ¶¶ 52-54, 59. During these visits, he met with Thomas Nielsen ("Nielsen"), a business friend of his father's and in whose house Plaintiff was allegedly born in 1965. *Id.*, ¶¶ 45-46, 49. Plaintiff alleges Nielsen was present at his birth, along with a midwife, Margert Roper, and her niece, Judith Roper ("Roper"). *Id.*, ¶ 49. Nielsen also allegedly helped his parents at a hospital afterwards, though no records exist of a hospital visit.³ *Id.*, ¶¶ 49-50, 61-62.

2. From his Complaint, it appears that Plaintiff spent his childhood in India; with alleged trips to Hong Kong as a young adult (in the mid-1980s) to seek assistance obtaining proof of his birth from the United States consulate. See Doc. 58, ¶¶ 52-54.

3. Plaintiff alleges that, along with Nielsen, he "visited the Norwegian-American Hospital in Humboldt Park multiple times in search of

When Plaintiff first met Nielsen as an adult in Hong Kong in the 1980s, he agreed to help Plaintiff track down proof of his birth. *Id.*, ¶ 56. It was Nielsen who helped Plaintiff find Roper, one of the few surviving witnesses of his alleged birth. *Id.*, ¶¶ 49, 52-53, 63. During a meeting at a Chicago McDonald's in 1996, Roper confirmed to Plaintiff and Nielsen that she witnessed "an Indian woman give birth to a child of Indian descent on or about September 23, 1965." *Id.*, ¶¶ 64-65. Roper then agreed to assist Plaintiff in establishing his birth by submitting an affidavit to the State of Illinois Department of Public Health ("IDPH").⁴ *Id.*, ¶¶ 65-68. Alongside Roper's affidavit and other documents, Plaintiff submitted a handwritten marriage license application from India indicating that he was born in the United States and affidavits from Nielsen and his family attesting to same. *Id.*, ¶¶ 69-71.

In May 1996, the state of Illinois issued Plaintiff a delayed birth certificate ("DBC") showing his place of birth as Chicago, Illinois. *Id.*, ¶ 72. Plaintiff's DBC states that IDPH primarily relied upon Roper's affidavit and the marriage license application in issuing his credential. *Id.*, ¶ 73.

hospital records." Doc. 58, ¶ 61. However, he was eventually informed by the hospital that it "lacked records from the mid-1960s, including from September and October 1965." *Id.*, ¶ 62.

4. Plaintiff asserts that, incident to her assistance, Roper spoke to a Jan Surratt, an IDPH employee, regarding the circumstances of Plaintiff's birth and what Roper would need to provide to support his application for a delayed birth certificate. Doc. 58, ¶¶ 66-7.
5. Though the State Department's IMS Report itself is not presently in the record, Plaintiff's Complaint directly, and frequently, references it. *See, e.g.*, Doc. 58, ¶¶ 88-93, 104, 146-47, 163, 174, 225. Moreover, in *Mathin v. Kerry*—Plaintiff's previous litigation over obtaining a U.S. passport—the Seventh Circuit described the IMS Report's contents with considerable

B. Passport Applications

Armed with his Illinois DBC, Plaintiff immediately sought to cement his status as an American by applying for a U.S. passport in June of 1996, but he was rejected. *Id.*, ¶ 82. The State Department investigator on Plaintiff's case, Scott Bultrowicz ("Bultrowicz"), created a State Investigative Management System Report ("IMS Report"), which apparently states that Plaintiff committed fraud in his attempt to obtain a U.S. Passport.⁵ *Id.*, ¶¶ 83-92. Indeed, the IMS report allegedly—and inaccurately—states that Plaintiff was arrested by the State Department in 1996, though Plaintiff vigorously disputes that he was ever arrested. *Id.*, ¶¶ 93-104; *see also Mathin v. Kerry*, 782 F.3d 804, 808 (7th Cir. 2015).

The IMS Report also states that Bultrowicz determined that both Plaintiff's marriage license application and Roper's affidavit were fraudulent, which led to Plaintiff's alleged arrest. *Mathin*, 782 F.3d at 808. While investigating this fraud, Bultrowicz interviewed Roper's roommate, Florence Neel ("Neel"), during a visit to Roper's home. *Id.* Neel relayed that Roper

specificity such as to provide valuable context to this Court's understanding of the background of Plaintiff's instant case. 782 F.3d 804, 805-07 (7th Cir. 2015); *see SFM Holdings, Ltd. v. Banc of Am. Secs., LLC*, 600 F.3d 1334, 1337 (11th Cir. 2010) ("In ruling upon a motion to dismiss, the district court may consider an extrinsic document if it is (1) central to the plaintiff's claim, and (2) its authenticity is not challenged."). Because no party has questioned the authenticity of the Court's findings in *Mathin* or the IMS Report itself, the Court considers these references to the contents of that report. *See SFM Holdings*, 600 F.3d at 1337; *see also* Doc. 58, ¶ 147 (though Plaintiff questions the completeness of the report and its findings, he does not dispute its authenticity).

was pressured into providing the affidavit and that Neel had heard Plaintiff offer Roper \$500 to do so. *Id.* Neel stated that, upon Roper’s realization that her actions had been illegal, “she experienced a nervous breakdown with physical complications for which she was living in a medical care facility at the time of the agent’s visit.” *Id.* However, Neel did not testify under oath and, despite Bultrowicz having never interviewed Roper herself,⁶ the IMS Report determined that her affidavit was obtained fraudulently. *Id.* According to Plaintiff, Bultrowicz never informed him that he suspected his DBC had been obtained fraudulently. Doc. 58, ¶ 110.

