DENATURALIZATION AND REVOCATION OF NATURALIZATION

I. Introduction[1]

Historically, denaturalization was pursued by the U.S. government in very small numbers, averaging only eleven cases per year between 1990 and 2017.[2] However, under the Trump administration there has been a dramatic increase in the number of denaturalization cases the government is pursuing and a corresponding increase in resources dedicated to this effort.

In 2010, Operation Janus was launched to continue this work and expand the Department of Homeland Security's ("DHS") efforts to identify individuals with a final deportation order who naturalized or obtained legal permanent residence status under a different identity.[3] A 2016 DHS Office of Inspector General ("OIG") report determined that there were 1,029 such cases and identified the lack of digital fingerprint records as the main cause of the problem.[4] DHS identified another 953 cases of naturalized citizens with prior deportation orders under other identities.[5] The OIG report also noted that fingerprint records were lacking in approximately 315,000 cases of non-citizens with final deportation orders or criminal convictions and that in about 148,000 cases Immigration and Customs Enforcement ("ICE") had not yet reviewed and tried to retrieve and digitize old fingerprint cards.[6] The OIG report noted that as of September 2016, United States Attorney's Offices had accepted two Operation Janus cases for criminal prosecution and declined twenty-six others.[7]

Under the Trump administration, the government has significantly increased its capacity to investigate U.S. citizens and pursue denaturalization cases. In 2018, U.S. Citizenship and Immigration Services ("USCIS") announced that it intended to refer approximately 1,600 cases to the Department of Justice ("DOJ") for prosecution and the creation of a new office dedicated to reviewing and referring denaturalization cases to DOJ.[8] DHS also diverted funds from USCIS's budget to ICE in order to conduct investigations of naturalized citizens.[9] As a result of these investigations, denaturalization case referrals to DOJ increased 600 percent over the last three years.[10] In February 2020, DOJ announced the creation of the Denaturalization Section within DOJ's Office of Immigration Litigation which will be "dedicated to investigating and litigating revocation of naturalization."[11]

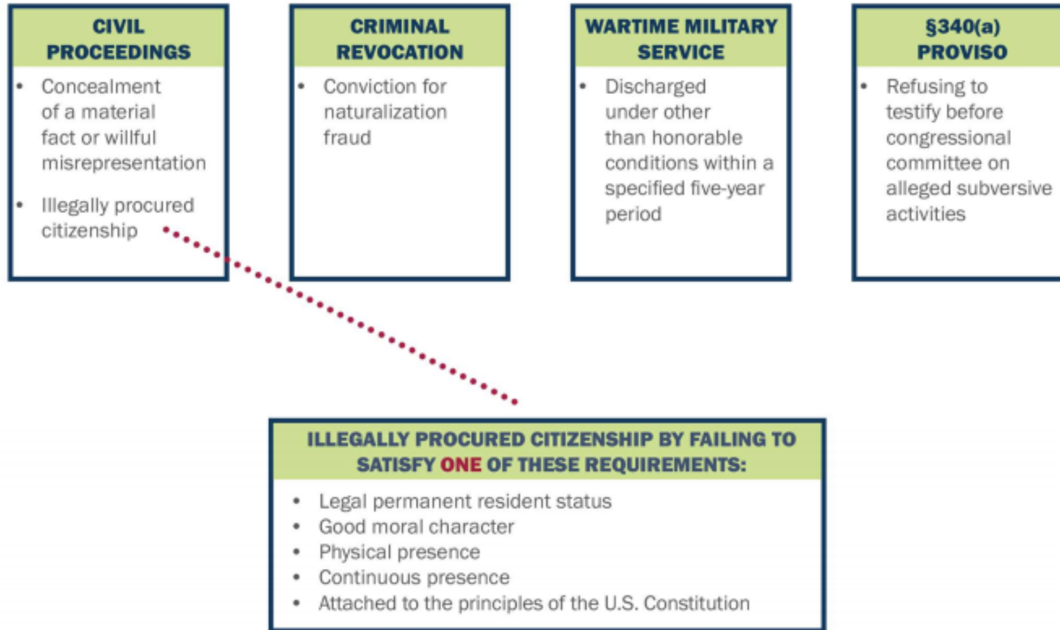
Despite the significant resources this administration is expending on these cases, in absolute terms the number of people who have had their citizenship stripped remains small so far. However, there are fears that the creation of the DOJ's Denaturalization Section may result in many more people being denaturalized in the

near future. In addition, these efforts will have a chilling effect on the number of legal permanent residents applying for U.S. citizenship[12] and will further burden a system that is already delayed in adjudicating and granting immigration benefits.

A naturalized U.S. citizen can have that status taken away if the federal government proves by clear, convincing, and unequivocal evidence in a civil federal court proceeding, or satisfies the beyond a reasonable doubt standard in a comparable criminal case, that the citizen was not qualified for naturalization at the time it was mistakenly granted. The denaturalization process is governed by these provisions of law:

- **Illegal Procurement, or Concealment or Willful Misrepresentation (INA § 340(a)):** Naturalization may be revoked in civil proceedings for having "illegally procured" citizenship or by "concealment of a material fact or by willful misrepresentation."
- **Denaturalization for Convictions for Naturalization Fraud (Criminal Revocation) (18 U.S.C. § 1425):** Naturalization may be revoked by conviction for procuring or attempting to procure the naturalization of anyone contrary to the law.
- **Wartime Military Service (INA § 329(c))**: Naturalization through wartime military service under § 329(a) may be revoked if the citizen was subsequently discharged under other than honorable conditions within a specified five-year period.
- **The Proviso to § 340(a):** A remnant of the Cold War, but still valid law, naturalization may be revoked for refusing under specified circumstances to testify before a congressional committee on alleged subversive activities.

Each of these provisions for denaturalization will be discussed in further detail below.



II. Civil Proceedings

This section will provide an overview of the three different grounds for denaturalization in civil proceedings and process for denaturalization that applies to all three grounds.

A. Illegal Procurement, or Concealment or Willful Misrepresentation

Naturalization is "illegally procured" when the applicant was in fact ineligible for naturalization by failing to satisfy certain statutory requirements.[13] Because it is a distinct ground for denaturalization, illegal procurement does not require a concealment or misrepresentation of any kind.[14] Rather, the issue is whether the applicant satisfied all of the specific naturalization requirements found in INA §316(a):

(1) The applicant was a lawful permanent resident of the U.S. for the five years (or three years if applying as the spouse of a United States citizen) immediately preceding the date of filing and up to the date of naturalization;

(2) They were a person of good moral character during all of the five (or three) year period;

(3) They were physically present in the U.S. for at least half of the five (or three) year period;

(4) They resided continuously in the U.S. as a lawful permanent resident for the five-year period (or three-year period if applying as the spouse of a United States citizen) immediately preceding the date of filing and up to the time of naturalization; and

(5) During the five- or three-year period was "attached to the principles of the Constitution of the United States, and well-disposed to the good order and happiness of the United States."

Each of these naturalization requirements is discussed briefly below and in more detail throughout this manual.

Additionally, naturalization of a U.S. citizen may be revoked if it was procured "by concealment of a material fact or by willful misrepresentation."[15] To a great extent, the illegal procurement and concealment provisions overlap for the simple reason that procuring naturalization by concealment or willful misrepresentation is also procuring it illegally.

1. Lawful Permanent Resident Status

One place that illegal procurement can potentially arise is in determining whether the naturalized citizen legally obtained the lawful permanent resident status that qualified them for naturalization. In many, if not most, cases, the underlying issue will be whether the applicant obtained resident status through fraud or willful misrepresentation of a material fact, which often overlaps with the concealment provision for revocation of naturalization because the applicant will probably have concealed the same fact on their naturalization application (e.g., an individual enters into a marriage solely to acquire lawful permanent resident status and then conceals it).[16] There are instances in which an applicant might have been eligible for lawful permanent resident status under the circumstances at the time, but because of false statements or misrepresentations on the visa application, that underlying resident status will be found to have been unlawfully obtained.[17] Denaturalization in that instance would also be based on illegal procurement. If an applicant is not a lawful permanent resident on the date of their naturalization, the citizenship will be found to have been illegally procured. If the underlying documents that led to lawful permanent resident status are fraudulent or insufficient, a subsequent denaturalization proceeding based on the flawed permanent resident status will be upheld.[18]

There are numerous cases where a naturalized citizen has been found to have fraudulently procured their immigrant visas for entry into the United States under the Displaced Persons Act of 1948 (the "DPA") by, e.g., having lied about their involvement and assistance to Nazi persecution of the Jews during World War II. It is not necessary for the individual to have personally been involved in any act or atrocity to be ineligible;[19] being an armed concentration guard is sufficient to qualify as having "assisted" in persecution.[20] Congress passed the DPA to permit people displaced by World War II to seek refuge in the United States, provided that individuals that (a) are or have been members of or participated in any movement which is or has been hostile towards the United States, (b) advocated or assisted in the persecution of any person because of race, religion, or national origin, or (c) voluntarily bore arms against the United Stated during World War II, would be barred from eligibility.[21] Such involvement or participation served as grounds for denial of an immigrant visa (lawful permanent residence), meaning that these naturalized citizens were not lawfully admitted into the United States pursuant to a valid visa, which is a prerequisite to naturalization.[22]

Still, there are cases where permanent resident status may have been obtained unlawfully in the absence of misrepresentation; e.g., where a good faith marriage to a U.S. citizen or labor certification is later proven to be invalid, or where an ineligible applicant is issued a visa in error, and that visa ultimately leads to permanent residency.[23] Whether legal residence was obtained in error or through fraud or willful misrepresentation, the eventual citizenship status can still be taken away.

Example: Joe immigrated as the unmarried son of his lawful permanent resident father. When Joe immigrated, he forgot to disclose he actually got married before immigrating. Joe should not have been allowed to obtain his green card because he was not eligible for lawful permanent residence status and now, he could be denaturalized.

2. Continuous Residence

The naturalization applicant must have resided "continuously" within the United States during the requisite continuous residence period, generally five years (or three years if applying as the spouse of a U.S. citizen), and from the date of application until admission to citizenship.[24] Any single absence of one year or more within the continuous residence period breaks the continuity of such residence. An absence of more than six months but less than one year also breaks the continuity of residence unless the applicant can show otherwise.[25] Residence in this context is defined by statute as a person's principal, actual dwelling place without regard to intent.[26] Providing false information about one's continuous residence or using an address as an applicant's address when, in fact, the applicant does not reside at that address can serve as grounds for denaturalization (e.g., an applicant lists her estranged husband's address but has not lived there during the three year marital period).[27]

If someone lied about, or simply omitted, a trip that was one year or more during the continuous residence period, they could be denaturalized as they were not eligible for naturalization. Also, depending on the facts, misrepresentations about one's absences could cause denaturalization.[28]

3. Physical Presence

A naturalization applicant must also show that they were physically present for half of the previous five years (or half of the previous three years if applying as the spouse of a U.S. citizen).[29] If someone misrepresented, or omitted, a trip that would have made them ineligible to meet this requirement, they could be denaturalized as they were not eligible for naturalization.[30]

Example: Lupe travelled back and forth to Mexico several times a year. She forgot to list all of her absences, which equaled more than thirty out of the sixty months prior to applying for naturalization. When USCIS found out about all of her absences, they referred her to the United States Attorney's office for denaturalization prosecution.

