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Hanna E. Borsilli
Dickinson School of Law of the Pennsylvania State University

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But It’s Just a Little White Lie!
An Analysis of the Materiality
Requirement of 18 U.S.C. § 1425

Hanna E. Borsilli*

ABSTRACT

Once an individual becomes a naturalized citizen, the U.S. government can revoke citizenship only upon a discovery that the individual was not eligible to procure naturalization at the time of application. The process to revoke naturalization, referred to as denaturalization, may begin with a conviction under 18 U.S.C. § 1425, a criminal statute broadly prohibiting any attempt to procure naturalization “contrary to law.”

This “contrary to law” language created confusion regarding the required statutory elements of § 1425. Most courts to address this issue, including the Supreme Court in *Maslenjak v. United States*, held that § 1425 requires proof of a material misrepresentation to sustain a conviction, meaning the misrepresentation at issue must have actually impacted an applicant’s eligibility to procure citizenship. However, prior to *Maslenjak*, the Sixth Circuit Court of Appeals created a circuit split in holding that any misrepresentation made during the naturalization process sufficed for conviction under § 1425.

This Comment argues that the Supreme Court’s opinion in *Maslenjak* ignored the plain meaning and purpose of 18 U.S.C. § 1425. This Comment begins by examining the history of naturalization in the United States and the evolution of denaturalization procedures. Next, this Comment examines the plain meaning of § 1425 and discusses the purpose of the statute within the broader framework of the laws governing naturalization. Finally, this Comment addresses relevant case law, particularly the *Maslenjak* case, and argues that the legislative process is the proper vehicle to change the statutory elements for criminal denaturalization under § 1425.

* J.D. Candidate, the Dickinson School of Law of the Pennsylvania State University, 2018.
I. INTRODUCTION

After being released on parole in 1980, Lionel Jean-Baptiste, a Haitian national, became a lawful permanent resident of the United States on New Year’s Day, 1982.1 Jean-Baptiste thereafter lived in the United States for 12 years before applying for citizenship.

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through the process of naturalization.\(^2\) In 1996, the government accepted Jean-Baptiste’s naturalization application, and he became a citizen after swearing an oath of allegiance to the United States.\(^3\) But later that year, Jean-Baptiste was indicted on drug conspiracy charges.\(^4\) He was tried in federal court, convicted by a jury, and sentenced to 97 months’ incarceration.\(^5\) Because of this conviction, the U.S. government subsequently revoked Jean-Baptiste’s citizenship.\(^6\) Ultimately, Jean-Baptiste lost his citizenship after living in the United States for over two decades.\(^7\)

The United States naturalizes approximately 700,000–750,000 individuals every year.\(^8\) Naturalized citizens enjoy nearly all of the same rights and protections as natural-born citizens.\(^9\) The case of Jean-Baptiste demonstrates one rare circumstance in which the government can revoke naturalization.\(^10\) The term “denaturalization” refers to the involuntary loss of citizenship.\(^11\)

Denaturalization carries “severe and unsettling consequences” for former citizens.\(^12\) For example, following denaturalization, individuals may face forced deportation back to their countries of origin, which creates the very real possibilities of exile,\(^13\) sickness, starvation, and even death for individuals, like Jean-Baptiste, born in impoverished nations.\(^14\) The significant personal repercussions stemming from the loss of citizenship necessitate certain procedural

\(^2\) Naturalization is the statutory process by which foreign individuals become citizens of a country. See Naturalization, BLACK’S LAW DICTIONARY (10th ed. 2014).


\(^4\) See Jean-Baptiste, 395 F.3d at 1191.

\(^5\) Id.

\(^6\) Id.

\(^7\) See Ronner, supra note 3, at 102.


\(^9\) See infra Part II.A.

\(^10\) See generally Jean-Baptiste, 395 F.3d 1190. For a more detailed explanation of the circumstances justifying the revocation of citizenship, see infra Part II.B.


\(^12\) Fedorenko v. United States, 449 U.S. 490, 505 (1981). See also Klapprott v. United States, 335 U.S. 601, 616 (1949) (“To take away a man’s citizenship deprives him of a right no less precious than life or liberty.”). See also Schneiderman v. United States, 320 U.S. 118, 122 (1943) (describing the loss of citizenship as “more serious than a taking of one’s property, or the imposition of a fine or other penalty”).

\(^13\) See Ronner, supra note 3, at 101.

\(^14\) Id. at 131–32.
protections for denaturalization proceedings. In *Maslenjak v. United States (Maslenjak II)*, the Supreme Court held that the criminal denaturalization statute contains an implied materiality requirement, and this holding resolved a recent circuit split regarding the statutory elements the government must satisfy to revoke citizenship in criminal proceedings.

This Comment argues that the Supreme Court erred in *Maslenjak II* by reading the criminal denaturalization statute, 18 U.S.C. § 1425, to contain an implied materiality requirement. Specifically, this Comment argues that 18 U.S.C. § 1425(a), as currently written, authorizes denaturalization based on any technical violation of a federal statute implicated by the naturalization application process.

This Comment begins with an overview of the naturalization process and provides a detailed history of the different judicial and administrative processes used to revoke citizenship. Part II also discusses the concept of materiality in the context of denaturalization. Part III conducts a statutory analysis of 18 U.S.C. § 1425, drawing upon the statute’s plain meaning, legislative history, and relationship to other naturalization statutes to demonstrate that § 1425(a) does not require proof of a material misrepresentation to sustain a conviction. Additionally, Part III examines the reasoning behind relevant court decisions addressing materiality under § 1425. Finally, Part IV argues that the Supreme Court erred in *Maslenjak II* by ignoring the plain language of the statute and imposing an implied materiality requirement under 18 U.S.C.

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15. See id. at 132–33.
17. See id. at 1921 (holding that the criminal denaturalization statute, 18 U.S.C. § 1425 (2012), requires proof of a material false statement to sustain a conviction). This decision overruled United States v. Maslenjak (*Maslenjak I*), 821 F.3d 675 (6th Cir. 2016), rev’d, 137 S. Ct. 1918 (2017), in which the Sixth Circuit Court of Appeals held that any violation of federal law related to the naturalization application process justified criminal denaturalization pursuant to 18 U.S.C. § 1425. Id. at 686. This Comment will discuss the elemental standard established by the Sixth Circuit Court of Appeals in *Maslenjak I* at length and will compare this standard to the approach adopted by the Supreme Court in *Maslenjak II*. See infra Parts II.D–III.
19. See infra Parts II.A–B.
20. See infra Part II.C.
21. See infra Part II.D.
22. See infra Part III.A.1.
25. See generally infra Part III.A.
26. See infra Part III.B.
II. BACKGROUND

A. Naturalization in the United States

Generally speaking, persons born in the United States are automatically granted citizenship at birth, as are persons born outside of the United States to two U.S. citizens, provided at least one parent is a resident of the United States. However, individuals born to noncitizens outside of the United States can still obtain U.S. citizenship, most commonly through the process of naturalization.

Naturalized citizens enjoy rights equivalent to the rights of natural-born citizens, which may not be surprising given the historical significance of immigration in the United States. The only distinct-

27. See infra Part IV.
28. See 8 U.S.C. § 1401 (2012) for a complete list of individuals granted U.S. citizenship at birth. Under § 1401, citizenship is also afforded at birth to persons born on tribal lands, persons of unknown parentage under five years of age who are found in the United States, and persons born outside of the United States to a parent who is a citizen and parent who is an alien, provided that the alien parent satisfies the five-year physical presence requirement outlined in the statute. See id. Federal law defines the territories of Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands as part of the United States. See 8 U.S.C. § 1101(a)(38) (2012) (defining United States to include the aforementioned territories). Therefore, persons born in any of the above-mentioned territories are also granted citizenship at birth. See 8 U.S.C. § 1401 (stating that citizenship is granted “at birth” to persons “born in the United States”); 8 U.S.C. § 1406 (2012) (“All persons born in the Virgin Islands of the United States . . . on or after February 25, 1927, and subject to the jurisdiction of the United States, are declared to be citizens of the United States at birth.”); 8 U.S.C. § 1407 (2012) (“All persons born in the island of Guam on or after April 11, 1899 . . . subject to the jurisdiction of the United States, are hereby declared to be citizens of the United States.”).
29. See Mariela Olivos, A Final Obstacle: Barriers To Divorce For Immigrant Victims Of Domestic Violence In The United States, 34 Hamline L. Rev. 149, 162 n.35 (2011) (discussing the statute which outlines the general requirements for naturalization, 8 U.S.C. § 1427 (2012), as the “most common” method to obtain citizenship); see also Path to U.S. Citizenship, U.S. Citizenship and Immigration Servs., http://bit.ly/2cD8kIT (last updated Jan. 22, 2013) (describing naturalization as the “most common” method to obtain citizenship).
30. See Fedorenko v. United States, 449 U.S. 490, 525 n.14 (1981) (Blackmun, J., concurring) (“The procedural protection of the high standard of proof [in denaturalization actions] is necessary to assure the naturalized citizen his right, equally with the native-born, to enjoy the benefits of citizenship in confidence and without fear.”).
tion between the legal rights afforded to naturalized citizens and natural-born citizens is that naturalized citizens cannot hold the office of President of the United States. 32

Over the years, Congress frequently enacted laws establishing specific eligibility requirements for naturalization. 33 Unfortunately, these laws often barred minority groups from obtaining citizenship. 34 However, current naturalization laws no longer contain facially discriminatory provisions. 35

first census in 1790, “seventy-five percent of the country was of English, Scotch, or Scotch-Irish descent, eight percent was of German descent, and the rest were mostly from [Western Europe].” Id. The inclusion of an immigration provision in the Constitution demonstrates the Framers’ recognition of the importance of immigration to the development of the nation. See U.S. Const. art. I, § 8, cl. 4 (“The Congress shall have power to . . . establish a uniform rule of naturalization . . . .”). Still, the treatment of immigrants within the United States has changed significantly in recent years. See infra note 171 (discussing opinions regarding immigrants in United States during the Trump-era).