After his 1996 U.S. passport application was denied, Plaintiff sought advice from numerous attorneys, ex-law enforcement officers, and several of his congressional representatives.⁷ *Id.*, ¶ 122. Allegedly at their direction, Plaintiff reapplied for an American passport in 2007, but ultimately abandoned this second application. *Id.*, ¶¶ 123-25. Instead, around this same time, he sued the state of Illinois to compel it to issue him a certificate of live birth, a case which the Court can only assume was dismissed.⁸ *Id.*, ¶ 126.

On May 17, 2010, Plaintiff reapplied for a U.S. passport—for the third time. *Id.*, ¶ 127. As part of this application process, Plaintiff traveled to Chicago for extensive interviews with Tim Ten Pas (“Pas”) and

Benjamin Hammond (“Hammond”) at the State Department. *Id.*, ¶¶ 127, 131. Plaintiff alleges that the State Department was in possession of all of his previous records, yet neither Pas nor Hammond ever indicated during this time that they suspected him of dishonesty or fraud in connection with his passport applications. *Id.*, ¶¶ 128-134. Despite Plaintiff’s assertion that employees “went overboard” in assisting him with his 2010 passport application, State was “ultimately not able to prove one way or another whether [Plaintiff] was born in the United States” and thus could not approve his passport application. *Id.*, ¶ 138. Hammond considered it possible that Plaintiff “thought he was born here but his parents just lied to him, and that’s why there’s no evidence, which we get all the time.” *Id.*, ¶ 141.

C. First Federal Case

After his 2010 passport application was denied, Plaintiff sought *de novo* review in the U.S. District Court for the Northern District of Illinois. *Id.*, ¶ 141; see *Mathin v. Kerry*, No. 11-cv-5157 (N.D. Ill. 2011). Plaintiff filed this case “under 8 U.S.C. § 1503(a) and 28 U.S.C. § 2201(a), seeking a declaration that he is a United States national for the purpose of obtaining a United States passport.” *Mathin v. Kerry*, 782 F.3d 804, 805-06 (7th Cir. 2015). The district court denied Plaintiff’s petition af-

6. Without the IMS Report, the Court is unable to independently verify that Roper was never interviewed; however, the Seventh Circuit’s discussion makes no mention of such an interview taking place. *Mathin v. Kerry*, 782 F.3d 804, 808 (7th Cir. 2015). Given the importance of the fraud determination, however, it is difficult to imagine that the court would omit such probative, relevant evidence if it existed. And, most importantly at this stage, Plaintiff’s Complaint alleges that Bultrowicz never interviewed Roper or Nielsen—who have both since passed away. See Doc. 58, ¶¶ 111-116.

7. Plaintiff alleges that he consulted with the offices of U.S. Senator (IL) Dick Durbin, former U.S. Senator (FL) Bill Nelson, former Cook County Commissioner Cal Sutker, and U.S. Congresswoman (IL-9th) Jan Schakowsky. Doc. 58, ¶ 122.

8. Apart from mentioning that this lawsuit was filed, Plaintiff recounts no other facts regarding his attempt to compel the state of Illinois to issue him a certificate of live birth. See generally Doc. 58. Moreover, the conspicuous absence of a live birth certificate throughout the remainder of Plaintiff’s Complaint supports this conclusion. See *id.*

ter a bench trial, finding that he had not carried his burden to establish that he was born in the United States. *Id.* Plaintiff then appealed to the Seventh Circuit Court of Appeals. *Id.*

The Seventh Circuit affirmed the district court's denial, finding no clearly erroneous factual findings and declining to reweigh the evidence as Plaintiff requested. *Id.* at 813-14. Along the way, the Seventh Circuit recognized that Plaintiff had not provided any contemporaneous records—medical, statistical, or immigration—supporting his birth story. *Id.* at 806-07. The court also noted that, when Plaintiff applied for U.S. passports for his children in 1993 and 1995, he stated that he was born in India; however, it also recognized that the district court found Plaintiff's testimony that he did so only on the advice of counsel to be credible. *Id.*

Apart from Plaintiff's hope that the Seventh Circuit would weigh the evidence anew in his favor, he objected to the district court's admission of the IMS report into evidence at the bench trial. *Id.* at 808-09. State's denial of Plaintiff's 2010 passport application—the precursor to that case—“relied on [Bultrowicz's] determinations from the 1996 investigation[,]” including that the DBC and marriage certificate application were fraudulent. *Id.* At both trial and appellate courts, Plaintiff argued that the IMS report's findings and opinions were unreliable, in part because Bultrowicz never interviewed Roper. *Id.* at 809. However, the appeals court held that “a report will not be excluded merely because the author did not have firsthand knowledge of the reported matters.” *Id.* (citing *Jordan v. Binns*, 712 F.3d 1123, 1133 (7th Cir. 2013)). On July 15, 2015, the Seventh Circuit affirmed because it found that the district court had properly considered the IMS report, and its findings of fact regarding the weight to afford the

various testimony and affidavits presented by Plaintiff were not clearly erroneous. *Id.* at 809-14; Doc. 58, ¶ 166.