4. Good Moral Character

A large number of illegal procurement cases involves the charge that the citizen was not a person of good moral character during the requisite period prior to their naturalization. More specifically, the government discovers a fact, which would have precluded a finding of good moral character had it been known prior to naturalization.[31] This includes certain acts committed prior to naturalization but for which charges and convictions occurred after the granting of citizenship.[32] A finding of good moral character is precluded if the applicant fell within one of the provisions of INA § 101(f). Moreover, in a catchall concluding paragraph, the statute permits the government to find a lack of good moral character for other reasons on a case-by-case basis.[33] Of course, willful concealment of material fact would provide grounds for revocation under the concealment provision (discussed below). However, misrepresentation or concealment of a non-material fact can still raise questions about a person's good moral character if it constituted false testimony (a statutory

bar to good moral character) or was made to obtain an immigration benefit, even if the truth would not have disqualified the applicant from naturalization, such as an arrest without conviction or conviction for a petty offense or other misconduct that preceded the qualifying period of residence.[34] Many of the cases for denaturalization based on lack of good moral character involve individuals who have committed crimes prior to naturalization, but were not arrested or charged until sometime after naturalization, and they did not disclose the existence of these crimes during the naturalization application process.[35]

5. Attachment to Principles and Good Order of the United States

Enacted during the Cold War, INA § 340(c) creates a rebuttable presumption that someone who, within five years of being naturalized, joins or becomes affiliated with an organization that would have precluded naturalization under INA § 313,[36] "was not attached to the principles of the Constitution … and was not well disposed to the good order and happiness of the U.S. at the time of naturalization."[37] Therefore, in the absence of countervailing evidence, such person can be denaturalized because they were originally ineligible for naturalization. Likewise, INA § 340(a) provides for the denaturalization for concealment of a material fact of a person convicted of contempt of Congress for refusing to testify within ten years of naturalization.

B. Concealment and Willful Misrepresentation

Naturalization may be revoked if it was procured by "concealment of a material fact or by willful misrepresentation."[38] The plain language seems to indicate that the concealment does not have to be willful; and a willful misrepresentation does not have to be material.[39] Nonetheless, the courts have held in civil cases that the concealment of a material fact must be willful, and that a willful misrepresentation must be of a material fact.[40] In *U.S. v. Kungys*, the Supreme Court addressed both. Concealing or misrepresenting a fact is material if it had a "natural tendency" to mislead the government official; and such a statement is said to have such a natural tendency if honest representations would have disclosed facts relevant to the applicant's eligibility. According to the USCIS Policy Manual, the Court in *Kungys* does not mean that the information, if disclosed, would have prevented the applicant from naturalizing.[41] Additionally, the misrepresentation or concealment must have been material and have procured naturalization. A material misrepresentation creates a presumption that it "procured" naturalization only if the record creates a "fair inference" that a ground of ineligibility actually existed.[42] Consequently, a naturalized citizen could rebut that presumption and thereby save their citizenship by showing that no such ground actually existed, presumably meaning that they were eligible for naturalization despite the concealment or misrepresentation of a material fact. Note that in such a situation, they would have to show that they did not commit false testimony (a bar to good moral character) in their misrepresentation in order to show that they were nevertheless eligible for naturalization.

There are four requirements in order to show that naturalization was procured by concealment of a material fact or willful misrepresentation: the applicant must have made a (1) willful, (2) concealment or misrepresentation, (3) of a material fact, (4) to procure naturalization.[43]

Concealment includes swearing under oath that a person does not possess a criminal record or has not committed crimes for which they were not arrested[44] and misstatements that conceal information that the applicant does not want the court to discover.[45] Concealment usually arises out of incomplete or false answers.[46] The determination of whether a naturalization applicant's response is deemed to have been concealment or willful misrepresentation is a very fact-dependent analysis, and will depend both on the response given as well as the questions asked.[47] The Supreme Court has held that if the question was

ambiguous and could have been interpreted by the applicant in a way in which their response would not have been a concealment or misrepresentation, the applicant cannot be considered to have fraudulently procured naturalization.[48] Note that concealment of a material fact can also include omissions.[49] There has also been at least one instance of citizenship being revoked as a consequence of applicant's failure to take the naturalization oath outlined in 8 U.S.C. § 1448.[50]

C. Wartime Military Service

A non-citizen can become a U.S. citizen as a result of their service in US armed forces during wartime under INA §329(a).[51] However, their naturalization may be revoked if they were discharged for other than honorable reasons before having served an aggregate of five years.

This provision calls for a constitutional challenge. If citizenship was not acquired unlawfully, they are a U.S. citizen just like anyone else who, under the Fourteenth Amendment, was ". . . naturalized in the United States." As a result, citizenship may not be taken away absent their voluntary relinquishment.[52]

D. The §340(a) Proviso

The proviso to INA §340(a) says naturalization may be revoked if, within the ten years following naturalization, the citizen refuses to testify before a congressional committee on "subversive activities" and as a result is convicted of contempt. While this proviso is likely a remnant of the Cold War, it is still a ground for revocation of naturalization. Such events, the proviso continues, demonstrate that citizenship was acquired by "concealment of a material fact or willful misrepresentation," with the assumption that the citizen was not attached to the "principles of the Constitution" at the time of naturalization.

As with military discharge cases previously discussed, the proviso raises several constitutional questions. It constitutes disfavored revocation for "conditions subsequent" to naturalizations. It is irrational to presume that an applicant concealed or misrepresented acts occurring as much as ten years later. Lacking a rational basis is a denial of equal protection by imposing a drastic penalty on the naturalized citizen.

E. Denaturalization Process

The denaturalization process is initiated by filing a complaint in U.S. district court alleging, "upon affidavit showing good cause," that the defendant's naturalization was either procured illegally or by concealment of a material fact or by willful misrepresentation.[53] Jurisdiction is in the district court of the defendant's current residence. Generally, the process begins with the USCIS making a recommendation to revoke citizenship[54] and then usually the U.S. Attorney's office would prosecute the case.

A Department of Justice circular letter lists factors to consider in determining whether to institute denaturalization proceedings, by looking at whether proceedings would result in the "betterment of the citizenship of the country."[55] Although the letter is over 100 years old, it indicates that proceedings should not be instituted merely to correct errors and irregularities in an individual's naturalization, which would properly have been the subject of consideration at the naturalization hearing or of correction on appeal.[56] Where the naturalized citizen procured citizenship through willful and deliberate fraud, the letter states that denaturalization proceedings should not be considered if many years have passed since the judgment of

naturalization, the individual has since been an exemplary citizen, and the individual possesses the necessary qualifications for citizenship.[57]

Given the precious nature of U.S. citizenship, the government must prove its case by clear, unequivocal and convincing evidence.[58] Facts should be construed as far as is reasonably possible in favor of the citizen.[59]

III. Denaturalization for Convictions for Naturalization Fraud (Criminal Revocation)

The INA mandates that courts revoke citizenship of naturalized citizens when they are convicted for certain types of naturalization fraud under 18 U.S.C. § 1425.[60] These include knowing, unlawful procurement or attempts to procure naturalization, or documentary evidence of naturalization for any person.[61] The statute also provides sentencing guidelines for naturalization fraud convictions that are tied to terrorism and drug trafficking.[62] Like all criminal cases, the government bears the burden of proof beyond a reasonable doubt.[63]

Presumably, "contrary to law" means the same as "illegally procured" or concealment or misrepresentation of a material fact as in the civil charge under INA § 340(a). If the allegation for denaturalization is lack of good moral character based on false testimony, the testimony need not be material in the sense that if the truth had been known it would have blocked naturalization. This is because the ground for denaturalization would be due to the fact that the application was ineligible for lack of good moral character.[64] But denaturalization under the criminal code is not appropriate merely for making a false statement if such statement had nothing to do with eligibility at all. Rather, the testimony had to have "played a role" in the acquisition of naturalization.[65]

Whereas naturalized citizens are provided notice and an opportunity to be heard when complaints are brought against them for illegal procurement or concealment and misrepresentation, there is no required notice or right to be heard for revocation of citizenship after criminal convictions for fraudulent naturalization.[66] Instead, courts have interpreted the statute as requiring automatic denaturalization after the conviction,[67] regardless of whether lengthy periods of time transpire between conviction and revocation.[68]

IV. Potential Defenses to Denaturalization Proceedings

A survey of the judicial circuits and districts reveals a number of different defenses that have been used. The following section provides a summary of some of those defenses; however, this list of defenses is not exhaustive. Each case is unique, with its own set of facts and circumstances that might support various procedural or substantive defenses to denaturalization, including ones not discussed below.

A. Eligibility for Citizenship is a Complete Defense

In *Maslenjak v. U.S.*, the Supreme Court held that qualification for citizenship is a complete defense to prosecution for knowingly procuring naturalization of a person contrary to law in violation of 18 U.S.C. § 1425(a).[69] The Court explained that in both civil and criminal denaturalization proceedings, if a defendant proves that he was qualified for citizenship, he could not be denaturalized.[70]

In *U.S. v. Allouche*, the Fifth Circuit held that a defendant's qualification for citizenship—based upon grounds separate and apart from those which the government had charged defendant failed to meet—would be a complete defense to both criminal and civil denaturalization proceedings.[71] In *Allouche*, during his naturalization interview, the defendant was only questioned about his marital basis for naturalization (§ 319) and, subsequently, obtained naturalization based on false statements he made concerning his marriage.[72] However, during his criminal trial, evidence revealed that the defendant would otherwise have been qualified for citizenship based on § 316, based on the continuous residency requirement.[73] The court of appeals overturned the jury verdict by finding that no rational, properly-instructed jury could find beyond a reasonable doubt that the defendant was not entitled to naturalization based on the government's theories presented in the case.[74] The court declared that being eligible for citizenship in some regard is a complete defense to a denaturalization case where the government asserts the defendant unlawfully procured citizenship.[75]

The Ninth Circuit Court of Appeals remanded to the Board of Immigration Appeals to determine whether this defense applies to a case involving a legal permanent resident ("LPR").[76] The LPR in the case presented a false birth certificate as an identification document when he first applied for LPR status because he had difficulty obtaining his own birth certificate from Mexico.[77] Based on the available evidence, the Immigration Judge, the Board of Immigration Appeals, and the Ninth Circuit agreed that he may have been eligible to obtain LPR status under his own name.[78] In light of *Maslenjak*, the Ninth Circuit remanded to the Board of Immigration Appeals to determine if the *Maslenjak* defense would apply to LPRs and if so, whether the legal permanent resident was qualified for his LPR status despite the false testimony.[79]