32. See U.S. Const. art. II, § 1; Schneider v. Rusk, 377 U.S. 163, 165 (1964) (“[T]he rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the ‘natural born’ citizen is eligible to be President.”).


34. See id. See also Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103 (1790) (repealed 1795). The 1790 Act was the first codified naturalization provision in the United States. See Ex Parte Shahid, 205 F. 812, 814 (E.D.S.C. 1913). The Act restricted citizenship to “any alien, being a free white person” who resided in the United States for two years. Naturalization Act of 1790 § 1; see also Angela P. Harris, Equality Trouble: Sameness and Difference in Twentieth-Century Race Law, 88 Cal. L. Rev. 1923, 1947–50 (2000) (discussing the racially restrictive immigration laws of the twentieth century, specifically laws prohibiting Asian immigrants). Naturalization laws tend to reflect the social, moral, and political beliefs of the era in which the laws are passed; however, such discussion is outside the scope of this Comment. For more information regarding how immigration policies relate to social and moral values, see Kevin R. Johnson, Race, the Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness, 73 Ind. L. J. 1111 (1998); Mary C. Waters & Jessica T. Simes, The Politics of Immigration and Crime, in The Oxford Handbook on Ethnicity, Crime, and Immigration 475 (Oxford Univ. Press 2014); Helen V. Milner & Dustin Tingley, The Economic and Political Influences on Different Dimensions of United States Immigration Policy (Working Paper)(on file with author).

35. See generally Harris, supra note 34, at 1948. This Comment focuses on the current laws governing the revocation of citizenship and the public policies under-scoring these laws. Although current naturalization laws are not facially discriminatory, debate has erupted regarding President Trump’s immigration executive orders, which have been strongly criticized for targeting Muslims. See generally James Rothwell & Charlotte Krol, Everything You Need to Know about Donald Trump’s ‘Muslim Ban’, The Telegraph (Jan. 31, 2017, 10:01 AM), http://bit.ly/2kCN96B. Still, such discussion is outside the scope of this Comment.
B. Overview of the Naturalization Process

The path to naturalized citizenship can take several years. But once citizenship is obtained through naturalization, it cannot be revoked as a punishment for non-naturalization related offenses. Instead, naturalization can be revoked only upon the discovery that the naturalized citizen did not fully comply with the requirements to lawfully obtain citizenship at the time he or she applied for naturalization.

Over the years, denaturalization proceedings operated as criminal, civil, and administrative processes. The following sections summarize the rise and fall of administrative denaturalization and explain the current “tracks” for denaturalization under federal law.

C. Procedures for Denaturalization

1. Administrative Denaturalization

Historically, federal courts possessed exclusive authority over the naturalization process. However, the Immigration Act of

   a. Reside in the United States as a lawful permanent resident for five years
   b. Complete relevant immigration forms
   c. Undergo fingerprinting analysis
   d. Complete English language and civics tests
   e. Interview with United States Citizenship and Immigration Services (USCIS)
   f. Pledge an oath of allegiance to the United States

Id. at 31.

37. See 8 U.S.C. § 1451 (2012) (outlining the grounds for revoking of citizenship). For example, naturalization cannot be revoked for a felony conviction, like murder, if the conviction is not related to the naturalization process and the illegal conduct occurred after the defendant became a citizen. Id.

38. See Fedorenko v. United States, 449 U.S. 490, 506 (1981) (“[T]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship ‘illegally procured,’ and naturalization that is unlawfully procured can be set aside.”).

39. See infra Part II.C.


1990 (the “1990 Act”) transferred the power to naturalize citizens from the federal courts to the U.S. Attorney General. The 1990 Act authorized the Attorney General to “institute actions to revoke naturalization” and “cancel” certificates of naturalization. In 1996, the Attorney General promulgated new regulations, purportedly based on the authority granted in the 1990 Act, which authorized the then-existing Immigration and Naturalization Services (INS) to “reopen a naturalization proceeding and revoke naturalization.” In effect, these regulations created administrative denaturalization. Unlike traditional judicial denaturalization proceedings, which afforded citizens the same due process rights granted to defendants in civil cases, these administrative denaturalization proceedings revoked citizenship in a summary fashion and shifted the burden of proof from the government to the citizen.

In 2000, the Ninth Circuit Court of Appeals considered the constitutionality of the Attorney General’s administrative denaturalization regime in Gorbach v. Reno. In Gorbach, the Ninth Circuit Court of Appeals held that the Attorney General, Janet Reno, exceeded the authority granted to her by Congress by creating administrative denaturalization. The Ninth Circuit noted that while Congress gave the Attorney General the authority to naturalize citizens, this statutory authority did not also empower the Attorney General to create denaturalization procedures. Thus, the Attorney General exceeded her statutory authority by creating administrative denaturalization and violated the principle

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43. Hultman, supra note 41, at 897.
46. Gorbach, 219 F.3d at 1090–91.
47. See Hultman, supra note 41, at 905.
50. Gorbach, 219 F.3d at 1093.
51. Id.
of the separation of powers by unlawfully conferring additional power unto herself.52

The defendants53 in Gorbach did not appeal the Ninth Circuit’s decision.54 Ultimately, Congress ended administrative denaturalization.55 In 2011, Congress retracted the federal regulations, which previously enabled the Attorney General to create administrative denaturalization.56

2. Civil Denaturalization

The primary statutory authority for denaturalization is 8 U.S.C. § 1451.57 This statute authorizes U.S. Attorneys to commence denaturalization proceedings against citizens who illegally procure naturalization, procure naturalization “by concealment of a material fact or by willful misrepresentation,” or refuse to testify in a congressional hearing within ten years following his or her naturalization.58 Once a U.S. Attorney files a petition with the district court to commence denaturalization, the citizen must respond to the allegations of the petition within 60 days.59 Proceedings under § 1451 are equitable in nature; therefore, individuals charged under this statute have no right to a jury trial.60 Furthermore, indigent citizens are not entitled to appointed counsel in § 1451 proceedings.61 Still, judges retain the discretionary authority to appoint

52. Id.
53. The defendants included Janet Reno, Attorney General of the United States, Doris Meissner, INS Commissioner, and the INS. See id.
54. CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE § 96.12 (Dec. 2017; Release No. 159) (“The INS did not appeal the Ninth Circuit’s decision, nor does it appear to have continued administrative denaturalization in other jurisdictions.”).
56. Id. at 53,774–75.
59. 8 U.S.C. § 1451(b).
60. See United States v. Kairys, 782 F.2d 1374, 1384 (7th Cir. 1986) (“[T]here is no right to a jury in denaturalizations because they are proceedings in equity.”).
61. No categorical right to counsel exists in federal civil proceedings; in fact, a presumption against counsel exists when the defendant does not risk losing his or her physical liberty. See RISA KAUFMAN, COLUM. L. SCH. HUMAN RIGHTS INST., ACCESS TO COUNSEL IN CIVIL CASES 2 n.11 (2015), http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/access_to_counsel_in_civil_cases_2015_01.pdf (citing Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981)). Federal law does not provide a right to counsel in civil proceedings, but courts may appoint counsel if due process so requires. See id.; Turner v. Rogers, 564 U.S. 431, 444 (2011). To determine whether due process necessitates the appointment of counsel, judges must weigh “(1) the nature of ‘the private interest that will be affected,’ (2) the comparative ‘risk’ of an
counsel in § 1451 proceedings, although such appointments occur rarely.62

In civil denaturalization proceedings, the government carries a heavy burden to prove that the citizen fraudulently acquired citizenship by “clear, unequivocal, and convincing” evidence.63  This ‘erroneous deprivation’ of that interest with and without ‘additional or substitute procedural safeguards,’ and (3) the nature and magnitude of any countervailing interest in not providing ‘additional or substitute procedural requirement[s].’15 Turner, 564 U.S. at 444–45 (summarizing Mathews v. Eldridge, 424 U.S. 319, 335 (1976)).