D. Legal Permanent Residence

Plaintiff alleges that, at some point during the pendency of the aforementioned Seventh Circuit appeal, his former attorney and the Assistant U.S. Attorney (“AUSA”) assigned to that case, Stacey Young (“Young”), agreed that he should apply for Legal Permanent Resident (“LPR”) status based on his marriage to a U.S. citizen. Doc. 58, ¶¶ 167, 169. Young and Plaintiff's former attorney likewise agreed that he could always withdraw his Form I-485 application for LPR without suffering any prejudice if the Seventh Circuit eventually ruled in his favor. *Id.*, ¶ 168. Young allegedly contacted USCIS in an effort to expedite Plaintiff's LPR application, and he was subsequently interviewed at the USCIS Chicago field office and fingerprinted. *Id.*, ¶¶ 170-73.

Plaintiff emphasizes that, at the time he applied to adjust to LPR status and was interviewed, USCIS was in possession of State's IMS Report, his compete travel and immigration history, and his criminal record. *Id.*, ¶¶ 174-76. In his application, Plaintiff stated that he was born in the United States but that he was considered “stateless.” *Id.*, ¶ 177. USCIS requested additional information regarding Plaintiff's birth and DBC, which he provided—including documentation from the Seventh Circuit passport litigation case. *Id.*, ¶¶ 180-81. On August 7, 2015, Plaintiff's application for LPR status was granted, and he received his “Green Card” thereafter. *Id.*, ¶¶ 179, 182-83. The Green Card listed Plaintiff's “Country of Birth” as the United States, as did a January 4, 2018, travel document permitting Plaintiff to depart and be readmitted to the United States. *Id.*, ¶¶ 184, 186.

*E. Application for Naturalization
& Present Context*

On May 17, 2018, not long after he became eligible, Plaintiff filed his N-400 application for naturalization (“N-400”) with the USCIS field office in Orlando, Florida. *Id.*, ¶ 187. USCIS denied his application on February 19, 2019, after determining that Plaintiff appeared to already be a citizen due to his birth in the United States (based upon his DBC and interview). *Id.*, ¶¶ 188-89; Doc. 1-2 at 2-3. Plaintiff appealed this determination via a Form N-336 and, after a hearing to review this denial—in which Plaintiff argued that USCIS’s manuals do not consider delayed birth certificates conclusive evidence of birth—USCIS reaffirmed their decision. Doc. 58, ¶¶ 190-91; Doc. 1-2 at 8-9.

On October 10, 2019, Plaintiff exercised his right under 8 U.S.C. § 1421(c)⁹ to seek review of USCIS’s final denial of his N-400 application (and N-336 appeal) for naturalization by filing suit in the U.S. District Court for the Northern District of Illinois. Doc. 58, ¶ 192. After the COVID-19 pandemic delayed proceedings and the parties attempted to settle the matter, *see* Doc. 22, the Government moved to remand the case to USCIS. Doc. 24. In its motion, the Government stated that “USCIS wishe[d] to reopen the case and intend[ed] to render a new adjudicative action,” and that it needed sixty days to afford Plaintiff the opportunity to rebut any adverse information. *Id.* at 1-2. It also stated that it recognized that Plaintiff’s Complaint had raised issues regarding Plaintiff’s DBC. *Id.* at 2.

9. The statute states that:

A person whose application for naturalization under this subchapter is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which

The Court granted the Government’s motion to remand on September 17, 2020. Doc. 43. After re-adjudicating Plaintiff’s N-400, USCIS issued him a Notice of Intent to Deny on October 1, 2020. Doc. 58, ¶ 193. Plaintiff responded by submitting a legal brief and thirty-nine exhibits to USCIS before providing hours of sworn testimony at a USCIS interview on February 19, 2021. *Id.*, ¶¶ 193, 196-97. After USCIS denied Plaintiff’s N-400 on February 25, 2021, he filed a renewed N-336 appeal and provided additional documentation and sworn testimony. *Id.*, ¶¶ 198-99.

Finally, on June 11, 2021, USCIS issued a final decision denying Plaintiff’s application for naturalization for four reasons: (1) Plaintiff was ineligible to adjust to LPR status in 2015 because he entered the U.S. on September 20, 2014, without being inspected and admitted under 8 U.S.C. § 1255(a); (2) Plaintiff was ineligible to adjust to LPR status in 2015 because he had illegally voted in federal elections in Florida in 2006, 2008, and 2012; (3) Plaintiff was ineligible to adjust to LPR status in 2015 because he committed fraud or made material misrepresentations by claiming in his Form I-485 that he had not voted before; and (4) because Plaintiff failed to prove that he possesses the requisite “Good Moral Character.” *Id.*, ¶¶ 204-50; Doc. 94-2 at 6-7.

On July 28, 2021, Plaintiff moved to reopen this case (at the time, still in the Northern District of Illinois) following USCIS’s re-determination. Doc. 54. The court granted that motion, and Plaintiff filed his Amended Complaint on August 16, 2021. Doc. 57; Doc. 58. The Government filed its

such person resides in accordance with chapter 7 of title 5. Such review shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application. 8 U.S.C. § 1421(c).