B. Factual-Based Defenses

Several cases were successful by challenging the alleged factual assertions put forth by the government. For example, in a pre-World War II case, *U.S. v. Grenfeld*, a Texas federal court accepted the defense that the individual made "strenuous efforts" to return to the United States to establish residence here, finding that the immigrant had successfully rebutted a presumption that he did not intend to reside indefinitely in the United States.[80] There, the defendant's own deposition testimony established that he did not intend to reside in Palestine despite the U.S. Consul issuing a certificate indicating he did intend to reside in Palestine.[81] Similarly, a New York federal court held that the defendant, who had left the United States within five years of naturalizing to reside in Cuba, had "offered overwhelming evidence that he never intended to give up his residence in the United States" and therefore could not be denaturalized on the ground of lack of intention to reside permanently within the United States.[82] The denaturalization provision that these cases were based on was repealed in 1994.[83]

In *U.S. v. Horwitz*, a cold war-era case, a federal court in Virginia found that a young, eighteen-year old immigrant was so ignorant of the Communist party's ambitions that he never truly comprehended the reality of the party's aims.[84] Moreover, the young man had joined the Communist party in an attempt to navigate the labor market during the Great Depression, seeking its assistance in finding employment and admission into a reputable labor union. Based upon these facts, the court found persuasive the defendant's defense to the charge that he was not attached to the principles of the U.S. Constitution. In a similar case from 1942, *U.S. v. Polzin*, a Maryland district court refused to cancel the defendant's citizenship "upon mere speculation" that a Nazi sympathizer did not bear true faith and allegiance to the U.S. Constitution.[85]

The Ninth Circuit reversed the conviction of a defendant for knowingly procuring naturalization contrary to law, on the basis that the trial court abused its discretion in admitting a document purporting to show defendant's convictions in Israel partly because the documents had not been properly authenticated, as required under the Federal Rules of Evidence.[86]

C. Materiality

Concealment or misrepresentation may only be the basis for revocation proceedings if they related to a *material* fact. In *Kungys*, the Supreme Court held that the test for materiality, which the government must meet with clear, unequivocal, and convincing evidence, is whether the concealments or misrepresentations in the naturalization process have a "natural tendency to influence" the decision to grant naturalization.[87] The Court found that the misrepresentations in a naturalization petition as to the defendant's date and place of birth were not material, and did not warrant denaturalization.[88] Materiality is only an element if the government is seeking to prove concealment or misrepresentation, not illegal procurement.

In *Maslenjak v. U.S.*, the federal government was attempting to revoke Diana Maslenjak's citizenship for making false statements regarding her husband's membership in a Bosnian Serb militia in the 1990s.[89] The Supreme Court held that in order for the government to obtain a criminal conviction for knowingly procuring naturalization of a person contrary to law under 18 U.S.C. § 1425(a), the illegal act must have contributed to the obtaining of citizenship.[90] The Court held that the "jury must evaluate how knowledge of the real facts would have affected a reasonable government official properly applying naturalization law."[91] There are two ways the government can satisfy the materiality requirement. First, "if the facts misrepresented are themselves disqualifying, . . . there is an obvious causal link between the defendant's lie and her procurement of citizenship."[92] If the government is relying on the second scenario, which the Court called an "investigation-based theory" for prosecution, the government must show that: (1) "the misrepresented fact was sufficiently relevant to one or another naturalization criterion that it would have prompted reasonable officials, 'seeking only evidence concerning citizenship qualifications,' to undertake further investigation"; and (2) "the investigation 'would predictably have disclosed' " some legal disqualification.[93]

In connection with a charge of violating § 1425(a), the defendant argued in a First Circuit case that the government must prove there is a "but for" connection between any misrepresentations and the grant of citizenship.[94] In other words, the defendant argues that the government must show that the defendant was ineligible for naturalization when the defendant became a citizen.[95] The First Circuit, in declining to reverse the trial court's jury instruction, held that while the burden of proving unlawful procurement remains with the government, the government need only prove that the truthful information would have raised a "fair inference" of ineligibility for naturalization (i.e., a causative link between the false statement and eligibility for naturalization).[96]

In the Second Circuit, appellants argued that, with respect to the materiality to any ground of disqualification, the failure to disclose a record of arrests in naturalization proceedings is not by itself an automatic disqualification when an inquiry into the totality of the circumstances surrounding the offenses charged makes them of extremely slight consequence.[97] In rejecting this defense, the Second Circuit weighed whether any of the arrests occurred during the five years before naturalization and the type of alleged crimes that led to the arrests.[98] Ultimately, the Second Circuit was not persuaded by this defense because the "[f]ailure to disclose a record of prior arrests, even though none of those arrests by itself would be a sufficient ground for denial of

naturalization, closes to the [g]overnment an avenue of enquiry which might conceivably lead to collateral information of greater relevance."[99] The court distinguished the facts of the case from the Supreme Court's decision in *Chaunt*, which held that defendant's failure to disclose arrests for offenses that were not crimes involving moral turpitude and which occurred ten to eleven years before naturalization did not warrant denial of naturalization.[100]

The Third Circuit has held that a naturalization applicant's denial that she had ever been arrested did not provide a ground for revocation of naturalization where the arrests relied upon by the government were illegal and false arrests.[101] Even though the applicant was arrested seventeen times before naturalizing, the criminal record showed that she was charged with only the offense of 'obstructing highway,' which was not a crime under the laws of the state. Therefore, the court held that the government failed to prove that defendant's "repeated 'arrests' were based on a charge which stated any offense at all," or that her statement that she had never been arrested was "made 'with knowledge of falsity and in a willful and deliberate attempt to deceive the government,'" or that the question asking whether she had ever been arrested "properly went to false or illegal arrests."[102]

A Virginia federal court has rejected a defendant's argument that his false statements lacked "materiality" and, therefore, could not support denaturalization. In *U.S. v. Biheiri*, the Eastern District of Virginia declared that Fourth Circuit precedent holds that false statements—no matter how minor or immaterial—can support a charge of unlawful procurement of citizenship.[103]

On the other hand, an Illinois district court has held that the government did not prove material misrepresentation of a naturalized citizen's date and place of birth in his visa application on the partial ground that even if he had listed the correct date and place, his doing so would not have resulted in the application's denial.[104] The court did, however, revoke the naturalization on the basis of illegal procurement.[105]

The Tenth Circuit has favored arguments that show that misstatements in an application that were not material did not warrant denaturalization. In *U.S. v. Sheshtawy*, the court held that the fact that an appellate made a misstatement in his application for naturalization concerning an arrest on charges which were eventually dismissed was not material and did not warrant denaturalization.[106] The Tenth Circuit recognizes that the government carries a heavy burden when seeking to revoke citizenship for the willful misrepresentation or concealment of a material fact.[107] For a fact to be "material," the Tenth Circuit highlights that the government must "show by 'clear, unequivocal, and convincing' evidence either (1) that facts were suppressed which, if known, would have warranted denial of citizenship or (2) that their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship."[108] In *Sheshtawy,* the government made no claim that the arrest itself would have resulted in a denial of citizenship, nor did the government attempt to show that an investigation would have turned up other facts warranting a denial of citizenship.[109]

D. Truthfulness and Ambiguity

Defendants have argued that the question asked on the naturalization form is ambiguous, and therefore their concealment or misrepresentation of certain facts was not willful for the purposes of 8 U.S.C. 1451(a). In *Nowak* and *Maisenberg*, the Supreme Court considered whether a question asking the applicant if they are a "believer in anarchy" or are associated with an organization "which teaches or advocates anarchy or the

overthrow of existing government in this country" was ambiguous as applied to defendants.[110] Defendants in both cases failed to disclose their membership in the Communist Party, a "nonanarchist organization[] advocating violent overthrow of government."[111] The Court reasoned that the question was not clear enough to warrant the disclosure of such an organization because the question could reasonably have been interpreted "as a two-pronged inquiry relating simply to anarchy."[112] However, the Court in *Costello* held defendant's answering "real estate" to questions concerning his occupation, when he was actually an illegal bootlegger, was not excusable on the ground of the questions' ambiguity.[113] Citing *Nowak* and *Maisenberg*, the Court reasoned that while the word 'occupation' "can be a word of elusive content in some circumstances," the defendant cannot rely on that argument because "no one in the petitioner's situation could have reasonably thought that the questions could be answered truthfully as they were."[114]

In the First Circuit, a defendant argued in defending against denaturalization that a finding of a false statement requires that the statement be literally untrue and that it is not enough to find that a statement be misleading, evasive, unresponsive, or ambiguous.[115] In *U.S. v. Mensah*, the defendant attempted to procure two separate visas for himself under two different names.[116] In his naturalization application, the defendant responded "N/A" to a request for any other names he used since becoming a permanent resident.[117] The First Circuit did not find reversible error on the trial court's rejection of defendant's proposed jury instruction on ambiguity because, among other reasons, an imprecise or incomplete answer to an unambiguous, straightforward question can be false.[118] The First Circuit did, however, note that an answer may not necessarily be fraudulent if the question itself is ambiguous such that there is an objectively reasonable interpretation of the question itself under which the answer is not false.[119]

Reviewing a Fed. R. Crim. Pro. Rule 29 motion for acquittal, the Fourth Circuit rejected a defendant's defense that she lacked a good understanding of the English language and, therefore, lacked the intent to knowingly make false statements regarding her criminal record during the naturalization process. In *U.S. v. Nicaragua-Rodriguez*, the defendant had repeatedly been asked during the naturalization application process whether she understood English and the questions being asked of her, to which she indicated she understood everything.[120] As such, her defense to the criminal denaturalization proceeding that she "did not have a good understanding of the English language" did not outweigh the substantial evidence which, viewed in the light most favorable to the prosecution, warranted a jury finding that the defendant was guilty.[121]

The Second Circuit has considered the lack of understanding of the English language as a factor in an ambiguity defense to a denaturalization proceeding.[122] In *U.S. v. Profaci*, the Second Circuit explained why it thought the question "Have you ever been arrested?" is ambiguous. The Second Circuit concluded that an interviewee could reasonably believe the question related only to arrests in the United States, and therefore, the interviewee would not necessarily have made a willful, false misrepresentation.[123] The Second Circuit also did not find probative the subsequent times that the appellant was asked the same question.[124]

A federal district court in Michigan held that a question asking an applicant whether he had ever "committed a crime involving moral turpitude" was ambiguous when the defendant honestly believed that a crime involving moral turpitude referred to a sexual offense.[125] Therefore, the court held that the government failed to prove willful misrepresentation on the part of the defendant.[126]

E. Procedural Arguments

In *Schneiderman v. U.S.*, the Supreme Court held that the burden of proof for civil denaturalization proceedings is " 'clear, unequivocal, and convincing' " evidence which does not leave " 'the issue in doubt.' "[127] The Court emphasized that this burden is especially heavy "when the attack is made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness."[128] The government argued that the defendant, because of his membership in certain communist organizations, was not attached to the principles of the Constitution because (1) he believed in sweeping changes of the Constitution; and (2) he believed in and advocated for the violent overthrow of the government.[129] The defendant admitted that although he wanted to apply Marxist theory in the United States, he did not support a violent overthrow of the government.[130] The Supreme Court held that mere association with an organization does not prove the defendant's own beliefs and that a desire to change the Constitution does not mean that the defendant is not attached to the principles of the Constitution.[131] Therefore, the government failed to meet its high burden of proof in taking away defendant's citizenship.