62. Judicial appointment of counsel in civil proceedings is not a right, but due process concerns may prompt appointment. See supra note 61. Appointment of counsel in § 1451 proceedings may be appropriate when the case presents a particularly compelling private interest. See generally Eldridge, 424 U.S. 319. The case of former Nazi, John Demjanjuk, serves as an example of when appointment may occur in § 1451 cases. Demjanjuk, a naturalized U.S. citizen, had his citizenship revoked in 1981 after he was convicted at trial of misrepresenting his involvement in war crimes on his naturalization application. See Robert D. McFadden, John Demjanjuk, 91, Dogged by Charges of Atrocities as Nazi Camp Guard, Dies, N.Y. Times (Mar. 17, 2011), http://www.nytimes.com/2012/03/18/world/europe/john-demjanjuk-nazi-guard-dies-at-91.html. Following his denaturalization under § 1451, Demjanjuk was tried and convicted for war crimes before the Israeli Supreme Court. Id. This conviction was later overturned based on the discovery of new evidence. Id. Following the reversal of his Israeli conviction, Demjanjuk’s U.S. denaturalization was also overturned, and he regained his American citizenship in 1998. Id. However, the U.S. Government then filed a second claim to strip Demjanjuk of his citizenship based on additional evidence linking Demjanjuk to concentration camps in Bavaria. Id. Following another trial, Demjanjuk’s citizenship was revoked for a second time, and he was subsequently deported to Germany where he was tried for war crimes. Id. At the German trial, the defense introduced evidence which questioned the validity of Demjanjuk’s Nazi identification card, a key piece of evidence used in his second U.S. denaturalization trial. Id. While the German trial was pending, U.S. District Court Judge Polster accepted a motion to appoint the Office of the Federal Public Defender as Demjanjuk’s co-counsel to assist with his motion under FED. R. CIV. P. 60 to challenge his second denaturalization based on the contested identification card evidence, but this motion ultimately failed. See Memorandum of Opinion, United States v. Demjanjuk, No. 1:99-CV-1193 (N.D. Ohio May 10, 2011), ECF No. 215 (granting appointment of counsel); United States v. Demjanjuk, 838 F. Supp. 2d 616, 618 (N.D. Ohio 2011) (denying Rule 60 motion). In this case, the court appointed counsel for Demjanjuk after he was denaturalized under § 1451. The unique procedural posture of this case demonstrates the exceptional circumstances which may necessitate the appointment of counsel in civil denaturalization proceedings.

63. Fedorenko v. United States, 449 U.S. 490, 505 (1981). Proof by “clear, unequivocal, and convincing” evidence is the same intermediate standard as proof by “clear and convincing” evidence. See Mondaca-Vega v. Lynch, 808 F.3d 413, 421–22 (9th Cir. 2015). There are three standards of proof: preponderance of the evidence, clear and convincing evidence, and proof beyond a reasonable doubt. Addington v. Texas, 441 U.S. 418, 423–24 (1979). In Mondaca-Vega, the court held that proof by “clear, unequivocal, and convincing” evidence does not establish a new heightened burden of proof: this standard merely constitutes an alternative phrasing of the intermediate “clear and convincing evidence” standard. Mondaca-Vega, 808 F.3d at 421–22 (“The intermediate standard . . . usually employs some
burden of proof is higher than the normal “preponderance of the evidence” standard in many civil proceedings, and this heightened burden reflects the severity of the revocation of citizenship.

To prove a violation of § 1451(a), the government must prove: (1) the naturalized citizen misrepresented or concealed some fact, (2) the misrepresentation or concealment was willful, (3) the misrepresented fact was material to the case at hand, and (4) the naturalized citizen procured citizenship as a result of the misrepresentation or concealment. If the government satisfies each of these elements by proof of clear and convincing evidence, a presumption arises that the citizen was not eligible to procure citizenship, and the burden then shifts to the citizen to prove that he or she was not presumptively ineligible to procure citizenship.

Membership in certain organizations within five years of procuring citizenship, such as Communist or totalitarian groups, establishes prima facie evidence that the citizen “was not attached to the principles of the Constitution” and not “well disposed” for citizenship at the time of naturalization. This prima facie evidence is sufficient to authorize denaturalization under § 1451.

3. Criminal Denaturalization

18 U.S.C. § 1425 contains two distinct offenses: § 1425(a) criminalizes any attempt to knowingly procure naturalization “contrary to law” while § 1425(b) criminalizes attempts to procure naturalization without possessing the requisite qualifications to procure naturalization.

combination of the words ‘clear,’ ‘cogent,’ ‘unequivocal,’ and ‘convincing’ . . . .” (quoting Addington, 441 U.S. at 424)).


65. See Fedorenko, 449 U.S. at 505–06; see also Schneiderman v. United States, 320 U.S. 118, 123–25 (1943) (justifying the imposition of a heightened burden of proof in denaturalization proceedings based on the “precious” nature of citizenship and fairness considerations).


67. Id. at 783–84 (Brennan, J., concurring).


70. Id.


72. Maslenjak II, 137 S. Ct. 1918, 1925 n.2 (2017) (stating that § 1425 establishes “two separate crimes”). The requirements to procure naturalization are outlined in 8 U.S.C. § 1427 (2012). Prior to applying for naturalization, an individual must: (1) satisfy residency requirements in the United States; (2) reside “within the United States from the date of the application up to the time of admission to citizenship”; and (3) demonstrate good moral character as determined by federal law. Id. Related to this statute, 8 U.S.C.S. § 1182 (LEXIS through Pub. L. No.
Citizens indicted under § 1425 are entitled to the same due process protections afforded to defendants in criminal proceedings, including the right to appointed counsel for indigent defendants. Although incarceration is the statutory punishment for violations of § 1425, a conviction under § 1425 also serves as the basis for mandatory denaturalization pursuant to 8 U.S.C. § 1451(e). Because denaturalization following a § 1425 conviction is a mandatory administrative responsibility of the court, a citizen found guilty under § 1425 is not entitled to any additional due process prior to denaturalization under § 1451(e).

a. Elements of Criminal Denaturalization under Sixth Circuit Precedent Prior to Maslenjak II

Under precedent established by the Sixth Circuit Court of Appeals prior to the Supreme Court’s ruling in Maslenjak II, to sustain a conviction under § 1425(a), the Government had to prove the following elements beyond a reasonable doubt: (1) the defendant pro-

115-71) outlines conduct which prevents hopeful citizens from establishing lawful residency. Generally, such conduct falls under the following categories: health related grounds, criminal activity, activity threatening the safety of the United States, likelihood of becoming a “public charge,” labor certifications and qualifications, prior illegal entrants and immigration violations, inadequate documentation, draft avoidance, and previous removal. *Id. See also* United States v. Ngombwa, No. 14-CR-123-LRR, 2016 U.S. Dist. LEXIS 118926, at *12 (N.D. Iowa Sept. 2, 2016) (“[N]aturalization disqualifiers are codified at 8 U.S.C. § 1182.”).

73. In § 1425 proceedings, the government must prove its case beyond a reasonable doubt, and a defendant is entitled to “all of the constitutional due process he would otherwise not receive as part of a civil denaturalization proceeding . . . including the right not to testify or put on proof at all.” *Maslenjak I*, 821 F.3d 675, 684 (6th Cir. 2016). Unlike civil denaturalization proceedings, indigent defendants indicted under § 1425 are entitled to court-appointed counsel because conviction carries the possibility of actual incarceration. *See* 18 U.S.C. § 1425(b); *Argersinger v. Hamlin*, 407 U.S. 25, 38 (1972) (holding that a constitutional right to counsel exists in every case where the defendant risks the possibility of actual imprisonment).

74. 8 U.S.C. § 1451 (2012). *See also* *Maslenjak I*, 821 F.3d at 682. Appointed counsel represents defendants during trial for violation of § 1425 and also during subsequent denaturalization under 8 U.S.C. § 1451(e). *See* Order Regarding Appointment of Council, United States v. Ngombwa, No. CR14-0123 (N.D. Iowa Nov. 4, 2014), ECF No. 7, for an example of a case in which the Federal Public Defender represented the same defendant in both the trial for violation of 18 U.S.C. § 1425 as well as the defendant’s subsequent denaturalization pursuant to 8 U.S.C. § 1451(e).