Answer on September 22, 2021. Doc. 61. Simultaneously, the Government also moved to transfer venue to the Middle District of Florida. Doc. 62; Doc. 64. Very little else occurred in the case until the Court finally granted the Government's motion to transfer venue—over Plaintiff's vigorous objections—on February 28, 2024, and the case was moved to Orlando. Doc. 74.

On April 25, 2024, less than two months after the case was transferred, USCIS initiated removal proceedings against Plaintiff. Doc. 94-1 at 2. The next day, the parties submitted a joint case management report and the Court docketed a Case Management and Scheduling Order (“CMSO”) thereafter.¹⁰ Doc. 84; Doc. 89; Doc. 90. On May 25, 2024, the Government filed its present Motion to Dismiss or, Alternatively, Stay the Case. Doc. 94.

II. Legal Standard

[1–3] Federal district courts are “empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution and which have been entrusted to them by a jurisdictional grant authorized by Congress.” *Patel v. Hamilton Med. Ctr., Inc.*, 967 F.3d 1190, 1193 (11th Cir. 2020). Indeed, federal courts presumptively lack subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). The “burden of establishing the contrary rests upon the party asserting jurisdiction.” *Trump v. United States*, 54 F.4th 689, 697 (11th Cir. 2022) (citing *Kokkonen*, 511 U.S. at 377, 114 S.Ct. 1673).

[4–6] Jurisdictional motions to dismiss under Federal Rule of Civil Procedure

(“Rule”) 12(b)(1) come in two forms. First, there are “facial attacks,” which “require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction.” *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (quoting *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). A court assessing a “facial attack” on jurisdiction assumes the allegations in the complaint are true and does not look outside the pleadings and attached exhibits. *See id.* Second, there are factual attacks, which challenge the factual basis asserted for jurisdiction. *Id.* The present Motion is a facial attack on subject matter jurisdiction; therefore, the Court accepts the Complaint's factual allegations as true. *See* Doc. 94.

III. Analysis

In its Motion to Dismiss, the Government contends that, because removal proceedings have been initiated against Plaintiff, 8 U.S.C. § 1429 strips the Court of jurisdiction to review Plaintiff's petition for naturalization under § 1421(c). Doc. 94 at 8-13. In relevant part, § 1429 states:

[N]o person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act; and no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act[.]

This prohibition on the Attorney General, the Government argues, must also necessarily divest a district court of its jurisdic-

¹⁰ On April 2, 2024, the Government substituted a local Orlando AUSA for the two AUSAs who had appeared on behalf of the Gov-

ernment before the case was transferred. Doc. 84.

tion under § 1421(a). *See* Doc. 94 at 8-9. The Government contends that, because Congress precluded the Attorney General from considering naturalization applications in this context, surely “plaintiff cannot obtain such relief from this Court.” Doc. 94 at 8. Plaintiff counters that the plain text of § 1429 makes clear that it applies only to the Attorney General, and therefore does not strip this Court of the jurisdiction conferred on it by § 1421(c). Doc. 101 at 7-14.

As a threshold matter, the Court recognizes that there is a circuit split in the courts of appeal regarding the correct interpretation of 8 U.S.C. § 1429 and its interplay with § 1421(c). *See, e.g.*, Doc. 94 at 10-13. Importantly here, the Eleventh Circuit has yet to issue any binding precedent addressing this question. *See Gomez v. Barr*, 2020 WL 13547450, *3 (M.D. Fla. Jun. 2, 2020) (“Federal courts throughout the United States have addressed the interplay between § 1429 and § 1421, but there is no binding precedent from the Eleventh Circuit on the question of whether § 1429 forecloses judicial review of a denial of a naturalization application under § 1421(c).”); *see also Karam v. U.S. Citizenship & Immigr. Servs.*, 373 F. App’x 956, 958 (11th Cir. 2010) (affirming dismissal for lack of subject matter jurisdiction based on petitioner’s failure to exhaust administrative remedies and not reaching the question of whether the court has the power to order naturalization of a petitioner who has been placed in removal proceedings); *Huang v. Sec’y U.S. Dep’t of Homeland Sec.*, 468 F. App’x 932, 935 (11th Cir. 2012) (same).

The Court finds that the Government’s Motion to Dismiss or to Stay the Case must be denied for three reasons: (1) § 1429 only applies when there is a removal proceeding *pursuant to a warrant of arrest*, which is not present in this case; (2)

even if § 1429 applies, it does not strip this Court of jurisdiction to review USCIS’s denial of Plaintiff’s N-400 Application for Naturalization under § 1421(c); and (3) Plaintiff has plainly stated a claim for relief under § 1421(c).

A. Plaintiff’s Removal Proceeding is not “Pursuant to a Warrant of Arrest”

[7] Section 1429 does not apply to this case because Plaintiff has not been issued a warrant of arrest. *See* Doc. 94-1; *see Yith v. Nielsen*, 881 F.3d 1155, 1165-68 (9th Cir. 2018) (“Here, when read in context, a “warrant of arrest” cannot mean a “notice to appear.”).

Section 1429 prohibits naturalizing persons “against whom there is outstanding a final finding of deportability *pursuant to a warrant of arrest*.” It also prohibits the Attorney General from considering N-400s “if there is pending against the applicant a removal proceeding *pursuant to a warrant of arrest*.” *Id.* However, 8 C.F.R. § 318.1 states that “[f]or the purposes of section 318 of the Act, a notice to appear issued under 8 C.F.R. part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) shall be regarded as a warrant of arrest.”

