Practice Advisory: Denaturalization and Revocation of Naturalization[1]

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I. Introduction

Historically, denaturalization was pursued by the U.S. government in very small numbers, averaging only eleven cases per year between 1990 and 2017, and focusing only on the most egregious of cases involving war criminals and others who had lied about their identities to obtain status in the United States.[2] A Department of Justice ("DOJ") circular letter issued in 1909 emphasizes that denaturalization 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.[3] 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.[4] However, the Trump administration claims to be increasing its capacity and resources to pursue an unprecedented number of denaturalization cases in its second term, an approach that is at odds with historical practice.

Under the Obama administration, Operation Janus was launched in 2010 to expand the Department of Homeland Security's ("DHS") efforts to identify naturalized individuals coming from "special interest countries or neighboring countries with high rates of immigration fraud" who had been ineligible at the time of naturalization.[5] A 2016 DHS Office of Inspector General ("OIG") report

[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), https://www.nytimes.com/2018/07/23/us/denaturalize-citizen-immigration.html.
[3] INS Interpretation 340.1(f) (quoting Department of Justice, Circular Letter No. 107 (Sept. 20, 1909)).
[4] *Id.*
[5] Department of Homeland Security (DHS), Office of the Inspector General, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records* 1 (Sept. 8, 2016), https://www.oversight.gov/sites/default/files/oig-reports/OIG-16-130-Sep16.pdf [hereinafter "DHS, *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.[6] The OIG report also noted that fingerprint records were missing in approximately 315,000 cases of noncitizens with final deportation orders or criminal convictions and Immigration and Customs Enforcement ("ICE") had not yet reviewed files or attempted to retrieve or digitize about 148,000 more.[7]

Under the first Trump administration, the government significantly increased its capacity to investigate U.S. citizens and pursue denaturalization cases on broader grounds. In 2018, U.S. Citizenship and Immigration Services ("USCIS") announced that it intended to refer approximately 1,600 cases to DOJ for prosecution and that it was creating a new office dedicated to reviewing and referring denaturalization cases to DOJ.[8] DHS also transferred an allotment of funds from USCIS 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 first three years of the Trump administration.[10] In February 2020, DOJ announced the creation of the Denaturalization Section within DOJ's Office of Immigration Litigation which was "dedicated to investigating and litigating revocation of naturalization."[11]

Despite the significant effort the Trump administration expended on these cases during its first term, in absolute terms the number of people who had their citizenship stripped remained small.[12] This is in part because of the vast resources necessary to prosecute denaturalization cases in federal court and the length of time these cases can take to reach a resolution.

On February 2, 2021, then-President Biden issued an Executive Order requiring the Secretary of State, the Attorney General, and the Secretary of Homeland Security to "review policies and practices regarding denaturalization and passport revocation to ensure that these authorities are not

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"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* DHS, *Memorandum: Arrests of Aliens from Special Interest Countries*, (Nov. 1, 2004), https://cryptome.org/obp-50-8b-p.pdf.

[6] DHS, *OIG Report* at 1*,* n.5.

[7] *Id*. at 3–4.

[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/archives/opa/pr/justice-department-secures-first-denaturalization-result-operation-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. Immigration and Customs Enforcement Budget Overview Fiscal Year 2019* ICE–O&S-20–21, 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] DOJ Office of Public Affairs, *The Department of Justice Creates Section Dedicated to Denaturalization Cases* (Feb. 26, 2020), https://www.justice.gov/opa/pr/department-justice-creates-section-dedicated-denaturalization-cases.

[12] Umar Farooq and Ellen M. Gilmer, *Falsifying a Tax Return Can Cost Your Citizenship Under Trump*, Bloomberg Law (July 25, 2025), https://news.bloomberglaw.com/us-law-week/falsifying-a-tax-return-can-cost-your-citizenship-under-trump.

used excessively or inappropriately."[13] In December 2022, the Biden administration updated DOJ's Justice Manual to establish the administration's priorities for denaturalization and certain procedures DOJ attorneys must follow prior to commencing denaturalization proceedings.[14] The administration's denaturalization priorities included: (1) "individuals who pose a potential danger to national security," (2) "individuals who engaged in war crimes or human rights violations," and (3) "individuals who committed very serious felonies that were not disclosed during the naturalization process."[15] The Biden administration also appeared to have redirected resources and staff within the Denaturalization Section to the Enforcement Unit within the Office of Immigration Litigation.[16]

On January 20, 2025, President Trump issued an Executive Order directing several federal agencies, including DHS and DOJ, to "[e]nsure the devotion of adequate resources to identify and take appropriate action for" civil denaturalization within 30 days.[17] On June 11, 2025, the Assistant Attorney General of the United States issued a memo titled "Civil Division Enforcement Priorities," which lists five priorities of DOJ's Civil Division.[18] It establishes ten broad categories as priorities for denaturalization cases.[19] The memo states that DOJ "shall prioritize and maximally pursue denaturalization proceedings in all cases permitted by law and supported by the evidence."[20] The administration has also directed USCIS to refer up to 200 denaturalization cases per month to DOJ.[21]

There are fears that the shifting of DOJ priorities under the second Trump term may result in many more people being denaturalized in the near future. In recent days, DOJ has announced the filing of several denaturalization actions.[22] However, it remains to be seen whether the administration will be able to meet its targets for denaturalization. Regardless, this will have a chilling effect on the number of lawful permanent residents applying for U.S. citizenship and will further burden a system that is already delayed in adjudicating and granting immigration benefits. These efforts are part of a broader push to shift resources towards investigating fraud,[23] instead of a focus on timely

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[13] Exec. Order No. 14,012 § 5(a)(iv), Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 86 Fed. Reg. 8,277 (Feb. 2, 2021).
[14] DOJ, Justice Manual § 4-7.00 – Immigration Litigation (last updated Oct. 2024), https://www.justice.gov/jm/jm-4-7000-immigration-litigation#4-7.200.
[15] *Id*.
[16] *Id*.
[17] Exec. Order No. 14,161 § 3(e), Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 Fed. Reg. 8,451 (Jan. 20, 2025).
[18] DOJ, *Memorandum: Civil Division Enforcement Priorities*, (Jun. 11, 2025), https://www.justice.gov/civil/media/1404046/dl.
[19] *Id*.
[20] *Id*. at 4.
[21] Hamed Aleaziz, *Trump Administration Aims to Strip More Foreign-Born Americans of Citizenship*, N.Y. Times (Dec. 17, 2025), https://www.nytimes.com/2025/12/17/us/politics/trump-immigration-citizenship-denaturalization.html.
[22] DOJ Office of Public Affairs, *Justice Department Moves to Denaturalize 12 Individuals for Concealing Terrorist Support, War Crimes, Espionage, Sexual Abuse, and More* (May 8, 2026), https://www.justice.gov/opa/pr/justice-department-moves-denaturalize-12-individuals-concealing-terrorist-support-war-crimes.
[23] *See Matter of Jin*, 29 I&N Dec. 441 (BIA 2026) ("USCIS does not devote adequate attention and resources to uncovering and addressing marriage fraud" and "[w]hile these avenues to uncover marriage fraud exist, this does not mean that they are adequately utilized by DHS."). The BIA relied on the Investigations Pilot Fraud Survey of 1984 that the author conceded was unreliable in *Manwani v. INS*, 736 F. Supp. 1367, 1373 (W.D.N.C. 1990).