In the Sixth Circuit, the majority of successful defenses resulted from procedural errors rather than successful substantive defenses – e.g. *U.S. v. Ataya*, where the defendant's denaturalization resulted from a guilty plea to healthcare fraud and wire fraud, but the conviction was subsequently vacated by the appellate court due to violation of the Federal Rule of Criminal Procedure 11(b)(1), which requires either the district court or the plea agreement itself to inform the defendant that a conviction could result in his denaturalization.[132]

The Third Circuit and Fifth Circuit have held that the federal catch-all statute of limitations is not a defense to a denaturalization proceeding because it is inapplicable.[133] Both circuit courts explained that because denaturalization serves as a remedy for fraudulently obtained citizenship as opposed to a penalty or forfeiture, the catch-all statute of limitations of 28 U.S.C. § 2462 does not apply to denaturalization proceedings.[134] A district court in Texas held that there was no statute of limitations in a denaturalization case and that public policy allows the government to enforce its rights no matter how long the passage of time.[135]

Laches defenses by denaturalized citizens have generally proved to be ineffective, although some circuits allow the defense where defendant can show prejudice by the government's delay in bringing the suit. In *Costello*, the Supreme Court, assuming *arguendo* the applicability of the doctrine of laches to denaturalization, found that defendant had failed to prove the elements necessary for a laches defense.[136] The Court noted that it had consistently adhered to the principle that the doctrine of laches does not apply against the sovereign, and that it had not "considered the question of the application of laches in a denaturalization proceeding."[137] The Sixth Circuit has stated that there is no laches defense to a denaturalization suit.[138] The Seventh Circuit has held that the doctrine of laches does not apply in denaturalization proceedings unless the government can be shown to have lacked diligence and prejudiced the defense.[139]

Arguments of duplicity when indicted for charges of violations under separate subclauses of 18 U.S.C. § 1425 have not been successful. In *U.S. v. Damrah*,[140] the defendant argued, among other things, that § 1425(a) and (b) were "separate offenses" with different elements and should have been charged in separate counts of his indictment. The Circuit Court held that not only was the indictment not duplicitous but that any such duplicity would be harmless.[141]

Arguments that a defendant in a civil denaturalization proceeding is entitled to a jury trial have been rejected. The Seventh Circuit, in *U.S. v. Ciurinskas,* did not find Ciurinskas' argument that he should be granted a jury trial persuasive in light of decades of Supreme Court precedence holding that a denaturalization action is a suit in equity.[142]

The Sixth Circuit held that government attorneys engaged in prosecutorial misconduct because they failed to disclose to the court and to the defendant exculpatory information during denaturalization and extradition proceedings.[143] The court extended the *Brady* rule[144] "to cover denaturalization and extradition cases where the government seeks denaturalization or extradition based on proof of alleged criminal activities of the party proceeded against."[145]

F. Admission of Certain Types of Evidence

The courts have also considered what types of evidence can be admitted or considered sufficient in a denaturalization case. In the Eighth Circuit, a defendant's argument that circumstantial evidence is not sufficient to satisfy the burden of proving by clear, unequivocal and convincing evidence, as is the government's burden of proof in denaturalization cases, was unsuccessful.[146] Although misrepresentations made outside of the naturalization context cannot be grounds for denaturalization under the civil denaturalization statute,[147] the Eighth Circuit rejected the argument that courts may not consider statements made outside the naturalization context at all to determine whether such statements were true.[148]

Unlike the Eighth Circuit, the Second Circuit has been more favorable to an appellant's defense that circumstantial evidence is insufficient to satisfy the government's burden of proving by clear, unequivocal and convincing evidence that an appellant should be denaturalized.[149] In *U.S. v. Sokolov*, the government argued that during the visa application process the applicant made material misrepresentations, but the alleged material misrepresentations were not written in his visa application or in the responses during the visa interview.[150] Since the alleged material misrepresentations were not in writing, the government further argued that some of the applicant's answers would have caused the interviewer or reviewer to ask follow up questions, it would have been "logical" for the interviewer to ask the follow up questions, and the applicant must have made misrepresentations during the follow up questioning.[151] The Second Circuit noted, however, that, in fact, there was no evidence of the actual interview in the applicant's report.[152] The Second Circuit also pointed out that the government officials were not required to ask the follow up questions.[153] The Second Circuit ruled that though the evidence the government put forth was admissible, it was insufficiently probative to meet the clear, unequivocal and convincing standard.[154] Because the statements did not appear in the visa application, the Second Circuit declined to infer that the applicant made a material misrepresentation.[155] However, the defendant's naturalization was revoked both because he made a material misrepresentation in his naturalization interview when he stated he had never written one single fascist or pro-fascist line, and because he had illegally procured naturalization since he was ineligible for permanent residence at the time it was granted.[156]

In DPA cases or other cases in which the defendant's citizenship was revoked as a consequence of service or participation in the persecution of Jews and/or other Nazi-sympathetic roles during World War II, arguments by defendants against the admission of documentary evidence surviving World War II and having been released or revealed post-dissolution of the Soviet Union have been unsuccessful (as they have been ruled admissible as "ancient documents").[157]

G. Attorney Error and Ineffective Assistance of Counsel

Errors and mistakes made by defendants' attorneys related to the denaturalization proceedings have been largely unsuccessful defenses. In *U.S. v. Agyemang*, a North Carolina district court found unconvincing a defendant's argument that he committed the crime in question after naturalization, as the later date was reflected in his plea transcript simply due to an attorney's typographical error and the judgment of conviction and defendant's testimony stated the earlier date.[158]

The Fifth Circuit has also concluded that excusable neglect was not a valid defense in a denaturalization case where a defendant's prior criminal defense attorney advised the defendant that he had no viable defenses in his criminal proceeding, which later formed the basis of denaturalization.[159] However, in a case involving criminal denaturalization for knowingly procuring naturalization contrary to law, the Ninth Circuit held that there was a Sixth Amendment violation where defense counsel failed to obtain jury instructions on the materiality element of the offense.[160] The court found that, in failing to "obtain an instruction on a critical element of the charged crime and thereby abandon[ing] one of his client's most promising defenses," the defendant was deprived of his right to effective assistance of counsel.[161]

In those cases, in which the government has brought denaturalization proceedings due to a criminal conviction, defendants who sought to vacate their conviction on Sixth Amendment grounds have had more success. In *Padilla v. Kentucky*, the Supreme Court held that a defense attorney's failure to advise the defendant about the risk of deportation fell below the objective standard of reasonable professional assistance required under the Sixth Amendment.[162] The Second Circuit has held that defense counsel's advice to a naturalized citizen, who was later subject to denaturalization proceedings, that she did not have to worry about immigration consequences of pleading guilty fell below objective standard of reasonableness.[163] However, *Padilla*'s ruling is not retroactive and does not apply to cases in which the defendant pled guilty before the decision in 2010.[164] In addition, a federal district court in Florida found that a defendant cannot collaterally attack his criminal conviction using this defense in his denaturalization case.[165]

H. Ambiguity or Vagueness of Law

At least one District Court, in an unpublished decision, has rejected arguments that 8 U.S.C. § 1451 is unconstitutionally vague and thus infringes a defendant's First Amendment rights.[166]

In the Ninth Circuit in *U.S. v. Dang*, the defendant argued in a denaturalization case that the regulation governing the general requirement of good moral character for naturalization prohibiting "unlawful acts" was unconstitutionally vague.[167] In examining a statute for vagueness, the court evaluated whether a person of average intelligence would reasonably understand that the charged conduct was proscribed.[168] The court found that the statute was not unconstitutionally vague as applied to the defendant, since defendant was arrested for, and convicted of, arson, willful injury to a child, and fraud in an insurance scandal, and a "person of ordinary capacity would reasonably understand that those actions constituted 'unlawful acts.'"[169]

In *U.S. v. Damrah*, the defendant's argument that the persecution and affiliation questions in the application process are so ambiguous that he should have been acquitted for the criminal charge of unlawfully obtaining citizenship was rejected.[170] The Circuit Court held that the defendant mistook breadth for ambiguity and that any ambiguity in the terms should have been and were resolved by the jury, which rendered a guilty verdict.[171]

I. Collateral Estoppel or *Res Judicata*

The courts have said there is no right to naturalization if a person does not meet all of the statutory requirements.[172] Cases challenging that assertion, for example under *res judicata* or collateral estoppel claims, have been unsuccessful.

The Supreme Court has held that res judicata cannot be used as a defense in a denaturalization proceeding because "fraud in the oath was not in issue in the [naturalization] proceedings and neither was adjudicated nor could have been adjudicated."[173] Other courts have agreed that res judicata and estoppel are not valid defenses because issues involving possible grounds for revocation of naturalization are not adjudicated in the original naturalization proceedings.[174] Furthermore, the Second Circuit has held that when the government fails to file the required affidavit of good cause in a denaturalization proceeding and the case is dismissed, a subsequent denaturalization action on the same grounds is not barred.[175]

The Seventh Circuit has held that collateral estoppel does apply in deportation proceedings to bar the relitigation of issues that had already been adjudicated in the noncitizen's denaturalization case.[176] Similarly, the Fifth Circuit held that collateral estoppel applied to prevent defendant from arguing that he was not engaged in a criminal conspiracy at the time of his naturalization when he had pled guilty to that same conspiracy in an earlier criminal proceeding.[177]

In *U.S. v. Benavides*, the court explained that a government officer's neglect is no defense to a suit by the government to enforce a public right or interest.[178] The court also found both that defendant's *res judicata* and collateral estoppel defenses were legally insufficient, and that the government may revoke naturalization at any time if it was illegally procured.[179]

J. Equal Protection Claims

To fulfill equal protection guarantees, any classifications made among naturalized and native-born citizens need only be supported by a rational basis. Despite the plenary power doctrine, denaturalization could still violate the constitutional guarantee of equal protection.[180]

In *Schneider v. Rusk*, the Supreme Court held that the statute providing for denaturalization of a citizen residing continuously for three years in the country of his birth constituted discrimination and violated the implied equal protection component of the Due Process Clause. In reaching that conclusion, the Court stated the "rights of citizenship of native-born and naturalized person are of the same dignity and are coextensive."[181] The Court denounced the denaturalization statute as it created "a second-class citizenship" and rested on the assumption that naturalized citizens are "a class less reliable or bear less allegiance to this country than do the native born."[182] It is important to note that the underlying law for this case has been repealed.