This regulation is dispositive in this case because § 318.1 only applies to a notice to appear “issued under 8 C.F.R. part 239.” *Id.* Plaintiff’s Notice to Appear states, in bold font immediately beneath the title: “In removal proceedings under *section 240* of the [Immigration and Nationality Act (“INA”)].” Doc. 94-1 (emphasis added). While § 239—to which 8 C.F.R. § 318.1 explicitly applies—covers the “Initiation of Removal Proceedings,” § 240 covers “Voluntary Departure, Suspension of Deportation and Special Rule Cancellation of Removal.” A notice to appear under voluntary departure regulations does not sound like a warrant of arrest and, because § 318.1

does not explicitly apply to removal proceedings initiated under § 240, the Court finds that it is inapplicable to this case. Therefore, because there is no removal proceeding under § 239 pursuant to a warrant of arrest presently pending against Plaintiff, § 1429 does not apply and therefore cannot serve as a basis to dismiss or stay this litigation. *See Yith*, 881 F.3d at 1165-66.

[8] Even if § 240 were covered by § 318.1, § 1429 would still not apply here. “When we construe a statute, we must begin, and often should end as well, with the language of the statute itself.” *Silva-Hernandez v. U.S. Bureau of Citizenship & Immigr. Servs.*, 701 F.3d 356, 361 (11th Cir. 2012) (internal quotation marks omitted). Indeed, this analysis is especially cogent—and necessary—in light of the Supreme Court’s recent decision to abandon the *Chevron* doctrine. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L.Ed.2d 832 (2024). “Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority . . . courts need not and under the APA may not defer to an agency interpretation of the law simply because the statute is ambiguous.” *Id.* at 2273.

To the extent that § 1429 is ambiguous, the statutory language of the INA clearly distinguishes between a “warrant of arrest” and a “notice to appear.” *See* 8 U.S.C. §§ 1226(a), 1229(a). On a warrant of arrest issued by the Attorney General under § 1226(a), “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” However, a “notice to appear” under § 1229(a) is merely a written notice that “shall be given in person to the alien” and which describes the removal proceedings. This Court agrees with the Ninth Circuit:

If Congress intended to preclude the government’s consideration of a naturalization petition whenever the applicant was in removal proceedings, then it would have had no need to state that § 1429 is applicable only when a removal proceeding is “pursuant to a warrant of arrest.” DHS’s interpretation would make “pursuant to a warrant of arrest” unnecessary, which “is contrary to our general ‘reluctan[ce] to treat statutory terms as surplusage.’” *Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 563 U.S. 776, 788, 131 S.Ct. 2188, 180 L.Ed.2d 1 (2011).

* * *

Congress clearly defined “warrant of arrest” as a writ that issues to arrest and detain an alien, and is not the same as a notice to appear.

Yith, 881 F.3d at 1168; *see also Sanga v. Barr*, 706 F. Supp. 3d 803, 813–14 (S.D. Iowa 2020); *Kabura v. McNeer*, 448 F. Supp. 3d 1274, 1281–82 (D. Utah 2020).

[9] This Court further agrees that, in reality, the meaning of ‘warrant of arrest’ in § 1429 is simply not ambiguous. *Yith*, 881 F.3d at 1161-62. It means “an order authorizing law enforcement to seize and detain a person as necessary for the administration of law”—which is plainly distinguishable from a notice to appear. *Id.* at 1166 (citing *Black’s Law Dictionary* (10th ed. 2014)). Thus, § 1429 does not apply to this case because Plaintiff has not been issued a warrant of arrest.

B. § 1429 Does Not Divest District Courts of Subject Matter Jurisdiction

[10] Even assuming that § 1429 applies here, it does not strip this Court of subject matter jurisdiction. The Government argues that a district court cannot override

that prohibition by reviewing § 1421(c) petitions because § 1429 prohibits the Attorney General—who has sole authority to naturalize citizens, *see* § 1421(a)—from considering naturalization applications during removal proceedings. Doc. 94 at 8. Thus, according to the Government, § 1429 strips this Court of subject matter jurisdiction over Plaintiff’s claim. *See id.* at 8-13.

The Government cites primarily to *Ajlani v. Chertoff*; however, that case is distinguishable because it arose from an action brought under § 1447(b) for delay and did not involve a final decision on an application for naturalization—much less a five-year-old one. 545 F.3d 229, 231, 235-36 (2d Cir. 2008). More importantly, the Second Circuit expressly acknowledged in *Ajlani* that district courts maintain jurisdiction to review denials and delays under § 1421(c) and § 1447(b). *Id.* at 239-240 (adopting the reasoning of the Ninth Circuit, which “ruled that federal jurisdiction existed ‘to review the denial but the scope of review is limited to “such” denial’ . . . The court

explained that this narrow construction of the judicial relief available to an alien pending removal ‘rationalizes the judicial review provision of § 1421(c) with the priority provision of § 1429.’”).