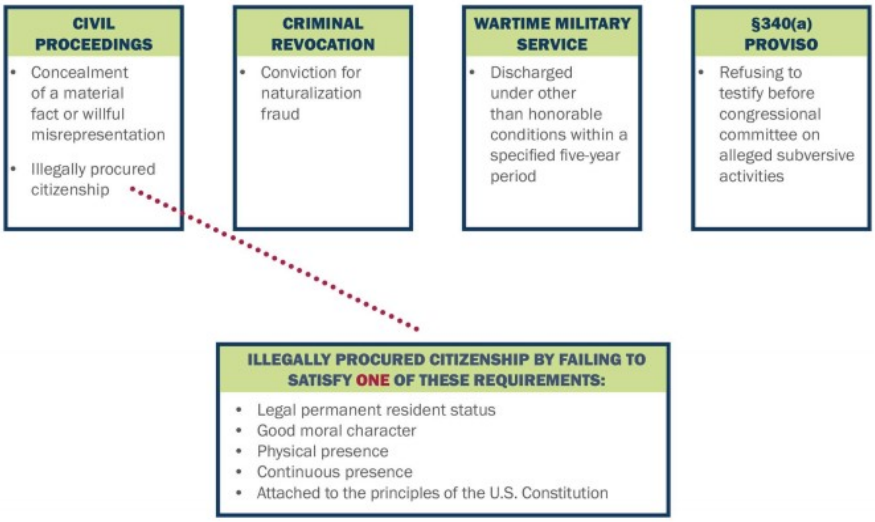
adjudication of benefits applications,[24] and to suppress political engagement and voting among naturalized citizens.[25]

II. Overview of Legal Authorities for Denaturalization

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 been "illegally procured" or "procured 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.

[24] *See* Madeleine Ngo, *Trump Administration to Halt Immigrant Visa Processing for 75 Countries*, N.Y. Times (Jan. 14, 2026), https://www.nytimes.com/2026/01/14/us/politics/trump-suspends-visa-75-countries.html.
[25] *See* Brian Bennett, *Bannon Calls on Trump to Send ICE to the Polls; White House Doesn't Rule It Out*, Time Magazine (Feb. 5, 2026), https://time.com/7371900/steve-bannon-ice-election-donald-trump-leavitt/.

III. Administrative Denaturalization Enjoined

Currently, revocation of naturalization can only occur through a proceeding in federal court. 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.[26] The Court affirmed a preliminary injunction on administrative denaturalization, which became permanent in 2001.[27]

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.[28] 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.[29] 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 § 340 of the INA to initiate court proceedings to denaturalize the plaintiffs.[30]

Therefore, at this point in time, revocation of naturalization can only occur in federal courts.[31] USCIS can only cancel the certification of naturalization but cannot revoke the underlying status.[32]

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[26] *Gorbach v. Reno*, 219 F.3d 1087, 1093 (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.").

[27] *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 CFR § 340.1). The regulations were eventually removed in 2011. Immigration Benefits Business Transformation, Increment I, 76 Fed. Reg. 53,764, 53,804 (Aug. 29, 2011).

[28] *Xia v. Tillerson*, 865 F.3d 643 (D.C. Cir. 2017).

[29] *Id.*

[30] INA § 340(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 . . . .

[31] 12 USCIS-PM L.1(A).

[32] 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.").

IV. Civil Denaturalization Proceedings

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

A. Illegal Procurement

Naturalization is "illegally procured" when the applicant was in fact ineligible for naturalization by failing to satisfy certain statutory requirements.[33] Because it is a distinct ground for denaturalization, illegal procurement generally does not require a concealment or misrepresentation of any kind.[34] 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 United States 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 United States for at least half of the five- (or three-) year period;

(4) They resided continuously in the United States 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 they were "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 practice advisory.

Additionally, naturalization of a U.S. citizen may be revoked if it was procured "by concealment of a material fact or by willful misrepresentation" (discussed in more detail in **Section IV.B.**).[35] To

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[33] 12 U.S. Citizenship and Immigration Services Policy Manual L.2(A) [hereinafter USCIS-PM].

[34] *See, e.g.*, *Kungys v. U.S.*, 485 U.S. 759, 800 n. 11 (1988) (noting that "[a]lthough the illegally-procured provision may reach some of the conduct encompassed within the material misrepresentation provision, the illegally-procured provision has an independent and broader reach"); *U.S. v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005) (holding that denaturalization under illegal procurement does not require a determination of whether the naturalization applicant committed fraud); *U.S. v. Teng Jiao Zhou*, 815 F.3d 639, 645 (9th Cir. 2016) (holding that "an individual's scienter with respect to any misrepresentation" is not relevant to an illegal procurement claim); *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)).

[35] INA § 340(a).

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

Section 316(a) of the INA requires that a naturalized citizen have been a lawful permanent resident for a certain amount of time and have resided continuously in the United States during that time. Therefore, 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 cases, the underlying issue will be whether the applicant obtained residence 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).[36]

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.[37] 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 may 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 could be upheld.[38]

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[36] *See, e.g.*, *U.S. v. Cordero*, 457 F. App'x 454 (5th Cir. 2012) (finding defendant illegally procured his citizenship where his 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 who had not yet received the final dismissal of his appeal of the LPR rescission therefore had met the requirements for naturalization on the date he had filed his application. *Cordero*, 457 F. App'x at 456. 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's opinion as to how the verdict should be read. *Almallah*, 244 F. App'x at 587; *see also 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).

[37] *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).

[38] *See, e.g.*, *U.S. v. Yetisen*, No. 3:18-CV-00570-HZ, 2023 WL 5934595, at *5-*7 (D. Or. Sept. 12, 2023) (granting the government's motion for summary judgment on the grounds that the defendant had illegally procured her citizenship because she was ineligible for refugee status under the persecutor bar and was therefore never lawfully admitted to the United States); *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

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 in and assistance to Nazi persecution of Jewish people during World War II. It is not necessary for the individual to have personally been involved in any act or atrocity to be ineligible;[39] being an armed concentration guard is sufficient to qualify as having "assisted" in persecution.[40] 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.[41] Courts have found that 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.[42]

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,

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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 and finding naturalization to be illegally procured both because defendant 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 and using a fraudulent birth certificate and then lied about those matters on his naturalization application).

[39] 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).

[40] *See, e.g.*, *U.S. v. Demjanjuk*, 367 F.3d 623, 637 (6th Cir. 2004) (holding that defendant was ineligible for a visa under the DPA where defendant claimed his service in a concentration camp was involuntary because "voluntariness is not an element of an assistance-in-persecution charge under the DPA"); *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*, 402 F.3d 842 (holding that defendant here was ineligible for visa under the RRA rather than the DPA due to service in the Schutzstaffel (SS) Death's Head as a prison guard); *U.S. v. Negele*, 222 F.3d 443, 447 (8th Cir. 2000) (holding that defendant's service in the Waffen SS Death's Head guard unit made him ineligible for an immigration visa under the DPA); *U.S. v. Hansl*, 439 F.3d 850, 854 (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); *see also Palciauskas v. INS*, 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).

[41] *U.S. v. Reimer*, 356 F.3d 456, 458 (2d Cir. 2004).

[42] *See, e.g.*, *U.S. v. Kalymon*, 541 F.3d 624, 633 (6th Cir. 2008) (affirming denaturalization of the defendant because he was not lawfully admitted into the United States on a valid visa); *U.S. v. Mandycz*, 447 F.3d 951, 956–57 (6th Cir. 2006) (same); *U.S. v. Demjanjuk*, 367 F.3d 623, 629 (6th Cir. 2004) (same); *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, so citizenship was properly revoked); *U.S. v. Dailide*, 316 F.3d 611, 620 (6th Cir. 2003) (same); *U.S. v. Schmidt*, 923 F.2d 1253 (7th Cir. 1991) (same).

and that visa ultimately leads to permanent residence.[43] Whether legal residence was obtained in error or through fraud or willful misrepresentation, the eventual citizenship status can still be taken away.[44]

> **Example:** Joe immigrated as the unmarried son of his lawful permanent resident father. When Joe immigrated, he did not disclose he got married before immigrating. Joe should not have been able to obtain lawful permanent residence on this basis, and his resulting U.S. citizenship could be at risk.

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.[45] 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 is presumed to break continuous residence unless the applicant can prove they did not abandon their residence.[46] Residence in this context is defined by statute as a person's "principal, actual dwelling place . . . without regard to intent."[47]

Providing false information about one's continuous residence could serve as grounds for denaturalization. One example includes using an address as an applicant's address when, in fact, the applicant does not reside at that address could serve as grounds for denaturalization (e.g., an applicant lists her estranged husband's address but has not lived there during the three years).[48]

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,

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[43] *See, e.g.*, *U.S. v. Kaur*, No. 11-3868, 2014 WL 285077 (E.D. Pa. Jan. 27, 2014) (revoking naturalization where the court concluded that derivative asylum status and adjustment were not lawfully obtained for a derivative asylee when 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 Displaced Persons Act, 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 lawful permanent resident status by mistake by the government, even though the individual did not commit any fraud in obtaining his status).