However, the illegal procurement or concealment and misrepresentation provisions of the denaturalization statute, even though they treat naturalized citizens differently than native born citizens, have been held constitutional under the Equal Protection component of the Fifth Amendment.[183]

In the Seventh Circuit, arguments that the illegal procurement standard violates the equal protection clause of the Fifth Amendment have not been effective.[184]

K. Equitable Discretion

The Supreme Court has held that no one "has the slightest right to naturalization unless all statutory requirements are complied with."[185] Therefore, the Court concluded that district courts lack "equitable discretion to refrain from entering a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts."[186] Arguments that denaturalization pursuant to a conviction for violation of 18 U.S.C. § 1425 are "permissive" rather than automatic have also been rejected by courts. In a 2006 Sixth Circuit case, *U.S. v. Al-Banna*, the individual unsuccessfully argued that denaturalization pursuant to a conviction for a violation of 18 U.S.C. § 1425 is permitted rather than required under 18 U.S.C. § 1451(e).[187] The Sixth Circuit relied on the plain language of the statute as well as the Supreme Court precedent set forth in *Fedorenko v. U.S.*[188]

Following *Fedorenko*'s holding, district courts have rejected defenses that the government was negligent in connection with his illegal procurement of citizenship where it missed information when the applicant originally applied for naturalization. In *U.S. v. Benavides*, the defendant raised five affirmative defenses related to the government's fault in failing to identify his criminal conviction when he first applied for naturalization; those defenses were namely: "(1) Plaintiff's own negligence, (2) comparative negligence, (3) third party negligence, (4) superseding and/or intervening causes, and (5) pre-existing condition."[189] The Southern District of Texas declared that "doctrines such as [defendant's] first five affirmative defenses, which all seek to mitigate [defendant's] own conduct based upon the actions of another party, have no legal bases in a denaturalization proceeding …."[190]

V. Administrative Denaturalization Enjoined

INA § 340(h) provides that "[n]othing contained in this section shall be regarded as limiting, denying, or restricting the power of the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person." From this section, the legacy Immigration and Naturalization Service (INS) imputed the power to revoke citizenship and publish regulations governing denaturalization. However, a Ninth Circuit decision held that the INS only had the power to cancel certificates of naturalization in limited circumstances without affecting the citizenship status of those affected.[191] The Court affirmed a preliminary injunction on administrative denaturalization, which became permanent in 2001.[192] At this point in time, revocation of naturalization can only occur in federal courts.[193] USCIS can only cancel the certification of naturalization, but cannot revoke the underlying status.[194]

In 2017, the D.C. Circuit clarified the differences between a revocation of a certificate of naturalization and a revocation of citizenship itself. In *Xia v. Tillerson*, plaintiffs—who were Chinese nationals—sued the government after USCIS and the State Department cancelled their naturalization certificates and revoked their U.S. passports after a USCIS employee was implicated in the illegal issuance of 200 certificates of naturalization.[195] The plaintiffs were concerned that their citizenship had been administratively revoked; however, the court explained that administrative cancellation of a certificate of naturalization—for which the Attorney General has the authority—does not affect the underlying citizenship. The court noted that only the document itself, the certificate, is affected by such administrative cancellation. However, in *Xia v. Tillerson*, because the facts revealed that the citizenship may have been illegally procured in the first instance (through the fault of the

USCIS employee who committed the wrongdoing), the court instructed the government that it was required by §1451 of the INA to initiate court proceedings to denaturalize the plaintiffs.[196]

VI. Consequences of Denaturalization and Relation Back

Courts adjudicating denaturalization proceedings coined the "relation-back" moniker to describe INA § 340(a), which provides that naturalization and the certificate of citizenship are revoked "as of the original date" of admission to citizenship.[197] In other words, a person reverts to their pre-naturalization immigrant status for the time spanning conferment of citizenship and denaturalization. However, it is not clear that all actions taken, such as immigrant visa petitions, during the period between naturalization and revocation are necessarily void or illegal. Moreover, the U.S. Supreme Court clarified that the relation-back does not apply to general deportation provisions,[198] so deportable crimes committed after a fraudulently procured naturalization cannot be grounds for deportation after a citizen is denaturalized.[199]

VII. Impact on Derivative Citizens

Under INA § 340(d), derivatives may lose their citizenship if they "claimed" it through a parent or spouse, depending on why the parent was denaturalized, how the derivatives claimed the citizenship, and where they were when it happened.

If the parents' naturalization is revoked because of concealment or misrepresentation,[200] any children who acquired or derived citizenship from that parent will lose citizenship. This "applies regardless of whether the spouse or child is residing in the United States or abroad at the time of the revocation of the naturalization."[201] Courts have tied this rule to the relation-back doctrine (see above), explaining that since denaturalization revokes citizenship as of the time it was granted, it must also void any intervening derivative claims.[202] The statute's reference to spouses and children of denaturalized principals suggests that the rule is limited to cases involving people who derived citizenship (and possibly even acquired citizenship at birth), a notion supported by the USCIS Policy Manual.[203] While only children of citizens can acquire or derive their citizenship through citizen parents today, spouses were also eligible for derived citizenship up until 1922,[204] making it likely that the language is a remnant of a bygone era.

Alternatively, the language never specifies acquisition or derivation, but instead asserts that revocations will apply to persons who "claim" their citizenship from a naturalized parent or spouse. Read this way, one could argue that the rule additionally applies to persons who obtained citizenship in any of several ways through a spouse or parent's naturalization. This would include, for example, a spouse who obtained lawful permanent residency through a visa petition, and subsequently naturalized. It is difficult to determine if the law recognizes this distinction due to a scarcity of recent cases on the topic. In 1932, the Third Circuit found that a fraudulently obtained naturalization conferred no citizenship rights to a spouse who had petitioned to intervene in proceedings against her husband.[205] However, the spouse in this case had probably derived her citizenship from her husband's naturalization prior to 1922. Similarly in 1943, the Seventh Circuit opined that in cases where fraud is at issue, "*any* derivative rights [in a wife or minor child] stemming from the certificate of naturalization involved, must rise or fall solely on the basis of the rights of the husband or parent from whom they stem..."[206] As definitively as the language indicates *any* or all derivative claims, practitioners having to argue against this position are advised to point out that the case involved a minor child who had derived citizenship from his father's fraudulent naturalization, and that the opinion is limited to this context.

Derivatives will lose citizenship if the parent or spouse's naturalization is revoked due to concealment or misrepresentation of a material fact but will not lose citizenship if the parent or spouse's citizenship was revoked due to illegal procurement of naturalization.[207]

> **Example:** After living in the U.S. for three years, Ana applied for naturalization as a spouse of a U.S. citizen. However, Ana's divorce from her first husband was not final at the time of her second marriage so she was not actually married to her second husband and therefore ineligible to apply for citizenship after only three years. If Ana's daughter, Emma, had naturalized as Ana's derivative, Emma would not lose her citizenship if Ana's citizenship was revoked due to illegal procurement of naturalization.

> **Example:** Now let's say Ana's citizenship was revoked because of concealment of a material fact or willful misrepresentation. When Ana applied for naturalization she lied about her prior convictions. If Ana's citizenship is revoked, Emma will also lose her citizenship.

Derivatives may lose their citizenship if the spouse or parent through whom they claimed it is denaturalized under one of the presumptions for denaturalization, including having joined the Communist or other subversive party, or having been separated from the Armed Forces under dishonorable circumstances before serving five years.[208] However, such derivatives will not lose their citizenship if they were residing in the United States at the time of the principal's denaturalization.[209]

> **Example:** Ana was able to naturalize because of her service in the military. Emma acquired her U.S. citizenship through her mother. After three years of service, Ana is dishonorably discharged. Because Emma was living outside of the U.S. when her mom's citizenship was revoked, Emma's citizenship is also revoked. However, if Emma had been living in the U.S. when her mom's citizenship was revoked, Emma would not have lost her U.S. citizenship.

Grounds for Revocation	Derivatives Lose Their Status?
Illegal Procurement	Living in U.S.: No Living outside U.S.: No
Concealment of a material fact or willful misrepresentation	Living in U.S.: Yes Living outside U.S.: Yes
Other grounds such as military service or membership in subversive party	Living in U.S.: No Living outside U.S.: Yes

End Notes

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[2] Patricia Mazzei, *Congratulations, You Are Now a U.S. Citizen. Unless Someone Decides Later You're Not.*, The New York Times (July 23, 2018), *available at* https://www.nytimes.com/2018/07/23/us/denaturalize-citizen-immigration.html.
[3] Department of Homeland Security, Office of the Inspector General, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records* 1 (Sept. 8, 2016), *available at* https://bit.ly/2cDxCkw [hereinafter OIG Report].
"Special interest countries" are those countries of concern to the national security of the United States; the class includes Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Malaysia, Mauritania, Morocco, North Korea, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, and Gaza and the West Bank. *See* Memorandum from David V. Aguilar, Chief U.S. Border Patrol on Arrests of Aliens from Special Interest Countries to All Sector Chief Patrol Agents (Nov. 1, 2004), *available at* https://cryptome.org/obp-50-8b-p.pdf.
[4] OIG Report, at 1.
[5] *Id.* at 1 n.3.
[6] *Id*. at 4.
[7] *Id.* at 6-7. Historically, U.S. Attorney's Offices (USAOs) had declined to criminally prosecute immigration benefit fraud cases; starting in 2015, they had agreed at ICE's urging to prosecute individuals with TSA credentials, security clearances, positions of public trust, or criminal histories. *Id.* at 7.
[8] Department of Justice Office of Public Affairs, *Justice Department Secures First Denaturalization as a Result of Operation Janus* (Jan. 9, 2018), https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalizationresultoperation-janus; Amy Taxin, *US launches bid to find citizenship cheaters*, AP News (Jun. 11, 2018), https://apnews.com/1da389a535684a5f9d0da74081c242f3.
[9] Department of Homeland Security, U.S. Citizenship & Immigration Services Budget Overview Fiscal Year 2019, at 47, https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf.
[10] Katie Benner, *Justice Dept. Establishes Office to Denaturalize Immigrants*, The New York Times (Feb. 26, 2020), https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html.
[11] Id.
[12] Carlotta Mohamed, *LIC Clinic Helps Immigrants Apply for Citizenship*, Times Ledger (Aug. 8, 2018), https://www.timesledger.com/stories/2018/31/naturalizationclinic_2018_08_03_q.html.
[13] 12 U.S. Citizenship and Immigration Services Policy Manual L.2(A) [hereinafter USCIS-PM].
[14] *See, e.g.*, *U.S. v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005); *U.S. v. Dang*, 488 F.3d 1135 (9th Cir. 2007); *U.S. v. Suarez*, 664 F.3d 655 (7th Cir. 2011); *U.S. v. Sokolov*, 814 F.2d 864, 866 (2d Cir. 1987) ("Under section 340(a), a person who has been admitted to citizenship may be denaturalized if the order admitting him and his certificate of naturalization 'were illegally procured *or* were procured by concealment of a material fact or by willful misrepresentation.'") (emphasis added).
[15] INA § 340(a).
[16] *See, e.g.*, *U.S. v. Cordero*, 457 F. App'x 454 (5th Cir. 2012) (finding defendant illegally procured his citizenship where his lawful permanent resident ("LPR") status was rescinded due to a marriage in which he had entered solely for purposes of obtaining LPR status); *U.S. v. Almallah*, 244 F. App'x 584 (5th Cir. 2007) (affirming revocation of citizenship where defendant procured a marriage for the purpose of obtaining LPR status and then lied about that marriage on his naturalization application). The Fifth Circuit has rejected the argument that a defendant had not yet received the final dismissal of his appeal of the LPR rescission and, therefore, had met the requirements for naturalization on the date he had filed his application. *Cordero*, 457 F. App'x at 454. The court ruled that nothing in the immigration statutes or regulations suggests that receipt of final appeal dismissal is required before the LPR rescission becomes "final." *Id*. The Fifth Circuit also has prohibited testimony from an "expert" concerning whether a marriage was valid, ruling that such testimony would merely consist of the witness' opinion as to how the verdict should be read. *Almallah*, 244 F. App'x 584; *U.S. v. Al-Sibai,* 599 F. App'x 251 (6th Cir. 2015) (holding that the district court did not err in finding that the defendant had illegally procured his citizenship as he was not eligible to receive his immigrant visa through a fraudulent marriage); *but see U.S. v. Arango,* 670 F.3d 988, 999 (9th Cir. 2012) (finding that summary judgment upholding denaturalization was inappropriate where