Indeed, the Government’s motion itself recognizes this Court’s subject matter jurisdiction. *See* Doc. 94. In its motion, after outlining its illogical interpretation of the interplay between §§ 1421 and 1429, the Government admits that “*district courts have jurisdiction* to review the Attorney General’s denial of a naturalization application under § 1421(c).” *Id.* at 10 (emphasis added). Plaintiff’s Complaint seeks this Court’s review of the Attorney General’s denial of his petition for naturalization “*pursuant to 8 U.S.C. § 1421(c)*” and 28 U.S.C. § 1331. Doc. 58, ¶¶ 251-54 (emphasis original). Therefore, the Government’s Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction is due to be **DENIED**.¹¹

C. Plaintiff has Stated a

¹¹ The Court also recognizes that nearly every case cited by the Government for the proposition that § 1429 strips district courts of subject matter jurisdiction in fact stands for the opposite proposition. Doc. 94 at 10; *see, e.g., Zayed v. U.S.*, 368 F.3d 902, 906 (6th Cir. 2004) (“But we do not read the amended § 1429 as divesting the district courts of the jurisdiction granted under § 1421(c).”); *De Lara Bellajaro v. Schiltgen*, 378 F.3d 1042, 1047 (9th Cir. 2004) (“We hold that district courts have jurisdiction pursuant to § 1421(c) to review the denial of an application for naturalization whether or not a removal proceeding is pending, but that the scope of review is limited to ‘such’ denial.”). This mischaracterization is not well taken, particularly because the Government went out of its way to frame the issue here as one of subject matter jurisdiction when it is plainly a question of whether Plaintiff failed to state a claim. *See* Doc. 94 at 8, n.3; *see also Ajlani v. Chertoff*, 545 F.3d 229, 237-38 (2d Cir. 2008) (“Because defendants raise no challenge to the exercise of § 1447(b) jurisdiction in this

case, we need not answer these questions on this appeal. . . . We proceed to explain why we conclude that the district court, nevertheless, correctly determined that Ajlani did not *state a claim* for naturalization relief while removal proceedings were pending and, thus properly dismissed the complaint.”).

Moreover, the “recent case law” the Government cited as cause for its “strategic choice” to file its motion under Rule 12(b)(1) merely mirrors the sloppy diction it employed to incorrectly equate subject matter jurisdiction with the failure to state a claim, *see James v. U.S. Dep’t of Homeland Sec.*, 2021 WL 9385809, *2-*3 (N.D. Ga. Mar. 16, 2021), or worse, abstained from addressing the issue and opted to stay the case without deciding the jurisdictional question. *See Kamara v. DHS*, No. 6:19-cv-515-GAP-EJK (M.D. Fla. Jun. 2, 2022) (“Rather than attempt to make its own determination—which might at a later date be reversed—the Court will accept Defendants’ invitation to stay the proceedings until Plaintiff’s removal proceedings have concluded.”).

*Claim for Relief*¹²

[11] Central to its contention that there is no relief available to Plaintiff under § 1421(c), the Government argues (citing to non-binding case law) that, though this Court may have jurisdiction, district courts ultimately cannot compel the Attorney General to approve a naturalization application that he is prohibited by law from considering.¹³ See Doc. 94 at 10-13. The Government's (and other Circuit Courts of Appeals') interpretation, however, overlooks the complexity of the instant context and Plaintiff's request for a declaratory judgment. See *Klene v. Napolitano*, 697 F.3d 666, 669 (7th Cir. 2012) ("The second, sixth, and ninth circuits neglected the possibility of declaratory relief.").

As the Seventh Circuit recognized, "a declaratory judgment of entitlement to citizenship would not violate § 1429, because it would not order the Attorney General to naturalize the alien while a removal proceeding was ongoing." *Id.* Instead, "a de-

claratory judgment in the alien's favor [for example, a judgment declaring that Plaintiff was born in the United States] would bring the removal proceeding to a prompt close, allowing the Attorney General to naturalize the alien."¹⁴ *Id.* The Seventh Circuit Explained:

What makes this possible is the fact that the Attorney General acted on [the plaintiff's] application before the agency commenced removal proceedings. If the application for naturalization had been pending when the removal proceedings began, then the Attorney General would not have made a final decision and § 1421(c) would not have allowed [the plaintiff] to ask the district court for relief. The agency wants us to treat the two situations as equivalent and to understand § 1429 as announcing a general policy against multiple proceedings. But that isn't what § 1429 says. It tells the Attorney General to put an application aside once removal proceedings begin; it

12. The Government requested the Court review its motion on Rule 12(b)(6) grounds should it deem them relevant. Doc. 94 at 8, n.3. The Government's attack on subject matter jurisdiction under Rule 12(b)(1) was a facial one; therefore, the Court continues to review the motion to dismiss assuming all allegations in the Complaint are true pursuant to Rule 12(b)(6). See *Dunbar*, 919 F.2d at 1529. However, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). The complaint's factual allegations "must be enough to raise a right to relief above the speculative level," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and cross "the line from conceivable to plausible." *Ashcroft v. Iqbal*, 556 U.S. 662, 680, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

13. In other words, assuming that the Court has jurisdiction in this circumstance to review Plaintiff's N-400 denial, even if the Court were to rule in his favor, Plaintiff cannot state

a claim under § 1421(c) because the Court cannot compel the Attorney General to violate § 1429 and naturalize him whilst a removal proceeding is underway.