75. *See* United States v. Inocencio, 328 F.3d 1207, 1211 (9th Cir. 2003). The defendant in *Inocencio* was convicted of violating § 1425. *Id.* The Court of Appeals for the Ninth Circuit held that defendant was not entitled to additional notice prior the revocation of his citizenship under 8 U.S.C. § 1451(e) because denaturalization under § 1451(e) was not a separate proceeding but rather a continuation of the initial § 1425 criminal proceeding for which the defendant already received adequate due process. *Id.*
cured his or her naturalization, (2) the defendant procured naturalization contrary to law, and (3) the defendant did so knowingly.\(^{76}\) The Sixth Circuit was the only circuit court to explicitly hold that materiality was not an element under § 1425.\(^{77}\)

The Sixth Circuit noted that the broad language of the “contrary to law” element of § 1425(a) implicated the entirety of the statutory framework relating to naturalization.\(^{78}\) Thus, violating any federal law implicated by the naturalization process could serve as the basis for conviction under § 1425.\(^{79}\) The case of United States v. Maslenjak (Maslenjak I)\(^{80}\) illustrates how the Sixth Circuit viewed the “contrary to law” element of § 1425(a) in relation to other naturalization statutes.\(^{81}\)

In Maslenjak I, the jury found the defendant guilty of violating § 1425(a) after determining that she procured naturalization “contrary to law.”\(^{82}\) The defendant procured naturalization contrary to law because she violated both 18 U.S.C. § 1546(a)\(^{83}\) by making false statements to an immigration official and 18 U.S.C. § 1423\(^{84}\) by knowingly misusing her unlawfully issued certificate of naturalization to help her husband obtain permanent residency.\(^{85}\) Following her conviction, the defendant’s naturalization was revoked pursuant to 8 U.S.C. § 1451(e).\(^{86}\)

\(^{76}\) See Maslenjak I, 821 F.3d at 685.

\(^{77}\) Id. at 689 (“We recognize that Maslenjak’s position finds support in a number of other circuit decisions holding that materiality is an implied element of 18 U.S.C. § 1425(a).”); Petition for Writ of Certiorari at 3, Maslenjak II, 137 S. Ct. 1918 (2017) (No. 16-309) (noting that the Sixth Circuit Court of Appeals’ decision in Maslenjak I created a circuit split).

\(^{78}\) Id. at 686 (“The phrase ‘contrary to law’ is broad enough to include not only violations of the INA’s administrative requirements for naturalization but also any criminal offense against the United States pertaining to naturalization, including making false statements.”).

\(^{79}\) Id.

\(^{80}\) Maslenjak I, 821 F.3d 675 (6th Cir. 2016).

\(^{81}\) See id. at 685.

\(^{82}\) Id. at 681.

\(^{83}\) 18 U.S.C. § 1546(a) (2012) (criminalizing the forging, falsifying, alteration, or counterfeiting of immigration documents to procure citizenship or residency within the United States).

\(^{84}\) 18 U.S.C. § 1423 (2012). This statute provides:

> Whoever knowingly uses for any purpose any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, unlawfully issued or made, or copies or duplicates thereof, showing any person to be naturalized or admitted to be a citizen, shall be fined under this title or imprisoned not more than five years, or both.

\(^{85}\) Id.

\(^{86}\) Id.
b. Elements of Criminal Denaturalization Following *Maslenjak II*

In *Maslenjak II*, the Supreme Court held that in addition to the elements for criminal denaturalization enumerated in *Maslenjak I*, 18 U.S.C. § 1425(a) contains an implied materiality requirement.\(^{87}\) Prior to this decision, some circuit courts also held that § 1425(a) contained an implied materiality requirement.\(^{88}\) To understand the significance of *Maslenjak II*, it is first necessary to understand the concept of materiality.

D. **Materiality Defined**

Civil denaturalization under 8 U.S.C. § 1451(a) authorizes the revocation of citizenship for “concealment of a material fact or by willful misrepresentation” during the naturalization process.\(^{89}\) However, this reference to materiality does not appear in the text of 18 U.S.C. § 1425.\(^{90}\)

The Supreme Court considered the materiality requirement for civil denaturalization under 8 U.S.C. § 1451 in *Kungys v. United States*.\(^{91}\) In *Kungys*, the Supreme Court determined that a fact was “material” under § 1451 if “the misrepresentation or concealment was predictably capable of affecting, i.e., had a natural tendency to affect, the official decision.”\(^{92}\) Thus, the concealment of a material fact gives the false impression that the individual applying for naturalization qualified for citizenship.\(^{93}\) The Court also held that materiality constitutes an issue of substantive law.\(^{94}\) Accordingly, courts, not juries, determine questions of materiality.\(^{95}\)

To prove materiality, the government need not establish that the citizen would have been denied naturalization but for the misrepresentation he or she made during the naturalization process.\(^{96}\)

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88. See infra Part III.B.2.a.
92. See *Kungys*, 485 U.S. at 771.
93. Id. at 771–72.
94. Id. at 772 (citing *United States v. Abadi*, 706 F.2d 178, 180 (6th Cir. 1983)).
95. Id.
96. See *United States v. Nguyen*, 829 F.3d 907, 916 (8th Cir. 2016) (citing *Kungys*, 485 U.S. at 776–77) (“The Court clarified that the Government need not prove ‘but for’ causation—that is, the Government need not show that naturaliza-
Instead, after the government proves that the defendant made a material misrepresentation by sufficient evidence, “proof of a material misrepresentation creates a rebuttable presumption of ineligibility for citizenship.” 97 Once the government satisfies its initial burden of proof, the burden shifts to the defendant to prove that he or she was not presumptively ineligible to procure citizenship. 98

In Kungys, a naturalized citizen faced the revocation of his citizenship pursuant to 8 U.S.C. § 1451(a) because he concealed his birthplace, occupation during World War II, and wartime residence on his visa application. 99 The Government argued that these misrepresentations were material to Kungys’s naturalization because Kungys obtained a visa based on these misrepresentations, and obtaining a visa allowed Kungys to establish residency in the United States and ultimately procure citizenship. 100 However, the Court rejected this argument by the Government. 101 Justice Scalia, writing for the majority, focused on the plain meaning of § 1451 to determine that the misstatements on Kungys’s visa application were not material. 102 The Court reasoned that the misrepresentation only had the tendency to impact Kungys’s eligibility to procure citizenship when viewed in conjunction with contradictory information Kungys provided to immigration authorities during his immigration interviews. 103 Examining the discrepancies between Kungys’s visa application and his statements during interviews tended to prove that Kungys was not eligible to procure citizenship, but the statements on Kungys’s visa application alone did not render Kungys ineligible for citizenship. 104 Because the misrepresentations on Kungys’s visa application by themselves did not have a tendency to prove he was ineligible to procure citizenship, the Court vacated his denaturalization order and remanded the case. 105

Courts continue to define materiality under § 1451 using the framework established in Kungys. 106 In Maslenjak II, the Supreme

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97. Id. (citing Kungys, 485 U.S. at 783 (Brennan, J. concurring)); United States v. Puerta, 982 F.2d 1297, 1304 (9th Cir. 1992)).
98. Nguyen, 829 F.3d at 916.
100. Id. at 773.
101. Id. at 774–76.
102. Id.
103. Id. at 776.
104. Id.
105. Id. at 801.
106. See United States v. Hirani, 824 F.3d 741, 748–50 (8th Cir. 2016) (applying the Kungys materiality framework to a civil denaturalization case in which the
Court applied the *Kungys* definition of materiality to 18 U.S.C. § 1425, the criminal denaturalization statute, and noted that materiality in the context of denaturalization does not demand “proof positive that a disqualifying fact would have been found.” ¹⁰⁷ Rather, the “central inquiry under § 1425(a) is ‘how knowledge of the real facts would have affected a reasonable government official.’” ¹⁰⁸ For the reasons discussed in Part III, the Court’s application of the civil statute definition of materiality to the criminal denaturalization statute violates basic theories of statutory construction.

III. ANALYSIS

The *Kungys* Court examined materiality only in the context of § 1451.¹⁰⁹ The Court did not discuss whether 18 U.S.C. § 1425(a) contains an implicit materiality requirement.¹¹⁰ However, the plain meaning of § 1425 suggests that Congress did not intend to require proof of material misrepresentations to sustain a conviction under § 1425.¹¹¹

A. Statutory Interpretation of 18 U.S.C. § 1425

Statutory interpretation always begins with a plain meaning analysis.¹¹² Only after considering the plain meaning of a statute may a court consider the statute’s legislative history and the policy implications stemming from the suggested interpretation of the statute.¹¹³ The following sections draw support from the plain meaning

appellant failed to discuss his previous names on his visa application); United States v. Gonzales, 179 F. Supp. 3d 917, 925–28 (E.D. Mo. 2016) (applying the *Kungys* materiality framework to a civil denaturalization case in which the defendant wrongly stated that he had never committed a crime for which he had not been arrested on his naturalization application).