the petitioner raised genuine issues of material fact as to whether there was a cooperation agreement between him and the government that allowed him to retain his LPR status in exchange for his testimony against a fraudulent marriage broker).
[17] *See, e.g., U.S. v. Georgieff*, 100 F. Supp. 3d 15 (D. D.C. 2015) (granting summary judgment for government in denaturalization case where defendant secured LPR status through marriage to Bulgarian woman who obtained LPR status via Diversity Visa Lottery, but had lied on his visa application about both his first marriage to a Canadian (which had not yet ended) and his criminal history, and also concealed that information on his naturalization application).
[18] *See, e.g., U.S. v. Alrasheedi*, 953 F. Supp.2d 112 (D.D.C. 2013) (finding naturalization was illegally procured where defendant provided false information about previous persecution claims to gain asylum before ultimately obtaining LPR status by using a different name); *U.S. v.Montelongo*, No. 3:07-CV-15566-G ECF, 2008 WL 4693402 (N.D. Tex. Oct. 23, 2008) (granting summary judgment for government where, following divorce from citizen wife, defendant unlawfully entered the U.S. and was placed in deportation proceedings. Following his failure to appear, he was ordered deported *in absentia*. Subsequent naturalization found to be illegally procured both because he did not have LPR status for the required five years when he filled out the application and because he was subject to a final deportation order). *U.S. v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001) (granting summary judgment for government where defendant obtained LPR status by fraud through his wife by claiming that she was a U.S. citizen, using a fraudulent birth certificate, and then lying about those matters on his naturalization application).
[19] In contrast, the Refugee Relief Act of 1953 (the "RRA") is identical to the DPA of 1948 except that the RRA includes the additional term "personally" such that those individuals who "personally advocated or assisted in the persecution of any person because of race, religion, or natural origin" would be ineligible for a visa under the RRA. *See U.S. v. Friedrich,* 492 F.3d 842 (8th Cir. 2005).
[20] *See, e.g, U.S. v. Demjanjuk*, 367 F.3d 623, 627, 637 (6th Cir. 2004); *U.S. v. Wittje*, 422 F.3d 479 (7th Cir. 2005); *U.S. v. Schmidt*, 923 F.2d 1253, 1258-59 (7th Cir. 1991) (holding that "[s]ervice as an armed guard equally ensured the systematic destruction of concentration camp inmates" and thus rendered defendant ineligible for immigrant visa under the DPA); *U.S. v. Kairys*, 782 F.2d 1374 (7th Cir. 1986); *U.S. v. Friedrich*, 492 F.3d 842 (holding that defendant here was ineligible for visa under the RRA rather than the DPA due to service in the SS Death's Head as a prison guard); *U.S. v. Dailide*, 316 F.3d 611, 614 (6th Cir. 2003); *U.S. v. Negele*, 222 F.3d 443 (8th Cir. 2000); *U.S. v. Hansl*, 439 F.3d 850, 854, n.23 (8th Cir. 2006) (holding that under either the RRA or the DPA, whether service in SS Death's Head was voluntary or involuntary is inconsequential to analysis); *Palciauskas v. U.S. I.N.S.*, 939 F.2d 963 (11th Cir. 1991) (holding that petitioner's material misrepresentation as to the fact that he was Mayor of Kaunas, Lithuania, during the Nazi occupation of Lithuania was sufficient grounds for denaturalization, without the necessity of determining the extent of his participation in the persecution of Jews).
[21] *U.S. v. Reimer*, 356 F.3d 456, 458 (2d Cir. 2004).
[22] *See, e.g., U.S. v. Kalymon*, 541F.3d 624, 633 (6th Cir. 2008); *U.S. v. Mandycz*, 447 F.3d 951, 956-67 (6th Cir. 2006); *U.S. v. Demjanjuk*, 367 F.3d 623, 629 (6th Cir. 2004); *U.S. v. Reimer*, 356 F.3d at 462 (finding that the government showed the defendant was not in possession of a valid visa when admitted for permanent residence); *U.S. v. Dailide*, 316 F.3d 611, 620 (6th Cir. 2003); *U.S. v. Schmidt*, 923 F.2d 1253 (7th Cir. 1991).
[23] *See, e.g., U.S. v. Kaur*, No. 11-3868, 2014 WL 285077 (E.D. Pa 2014) (revoking naturalization where the court concluded that derivative asylum status and adjustment were not lawfully obtained where the principal's asylum grant was not valid); *U.S. v. Szehinskyj*, 277 F.3d 331 (3d Cir. 2002) (revoking citizenship where individual received a visa under the DPA, for which he was later found to be ineligible for having assisted in persecution); *Turfah v. USCIS,* 845 F.3d 668 (6th Cir. 2017) (revoking citizenship where individual received his legal permanent resident status by mistake by the government, even though the individual did not commit any fraud in obtaining his status).
[24] INA §§ 316(a); 319(a) and 8 C.F.R. 316.5(c).
[25] INA § 316(b). For more information on continuous residence requirements, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide.*
[26] INA § 101(a) (33). For more information on continuous residence requirements, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide*.
[27] *See, e.g., Chun-Yu Zhao v. U.S.*, Nos. l:14-cv-1787(GBL), l:10-cr-317(GBL), 2015 WL 4523487 (E.D. Va. Jul. 23, 2015) (holding that, in criminal proceeding for denaturalization, applicant was convicted of unlawfully procuring naturalization by falsely listing her separated husband's address as her address and falsely certifying that she had lived with her estranged husband for the preceding three years).
[28] *See U.S. v. Mohammad*, 249 F. Supp. 3d 450 (D.D.C. 2017) (granting government's unopposed motion for summary judgment where, among other things, defendant had misrepresented his travel outside of the U.S. on naturalization application); *U.S. v. Biheiri*, 293 F. Supp.2d 656 (E.D. Va. 2003) (convicting defendant of procurement of naturalization contrary to law where, among other things, defendant made false statements about the number of his absences from the U.S. during the statutory period). *But see Maslenjak v. U.S.*, 137 S. Ct. 1918, 1930 (2017).

[29] INA §§ 316(a); 319(a). For more information on the physical presence requirement, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide.*
[30] *See, e.g., U.S. v. Ahmed*, 735 Fed. Appx. 863 (6th Cir. 2018) (affirming the district court's ruling allowing denaturalization of petitioner who failed to disclose prior travel history which was sufficient to break both the continuous residence requirement and the physical presence requirement).
[31] *See, e.g.*, *U.S. v. Kiang*, 56 F. App'x 696, 697 (6th Cir. 2003) (affirming district court decision to revoke citizenship on the grounds that petitioner illegally procured his citizenship failing to divulge that he was convicted of a crime of moral turpitude and was on probation when his application for naturalization was adjudicated).
[32] *See, e.g.*, *U.S. v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005); *U.S. v. Dang*, 488 F.3d 1135 (9th Cir. 2007); *U.S. v. Suarez*, 664 F.3d 655 (7th Cir. 2011); *U.S. v. Al-Aqaili,* 550 F. App'x 356, 358 (8th Cir. 2014) (upholding petitioner's denaturalization because he committed a crime of moral turpitude during the statutory period in which he was required to possess good moral character); *U.S. v. Teng Jiao Zhou*, 815 F.3d 639 (9th Cir. 2016).
[33] INA § 101(f). *See, e.g.*, *U.S. v. Xunmei Li*, No. CV-12-00482-PHX-DGC, 2014 WL 880418 (D. Ariz. 2014).
[34] *Kungys v. U.S.*, 485 U.S. 759, 779 (1988) (discussing false birthdate; remand to determine whether false birthdate was testified to or whether it was made to obtain naturalization).
[35] *U.S. v. Montalbano*, 236 F.2d 757, 759 (3d Cir. 1956) (holding that "[t]he deliberate failure of each defendant to disclose his criminal record shows that he was not of good moral character and therefore did not meet the statutory prerequisite to citizenship"); *U.S. v. Jammal*, 90 F. Supp.3d 618, 625 (S.D. WVa. 2015); *U.S. v. Reve*, 241 F. Supp. 2d 470 (D. N.J. 2003). *See also U.S. v. Cornejo*, 679 F. App'x 361 (5th Cir. 2017) (affirming grant of summary judgment for government in civil case brought twenty years after naturalization because defendant had been arrested for two drug offenses one month before his naturalization interview and failed to disclose it; finding the omission of the drug crime was material and went to lack of good moral character); *U.S. v. Kayode Akamo*, 515 F. App'x 248 (5th Cir. 2012) (affirming district court's denaturalization where defendant had conspired to commit mail fraud prior to naturalization, but was not arrested, charged or convicted until after naturalization); *U.S. v. Suarez*, 664 F.3d 655, 660 (7th Cir. 2011) (holding that "the *offense* must occur during the statutory period…but the proof may come at any time" under 8 U.S.C. § 1101(f), which lists those qualities lacking in good moral character); *U.S. v. Mwalumba*, 688 F. Supp. 2d 565 (N.D. Tex. 2010) (granting summary judgment for government where defendant had pled guilty to three fraud-related crimes committed prior to naturalization, but was not convicted until after naturalization); *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682 (S.D. Tex. Feb. 8, 2008) (revoking defendant's citizenship where he had committed conspiracy with intent to distribute cocaine before his naturalization interview, stated during his interview that he had never committed any crime for which he had not been arrested, and pled guilty to that offense following his interview but before naturalization oath); *U.S. v. Syouf*, No. 9903760, 2000 WL 1827792 (6th Cir. 2000) (affirming district court decision to revoke defendant's citizenship for failing to inform naturalization examiner about his domestic violence conviction, bad check convictions, arrest for nonsupport and for having given false testimony under oath). For more information on the good moral character requirement, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide.*
[36] INA § 313 includes, but is not limited to, the Communist Party, other totalitarian parties, and terrorist organizations. *But see, U.S. v. Horwitz*, 140 F. Supp. 839 (E.D. Va. 1956) (holding that, even though defendant had been a member of the Communist party, the government failed to prove by clear, unequivocal and convincing evidence that the eighteen-year old immigrant "convict[ed]" in the Communist ideology such that he could be said to "compassed or imagined" the overthrow of America; defendant had joined the Communist party during the Great Depression because he needed help finding employment and entrance into a reputable labor union, with which the Communist party had helped him).
[37] INA § 340(c) only applies to those who naturalized after December 24, 1952. Earlier cases focused the inquiry on defendants' activities in the statutory period leading up to naturalization, not the years following naturalization. *See, e.g., U.S. v. Polzin*, 48 F. Supp. 476 (D. Md. 1942) (dismissing government's complaint for illegal procurement and concealment and misrepresentation where government failed to prove that defendant, an admitted Nazi and Hitler worshipper, had engaged in any disloyal or subversive conduct or statements "prior to the date of his naturalization …."); *U.S. v. Jentzsch*, 48 F. Supp. 482 (D. Md. 1942) (ruling for defendant, an unabashed Nazi sympathizer who even draped his daughter's coffin with a swastika flag, because the government failed to introduce any "direct evidence of any kind … showing any subversive tendencies either prior to the date of defendant's naturalization in 1933, or within two or three years after that time …."). There are even older cases, pre-Cold War, relying on the now repealed 8 U.S.C. § 738, whereby a naturalized citizen could have their citizenship revoked due to their lack of attachment to the principles of the U.S. government and the Constitution. *See, e.g.*, *U.S. v. Knauer*, 149 F.2d 519, 520 (7th Cir. 1945). There does not appear to be a specific statutory period during which a person must be attached to the principles of the Constitution as the court held that the individual in this case was not "before, at the time, and ever after" attached to the Constitution and stating that he was a "thorough-going Nazi and faithful follower of the Nationalist party of Germany". *Id.*
[38] INA § 340(a).