[44] *See* USCIS Policy Manual, Vol. 12, Ch. A.5, stating that LPR status is not valid where it was not validly obtained even if the error was on the part of the agency or other government entity.

[45] INA §§ 316(a), 319(a); 8 CFR § 316.5(c).

[46] INA § 316(b). For more information on continuous residence requirements, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide.*

[47] INA § 101(a)(33). Also note that an absence of less than six months can break continuous residence if the person cannot establish that their principal dwelling place was in the United States. For more information on continuous residence requirements, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide*.

[48] *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. July 23, 2015) (convicting person in criminal proceeding for denaturalization 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).

depending on the facts, misrepresentations about one's absences could cause denaturalization in both the civil and criminal contexts.[49]

> **Example:** Within five years prior to naturalizing, Liam visited and remained in Ireland for a little over 2 years. Upon his return, CBP did not ask him any questions about his absence and admitted him into the United States. Liam did not disclose his trip in his naturalization application and subsequently obtained citizenship. Liam may be at risk of denaturalization as a result of this omission.

3. Physical Presence

A naturalization applicant must also show that they were physically present for half of the five-year period immediately before applying for naturalization (or half of the three-year period immediately before applying for naturalization if applying as the spouse of a U.S. citizen).[50] 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.[51]

> **Example:** Lupe traveled back and forth to Mexico several times a year using her border crossing card. When she applied to naturalize, she calculated that her absences equal more than thirty out of the sixty prior months. She omitted a couple of trips from her N-400 to put her under 30 days outside of the United States. Lupe's U.S. citizenship could be at risk because she did not meet this element of INA § 316(a) when she naturalized. Her citizenship could be further at risk given that she concealed a material fact in leaving out some of her trips outside the United States.

4. Good Moral Character

Many illegal procurement cases involve 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 that would have precluded a finding of good moral character had it been known prior to naturalization.[52] This includes certain acts committed prior to naturalization,

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[49] *See e.g.*, *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 United States 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 United States during the statutory period); *but see Maslenjak v. U.S.*, 137 S. Ct. 1918, 1930 (2017) (holding that a mere false statement on a naturalization application is not enough to support a criminal conviction for knowingly procuring naturalization contrary to law).

[50] 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.*

[51] *See, e.g.*, *U.S. v. Ahmed*, 735 Fed. App'x 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).

[52] *See, e.g.*, *U.S. v. Kiang*, 56 F. App'x 696, 697–98 (6th Cir. 2003) (affirming district court decision to revoke citizenship on the grounds that petitioner illegally procured his citizenship by failing to divulge that he was convicted of a crime of moral turpitude and was on probation when his application for naturalization was adjudicated).

including between the naturalization application and taking the oath of naturalization, but for which charges and convictions occurred after the granting of citizenship.[53] 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.[54] 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 with an intent to obtain an immigration benefit (a statutory bar to good moral character), 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.[55] Many of the cases for denaturalization based on lack of good moral character involve individuals who had committed crimes prior to naturalization but were not arrested or charged until sometime after naturalization, and they did not disclose the existence of those crimes during the naturalization application process.[56]

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[53] *See, e.g.*, *U.S. v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005) (affirming denaturalization of naturalized citizen who committed a drug offense during the statutory period in which he was required to possess good moral character but was arrested and convicted after naturalizing); *U.S. v. Suarez*, 664 F.3d 655, 658 (7th Cir. 2011) (same); *U.S. v. Dang*, 488 F.3d 1135, 1137 (9th Cir. 2007) (affirming petitioner's denaturalization because she committed unlawful acts shortly before naturalizing); *U.S. v. Al-Aqaili,* 550 F. App'x 356, 358 (8th Cir. 2014) (upholding petitioner's denaturalization because he committed a crime involving 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, 643–44 (9th Cir. 2016); *see also U.S. v. Valenzuela*, 2018 WL 3619503 (N.D. Ill. 2018) (finding the individual would have been unable to establish good moral character during the statutory period for offenses that occurred during the statutory period even though he was not convicted until after he naturalized).

[54] INA § 101(f); 8 CFR § 316.10(b). *See, e.g.*, *U.S. v. Xunmei Li*, No. CV-12-00482-PHX-DGC, 2014 WL 880418 (D. Ariz. Mar. 6, 2014) (noting that, under the catchall provision, a person may be denaturalized for lacking good moral character if, during the statutory period, the person committed an unlawful act of bigamy or engaged in an extramarital affair that had a tendency to destroy the person's marriage).

[55] *Kungys v. U.S.*, 485 U.S. 759, 779, 782 (1988) (discussing false birthdate and remanding to determine whether false birthdate was testified to and whether it was made to obtain naturalization); *U.S. v. Daifullah,* 2021 WL 3888141 (8th Cir. 2021) (finding that a previous false asylum case and use of a false name that were not disclosed in subsequent applications for an immigrant visa and naturalization were sufficient grounds for denaturalization).

[56] *U.S. v. Montalbano*, 236 F.2d 757, 759 (3d Cir. 1956) ("The 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. W. Va. 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, and 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 INA § 101(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*, 238 F.3d 425 (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).

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,[57] "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."[58] Therefore, in the absence of countervailing evidence, such a person can be denaturalized because they were originally ineligible for naturalization.

> **Example:** Abdul, who immigrated to the United States from Saudi Arabia on a family petition, joined Al-Qaida three years after naturalizing. The government may initiate denaturalization proceedings against Abdul under INA § 340(c) on the basis that his membership in Al-Qaida created a rebuttable presumption that he was not attached to the principles of the Constitution at the time 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."[59] 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.[60] In *U.S. v. Kungys*, the

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For more information on the good moral character requirement, please see ILRC's manual *Naturalization and U.S. Citizenship: The Essential Legal Guide.*

[57] 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, 842 (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 have "compassed or imagined" the overthrow of America where 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).

[58] 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, 478 (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, 484 (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 pre-Cold War cases 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 National Socialist party of Germany." *Id.*

[59] INA § 340(a).

[60] *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, 476–77 (D.N.J. 2003); *U.S. v. Ekpin*, 214 F. Supp. 2d 707, 713 (S.D. Tex. 2002); *U.S. v. Tarango-Pena*, 173 F. Supp. 2d 588, 591–92 (E.D. Tex. 2001).

Supreme Court addressed both. Concealing or misrepresenting a fact is material if it had a "natural tendency" to mislead the government official, meaning that had the applicant told the truth, it would have disclosed facts relevant to the applicant's eligibility. According to the USCIS Policy Manual, the holding in *Kungys* does not mean that the information, if disclosed, would have prevented the applicant from naturalizing.[61] Additionally, the misrepresentation or concealment must have been material and have procured naturalization. A material misrepresentation creates a presumption that the applicant "procured" naturalization only if the record creates a "fair inference" that a ground of ineligibility actually existed.[62] 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 with an intent to obtain an immigration benefit (a statutory bar to good moral character) in their misrepresentation in order to show that they were nevertheless eligible for naturalization.

There are four requirements 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.[63] If one of these requirements is missing, the U.S. government cannot meet its burden of proof under the concealment and willful misrepresentation prong of INA § 340(a).

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[64] and misstatements that conceal information that the applicant does not want the court to discover.[65] Concealment usually arises out of incomplete or false answers.[66] The determination of whether a naturalization applicant's response is deemed to have been concealment or willful misrepresentation is a very fact-dependent

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[61] 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 his 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).

[62] *U.S. v. Latchin*, 554 F.3d 709, 714 (7th Cir. 2009) (citing *Kungys*, 485 U.S. at 783).

[63] *See Kungys*, 485 U.S. at 767.