¹⁰⁹. See generally *Kungys*, 485 U.S. 759.

¹¹⁰. Id.

¹¹¹. See infra Part III.A.1.


¹¹³. See Mohasco Corp. v. Silver, 447 U.S. 807, 815 (1980); We first review the plain meaning of the relevant statutory language; we next examine the legislative history of the . . . Act and the . . . amendments for evidence that Congress intended the statute to have a different meaning; and finally we consider the policy arguments in favor of a less literal reading of the Act.

Id. See also District of Columbia v. Carter, 409 U.S. 418, 420 (1973) (noting that statutes should be interpreted “not only by a consideration of the words them-
ing,\textsuperscript{114} legislative history,\textsuperscript{115} and legislative framework of § 1425\textsuperscript{116} to suggest that § 1425(a) does not contain an implied materiality requirement. The final portion of this section considers policy concerns implicated by imposing a materiality requirement under § 1425.\textsuperscript{117}

1. \textit{Plain Meaning}

The “material evidence” language appearing in 8 U.S.C. § 1451(a) does not appear in any section of 18 U.S.C. § 1425.\textsuperscript{118} As such, plain meaning canons of statutory interpretation suggest that § 1425 does not contain a materiality requirement.\textsuperscript{119} For example, under the statutory construction canon of \textit{expressio unius}, “to express or include one thing implies the exclusion of the other, or of the alternative.”\textsuperscript{120} Thus, materiality is not a required element under § 1425(a) because the term “material” does not appear in the statutory text.\textsuperscript{121}

The Supreme Court has cautioned courts to “resist reading words or elements into a statute that do not appear on its face.”\textsuperscript{122}

\textsuperscript{114.} See \textit{infra} Part III.A.1.
\textsuperscript{115.} See \textit{infra} Parts III.A.1–2.
\textsuperscript{116.} See \textit{infra} Part III.A.2.
\textsuperscript{117.} See \textit{infra} Part III.A.3.
\textsuperscript{119.} \textit{See} Dean v. United States, 556 U.S. 568, 572 (2009) (“[w]e ordinarily resist reading words or elements into a statute that do not appear on its face.” (quoting Bates v. United States, 522 U.S. 23, 29 (1997))). For a brief description of the canons of plain meaning textualism, see Stephen M. Durden, \textit{Textualist Canons: Cabining Rules or Predilective Tools}, 33 \textit{CAMPBELL L. REV.} 115 (2010). Durden describes three plain-meaning canons of construction: (1) the superfluity canon, which suggests that every word in a statute is purposeful and, thus, conveys a specific meaning; (2) the Latin maxim of \textit{Expressio Unius Est Exclusio Alterius}, which means the expression of one item excludes items not mentioned; and (3) the canon of specific meaning, which asserts that the same word used in different parts of the same statute carries the same meaning throughout the statute. \textit{See id.} at 122–23, 130–31, 138.
\textsuperscript{120.} \textit{Expressio unius est exclusion alterius}, \textit{Black's Law Dictionary} (10th ed. 2014).
\textsuperscript{121.} \textit{See} Durden, \textit{supra} note 119, at 130–31.
\textsuperscript{122.} Dean, 556 U.S. at 572 (2009) (quoting Bates, 522 U.S. at 29). The creation of additional statutory elements is a job best suited for Congress, not the courts. \textit{See} Chamblee v. Stalder, 868 So. 2d 88, 90 (La. Ct. App. 2003) (Downing, J., concurring) (“Courts should not legislate in the guise of interpretation. The legislature should amend the statute not the court.”). Courts have long recognized that Congress alone holds the power to legislate. \textit{See, e.g.}, United States v. Mayer, 66 F. 719, 719 (S.D.N.Y. 1895) (“It is true that the courts should not legislate . . . .”); \textit{State ex rel.} Milyanian v. Eddy, 145 S.E. 643, 646 (W. Va. 1928) (Lively, J.,
and the Court has applied this sort of plain meaning statutory interpretation in considering materiality requirements under other criminal statutes. Specifically, in *United States v. Wells*, the Court declined to find a materiality requirement under § 18 U.S.C. § 1014. The Court reasoned that because § 1014 did not “so much as mention materiality . . . a natural reading of the full text” of the statute precluded finding that the statute contained an implied materiality requirement. The Court’s reasoning in *Wells* provides clear guidance for interpreting § 1425; because § 1425 does not “so much as mention materiality,” the statute should not be read to contain an implied materiality requirement. Reading § 1425 to require materiality disregards the Court’s earlier precedent and ignores the plain language of the statute.

2. Legislative Framework

Congress introduced the first statutory provision for denaturalization in 1906. Until that time, no codified provision outlining the procedures or requirements for the revocation of citizenship existed. The denaturalization procedure introduced in the 1906 statute remains largely unchanged today and is codified at 8 U.S.C. § 1451.

One key change to this original denaturalization statute occurred in a 1952 amendment in which Congress introduced language to authorize denaturalization when citizenship was “illegally procured” or “procured by concealment of a material fact or by willful misrepresentation.” Prior to this amendment, the statute permitted denaturalization for simple fraud or procedural defects in concurring) (“[T]he courts should not legislate by construction to remedy what they might think was an oversight.”).

123. 18 U.S.C. § 1014 (2012). The statute provides criminal penalties for “[w]hoever knowingly makes any false statement or report” on a variety of federal loan applications. Id. The statute does not contain the term “materiality” at any point. Id.
124. See Wells, 519 U.S. at 490.
125. See id.
126. See e.g., Dean, 556 U.S. at 572; Wells, 519 U.S. at 490; Bates, 522 U.S. at 29.
128. See Gorbach v. Reno, 219 F.3d 1087, 1099–100 (9th Cir. 2000).
129. Id. at 1100 (referencing Act of June 29, 1906, ch. 3592, § 23, 34 Stat. 596, 603 (1906)).
130. Id. at 652–53.
an individual's naturalization application. Thus, the insertion of the “material fact” and “willful misrepresentation” language in the 1952 amendment demonstrated a conscious and deliberate effort by Congress to elevate the standard of wrongdoing necessary to justify denaturalization. Therefore, given Congress's conscious effort to elevate the required standard of conduct necessary to satisfy the statutory elements of 8 U.S.C. § 1451, the less exacting “contrary to law” language of 18 U.S.C. § 1425 seems intentional.

Although most denaturalization proceedings are brought under 8 U.S.C. § 1451, U.S. Attorneys may choose to commence denaturalization proceedings under 18 U.S.C. § 1425. Such prosecutorial discretion emphasizes that 18 U.S.C. § 1425 and 8 U.S.C. § 1451 have different required elements because Congress would not intentionally create two identical procedures to achieve the same end. Moreover, 8 U.S.C. § 1451 is a civil statute and 18 U.S.C. § 1425 constitutes a criminal offense. Civil and criminal offenses carry different burdens of proof, and civil and criminal causes of action arising out of the same conduct often require dif-

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132. Id. at 653.
133. Id. Gavoor & Mikus draw on the legislative history of the amendment to assert that the amendment intentionally elevated the standard of conduct needed to justify denaturalization. Id. at 653, n.115 (citing H.R. REP. NO. 82-1365, at 1740–41 (1952)) (“The bill changes the basis for judicial revocation of naturalization from fraud and illegal procurement to procurement by concealment of a material fact or by willful misrepresentation.”).
134. As Judge Gibbons noted in Maslenjak I, the reasoning behind Congress’s decision to omit materiality as an element of § 1425 is puzzling. See Maslenjak I, 821 F.3d 675, 697 (6th Cir. 2016) (Gibbons, J., concurring) (“I am uncertain what goal Congress intended to further by omitting materiality from the elements of §1425(a).”). But as Judge Gibbons further noted, courts are “not free to select [their] own notion of the best result in a case but instead are guided by what the law requires.” Id.
135. See Gavoor & Mikus, supra note 128 at 643, 647.
136. See Durden, supra note 119, at 122–23 (describing the statutory construction canon of superfluity, which implies that provisions passed by Congress are intentional and intended to govern specific conduct). The issue of prosecutorial discretion has generated a great deal of scholarship, including sharp criticism. See, e.g., Maria A. Fufidio, Note, You May Say I’m A Dreamer, But I’m Not The Only One: Categorical Prosecutorial Discretion and its Consequences for U.S. Immigration Law, 36 FORDHAM INT’L L. J. 976 (2013) (analyzing the impact of prosecutorial discretion in the context of immigration law); Rebecca Krauss, The Theory Of Prosecutorial Discretion In Federal Law: Origins And Developments, 6 SETON HALL CRIM. REV. 1, 1 (2009) (explaining the historical development of federal prosecutorial discretion in the United States).
ferent elements to prove essentially the same offense. The different burdens of proof in civil and criminal cases, coupled with the different required elements for criminal and civil causes of action, lend further support to the notion that Congress drafted 18 U.S.C. § 1425 and 8 U.S.C. § 1451 with the expectation that the statutes would require different elements.