[39] Contrast the language of this provision with INA § 212(a)(6)(C)(i), which bars admission to the United States of one seeking such admission by "willfully misrepresenting a material fact."
[40] *Fedorenko v. U.S.*, 449 U.S. 490, 507 n.28 (1981) (referring to *Costello v. U.S.*, 365 U.S. 265, 271-72, n. 3 (1961)). *See also U.S. v. Reve*, 241 F. Supp.2d 470 (D. N.J. 2003); *U.S. v. Ekpin*, 214 F. Supp.2d 707 (S.D. Tex. 2002); *U.S. v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001).
[41] 12 USCIS-PM L.2(B)(1) (citing *Kungys v. U.S.*, 485 U.S. 759, 767 (1988)); *see U.S. v. Hirani*, 824 F.3d 741 (8th Cir. 2016) (revoking citizenship because he failed to note on naturalization application the other name he used previously in his rejected asylum application and on his bills and other documents, that he had been deported as a consequence of his rejected asylum application, and that he had reported a fake birth date on the application).
[42] *See, e.g., U.S. v. Latchin*, 554 F.3d 709, 714 (7th Cir. 2009).
[43] *See Kungys v. U.S.*, 485 U.S. 759.
[44] *U.S. v. De Lucia,* 256 F.2d 487, 490 (7th Cir. 1958) (citing to cases where "use by an alien of an assumed name to gain entry into the United States" and "conceal[ing] from the government his criminal record is a ground for refusing naturalization or for ordering denaturalization"); *U.S. v. Oddo*, 314 F.2d 115, 116 (2d Cir. 1963); *U.S. v. Ekpin*, 214 F. Supp. 2d 707, 715-17 (S.D. Tex. 2002); *U.S. v. Tongo*, 16 F.3d 1223, 1994 WL 33967 (6th Cir. 1994) (unpublished).
[45] *U.S. v. Kowalchuk*, 773 F.2d 488, 492 (3d Cir. 1985) (*en banc*); *U.S. v. Dailide*, 227 F.3d 385 (6th Cir. 2000).
[46] *See, e.g., U.S. v. Accardo*, 113 F. Supp. 783, 784 (D. NJ 1953) (holding that defendant's failure to disclose his complete arrest record warranted denaturalization); *U.S. v. Schellong*, 717 F.2d 329, 335 (7th Cir. 1983) (holding that defendant's omission of specific roles played in the German Waffen SS would have either led to application being denied or at least resulted in further, detailed investigation which could "possibly lead[] to the discovery of other facts warranting denial of citizenship").
[47] *See, e.g., U.S. v. Minerich*, 250 F.2d 721, 730-31 (7th Cir. 1957) (finding that defendant did not have a duty to disclose an arrest and conviction that occurred after he was interviewed by naturalization examiners, even though he could have during his naturalization hearing (occurred after his arrest and conviction) because he was not asked by the court or any other person about it, and thus defendant held to not have done "anything to prevent inquiry, or to elude investigation, mislead or hinder the officials charged with duties under the naturalization Act").
[48] *Nowak v. U.S.*, 356 U.S. 660, 663-65 (1958); *see also Costello v. U.S.*, 365 U.S. 265, 289 (1961) (Douglas, J., dissenting). For more information, see Daniel Levy, *U.S. Citizenship and Naturalization Handbook*, § 14.5 (Thomas Reuters 2015-16).
[49] 12 USCIS-PM L.2(B)(1).
[50] *U.S. v. Siemzuch*, 461 F.2d 1087 (7th Cir. 1972) (finding that when applicant was admitted to citizenship, a portion of the prescribed oath was not given and applicant's citizenship was ultimately revoked as a consequence of refusal to take the oath as prescribed, and although court granted him opportunity to take the oath and keep his citizenship, applicant sought to modify the oath, which the court rejected).
[51] The Second Circuit has found that in addition to serving in the U.S. armed forces during wartime, an applicant must show good moral character in order to be eligible for naturalization. *Nolan v. Holmes*, 334 F.3d 189, 202 (2d Cir. 2003).
[52] *See Afroyim v. Rusk,* 387 U.S. 253 (1967) (stating that "people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship"). However, some military naturalizations do take place abroad which raises questions about the applicability of the Fourteenth amendment. Yet such "conditions subsequent," meaning acts that would revoke naturalization for acts occurring after naturalization, were dropped from the INA long ago in the aftermath of *Afroyim.*
[53] INA § 340(a).
[54] 8 C.F.R. § 340.2.
[55] INS Interpretation 340.1(f) (quoting Department of Justice, Circular Letter No. 107 (Sept. 20, 1909)).
[56] *Id.*
[57] *Id.*
[58] *See Baumgartner v. U.S.*, 322 U.S. 665 (1944); *Schneiderman v. U.S.*, 320 U.S. 118 (1943); *but see Mondaca-Vega v. Lynch*, 808 F.3d 413, 420 (9th Cir. 2015) (holding that the language "clear, unequivocal, and convincing" does not evince a higher evidentiary standard than the "clear and convincing" standard).
[59] *Schneiderman*, 320 U.S. at 122.
[60] INA § 340(e).

[61] *See, e.g.*, *U.S. v. Nguyen*, 829 F.3d 907 (8th Cir. 2016) (upholding defendant's conviction for attempted naturalization fraud where she was paid by two individuals to assist them in procuring citizenship and, in turn, convinced a doctor to report false medical information on form N-648, exempting them from English-proficiency and civics exams requirements for naturalization); *U.S. v. El Sayed*, 470 F. App'x 491, 493 (6th Cir. 2012) (upholding defendant's conviction for "unlawful procurement of citizenship for denying his arrest prior to being sworn in as a citizen, in violation of 18 U.S.C. § 1425(a)"); *U.S. v. Latchin*, 554 F.3d 709 (7th Cir. 2009) (upholding defendant's conviction under 18 U.S.C. § 1425 for omitting involvement in the Iraqi Intelligence Service on his naturalization application); *U.S. v. Damrah*, 412 F.3d 618 (6th Cir. 2005) (upholding defendant's conviction for "unlawfully obtaining citizenship in violation of 18 U.S.C. § 1425 for making false statements in a citizenship application and interview" when he denied participating in persecution and omitted his involvement with suspect and terrorist organizations from the "membership and organizations" question on the naturalization application).
[62] 18 U.S.C. § 1425(b).
[63] 12 USCIS-PM L.1(A).
[64] *Kungys v. U.S.*, 485 U.S. 759, 767 (1988)
[65] *Maslenjak v. U.S.*, 137 S. Ct. 1918 (2017).
[66] *U.S. v. Inocencio*, 328 F.3d 1207, 1211 (9th Cir. 2003).
[67] *U.S. v. Garcia*, 727 F. App'x 74 (4th Cir. 2018) (holding that automatic revocation of citizenship upon conviction of criminal offense of making false and misleading statements about criminal history during naturalization application is required); *U.S. v. Djanson*, 578 F. App'x 238 (4th Cir. 2014) (affirming district court's revocation of naturalization following conviction for unlawful procurement of naturalization; holding that revocation is automatic upon conviction, which does not include exhaustion of all appellate remedies).
[68] *Inocencio*, 328 F.3d. at 1210-11.
[69] 137 S. Ct. 1918, 1930 (2017).
[70] *Id*.
[71] 703 F. App'x 241 (5th Cir. 2017).
[72] *Id*. at 243.
[73] *Id*. at 245.
[74] *Id.* at 247.
[75] *Id*. at 245-47.
[76] *Sandoval v. Sessions*, 696 Fed. Appx. 281 (9th Cir. 2017).
[77] *Id*. at 282.
[78] *Id*.
[79] *Id*. at 283.
[80] 34 F.2d 349 (S.D. Tex. 1929).
[81] *Id*.
[82] *U.S. v. Jurick*, 16 F. Supp. 32, 33-34 (E.D. N.Y. 1936); *see also U.S. v. Cohen*, 32 F. Supp. 419 (D. N.J. 1940).
[83] An Act, Pub. L. No. 103-416, § 104(b), 108 Stat. 4305 (1994) struck out former subsection (d) in 8 U.S.C. § 1451 which provided that establishment of a permanent foreign residence by a naturalized citizen within one year (previously five years) after such naturalization was considered prima facie evidence of a lack of intention to reside permanently in the United States and, therefore, subject the person's certificate of naturalization to revocation and cancellation. Immigration and Nationality Technical Corrections Act of 1994, H.R. 783, 103rd Cong. § 104(b) (1994).
[84] *U.S. v. Horwitz*, 140 F. Supp. 839 (E.D. Va. 1956).
[85] *U.S. v. Polzin*, 48 F. Supp. 476 (D. Md. 1942).
[86] *U.S. v. Perlmuter*, 693 F.2d 1290 (9th Cir. 1982).
[87] *Kungys v. U.S.*, 485 U.S. 759, 771 (1988); *see also U.S. v. Demjanjuk*, 367 F.3d 623, 636-37 (6th Cir. 2004); *U.S. v. Firishchak*, 468 F.3d 1015, 1025 (7th Cir. 2006).
[88] *Id.*
[89] *Maslenjak v. U.S.*, 137 S. Ct. 1918 (2017)
[90] *Id.* at 1924-25.
[91] *Id*. at 1928.
[92] *Id*.
[93] *Id*. (quoting *Kungys*, 485 U.S. at 774).
[94] *U.S. v. Mensah*, 737 F.3d 789, 807 (1st Cir. 2013).
[95] *Id*. at 809.
[96] *Id.* at 809.
[97] *U.S. v. Oddo*, 314 F.2d 115, 118 (2d Cir. 1963).