[64] *See e.g.*, *U.S. v. De Lucia,* 256 F.2d 487, 490 (7th Cir. 1958) (citing to cases where "use by [a noncitizen] 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) (citing cases for the proposition that "failure to disclose a record of arrests during naturalization proceedings can constitute concealment of a material fact that will justify a decree of denaturalization"); *U.S. v. Ekpin*, 214 F. Supp. 2d 707, 715–17 (S.D. Tex. 2002) (finding that defendant procured naturalization through willful and material misrepresentation and concealment where he failed to disclose, *inter alia*, that he had committed a crime for which he had not been arrested during the naturalization process).

[65] *See, e.g.*, *U.S. v. Kowalchuk*, 773 F.2d 488, 492 (3d Cir. 1985) (en banc) (holding that defendant made willful material misrepresentations by concealing his membership in and employment by the Ukrainian militia and his residence during World War II).

[66] *See, e.g.*, *U.S. v. Accardo*, 113 F. Supp. 783, 784 (D.N.J. 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").

analysis and will depend both on the response given as well as the questions asked.[67] 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.[68] Note that concealment of a material fact can also include omissions.[69] There has also been at least one instance of citizenship being revoked as a consequence of the applicant's failure to take the naturalization oath outlined in INA § 337.[70]

C. Wartime Military Service

A non-citizen can become a U.S. citizen as a result of their service in the U.S. armed forces during wartime under INA § 329(a).[71] However, their naturalization may be revoked if they were discharged for other than honorable reasons before having served an aggregate of five years. In other words, the same military service that paved the way for naturalization can lead to revocation of U.S. citizenship if the person is dishonorably discharged before serving an aggregate of five years.

This provision calls for a constitutional challenge as it constitutes disfavored revocation for conditions subsequent to naturalization. If citizenship was acquired lawfully, the person is 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.[72]

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,

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[67] *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, which occurred after his arrest and conviction, because he was not asked by the court or any other person about it, and thus defendant was 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").
[68] *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, Charles Roth & National Immigration Project of the National Lawyers Guild, *U.S. Citizenship and Naturalization Handbook*, § 14.5 (Thomas Reuters 2021–2022 ed.).
[69] 12 USCIS-PM L.2(B)(1).
[70] *U.S. v. Siemzuch*, 461 F.2d 1087 (7th Cir. 1972) (upholding revocation of citizenship where a portion of the prescribed oath was not given when applicant naturalized and applicant refused to take the oath as prescribed, instead seeking to modify the oath, which the court rejected, when court granted him opportunity to take the oath and keep his citizenship).
[71] 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).
[72] *See Afroyim v. Rusk,* 387 U.S. 253, 257 (1967) ("[T]he 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 despite occurring after naturalization, were dropped from the INA long ago in the aftermath of *Afroyim.*

demonstrate that citizenship was acquired by "concealment of a material fact or willful misrepresentation."

As with military discharge cases previously discussed, the proviso raises several constitutional questions concerning application of denaturalization based on acts occurring post-naturalization. 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.

> **Example:** Stephan naturalized in 2020 and participated in the January 6, 2021, insurrection at the U.S. Capitol. In 2023, a congressional committee requested that Stephan appear to testify on his "subversive activities" on January 6th and the preparation for January 6th. Stephan did not appear and was convicted of contempt in 2024. Under the INA § 340(a) proviso, Stephan's U.S. citizenship could be at risk.

E. Civil Denaturalization Process

The civil denaturalization process is initiated by the federal government filing a complaint in U.S. district court alleging, "upon affidavit showing good cause," that the defendant's naturalization was procured either illegally or by concealment of a material fact or by willful misrepresentation.[73]

Generally, the process begins with a DHS entity (often USCIS or ICE) making a recommendation to revoke citizenship.[74] The U.S. Attorney's office would have to agree to prosecute the case.[75]

Jurisdiction is in the district court of the defendant's current residence.[76] If the defendant does not reside in any judicial district in the United States, the denaturalization suit may be brought in the District Court for the District of Columbia or the district where the defendant had their last residence.[77]

Given the precious nature of U.S. citizenship, the government must prove its case by clear, unequivocal and convincing evidence.[78] Facts should be construed as far as is reasonably possible in favor of the citizen.[79] There is no specific statute of limitations governing civil denaturalization proceedings.

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[73] INA § 340(a).
[74] 8 CFR § 340.2(a).
[75] INA § 340(a); *see also* 12 USCIS-PM L.1(A).
[76] *Id.*; *see also* 12 USCIS-PM L.1(A).
[77] INA § 340(a).
[78] *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); *see also U.S. v. Razic,* 2020 WL 6192360 (N.D. Iowa 2020) (holding that documentary evidence without further corroborating support was insufficient to meet the government's "clear and convincing evidence" standard. The court found that the government had not met its burden with documentation and non-firsthand witness testimony).
[79] *Schneiderman*, 320 U.S. at 122.

V. 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.[80] These include knowing procurement or attempts to procure naturalization or documentary evidence of naturalization for any person contrary to law.[81] The statute also provides sentencing guidelines for naturalization fraud convictions that are tied to terrorism and drug trafficking.[82] The statute of limitations for violations of 18 U.S.C. § 1425 is ten years from the date of the commission of the offense.[83] Like all criminal cases, the government bears the burden of proof beyond a reasonable doubt.[84]

Presumably, "contrary to law" under 18 U.S.C. § 1425 means the same as "illegally procured" or concealment or misrepresentation of a material fact in INA § 340(a). If the allegation for denaturalization is lack of good moral character based on false testimony, the testimony need not influence the decision whether to grant or deny naturalization, *i.e.*, be material. However, the false testimony must be deliberate and intended to deceive the U.S. government to gain a benefit under immigration law. This is because the ground for denaturalization would be due to the fact that the applicant was ineligible for lack of good moral character.[85] But denaturalization under the criminal code is not appropriate merely for making a false statement even if such statement did not, in fact, impact eligibility. Rather, the testimony had to have "played a role" in the acquisition of naturalization.[86]

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, several circuits have found that there is no required notice or right to be heard for revocation of citizenship after criminal convictions for fraudulent naturalization.[87] Instead, courts have interpreted the

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[80] INA § 340(e).
[81] *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 exam 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 based on denying his arrest on the naturalization form, 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, 620 (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).
[82] 18 U.S.C. § 1425(b).
[83] 18 U.S.C. § 3291.
[84] 12 USCIS-PM L.1(A).
[85] *Kungys v. U.S.*, 485 U.S. 759, 779–82 (1988) (discussing the "materiality" requirement in the context of civil denaturalization for illegal procurement).
[86] *Maslenjak v. U.S.*, 582 U.S. 335, 350 (2017).
[87] *U.S. v. Inocencio*, 328 F.3d 1207, 1211 (9th Cir. 2003).

statute as requiring automatic denaturalization after the conviction,[88] regardless of whether lengthy periods of time transpire between conviction and revocation.[89]

VI. 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. Further, a defendant who succeeds in their denaturalization case may be eligible to have their attorneys' fees covered by the government under the Equal Access to Justice Act (EAJA).[90]

A. Procedural Arguments

Procedural arguments raised in denaturalization cases have included issues regarding the government's burden of proof, a court's failure to advise criminal defendant of the risk of denaturalization under Federal Rule of Criminal Procedure 11(b)(1), the applicability of the catch-all statute of limitations to civil denaturalization proceedings and the defense of laches, duplicitous indictments under 18 U.S.C. § 1425, a defendant's entitlement to a jury trial, and prosecutorial misconduct.

In *Schneiderman v. U.S.*, the Supreme Court held that the burden of proof for civil denaturalization proceedings is "clear, unequivocal, and convincing" evidence that does not leave "the issue in doubt."[91] 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."[92] 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.[93] 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.[94] 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

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[88] *U.S. v. Garcia*, 727 F. App'x 74, 76 (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, 241 (4th Cir. 2014) (affirming district court's revocation of naturalization following conviction for unlawful procurement of naturalization and holding that revocation is automatic upon conviction, which does not include exhaustion of all appellate remedies).
[89] *Inocencio*, 328 F.3d. at 1210–11.
[90] For more information on requesting attorney's fees under the EAJA, *see* National Immigration Litigation Alliance, American Immigration Council, and National Immigration Project of the National Lawyers Guild, *Requesting Attorney' Fees Under the Equal Access to Justice Act*, (Aug. 15, 2020), available at https://nipnlg.org/work/resources/requesting-attorneys-fees-under-equal-access-justice-act .
[91] *Schneiderman v. U.S.*, 320 U.S. 118, 125 (1943) (quoting *U.S. v. Maxwell Land-Grant Co.*, 121 U.S. 325, 381 (1885)).
[92] *Schneiderman*, 320 U.S. at 122–23.
[93] *Id*. at 135.
[94] *Id.* at 127.

does not mean that the defendant is not attached to the principles of the Constitution.[95] Therefore, the government failed to meet its high burden of proof in taking away the defendant's citizenship.