14. Federal regulations already provide for mechanisms within the removal process to absorb and react to any dispositive finding by this Court. See 8 C.F.R. § 239.2(a) *et seq.* ("Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that: (1) The respondent is a national of the United States . . . (6) The notice to appear was improvidently issued, or (7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government."); see also *Zelaya v. Sec'y, Fla. Dep't of Corrections*, 798 F.3d 1360, 1363, n.1 (11th Cir. 2015) *overruled in part on other grounds by McCarthan v. Dir. of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc).

does not issue a similar directive to a court. Section 1421(c) gives the alien a right to an independent (“de novo”) judicial decision, a right that can be valuable compared with the kind of review available following an order of removal.

Id.

Indeed, to adopt the Government’s interpretation of these statutes would largely nullify the review afforded by § 1421(c) “since the very review the court is directed to undertake—whether a denial of naturalization comports with law—could always be circumvented by the Attorney General by institution of removal proceedings and obtaining a warrant of arrest.” *Gomez*, 2020 WL 13547450, at *4. This is an absurd result that would render superfluous not only Congress’ carefully thought-out statutory text, but also a plain and unambiguous holding of the Supreme Court:

Congress has prescribed specific eligibility standards for new citizens, respecting such matters as length of residency and “physical[] presen[ce],” understanding of English and American government, and (as previously mentioned) “good moral character,” with all its many specific components. *See* 8 U.S.C. §§ 1423(a), 1427(a); *supra*, at 1926 – 1927. Government officials are obligated to apply that body of law faithfully—granting naturalization when the applicable criteria are satisfied, and denying it when they are not . . . **And to ensure right results are reached, a court can reverse such a determination, at an applicant’s request, based on its “own findings of fact and conclusions of law.”** 8 U.S.C. § 1421(c). The entire

system, in other words, is set up to provide little or no room for subjective preferences or personal whims.

Maslenjak v. United States., 582 U.S. 335, 347-48, 137 S.Ct. 1918, 198 L.Ed.2d 460 (2017) (emphasis added) (internal citations omitted).

[12] However, the Seventh Circuit counsels—and this Court concurs—that while “[t]he existence of overlapping proceedings does not diminish a district court’s power[,] [it] does present a question on which the judge should exercise sound discretion.” *Klene*, 697 F.3d at 669. Courts should consider “whether a multi-track course of litigation is the best way to resolve the dispute.” *Id.* With that in mind, there is no question here that this Court should exercise its discretion to review Plaintiff’s petition under § 1421(c).

To begin with, Plaintiff first sought review of the denial of his N-400—which he is unambiguously entitled to by statute—nearly five years ago. *See generally* Doc. 1. It is incontestable that, but for the inordinate delay in adjudicating the Government’s motion to transfer venue, the denial of Plaintiff’s N-400 would have been reviewed pursuant to § 1421(c) because USCIS did not institute the removal proceeding until April 25, 2024. Doc. 94-1 at 2; *infra* at note 8. This context alone militates strongly in favor of allowing Plaintiff’s petition for review to progress alongside the removal proceeding, particularly where Plaintiff’s initial appearance in that proceeding is not scheduled until September 28, 2028—more than four years from now.¹⁵ Doc. 94-1 at 2.

15. Indeed, Plaintiff’s case was initially delayed for nearly a year so that USCIS could start over, issue a new final decision on Plaintiff’s N-400 (relying not upon wildly different grounds), and then send Plaintiff back to court. *See* Doc. 94-2; *cf* Doc. 1-2 at 2-13. Again, USCIS’s initial basis for denying Plain-

tiff’s N-400 application for naturalization—provided even after an administrative appeal by Plaintiff pointing to glaring incongruencies—was that Plaintiff was “already a citizen of the United States per the Illinois delayed birth certificate [he] submitted and [his] testimony.” Doc. 1-2 at 11; Doc. 58, ¶¶ 190-91.

Moreover, Plaintiff has raised substantial questions regarding the denial of his N-400 application. *See generally* Doc. 58. For one, it appears that Plaintiff's Illinois DBC was found to be fraudulent by USCIS, based in large part on the unsworn, hearsay statements of an individual who claimed to be Roper's roommate in 1996, which raises significant concerns.¹⁶ Doc. 94-1 at 2; Doc. 58-1 at 5-6. As does Plaintiff's alleged arrest by State for which there is scant apparent evidence. *Id.*; Doc. 58, ¶¶ 93-106. The fact that the voluminous record described *infra* was before USCIS when it initially determined that Plaintiff was already a citizen of this country—only to backtrack upon the filing of this lawsuit and the involvement of the U.S. Attorney's Office—raises even more concerns. *See, e.g.*, Doc. 1-2. Not to mention the fact that, after successfully delaying Plaintiff's case for nearly five years, the Government initiated removal proceedings almost immediately after the case finally began to advance. *See generally* Docs. 74-77; Doc. 94 at 5-6.

The Government complains that there could be overlapping factual determinations made in this Court and the eventual removal proceeding. Doc. 94 at 16-18. Indeed, the Government notes that the Immigration Judge could find Plaintiff ineligible to naturalize and, therefore, the relief pursued in this action “w[ould] be unavailable.” *Id.* at 17. But as this Court has already recognized, its findings in this proceeding can—and should—inform the Immigration Judge's ultimate findings. *See infra*. Moreover, Congress' plain intention

16. Though the N-400 denial is based upon allegations of improper re-entry into the U.S., and that Plaintiff illegally voted and lied on forms, the DBC's legitimacy undergirds this reasoning. *See* Doc. 94-2.