[98] *Id*.
[99] *Id*.
[100] *Chaunt v. U.S.*, 364 U.S. 350, 353-55 (1960).
[101] *U.S. v. Kessler*, 213 F.2d 53 (3d Cir. 1954).
[102] *Id.* at 58.
[103] 293 F. Supp. 2d 656 (E.D. Va. 2003). *But see Maslenjak v. U.S.*, 137 S. Ct. 1918, 1930 (2017).
[104] *U.S. v. Kairys*, 600 F.Supp. 1254 (N.D. Ill. 1984).
[105] *Id*.
[106] 714 F.2d 1038 (10th Cir. 1983).
[107] *Id.* at 1039.
[108] *Id.* at 1040.
[109] *Id.*
[110] *Nowak v. U.S.*, 356 U.S. 660 (1958); *Maisenberg v. U.S.*, 356 U.S. 670 (1958).
[111] *Nowak*, 356 U.S. at 664.
[112] *Id.*
[113] *Costello v. U.S.*, 365 U.S. 265 (1961).
[114] *Id*. at 277.
[115] *U.S. v. Mensah*, 737 F.3d 789, 804 (1st Cir. 2013)
[116] *Id*. at 792-93.
[117] *Id*. at 792.
[118] *Id*. at 804.
[119] *Id*. at 805 (citing *U.S. v. Rowe*, 144 F.3d 15 (1st Cir. 1998)).
[120] No. 98-4019, 1998 WL 738548 (4th Cir. Oct. 22, 1998).
[121] *Id*.; *see also*, *U.S. v. El Sayed*, 470 F. App'x 491, 493-94 (6th Cir. 2012) (holding that the jury rationally found that defendant knowingly made false statements when neglecting to mention arrests and charges during naturalization process despite claims that he was not sophisticated enough in his English comprehension to understand what "arrested" and "charged" meant).
[122] *U.S. v. Profaci*, 274 F.2d 289, 292 (2d Cir. 1960) ("But, when a question is not reasonably free from ambiguity, a clear understanding thereof and an intent to deceive are not to be readily implied merely from a false answer.").
[123] *Id*.
[124] *Id*. at 293.
[125] *U.S. v. Tooma*, 187 F.Supp. 928 (E.D. Mich. 1960).
[126] *Id.*
[127] *Schneiderman v. United States*, 320 U.S. 118, 125 (1943) (quoting *U.S. v. Maxwell Land-Grant Co.*, 121 U.S. 325 (1885)).
[128] *Schneiderman*, 320 U.S. at 122-23.
[129] *Id*. at 135.
[130] *Id.* at 127.
[131] *Id.* at 136
[132] 884 F.3d 318, 321, 326 (6th Cir. 2018).
[133] *U.S. v. Rebelo*, 394 F. App'x 850, 853 (3d Cir. 2010); *U.S. v. Hongyan Li*, 619 Fed.App'x. 298, 303 (5th Cir. 2015).
[134] *Rebelo*, 394 F. App'x at 853; *Hongyan Li*, 619 Fed.App'x at 302. See *Kokesh v. S.E.C.,* 137 S. Ct. 1635, 1642 (2017) to try a penalty argument, but see *U.S. v Malik,* USCOURTS-ksd-2_15-cv-09092-9.
[135] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682 (S.D. Tex. Feb. 8, 2008).
[136] *Costello v. U.S.*, 365 U.S. 265, 282 (1961)
[137] *Id*.
[138] *U.S. v. Mandycz*, 447 F.3d 951, 965 (2006).
[139] *See U.S. v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986);
[140] *U.S. v. Damrah*, 412 F.3d 618 (6th Cir. 2005).
[141] *Id.* at 982.
[142] *U.S. v. Ciurinskas*, 148 F.3d 729, 735 (7th Cir. 1998) (citing *Luria v. U.S.*, 231 U.S. 9 (1913)); *see also, Kairys*, 782 F.2d at 1384.
[143] *Demjanjuk v. Petrovsky*, 10 F.3d 338, 350 (6th Cir. 1993).
[144] The Supreme Court held in *Brady v. Maryland*, 373 U.S. 83 (1963) that prosecution's suppression of evidence, that is favorable to a defendant and material to guilt or punishment, upon defendant's request violates due process.
[145] *Demanjuk*, 10 F.3d at 353.
[146] *U.S. v. Hirani.* 824 F.3d 741, 747 (8th Cir. 2016).

[147] *See Kungys v. U.S.*, 485 U.S. 759 (1988).
[148] *Hirani*, 824 F.3d at 748 (reasoning that courts cannot view the past use of different names as "actionable misrepresentations themselves" but can do so to determine if the applicant was lying on his application with regards to his legal name and the declaration that such name was his only name).
[149] *U.S. v. Sokolov*, 814 F.2d 864, 872 (2d Cir. 1987).
[150] *Id.* at 871-72.
[151] *Id*.
[152] *Id.* at 871.
[153] *Id*.
[154] *Id.* at 872
[155] *Id*.
[156] *Id.* at 872-4.
[157] *See, e.g.*, *U.S. v. Kalymon*, 541 F.3d 624, 632-33 (6th Cir. 2008); *U.S. v. Demjanjuk*, 367 F.3d 623, 630-31 (6th Cir. 2004).
[158] No. 7:17-CV-55-D, 2018 WL 3245048 (E.D. Va. Jul. 3, 2018).
[159] *U.S. v. Cornejo*, 679 F. App'x 361 (5th Cir. 2017).
[160] *U.S. v. Alferahin*, 433 F.3d 1148, 1160-62 (9th Cir. 2006).
[161] *Id.* at 1161.
[162] 559 U.S. 356, 366 (2010).
[163] *Rodriguez v. U.S.*, 730 F. App'x. 39, 42 (2d Cir. 2018).
[164] *See Chaidez v. U.S.*, 568 U.S. 342 (2013); *U.S. v. Gomez*, 945 F. Supp. 2d 1359, 1365 (S.D. Fla. 2013).
[165] *U.S. v. Gomez*, 945 F.Supp.2d at 1364.
[166] See *U.S. v. Trifa*, 662 F.2d 447, 448 (6th Cir. 1981) (referencing the lower court's rejection of petitioner's void for vagueness argument).
[167] *U.S. v. Dang*, 488 F.3d 1135 (9th Cir. 2007).
[168] *Id.* at 1140.
[169] *Id.* at 1141.
[170] *U.S. v. Damrah*, 412 F.3d 618 (6th Cir. 2005).
[171] *Id.* at 984-86.
[172] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682 (S.D. Tex. Feb. 8, 2008).
[173] *Knauer v. U.S.*, 328 U.S. 654, 670 (1946).
[174] *See e.g. U.S. v. DeLucia*, 256 F.2d 487 (7th Cir. 1958).
[175] *U.S. v. Costello*, 275 F.2d 355 (2d Cir. 1960), *judgment aff'd* in *Costello v. U.S.,* 365 U.S. 265 (1961).
[176] *See Kairys v. I.N.S.*, 981 F.2d 937, 939 (7th Cir. 1992).
[177] *U.S. v. Kayode Akamo*, 515 F. App'x 248 (5th Cir. 2012) (finding that collateral estoppel applied because the issue of defendant's involvement in a criminal conspiracy had been fully litigated in the criminal proceeding).
[178] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682 (S.D. Tex. Feb. 8, 2008).
[179] *Id., citing U.S. v. Ginsberg,* 243 U.S. 472 (1917).
[180] See Aram A. Gavoor & Daniel Miktus, Snap: How the Moral Elasticity of the Denaturalization Statute Goes Too Far, 23 Wm. & Mary Bill Rts. J. 637, 662 (2015)
[181] *Schneider v. Rusk*, 377 U.S. 163, 165 (1964).
[182] *Id.* at 168-169.
[183] *See Luria v. U.S.*, 231 U.S. 9, 24 (1913) ("[T]he section makes no discrimination between the rights of naturalized and native citizens, and does not in anywise affect or disturb rights acquired through lawful naturalization, but only provides for the orderly cancellation, after full notice and hearing, of certificates of naturalization which have been procured fraudulently or illegally").
[184] *U.S. v. Kumpf*, 438 F.3d 785, 792 (7th Cir. 2006); *U.S. v. Kairys*, 782 F.2d 1374, 1383 (7th Cir. 1986) (rejecting defendant's reasoning that intentional and voluntary acts are required for expatriation, so intentional acts must also be basis for denaturalization, the Court stating that it fails to recognize the "intrinsic differences between the two types of citizenship…upheld by the Supreme Court").
[185] *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (*quoting U.S. v. Ginsberg*, 243 U.S. 472, 475 (1917)).
[186] *Id.* at 517.
[187] *U.S. v. Al-Banna*, No. 05-4287, 2006 WL 3203745, at *2 (6th Cir. 2006).
[188] *Id.*
[189] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682, at *2 (S.D. Tex. Feb. 8, 2008).
[190] *Id.* at *3; *see also U.S. v. Mwalumba*, 668 F.Supp.2d 565, 575, n.4 (N.D. Tex. 2010).

[191] *Gorbach v. Reno*, 219 F.3d 1087, 1094 (9th Cir. 2000) ("The delegation that Congress expressly made to the Attorney General was of 'authority to naturalize' citizens. There is no express delegation in the statutes to the Attorney General to denaturalize citizens.").
[192] *Gorbach v. Reno*, No. C-98-0278R, 2001 WL 34145464 (W.D. Wash. Feb. 14, 2001) (holding that the defendants are permanently enjoined from applying and executing regulations found at 8 C.F.R. § 340.1). The regulations were eventually removed in 2011. Revocation of Naturalization, 76 Fed. Reg. 53804.
[193] 12 USCIS-PM L.1(A).
[194] INA § 342. *See also* 12 USCIS-PM L.1(C) ("The main difference between cancellation and revocation proceedings is that cancellation only affects the document, not the person's underlying status").
[195] *Xia v. Tillerson*, 865 F.3d 643 (D.C. Cir. 2017) (finding that the cancellation of naturalization certificates did not have any effect on the actual citizenship of the plaintiffs in question; however, warning the government that §1451 of the INA obligates it to institute a denaturalization proceeding if a certificate has been illegally procured, which appeared to be the case).
[196] 8 U.S.C. § 1451(a). The statute provides in pertinent part:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation . . . .

[197] *See, e.g., Costello v. INS*, 376 U.S. 120 (1964). *See also* 12 USCIS-PM L.3(A).
[198] *Id.* at 128–32.
[199] *Id.* However, if the act had been committed before the naturalization, and only the conviction was later in time, this could be grounds to reopen or revoke naturalization.
[200] INA § 340(d).
[201] *Id.; see also* 12 USCIS-PM L.3(C)(2).
[202] *Battaglino v. Marshall*, 172 F.2d 979 (2d Cir. 1949).
[203] See 12 USCIS-PM L.3(C)(1). For more information on acquisition and derivation of citizenship, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide.*
[204] INS Interpretation 341.1: Derivation through Marriage.
[205] *Rosenberg v. U.S.*, 60 F.2d 475 (3d Cir. 1932).
[206] *U.S. ex rel. Harrington v. Schlotfeldt*, 136 F.2d 935, 940 (7th Cir. 1943) (emphasis added).
[207] 12 USCIS-PM L.3(C)(1) – (2).
[208] 12 USCIS-PM L.3(C)(3).*F*
[209] *Id. and* INA § 340(d).

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About the Immigrant Legal Resource Center
The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.