In the Sixth Circuit, the majority of successful defenses resulted from procedural errors rather than successful substantive defenses. For example, in *U.S. v. Ataya*, 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.[96]

The Third Circuit, Fifth Circuit, Ninth Circuit, and Eleventh Circuit have held that the federal catch-all statute of limitations is not a defense to a denaturalization proceeding, and no circuit court has held otherwise.[97] All four 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.[98] 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.[99]

Laches defenses by denaturalized citizens have generally proved to be ineffective. Laches is an equitable defense that bars a plaintiff (in this case the federal government) from seeking relief when they have unreasonably delayed asserting their rights to the prejudice of the defendant. In *Costello*, the Supreme Court, assuming *arguendo* the applicability of the doctrine of laches to denaturalization, found that the defendant had failed to prove the elements necessary for a laches defense.[100] 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."[101] Since then, some circuits have considered the applicability of this defense in denaturalization cases. The Sixth Circuit has stated that there is no laches defense to a denaturalization suit.[102] The Seventh and Ninth Circuits have rejected the laches defense in denaturalization proceedings where the defendants failed to show that the government lacked diligence and prejudiced the defense.[103] Both circuits assumed without deciding that laches is an available defense in a civil denaturalization proceeding.[104]

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[95] *Id.* at 136.
[96] *U.S. v. Ataya*, 884 F.3d 318, 321, 326 (6th Cir. 2018).
[97] *U.S. v. Rebelo*, 394 F. App'x 850, 853 (3d Cir. 2010); *U.S. v. Hongyan Li*, 619 F. App'x 298, 303 (5th Cir. 2015); *U.S. v. Phattey*, 943 F.3d 1277, 1283 (9th Cir. 2019); *U.S. v. Prat*, No. 24-13407, 2025 WL 3081849, at *1 (11th Cir. Nov. 4, 2025).
[98] *Rebelo*, 394 F. App'x at 853; *Hongyan Li*, 619 F. App'x at 302.
[99] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682 (S.D. Tex. Feb. 8, 2008).
[100] *Costello v. U.S.*, 365 U.S. 265, 282 (1961).
[101] *Id*.
[102] *U.S. v. Mandycz*, 447 F.3d 951, 965 (6th Cir. 2006).
[103] *See U.S. v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986); *U.S. v. Yetisen*, No. 23-3892, 2025 WL 2028310, at *2 (9th Cir. July 21, 2025).
[104] *Kairys*, 782 F.2d at 1384; *Yetisen*, 2025 WL 2028310, at *2.

In the Sixth Circuit, a defendant was unsuccessful in arguing that that an indictment for charges of violations under separate subclauses of 18 U.S.C. § 1425 was duplicitous. In *U.S. v. Damrah*,[105] 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 not only that the indictment was not duplicitous but that any such duplicity would be harmless.[106]

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 the defendant's argument that he should be granted a jury trial persuasive in light of decades of Supreme Court precedent holding that a civil denaturalization action is a suit in equity.[107] Several district courts have held the same.[108]

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.[109] The court extended the *Brady* rule[110] "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."[111]

B. Materiality

Concealment or misrepresentation may only be the basis for denaturalization proceedings if it related to a *material* fact. Thus, naturalized citizens facing denaturalization have argued that their misrepresentations or omissions were not material and did not warrant denaturalization. The issue of materiality is not straightforward, and the case law exposes a wide range of opinions on what is "material."

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.[112] 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.[113]

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[105] *U.S. v. Damrah*, 412 F.3d 618 (6th Cir. 2005).
[106] *Id.* at 622–23.
[107] *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.
[108] *See, e.g.*, *U.S. v. Yetisen*, No. 3:18-CV-00570-HZ, 2022 WL 3644926, at *6 (D. Or. Aug. 22, 2022); *U.S. v. Becker*, No. CV 18-2049-GW(AGRX), 2019 WL 6167396, at *7 (C.D. Cal. June 20, 2019); *U.S. v. Borgono*, No. 18-21835-CIV, 2019 WL 2436279, at *3 (S.D. Fla. June 11, 2019).
[109] *Demjanjuk v. Petrovsky*, 10 F.3d 338, 350 (6th Cir. 1993).
[110] 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.
[111] *Demanjuk*, 10 F.3d at 353.
[112] *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).
[113] *Kungys*, 485 U.S. at 776.

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.[114] 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.[115] 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."[116] 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."[117] 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.[118]

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.[119] In other words, the defendant argued that the government must show that the defendant was ineligible for naturalization when the defendant became a citizen.[120] 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).[121]

In the Second Circuit, appellants argued that, with respect to the materiality of 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.[122] 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.[123] 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."[124] The court distinguished the facts of the case from the Supreme Court's decision in *Chaunt v. U.S.*, which held that defendant's failure to disclose arrests

[114] *Maslenjak v. U.S.*, 582 U.S. 335 (2017).
[115] *Id.* at 341–42.
[116] *Id*. at 348.
[117] *Id*.
[118] *Id*. at 349–50 (quoting *Kungys*, 485 U.S. at 774).
[119] *U.S. v. Mensah*, 737 F.3d 789, 807 (1st Cir. 2013).
[120] *Id*. at 809.
[121] *Id.*
[122] *U.S. v. Oddo*, 314 F.2d 115, 118 (2d Cir. 1963).
[123] *Id*.
[124] *Id*.

for offenses that were not crimes involving moral turpitude and which occurred ten to eleven years before naturalization did not warrant denial of naturalization.[125]

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.[126] 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," that her statement that she had never been arrested was not "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."[127]

The Eastern District of Virginia has rejected a defendant's argument that his false statements lacked "materiality" and, therefore, could not support denaturalization. In *U.S. v. Biheiri*, the court declared that Fourth Circuit precedent holds that false statements—no matter how minor or immaterial—can support a charge of unlawful procurement of citizenship.[128]

On the other hand, the Northern District of Illinois 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.[129] The court did, however, revoke the naturalization on the basis of illegal procurement for unrelated reasons.[130] In another case, the Northern District of Illinois held that a defendant's failure to disclose his foreign military service was a material misrepresentation.[131]

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 that were eventually dismissed was not material and did not warrant denaturalization.[132] The Tenth Circuit recognizes the government carries a heavy burden when seeking to revoke citizenship for the willful misrepresentation or concealment of a material fact.[133] 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."[134]

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[125] *Chaunt v. U.S.*, 364 U.S. 350, 353–55 (1960).
[126] *U.S. v. Kessler*, 213 F.2d 53, 58 (3d Cir. 1954).
[127] *Id.* at 58–59.
[128] 293 F. Supp. 2d 656 (E.D. Va. 2003); *but see Maslenjak*, 582 U.S. at 351.
[129] *U.S. v. Kairys*, 600 F. Supp. 1254 (N.D. Ill. 1984).
[130] *Id*.
[131] *Milosevic*, 596 F. Supp. 3d at 1162–63.
[132] *U.S. v. Sheshtawy*, 714 F.2d 1038 (10th Cir. 1983).
[133] *Id.* at 1039.
[134] *Id.* at 1040 (citing *Chaunt v. U.S.*, 354 U.S. 350 (1960)).

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.[135]

C. Eligibility for Citizenship

Eligibility for citizenship is a complete defense to denaturalization in both civil and criminal proceedings. Courts have considered questions regarding the contours of this defense, including whether the defense applies when a defendant was eligible for citizenship on entirely different grounds than those originally relied upon, and whether it extends beyond citizenship to lawful permanent resident ("LPR") status.