Congress explicitly omitted any reference to materiality from 8 U.S.C. § 1451(e), and, in doing so, Congress failed to extend the materiality requirement imposed on the government in civil denaturalization cases under 8 U.S.C. § 1451(a) to criminal prosecutions commenced under 18 U.S.C. § 1425(a).

b. Statutes Implicated by the “Contrary to Law” Language of 18 U.S.C. § 1425

The “contrary to law” language of § 1425(a) implicates a broad range of statutes related to naturalization. Though the text of § 1425(a) does not contain a materiality requirement, the “contrary to law” language of the statute implicates other statutes which may contain proof of a material false statement as an element.

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138. See supra note 63 (explaining the distinctions between the different standards of proof in criminal and civil cases). As an illustrative example, if John punches Bill, the elements and standard of proof to convict John of aggravated assault would be different and higher than the elements and standard of proof in a civil action brought by Bill against John for assault and battery. See Davis v. Giles, 769 F.2d 813, 815 (D.C. Cir. 1985) (“There is a distinction between the elements of a civil assault and battery and those of a criminal assault.” (citing RESTATEMENT (SECOND) OF TORTS §§ 13, 18, 19, 21 (AM. LAW INST. 1965))).

139. See supra Part II.A.2.a.
142. See Maslenjak I, 821 F.3d 675, 685 (6th Cir. 2016).
143. Id. at 687–88.
fore, § 1425(a) may require the government to prove materiality beyond a reasonable doubt when the underlying offense of § 1425(a) contains proof of a material false statement as an element.144

To illustrate, 18 U.S.C. § 1001(a)(1)145 criminalizes a knowing or willful attempt to “falsify[, conceal[ ,] or cover[ ] up . . . a material fact.”146 Thus, when 18 U.S.C. § 1001(a) serves as the underlying offense for 18 U.S.C. § 1425(a), proof of a material false statement is required to sustain a conviction because the government must first prove all elements of the underlying § 1001 charge to satisfy the “contrary to law” language of § 1425(a).147 However, not all underlying offenses contain an explicit materiality requirement.148 Prior to the Court’s ruling in Maslenjak II, if an underlying offense did not contain an explicit materiality requirement, the common law of the jurisdiction of indictment determined whether an underlying offense contained an implied materiality require-

144. United States v. Santos, No. 1:15-cr-20865-LENARD, 2016 U.S. Dist. LEXIS 97500, at *22 n.12 (S.D. Fla. July 26, 2016) (“The Court notes that if the Government satisfies § 1425(a)’s ‘contrary to law’ element by relying upon an underlying immigration provision that contains an explicit materiality requirement, it must prove that materiality element—along with every other element of the predicate offense—beyond a reasonable doubt.”).
146. Id. This statute contains a materiality requirement in each subsection:
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry[.]

Id.
147. See United States v. Mensah, 737 F.3d 789 (1st Cir. 2013), for an example of how underlying offenses are imputed to § 1425. In Mensah, the Third Circuit Court of Appeals affirmed the defendant’s 18 U.S.C. § 1425(a) conviction, which was predicated on violating 18 U.S.C. § 1001(a)(2). Id.
148. In Santos, the defendant was charged under 18 U.S.C. § 1425 based on violating the underlying offenses of 18 U.S.C. § 1015(a) (prohibiting knowingly making any false statement under oath), 18 U.S.C. § 1427(a)(3) (failing to demonstrate good moral character during the required statutory period prior to seeking naturalization), and 18 U.S.C. § 1101(f)(6) (giving false testimony for the purpose of obtaining any benefits pertaining to immigration). Santos, 2016 U.S. Dist. LEXIS 97500, at *2. None of these underlying offenses contains an explicit materiality requirement. Id.
After *Maslenjak II*, the government must always prove materiality under § 1425, regardless of the underlying offense.

3. Policy Concerns

The Supreme Court’s analysis in *Maslenjak II* is largely policy-driven. As this section will explain, many policy concerns raised to justify imposing a materiality requirement under 18 U.S.C. § 1425 are either not valid or adequately addressed by the existing legislative framework.

a. Denaturalization Based on Trivial Misrepresentations

Imposing a materiality requirement makes conviction under § 1425 more challenging to obtain because the requirement forces the government to prove an additional element. In *Maslenjak II*, much of the Supreme Court’s analysis emphasized a desire to avoid denaturalization based on “lie[s] told . . . out of embarrassment, fear, or a desire for privacy.” Certainly, the severity of denaturalization prompts an emotional desire to exempt the types of lies described in *Maslenjak II* from prosecution under § 1425. However, a court’s individual notions of fairness should not supplant the

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149. To illustrate, 18 U.S.C. § 1015 does not contain an explicit materiality requirement, but courts have not reached a uniform consensus regarding whether § 1015 contains an implied materiality requirement. Compare United States v. Youssef, 547 F.3d 1090, 1094 (9th Cir. 2008) (holding that § 1015 does not require proof of a material false statement), with Mensah, 737 F.3d at 793 (suggesting that § 1015 contains an implied materiality requirement). The Fourth Circuit Court of Appeals, Sixth Circuit Court of Appeals, and Ninth Circuit Court of Appeals have all held that materiality is not a required element under § 1015(a) based largely on plain meaning because § 1015 does not contain any explicit language regarding materiality. See *Maslenjak I*, 821 F.3d 675, 687 (6th Cir. 2016) (citing United States v. Tongo, No. 93-5326, 1994 WL 33967, at *3–4 (6th Cir. Feb. 7, 1994)); *Youssef*, 547 F.3d at 1094; United States v. Abuagla, 336 F.3d 277, 278–79 (4th Cir. 2003). In dicta, the First Circuit Court of Appeals suggested that § 1015 contains an implied materiality requirement. See *Mensah*, 737 F.3d at 793. In describing the procedural posture of the case, the First Circuit noted that the defendant had been charged with “making material false statements under oath during his naturalization proceedings, in violation of § 1015(a).” Id. (emphasis added). The Second Circuit Court of Appeals has not yet addressed the issue of materiality under § 1015. See United States v. Rogers, No. 96-1197, 1996 U.S. App. LEXIS 30972, *2 (2d Cir. Nov. 29, 1996) (“It is unnecessary for us to address the question whether the statute[ ] require[s] ‘material’ false statements.”).


151. See infra Part III.B.2.b.

152. See United States v. Sain, 795 F.2d 888, 889–90 (10th Cir. 1986) (reversing the defendant’s conviction based on unproven elements of the crime charged).


154. See supra Part I (describing the severe personal consequences of the revocation of citizenship).
plain language of a statute. Moreover, the mens rea requirement of § 1425 sufficiently ensures that “seemingly innocent” conduct is not prosecuted under § 1425(a).

The “knowing” mens rea requirement of § 1425 elevates the level of conduct necessary to justify criminal prosecution. The statute requires that the actor knowingly attempt to procure citizenship “contrary to law.” This requirement is not satisfied by a purposeful attempt to apply for naturalization alone; such an approach would not only criminalize many seemingly innocent acts but would also transform the statute into a strict-liability crime, and strict liability crimes are atypical in U.S. jurisprudence. A strict liability reading of § 1425 also seems inappropriate on a grammatical basis. Thus, a citizen violates § 1425(a) when he or she applies for naturalization and knows he or she is ineligible to apply or

155. See Maslenjak I, 821 F.3d 675, 697 (6th Cir. 2016) (Gibbons, J. concurring) (“[W]e are not free to select our own notion of the best result in a case but instead are guided by what the law requires.”). See, e.g., Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez, 561 U.S. 661, 664 (2010) (“The Court has . . . cautioned courts to resist ‘substitut[ing] their own notions of sound educational policy for those of . . . school authorities . . .’”) (internal citations omitted); Arizona v. California, 373 U.S. 546, 565 (1963) (“[C]ourts have no power to substitute their own notions of an ‘equitable apportionment’ for the apportionment chosen by Congress.”) (addressing disputed claims to shares of waterways).


157. See infra notes 159, 161. United States v. Alameh, 341 F.3d 167, 175 (2d Cir. 2003); United States v. Pasillas-Gaytan, 192 F.3d 864, 868 (9th Cir. 1999).

158. 18 U.S.C. § 1425; Alameh, 341 F.3d at 175.