17. It is, however, important to understand that the Government initiated its removal pro-

ceeding over four years after Plaintiff initiated this lawsuit, and that removal proceeding is not even scheduled to commence for another four years. *See* Doc. 94-1 at 2. Therefore, in reality, there is no real “overlap” of these proceedings; one will finish long before the other is scheduled to commence.

that multiple proceedings may go forward in this context is not for the courts—or the Government—to overrule.¹⁷ *See* 8 U.S.C. § 1421(c). “[T]o ensure right results are reached, a court can reverse [USCIS's] determination . . . based on its ‘own findings of fact and conclusions of law.’” *Maslenjak*, 582 U.S. at 347-48, 137 S.Ct. 1918 (citing § 1421(c)).

The Court acknowledges the fractured and frustrating nature of contemporary immigration law in the United States. Plaintiff has been living in a pseudo-stateless limbo for his entire adult life. *See generally* Doc. 58. Since 1996, Plaintiff has been attempting to establish his citizenship through every legitimate channel available to him—and no doubt at considerable expense. *See infra* at sec. I. Plaintiff has no criminal record and is, in the absence of any rebuttal, a successful businessman who has been raising his family in this country for decades. *See id.*, ¶¶ 2, 31-32, 101, 128, 227. USCIS has denied his N-400 for acts which Plaintiff alleges were taken in good faith many years in the past, and which have only recently been re-classified as improper pursuant to some retrospective analysis. *See id.*, ¶¶ 2, 31-32, 101, 128, 227.

Plaintiff has had an alternate pathway available to him since 2006 which might have seen him naturalized long ago—there is simply no incentive for him to game this system. *Id.*, ¶¶ 161-62. Instead, this system has gamed Plaintiff since his first attempt at obtaining a passport. *See generally id.*

First, Bultrowicz determined—without interviewing either of the remaining living

ceeding over four years after Plaintiff initiated this lawsuit, and that removal proceeding is not even scheduled to commence for another four years. *See* Doc. 94-1 at 2. Therefore, in reality, there is no real “overlap” of these proceedings; one will finish long before the other is scheduled to commence.

witnesses to his birth—that Plaintiff’s DBC was fraudulent based largely on the unsworn, hearsay statements of a single individual who may not have any actual relation to the relevant witness. *See infra*, I.B.-C. Then, after trying twice more (unsuccessfully) to obtain a passport and litigating up to the Seventh Circuit, Plaintiff was advised to seek LPR status based on his wife’s citizenship, which he did. *See infra*, I.B.-D. Upon reaching eligibility, he then filed his N-400, which USCIS denied because he was already a citizen.¹⁸ *See* Doc. 1-2 at 2-13. After Plaintiff sued under § 1421(c), USCIS decided they wanted another crack at his case. *See* Doc. 24. Seemingly based on the questionable findings included in the IMS report, USCIS determined that Plaintiff was not actually a citizen and had, instead, never been eligible for LPR status and, in fact, committed voter fraud years earlier and lied about it on his subsequent applications. *See* Doc. 94-2.

Back in court once again, Plaintiff likely expected his long-overdue review was at hand. Not so. After a two-and-half *year* delay,¹⁹ the Government—less than two months after successfully transferring the case to this Court—promptly commenced removal proceedings in what amounts to a renewed attempt to prevent district court review of the denial of Plaintiff’s application for naturalization **filed in 2019**. *See* Doc. 94 at 5-6; Doc. 94-1. The Govern-

18. Plaintiff argued at this stage that his DBC was not conclusive evidence of birth, likely at his wits end because he was stuck in a doom loop: he tried for years to get a passport but was told by State that his DBC was insufficient to establish his birth, and then when he tried to naturalize through the LPR track, USCIS told him that his DBC was conclusive enough to determine he was a citizen and that he should apply for a passport. *See* Doc. 58, ¶¶ 190-91; Doc. 1-2 at 8-9.

19. It is notable that, but for the nearly three-year delay on the Government’s motion to

transfer venue, the present basis for its motion to dismiss would not exist. *See, e.g.*, Doc. 67; Doc. 74.

Win, lose, or draw, Plaintiff is explicitly entitled to district court review of the Attorney General’s denial of his N-400 and, in this Court, that right will be upheld. *See Maslenjak*, 582 U.S. at 347-48, 137 S.Ct. 1918. At the motion to dismiss stage, Plaintiff has pleaded more than ample facts to state a claim for relief under § 1421(c). Therefore, the Government’s illogical interpretation of § 1429’s plain language is of no consequence and its motion must be **DENIED**.²⁰

IV. Conclusion

Accordingly, it is **ORDERED** that the Government’s Motion to Dismiss or, Alternatively, to Stay the Case is hereby **DE-NIED**.

DONE and **ORDERED** in Orlando, Florida on August 16, 2024.



ment’s winning streak, however, has come to an end.

20. The Court notes that the Government did not present any arguments specific to Plaintiff’s Count II claim for estoppel and thus never moved to dismiss it for failure to state a claim. *See generally* Doc. 94. Consequently, the Court makes no findings with regard to whether Plaintiff adequately stated a claim for estoppel.