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).[136] The Court explained that in both civil and criminal denaturalization proceedings, if a defendant proves that they were qualified for citizenship, they could not be denaturalized.[137]

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.[138] In *Allouche*, during the defendant's naturalization interview, he was only questioned about his marital basis for naturalization (INA § 319) and, subsequently, obtained naturalization based on false statements he made concerning his marriage.[139] However, during his criminal trial, evidence revealed that the defendant would otherwise have been qualified for citizenship under INA § 316, based on the longer five-year continuous residence requirement.[140] The Fifth Circuit 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.[141] 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.[142]

The Ninth Circuit remanded to the Board of Immigration Appeals ("BIA") to determine whether this defense applies to a case involving a LPR.[143] 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.[144] Based on the available evidence, the Immigration Judge, the BIA, and the Ninth Circuit agreed that he may have been eligible to obtain

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[135] *Id.*
[136] *Maslenjak*, 582 U.S. at 351.
[137] *Id*.
[138] *U.S. v. Allouche*, 703 F. App'x 241, 246 (5th Cir. 2017).
[139] *Id*. at 243.
[140] *Id*. at 245.
[141] *Id.* at 247.
[142] *Id*. at 245–47.
[143] *Sandoval v. Sessions*, 696 Fed. App'x 281 (9th Cir. 2017).
[144] *Id*. at 282.

LPR status under his own name.[145] In light of *Maslenjak*, the Ninth Circuit remanded to the BIA to determine if the *Maslenjak* defense would apply to LPRs and if so, whether the lawful permanent resident was qualified for his LPR status despite the false testimony.[146]

D. Truthfulness and Ambiguity

Some defendants in denaturalization cases have argued that any concealment or misrepresentation of facts was not willful because certain questions on the naturalization application were ambiguous or the defendant did not understand English.

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 INA § 340(a). In *Nowak v. U.S.* and *Maisenberg v. U.S.*, 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 the defendants.[147] Defendants in both cases failed to disclose their membership in the Communist Party, a "nonanarchistic organization[] advocating violent overthrow of government."[148] 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."[149] However, the Court in *Costello v. U.S.* held the 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.[150] 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 "[n]o one in the petitioner's situation could have reasonably thought that the questions could be answered truthfully as they were."[151]

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.[152] In *U.S. v. Mensah*, the defendant attempted to procure two separate visas for himself under two different names.[153] In his naturalization application, the defendant responded "N/A" to a request for any other names he used since becoming a permanent resident, even though he had used a different name to apply for a diversity visa after becoming a permanent resident.[154] 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

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[145] *Id*.
[146] *Id*. at 283.
[147] *Nowak v. U.S.*, 356 U.S. 660 (1958); *Maisenberg v. U.S.*, 356 U.S. 670 (1958).
[148] *Nowak*, 356 U.S. at 663–64.
[149] *Id.* at 664.
[150] *Costello v. U.S.*, 365 U.S. 265 (1961).
[151] *Id*. at 277.
[152] *U.S. v. Mensah*, 737 F.3d 789, 804 (1st Cir. 2013).
[153] *Id*. at 792–93.
[154] *Id*. at 792.

be false.[155] 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.[156]

Reviewing a Federal Rules of Criminal Procedure 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.[157] 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.[158]

The Second Circuit has considered the lack of understanding of the English language as a factor in an ambiguity defense to a denaturalization proceeding.[159] 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.[160] The Second Circuit also did not find probative the subsequent times that the appellant was asked the same question.[161]

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.[162] Therefore, the court held that the government failed to prove willful misrepresentation on the part of the defendant.[163]

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.[164] The Sixth Circuit held that the defendant mistook breadth for ambiguity and that any ambiguity in the terms should have been and was resolved by the jury, which rendered a guilty verdict.[165]

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[155] *Id*. at 804.
[156] *Id*. at 805 (citing *U.S. v. Rowe*, 144 F.3d 15 (1st Cir. 1998)).
[157] *U.S. v. Nicaragua-Rodriguez*, No. 98-4019, 1998 WL 738548 (4th Cir. Oct. 22, 1998).
[158] *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).
[159] *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.").
[160] *Id*.
[161] *Id*. at 293.
[162] *U.S. v. Tooma*, 187 F. Supp. 928 (E.D. Mich. 1960).
[163] *Id.*
[164] *U.S. v. Damrah*, 412 F.3d 618 (6th Cir. 2005).
[165] *Id.* at 627.

E. Fact-Based Defenses

Several cases successfully challenged the alleged factual assertions put forth by the government. Many of these defenses related to the willfulness or intent requirement for concealment or misrepresentation.

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.[166] 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.[167] Similarly, a New York federal court held that a 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.[168] The denaturalization provision that these cases were based on was repealed in 1994.[169]

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.[170] 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.[171]

More recently, at least two courts have denied the government's motion for summary judgment or motion for judgment on the pleadings on the basis that there were factual disputes regarding whether the defendants' misstatements or omissions during the naturalization process were knowing or willful.[172] In *U.S. v. Milosevic*, the defendant admitted that "his submissions and statements in each of his Refugee Application, his Adjustment Application, and his Naturalization Application were replete with falsehoods," but denied making them willfully or knowingly.[173] The

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[166] *U.S. v. Grenfeld*, 34 F.2d 349, 350 (S.D. Tex. 1929).
[167] *Id*.
[168] *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).
[169] Immigration and Nationality Technical Corrects Act of 1994, Pub. L. No. 103-416, § 104(b), 108 Stat. 4305 (1994), struck out former subsection (d) in INA § 340, 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.
[170] *U.S. v. Horwitz*, 140 F. Supp. 839 (E.D. Va. 1956).
[171] *U.S. v. Polzin*, 48 F. Supp. 476, 480 (D. Md. 1942).
[172] *U.S. v. Milosevic*, 596 F. Supp. 3d 1155, 1161 (N.D. Ill. 2022); *U.S. v. Paz*, No. CV DLB-23-2801, 2024 WL 5186711 (D. Md. Dec. 20, 2024).
[173] *Milosevic*, 596 F. Supp. at 1161.

Northern District of Illinois held that even though those misrepresentations were material, the government was not entitled to summary judgment on its claims because a reasonable factfinder may find that the defendant's misstatements were not willfully made.[174] The District of Maryland, in *U.S. v. Paz*, similarly denied the government's motion for judgment on the pleadings because the government had not shown "by clear, unequivocal, and convincing evidence that [the defendant] willfully or knowingly made false statements in his naturalization application."[175]

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. This has included arguments regarding the sufficiency of circumstantial evidence to sustain the government's burden and the use of inadmissible evidence.

In the Eighth Circuit, a defendant was unsuccessful in arguing that circumstantial evidence is not sufficient to satisfy the burden of proving by clear, unequivocal, and convincing evidence, which is the government's burden of proof in denaturalization cases.[176] Although misrepresentations made outside of the naturalization context cannot be grounds for denaturalization under the civil denaturalization statute,[177] 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.[178]

In *U.S. v. Sokolov*, the Second Circuit ruled that where the alleged material misrepresentations were not in writing, the evidence the government put forth was insufficiently probative to meet the clear, unequivocal, and convincing standard, even though the evidence was admissible.[179] Because the statements not written in his visa application or in the responses during the visa interview, the Second Circuit declined to infer that the applicant made a material misrepresentation.[180] 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.[181]

The Ninth Circuit reversed the conviction of a defendant for knowingly procuring naturalization contrary to law on the basis that the federal district 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.[182]

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[174] *Id*. at 1162–63.
[175] *Paz*, 2024 WL 5186711, at *8.
[176] *U.S. v. Hirani.* 824 F.3d 741, 747 (8th Cir. 2016).
[177] *See Kungys v. U.S.*, 485 U.S. 759, 773 (1988).
[178] *Hirani*, 824 F.3d at 748 (reasoning that courts cannot view the past use of different names as "actionable misrepresentations themselves" but can consider them 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).
[179] *U.S. v. Sokolov*, 814 F.2d 864, 872 (2d Cir. 1987).
[180] *Id*.
[181] *Id.* at 872–74.
[182] *U.S. v. Perlmuter*, 693 F.2d 1290 (9th Cir. 1982).