159. If the intentional act of applying for naturalization was sufficient to satisfy the knowing mens rea requirement of § 1425, the statute would criminalize conduct such as “apply[ing] for citizenship outside of the statutory time periods for making such application, and . . . apply[ing] for citizenship [without] sufficient[ ] proficien[cy] in the English language to qualify for citizenship.” Pasillas-Gaytan, 192 F.3d at 868.

160. See id. Strict liability statutes are atypical in Anglo-American criminal jurisprudence; most criminal statutes require proof of some “evil meaning mind.” Id. (quoting United States v. Bailey, 444 U.S. 394, 404 n.4 (1980)). However, reading § 1425 to impose a mens rea requirement satisfied only by a voluntary attempt to procure naturalization would create a strict liability crime because the circumstances behind a defendant’s violation would be irrelevant. Id. at 868.

161. An argument for a strict liability reading may be appropriate if § 1425 stated “whoever knowingly procures naturalization is liable when such efforts are contrary to law.” However, § 1425 reads “whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person.” 18 U.S.C. § 1425. The word “knowingly” and the phrase “contrary to law” serve as adverbs which modify the verb “procures.” Thus, based on the grammatical structure of the sentence, the mens rea requirement is satisfied when the attempt to procure naturalization is knowingly contrary to law.
when he or she knowingly misrepresents facts in naturalization paperwork or interviews.\textsuperscript{162} Said another way, a defendant must know that he or she is not eligible for citizenship at the time of application and purposefully misrepresent some fact.\textsuperscript{163} Therefore, § 1425 criminalizes purposefully evasive conduct, such as concealing a criminal record, but excuses unintentional errors.\textsuperscript{164} Still, the knowing mens rea requirement does not forgive the purposeful misrepresentation of even minor information.\textsuperscript{165}

Hypothetically,\textsuperscript{166} an applicant for naturalization could purposefully and knowingly misrepresent his or her biographical information under oath, for example by providing a false address of prior residence. By itself, providing a false address may not be “material” to the applicant’s eligibility to procure citizenship.\textsuperscript{167} However, the misrepresentation would constitute a prima facie violation of 18 U.S.C. § 1015(a), which prohibits knowingly making “any false statement under oath” in naturalization proceedings.\textsuperscript{168} In jurisdictions that do not impose an implied materiality requirement under § 1015,\textsuperscript{169} this misrepresentation under oath satisfies the “contrary to law” language of § 1425. In this hypothetical, revoking an individual’s citizenship for a “little white lie,” which does not actually render the citizen ineligible to procure citizenship may seem severe, but strict compliance with the requirements for naturalization represents the most faithful reading of § 1425(a)\textsuperscript{170} and helps to preserve the sanctity of the American naturalization process.\textsuperscript{171}

\textsuperscript{162} Pasillas-Gaytan, 192 F.3d at 868.
\textsuperscript{163} Alameh, 341 F.3d at 175.
\textsuperscript{164} See Pasillas-Gaytan, 192 F.3d at 868–69.
\textsuperscript{165} The Supreme Court’s decision in Maslenjak II seems to craft a theory of statutory interpretation intended to prevent the criminalization of such conduct. See Maslenjak II, 137 S. Ct. 1918, 1927 (2017). While such an interpretation better resonates with notions of fairness, such notions of fairness are not sufficient to supplant the plain meaning of the statute. See supra note 155.
\textsuperscript{166} This hypothetical assumes that the Supreme Court did not hold that 18 U.S.C. § 1425 contains an implied materiality requirement.
\textsuperscript{167} See Part II.D for a discussion of materiality in the Kungys case.
\textsuperscript{169} See supra note 149 (discussing how various courts have interpreted materiality in the context of 18 U.S.C. § 1015).
\textsuperscript{170} Maslenjak I, 821 F.3d 675, 697 (6th Cir. 2016) (Gibbons, J. concurring) (“[T]he . . . most faithful [reading of] the statute is that materiality is not an element of the §1425(a) offense.”).
\textsuperscript{171} While American citizenship was once considered a great honor, the perceived desirability of U.S. citizenship may be declining in the eyes of the international community. Compare Schneiderman v. United States, 320 U.S. 118, 122 (1943) (describing U.S. citizenship as the “highest hope of civilized men”), with Richard Wike et al., U.S. Image Suffers as Publics Around World Question
In summation, the mens rea requirement of § 1425 criminalizes purposeful attempts to circumvent the requirements of naturalization but does not criminalize unintentional or good-faith application defects.

b. Differentiated Treatment of Civil and Criminal Denaturalization Defendants

The U.S. justice system affords criminal defendants greater procedural protections than civil defendants. One argument in favor of imposing an implied materiality requirement is that a materiality element helps ensure that criminal denaturalization defendants have the same protections as civil denaturalization defendants. However, this argument ignores the significance of the two-track denaturalization system established by Congress. The lower procedural protections afforded to civil defendants are precisely what justify the higher substantive protection of a statutory materiality requirement under 8 U.S.C. § 1451. Thus, imposing a materiality requirement in civil proceedings, which afford defendants less procedural rights, reinforces the meaningful distinction between the two tracks for denaturalization. Absent a materiality requirement, prosecutors must still prove that the citizen violated both § 18 U.S.C. § 1425 and some underlying offense beyond a reasonable doubt; this is the highest burden within the U.S. justice system.


172. See Petition for Writ of Certiorari at 18, Maslenjak II, 137 S. Ct. 1918 (2017) (No. 16-309) (citing U.S. CONST. amends. V, VI) (“[I]n our legal system, greater procedural protections are generally required for criminal as opposed to civil proceedings.”).

173. Id. at 18 (arguing that § 1425 requires materiality) (“Congress would not have wanted this criminal denaturalization provision to sweep more broadly than its civil analogue”).

174. See Brief for the United States in Opposition at 15, Maslenjak II, 137 S. Ct. 1918 (No. 16-309).

175. Id.

176. Id. See also supra Part III.A.

177. See supra Part II.C.3.

178. See supra Part II.C.3.
B. Cases Analyzing the Materiality Requirement Under § 1425

The plain-meaning, legislative framework, and policy implications of 18 U.S.C. § 1425 do not support a finding of materiality. Still, not all courts, including the Supreme Court in Maslenjak II, adequately addressed these considerations when analyzing the statute.

1. Courts Imposing No Materiality Requirement

The Sixth Circuit Court of Appeals was the only circuit court to explicitly reject a materiality requirement under § 1425. In Maslenjak I, the Sixth Circuit outlined the reasoning behind its deviation from its sister circuits.

In Maslenjak I, the defendant was convicted of knowingly using an unlawfully-issued certificate of naturalization, in violation of 18 U.S.C. § 1423, and procuring naturalization contrary to law, in violation of 18 U.S.C. § 1425(a). On appeal, the defendant challenged the jury instructions given at her trial which “instructed the jury that her false statements need not be material” for conviction under § 1425. Based largely on the plain meaning of the statute, the Sixth Circuit determined that § 1425 did not require proof of a material false statement and upheld the defendant’s conviction. Additionally, the Sixth Circuit declined to find that the materiality requirement imposed in civil denaturalization cases under 8 U.S.C. § 1451 applied to criminal denaturalization proceedings, noting that “little justification [exists] for reading an implied element of materiality into 18 U.S.C. § 1425 based on the fact that materiality is a required element for civil denaturalization under 8 U.S.C. § 1451(a).” The Sixth Circuit drew further support for its position based on the existence of the two-track denaturalization system, which, the court asserted, established distinct burdens of proof and required elements for civil and criminal denaturalizations.

179. See supra Part III.A.1.
180. See supra Part III.A.2.
181. See supra Part III.A.3.
183. See generally Maslenjak I, 821 F.3d 675 (6th Cir. 2016).
185. Maslenjak I, 821 F.3d at 679.
186. Id.
187. Id. at 682 (“Obviously, the term ‘material’ is found nowhere in § 1425(a). Without statutory support for an element of materiality, we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a).”).
188. Id. at 683.
189. Id. at 684–85.
Although the Sixth Circuit was the only Court of Appeals to explicitly reject a materiality requirement under § 1425, several district courts to consider the issue adopted similar reasoning to the Sixth Circuit’s decision in *Maslenjak I*.\(^\text{190}\) In *United States v. Biheiri*,\(^\text{191}\) the United States District Court for the Eastern District of Virginia held that both 18 U.S.C. § 1425(a) and the defendant’s underlying offense of 18 U.S.C. § 1015(a) did not contain an implied materiality requirement because neither statute explicitly mentioned materiality.\(^\text{192}\) Similarly, in *United States v. Rogers*,\(^\text{193}\) the United States District Court for the Southern District of New York relied on the plain meaning of § 1425 to reject the imposition of a materiality requirement.\(^\text{194}\) Finally, in *United States v. Santos*,\(^\text{195}\) the United States District Court for the Southern District of Florida quoted *Maslenjak I* at length and held that § 1425 did not require proof of materiality based on the plain language of § 1425.\(^\text{196}\) The *Santos* court further held that civil denaturalization materiality standards under 8 U.S.C. § 1451 did not apply to the criminal charges at issue in the case.\(^\text{197}\)

2. **Courts Requiring Materiality**

a. **Cases Prior to *Maslenjak II***

Each circuit to hold that § 1425 contained an implied materiality requirement relied on the leading civil denaturalization case, *Kungys*,\(^\text{198}\) to reach its decision.\(^\text{199}\) However, none of these cases addressed why the materiality framework established in *Kungys*, a

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\(^{190}\) See infra text accompanying notes 191, 193, 195.