The Northern District of Iowa has also held the government to its burden of "clear and convincing evidence." In *U.S. v. Razic*, the Court held that the government had not met its burden by providing documentary evidence and second-hand witness testimony.[183] In *Razic*, the government sought to denaturalize the defendant on the grounds that he had fraudulently obtained refugee status and subsequently citizenship by concealing his military involvement in the Balkan conflict in the 1990s, which the defendant denied. In support of its argument, the government produced documentary evidence and second-hand witness testimony. The Court found that because the documentary evidence alone was insufficient to meet the "clear and convincing evidence" standard and that none of the witnesses had direct knowledge of the defendant's involvement, the government had not met its burden and dismissed, with prejudice, the denaturalization proceedings.[184]

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 or other Nazi-sympathetic roles during World War II, some defendants have argued against the admission of documentary evidence surviving World War II as unreliable hearsay. These arguments have been unsuccessful as they have been ruled admissible under the "ancient documents" exception to hearsay.[185]

G. Attorney Error and Ineffective Assistance of Counsel

In cases where the government has brought denaturalization proceedings against a defendant based on a guilty plea they entered into after naturalizing, some defendants who sought to vacate their conviction on Sixth Amendment grounds have had 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.[186] In an en banc decision, the Second Circuit held that naturalized U.S. citizens have a Sixth Amendment right to be advised of the risk of denaturalization as a result of pleading guilty.[187] Four years after naturalizing, the defendant in the case pleaded guilty to conspiracy to commit money laundering and making materially false statements involving international terrorism. However, the defendant's criminal defense attorney never advised him of the risk of denaturalization and deportation raised by his plea. A year after the defendant's release from prison, the government instituted denaturalization proceedings against him. The defendant moved to vacate his plea and sentence on the grounds that his Sixth Amendment rights were violated under *Padilla*. The Second Circuit reasoned that because a risk

[183] *U.S. v. Razic, 2020 WL 6192360*, (N.D. Iowa 2020).
[184] *Id.* at 1256.
[185] *See, e.g.*, *U.S. v. Kalymon*, 541 F.3d 624, 632–33 (6th Cir. 2008) (allowing admission of a hand-written note from 1942 under the hearsay exception for ancient documents where the authenticity of the document was not in question); *U.S. v. Demjanjuk*, 367 F.3d 623, 630–31 (6th Cir. 2004) (finding that a Nazi service pass was not erroneously admitted by the district court under the ancient document and the public records exceptions to hearsay).
[186] *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010).
[187] *Farhane v. U.S.*, 121 F.4th 353, 363 (2d Cir. 2024). Previously, in an unpublished decision, the Second Circuit had 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. *Rodriguez v. U.S.*, 730 F. App'x 39, 42 (2d Cir. 2018).

of denaturalization carries a risk of deportation, *Padilla*'s holding must apply to U.S. citizens who face possible denaturalization as a result of pleading guilty.[188]

In analyzing a similar claim for ineffective assistance of counsel, the Sixth Circuit held that the Sixth Amendment does not require criminal defense attorneys to advise a naturalized citizen that a guilty plea may lead to denaturalization and deportation.[189] The court disagreed with the Second Circuit's holding that the Supreme Court's decision in *Padilla* extends to the denaturalization context.[190]

The Eastern District of Pennsylvania held that plea counsel's failure to advise the petitioner of the risks of denaturalization and deportation deprived him of his Sixth Amendment right to effective counsel under *Padilla*.[191] However, *Padilla*'s ruling is not retroactive and does not apply to cases in which the defendant pled guilty before the decision in 2010.[192] In addition, several district courts have found that a defendant cannot collaterally attack their criminal conviction using this defense in their denaturalization case.[193]

In other cases, 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 while the judgment of conviction and the defendant's testimony stated the earlier date.[194]

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.[195] 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.[196] The court found that, because the attorney "failed to obtain an instruction on a critical element of the charged crime and thereby abandoned one of his client's most promising defenses," the defendant was deprived of his right to effective assistance of counsel.[197]

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[188] *Farhane*, 121 F.4th at 364.
[189] *U.S. v. Singh*, No. 25-1523, 2026 WL 1224119, at *2 (6th Cir. May 5, 2026).
[190] *Id*. at *4–6.
[191] *Vincent v. Terra*, No. 24-CV-1037, 2024 WL 5008499, at *17 (E.D. Pa. Dec. 6, 2024).
[192] *See Chaidez v. U.S.*, 568 U.S. 342 (2013); *U.S. v. Gomez*, 945 F. Supp. 2d 1359, 1365 (S.D. Fla. 2013).
[193] *U.S. v. Gomez*, 945 F. Supp. 2d at 1364; *U.S. v. Yetisen*, No. 3:18-CV-00570-HZ, 2022 WL 3644926, at *6 (D. Or. Aug. 22, 2022); *U.S. v. Vongphakdy*, No. 321CR00184KDBDSC, 2022 WL 1282554, at *4 (W.D.N.C. Apr. 28, 2022), *aff'd*, No. 22-4593, 2023 WL 6638122 (4th Cir. Oct. 12, 2023).
[194] *U.S. v. Agyemang*, No. 7:17-CV-55-D, 2018 WL 3245048 (E.D.N.C. Jul. 3, 2018).
[195] *U.S. v. Cornejo*, 679 F. App'x 361 (5th Cir. 2017).
[196] *U.S. v. Alferahin*, 433 F.3d 1148, 1160–62 (9th Cir. 2006).
[197] *Id.* at 1161.

H. Categorical Approach

In some cases, the government has sought denaturalization on the basis that the defendant committed a crime involving moral turpitude during the good moral character statutory period. Defendants have argued that denaturalization on this basis is improper because their convictions were not disqualifying offenses under the categorical approach.[198]

In *U.S. v. Lopez*, the Eleventh Circuit reversed the district court's grant of judgment on the pleadings in favor of the government in which the district court had concluded that the defendant had illegally procured her naturalization because she had committed a crime of moral turpitude during the statutory period.[199] Applying the categorical approach, the court held that the crime the defendant was convicted of, conspiracy to commit money laundering, was not categorically a crime of moral turpitude and remanded the case to the district court.[200] However, in other cases, this defense has been unsuccessful where the categorical approach shows an offense to be categorically disqualifying.[201]

I. Ambiguity or Vagueness of Law

Courts have generally rejected constitutional challenges to INA § 340 on vagueness grounds. At least one district court, in an unpublished decision, has rejected arguments that INA § 340 is unconstitutionally vague and thus infringes a defendant's First Amendment rights.[202]

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.[203] In examining a statute for vagueness, the Ninth Circuit evaluated whether a person of average intelligence would reasonably understand that the charged conduct was proscribed.[204] 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.'"[205]

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[198] For more information on the categorical approach, please see the ILRC's practice advisory available at https://www.ilrc.org/sites/default/files/resources/2021_categorical_approach_oct_final2.pdf.
[199] *U.S. v. Lopez*, 75 F.4th 1337 (11th Cir. 2023).
[200] *Id*. at 1340–45.
[201] *See e.g.*, *U.S. v. Prat*, No. 24-13407, 2025 WL 3081849, at *2 (11th Cir. Nov. 4, 2025) (affirming lower court's holding that the defendant's conviction for healthcare fraud was a crime involving moral turpitude under the categorical approach); *U.S. v. Flores*, No. 22-CV-0395-JFH-JFJ, 2024 WL 245534, at *3–4 (N.D. Okla. Jan. 23, 2024) (same for child sexual abuse crimes).
[202] *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).
[203] *U.S. v. Dang*, 488 F.3d 1135 (9th Cir. 2007).
[204] *Id.* at 1141.
[205] *Id.*

J. 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.[206] Cases challenging that assertion, for example under *res judicata* or collateral estoppel claims, have been largely 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."[207] 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.[208] 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.[209]