\(^{192}\) Id. The court noted that: [N]owhere in § 1425 is materiality mentioned; nor does the phrase “contrary to law” have a common law meaning that requires materiality. As a result, “contrary to law” in § 1425(a) necessarily includes “contrary to 18 U.S.C. § 1015(a),” from which it follows that materiality is not required to establish a violation of § 1425(a).


\(^{194}\) Id.


\(^{196}\) Id. at *21–22.

\(^{197}\) Id.

\(^{198}\) See supra note 91 (describing the significance of *Kungys* v. United States, 485 U.S. 759 (1988)).

\(^{199}\) See United States v. Munyenyi, 781 F.3d 532, 536 (1st Cir. 2015); United States v. Latchin, 554 F.3d 709, 715 (7th Cir. 2009); United States v. Aladekoba, 61 Fed. Appx. 27, 28 (4th Cir. 2003); United States v. Puerta, 982 F.2d 1297, 1301 (9th Cir. 1992).
case involving civil denaturalization, applied to criminal denaturalization under § 1425.200

Earlier cases analyzing materiality provided scant justification for applying the Kungys materiality framework to § 1425. For example, in United States v. Puerta,201 the Ninth Circuit Court of Appeals held that § 1425 contained an implied materiality requirement simply because the Government said that it did.202 The court did not engage in any additional analysis to justify its determination that the Kungys framework applied in the case.203 As previously explained, criminal and civil denaturalization procedures constitute distinct avenues that reach the same end; however, the fundamental differences between criminal and civil procedural protections necessitate differentiated elemental standards for each denaturalization track.204

b. Materiality in Maslenjak II

In Maslenjak II, the Supreme Court held that § 1425 contains an implied materiality requirement, and in reaching this decision, the Court began with an analysis of the statutory text.205 The Court reasoned that the “contrary to law” language of the statute operates as an adverbial phrase which describes how an individual must procure naturalization; thus “someone ‘procure[s], contrary to law, naturalization’ when she obtains citizenship illegally.”206 The Court argued that “using English as you ordinarily would,” procuring naturalization “contrary to law” necessarily implies “that an illegality played some role” in the acquisition of citizenship.207

200. See supra note 199.
201. United States v. Puerta, 982 F.2d 1297 (9th Cir. 1992).
202. Id. (“[T]he government agrees with Puerta that § 1425(a) implies a materiality requirement similar to the one used in the denaturalization context. This position finds support in Kungys . . . .”). Id. This statement implies a fundamental misunderstanding of the two-track system for denaturalization. Contrary to the court’s assertion, 8 U.S.C. § 1451 does not comprise the entirety of the “denaturalization context.” Rather, both 8 U.S.C. § 1451 and 18 U.S.C. § 1425 serve as possible starting points for the revocation of citizenship. For a discussion of the two-track system for denaturalization, see United States v. Santos, No. 1:15-cr-20865-LENARD, 2016 U.S. Dist. LEXIS 97500, at *18 (S.D. Fla. July 26, 2016) (referring to the current statutory scheme for denaturalization as a two-track system). The Appellant’s brief in Maslenjak II notes the Government’s inconsistent position regarding the materiality under 18 U.S.C. § 1425 as justification for consideration by the Supreme Court. See Reply to Brief in Opposition at 11, Maslenjak II, 137 S. Ct. 1918 (2017) (No. 16-309).
203. See Puerta, 982 F.2d at 1301.
204. See supra Part III.A.2.
205. Maslenjak II, 137 S. Ct. at 1924.
206. Id. at 1925.
207. Id. at 1925–26.
While such an interpretation may be valid, the more plausible reading of § 1425(a) is that an individual violates the statute by procuring naturalization “in a manner that violates another provision of law that governs the naturalization process, defined according to the elements of the precise violation at issue.”208 This approach seems most appropriate given the Court’s precedent of declining to read a statute to contain an implied materiality requirement when the plain text of the statute does not mention materiality.209 However, the Court dismissed this interpretation in *Maslenjak II* on the basis that “some legal violations that do not justify denying citizenship under that definition would nonetheless justify revoking it later.”210

Absent from *Maslenjak II*, and most damaging to the Court’s analysis, is sufficient explanation as to why Congress intentionally omitted the materiality language used in 8 U.S.C. § 1451 from 18 U.S.C. § 1425, or why Congress created 18 U.S.C. § 1425 at all if 8 U.S.C. § 1451 governs the same conduct. The Court argued that some misrepresentations do not warrant denaturalization,211 but the Court does not point to any evidence in the Congressional Record suggesting that Congress intended to exempt specific classes of misrepresentations from § 1425. Certainly, as the Court notes, the omission of a materiality requirement may permit denaturalization in situations involving conduct that is far from egregious.212 But the Court is not charged with stating what the law should be; rather, the Court must apply the law as written.213 And as written, the law differentiates between the elemental requirements of 8 U.S.C. § 1451(a) and 18 U.S.C. § 1425, presumably because Congress intended to give U.S. Attorneys discretion in commencing denaturalization proceedings.214

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209. See Part III.A.I (discussing the Court’s earlier refusal to add statutory elements to an offense).


211. *Id.* at 1927 (discussing types of lies, such as those told out of embarrassment, fear, or a desire for privacy).

212. *Id.*

213. See *Maslenjak I*, 821 F.3d 675, 697 (6th Cir. 2016) (Gibbons, J., concurring) (noting that courts are “not free to select [their] own notion of the best result in a case but instead are guided by what the law requires”). Interestingly, neither party, nor the Court, raised any constitutional arguments stemming from a failure to find a materiality requirement. This author believes that an Equal Protection argument may have bolstered the Court’s analysis.

214. See supra Part III.A.I (discussing plain meaning cannons of statutory construction). Personally, this author believes that U.S. Attorneys should exercise
IV. Conclusion

The revocation of citizenship is one of the most serious penalties imposed by federal law.215 The significant personal consequences stemming from a conviction under 18 U.S.C. § 1425(a)216 may spur a desire by courts to impose a heightened elemental burden for conviction based on fairness considerations.217 However, courts must apply constitutionally sound laws as written, not insert additional statutory elements into an offense.218 On its face, § 1425(a) may appear to punish seemingly innocuous conduct,219 but in practice, conviction under § 1425 is an arduous task which requires the government to prove the statutory elements of at least two separate crimes, 18 U.S.C. § 1425 and an underlying offense, beyond a reasonable doubt.220

When the plain language of a statute is unambiguous, courts should not suggest alternative interpretations to advance individual notions of fairness, even when statutes enacted by Congress may create “severe” results.221 Congress’s creation of a two-track system for denaturalization demonstrates a conscious effort to differentiate the required statutory elements for civil denaturalization under 8 U.S.C. § 1451 and criminal denaturalization under 18 U.S.C. § 1425.222 In Maslenjak II, the Supreme Court ignored this significant distinction and invaded the realm of the legislature by creating a new statutory element for the offense. This Comment does not mean to suggest that Congress should aspire to revoke citizenship based on “little white lies,” but such a decision is

prosecutorial discretion, based on ethical and fairness considerations, and not to prosecute citizens under § 1425 for making non-material misrepresentations. However, this author also believes that the principles of the separation of powers necessitate that constitutionally sound laws deserve judicial affirmation. See generally The Federalist No. 47 (James Madison) (discussing the principle of the separation of powers).

215. See Klapprott v. United States, 335 U.S. 601, 616 (1949) (“To take away a man’s citizenship deprives him of a right no less precious than life or liberty.”). See also Schneiderman v. United States, 320 U.S. 118, 122 (1943) (describing the loss of citizenship as “more serious than a taking of one’s property, or the imposition of a fine or other penalty”).

216. See supra Part I (describing the potential consequences faced by Lionel Jean-Baptiste following denaturalization under § 1425, which included exile, impoverishment, and even death).

217. See supra Part III.A.3.b.


220. See generally supra Part III.A.3.

221. Supra Part III.A.3.a.

222. See supra Part III.A.2.
squarely within the authority of Congress. Accordingly, the legisla-
tive process is the proper means for imposing a higher elemental
burden for denaturalization, not unilateral decision-making by
courts.