However, in *U.S. v. Munoz*, the Eleventh Circuit explained that collateral estoppel did not apply to the start date of the criminal acts forming the basis for denaturalization proceedings because the start date was not a necessary part of the conviction, and therefore, the defendant may argue that his participation in the crime began after he became a U.S. citizen.[210] The court also found that the district court abused its discretion by holding that the defendant was judicially estopped from litigating the start date of the criminal acts in question.[211] On the other hand, the Fifth Circuit held that collateral estoppel applied to prevent a 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.[212]

The Seventh Circuit has held that collateral estoppel does apply in deportation proceedings to bar the re-litigation of issues that had already been adjudicated in the noncitizen's denaturalization case.[213]

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.[214] The court also found both that the 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.[215] Likewise, in *U.S. v. Manuel*, the district court held that the defendant in a denaturalization proceeding is collaterally estopped from relitigating facts stipulated within her plea agreement.[216]

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[206] *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).
[207] *Knauer v. U.S.*, 328 U.S. 654, 670 (1946).
[208] *See, e.g.*, *U.S. v. De Lucia*, 256 F.2d 487, 491 (7th Cir. 1958) (holding that *res judicata* is not an available defense where the denaturalization "was based upon charges of willful concealments and misrepresentations").
[209] *U.S. v. Costello*, 275 F.2d 355 (2d Cir. 1960), *judgment aff'd* in *Costello v. U.S.,* 365 U.S. 265 (1961).
[210] *U.S. v. Munoz*, 112 F.4th 923, 933 (11th Cir. 2024).
[211] *Id*. at 935–36.
[212] *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).
[213] *See Kairys v. INS*, 981 F.2d 937, 939 (7th Cir. 1992).
[214] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682 (S.D. Tex. Feb. 8, 2008).
[215] *Id.* (citing *U.S. v. Ginsberg,* 243 U.S. 472 (1917)).
[216] *U.S. v. Manuel*, No. 24-20689-CIV, 2024 WL 4826056, at *3–4 (S.D. Fla. Nov. 19, 2024).

K. 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, which has shielded the government from equal protection claims against immigration laws,[217] denaturalization may still violate the constitutional guarantee of equal protection.[218]

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 their 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 the native born and of the naturalized person are of the same dignity and are coextensive."[219] The Court denounced the denaturalization statute as it created "a second-class citizenship" and rested on the assumption that naturalized citizens "as a class are less reliable and bear less allegiance to this country than do the native born."[220] 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.[221]

In the Seventh Circuit, arguments that the illegal procurement standard violates the equal protection guarantee of the Fifth Amendment have not been effective.[222] For example, in *U.S. v. Kairys*, the court rejected the defendant's reasoning that because intentional and voluntary acts are required for expatriation, intentional acts must also be required for denaturalization. The court found that argument failed to recognize the "intrinsic differences between the two types of citizenship . . . upheld by the Supreme Court."[223]

L. Equitable Discretion

Courts do not have equitable discretion to deny an entry of judgment of denaturalization based on illegal procurement or concealment or misrepresentation regardless of how sympathetic the facts of the case may be.

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[217] Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 *Sup. Ct. Rev*. 255, 256 (1984).
[218] *See* Aram A. Gavoor & Daniel Miktus, *Snap: How the Moral Elasticity of the Denaturalization Statute Goes Too Far,* 23 *Wm. & Mary Bill Rights J.* 637, 662 (2015).
[219] *Schneider v. Rusk*, 377 U.S. 163, 165 (1964).
[220] *Id.* at 168–169.
[221] *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").
[222] *U.S. v. Kumpf*, 438 F.3d 785, 791 (7th Cir. 2006); *U.S. v. Kairys*, 782 F.2d 1374, 1383 (7th Cir. 1986).
[223] *Id*.

The Supreme Court has held that no one "has the slightest right to naturalization unless all statutory requirements are complied with."[224] 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."[225] 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 INA § 340(e).[226] 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.*[227]

Following *Fedorenko*'s holding, district courts have rejected defenses that the government was negligent in connection with an applicant's 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: "(1) Plaintiff's own negligence, (2) comparative negligence, (3) third party negligence, (4) superseding and/or intervening causes, [and] (5) pre-existing condition."[228] 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."[229]

VII. 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 naturalization.[230] In other words, a person reverts to their pre-naturalization immigration 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 Supreme Court clarified that the relation-back does not apply to general deportation provisions,[231] so deportable crimes committed after a fraudulently procured naturalization cannot be grounds for deportation after a citizen is denaturalized.[232]

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[224] *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (*quoting U.S. v. Ginsberg*, 243 U.S. 472, 474–75 (1917)).
[225] *Id.* at 517.
[226] *U.S. v. Al-Banna*, No. 05-4287, 2006 WL 3203745, at *2 (6th Cir. 2006).
[227] *Id.*
[228] *U.S. v. Benavides*, No. B-07-108, 2008 WL 362682, at *1 (S.D. Tex. Feb. 8, 2008).
[229] *Id.* at *3; *see also U.S. v. Mwalumba*, 688 F. Supp. 2d 565, 575 n.4 (N.D. Tex. 2010).
[230] *See, e.g.*, *Costello v. INS*, 376 U.S. 120, 128–29 (1964). *See also* 12 USCIS-PM L.3(A).
[231] *Costello*, 376 U.S. at 128–32.
[232] *Id.*; *see also Singh v. Att'y Gen. of U.S.*, 12 F.4th 262 (3d Cir. 2021); *Hylton v. U.S. Att'y Gen.*, 992 F.3d 1154 (11th Cir. 2021); *Okpala v. Whitaker*,1, 908 F.3d 965, 969 (5th Cir. 2018); *Castillo v. Bondi*, 140 F.4th 777, 785 (6th Cir. 2025). 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.

INA § 237(a)(3)(D)(i), which provides a ground for removal of noncitizens who falsely represent themselves to be a citizen of the United States, may provide a basis for instituting removal proceedings against individuals who have been denaturalized. The BIA has held that intent of the individual is not necessary to establish that the individual is deportable for making a false representation of United States citizenship.[233] However, the reasoning of the Supreme Court's decision in *Costello* can be used to argue that this provision, like provisions related to deportable crimes, cannot apply to conduct that occurred while the individual was a naturalized citizen.

VIII. Impact on Derivative Citizens

Under INA § 340(d), derivatives may lose their citizenship if they "claimed" it through a parent or spouse who was then denaturalized, depending on why the person 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,[234] any children who acquired or derived citizenship from that parent will lose citizenship. This "applies regardless of whether the . . . child is residing in the United States or abroad at the time of the revocation of the naturalization."[235] At least one court has 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.[236] 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.[237] 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,[238] making it likely that the language is a remnant of a bygone era.

However, 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. An alternative reading is 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 residence 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.[239] However, the spouse in this case had probably derived her

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[233] *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019).
[234] INA § 340(d).
[235] 12 USCIS-PM L.3(C)(2); *see also* INA § 340(d).
[236] *Battaglino v. Marshall*, 172 F.2d 979, 981–82 (2d Cir. 1949). Although the Second Circuit analyzed a different statutory scheme than INA § 340, both the provision providing for denaturalization in *Battaglino* and INA § 340(a) allow for the cancellation of the *original* certificate of naturalization for certain acts. Moreover, unlike the statutory scheme in *Battaglino*, §340(d) explicitly states that such cancellation "shall be effective as of the original date of the order and certificate." *See id*. at 982 n.1; INA § 340(a).
[237] *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.*
[238] INS Interpretation 341.1.
[239] *Rosenberg v. U.S.*, 60 F.2d 475 (3d Cir. 1932).

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."[240] 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's 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.[241]

> **Example**: After living in the United States 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 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.[242] However, such derivatives will not lose their citizenship if they were residing in the United States at the time of the principal's denaturalization.[243]

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

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[240] *U.S. ex rel. Harrington v. Schlotfeldt*, 136 F.2d 935, 940 (7th Cir. 1943) (emphasis added).
[241] 12 USCIS-PM L.3(C)(1)–(2).
[242] 12 USCIS-PM L.3(C)(3).
[243] *Id.*; INA § 340(d).

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

IX. Conclusion

Denaturalization cases carry a high burden of proof for the government and there are a number of effective defenses to denaturalization. However, it is critical to be aware of the relevant law in your circuit.