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Timothy A. Belsan

Aaron R. Petty

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CIVIL REVOCATION OF NATURALIZATION: MYTHS AND MISUNDERSTANDINGS

TIMOTHY M. BELSAN* & AARON R. PETTY†

We poison the sources of our national character and strength at the fountain, if the privilege [of citizenship] is claimed and exercised without right, and by means of fraud and corruption.¹

—President Theodore Roosevelt, State of the Union Address, 1903

INTRODUCTION

For the last several decades, immigration—and its apex benefit, naturalized citizenship—has been a hot button issue in the United States. Nearly every President and Congress have attempted to reform the United States’ immigration system. From the “Reagan Amnesty” of 1986 and the major overhaul of the Illegal Immigration Reform and Immigrant Responsibility Act a decade later,² to the more recent failed

* B.A., Newman University; J.D., Washburn University.

† B.A., Northwestern University; M.St., University of Cambridge J.D., University of Michigan; Ph.D., University of Leiden. The views expressed herein are solely those of the authors.

1. PATRICK WEIL, *THE SOVEREIGN CITIZEN: DENATURALIZATION AND THE ORIGINS OF THE AMERICAN REPUBLIC* 4 (quoting President Theodore Roosevelt, State of the Union Address (Dec. 7, 1903) and citing N.Y. TIMES, Dec. 8, 1903).

2. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

attempts at comprehensive immigration reform³ and President Trump's immigration-related Executive orders,⁴ immigration has rarely been out of the news for long.

Naturalization is, naturally, integral to a broader discussion on immigration. After all, as United States Supreme Court Justice Frank Murphy noted, many regard United States citizenship as "the highest hope of civilized men."⁵ In light of its desirability, it is hardly surprising that some who are ineligible for citizenship, including those with interests adverse to those of the United States, seek to obtain it by whatever means necessary, including fraudulently (e.g., by concealing criminal activity or other disqualifying facts).⁶ In situations like these, where ineligible applicants obtain citizenship in an unlawful or fraudulent manner, Congress has tasked the United States Department of Justice ("Department of Justice") to seek revocation of naturalization ("denaturalization") in federal court either civilly, by filing a lawsuit, or criminally, by seeking an indictment.⁷ Recent denaturalization cases have garnered significant national and international media attention.⁸

3. *See, e.g.*, Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. (2007); Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006); Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005); Comprehensive Enforcement and Immigration Reform Act of 2005, S. 1438, 109th Cong. (2005).

4. *See, e.g.*, Executive Order No. 13841, 83 Fed. Reg. 29435 (June 20, 2018); Executive Order No. 13815, 82 Fed. Reg. 50055 (Oct. 24, 2017); Executive Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017); Executive Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

5. *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

6. This was apparent even a century ago, when President Theodore Roosevelt noted, in language that still rings true today:

Forgeries and perjuries of shameless and flagrant character have been perpetrated, not only in the dense centers of population, but throughout the country; and it established beyond doubt that very many so-called citizens of the United States have no title whatever to that right, and are asserting and enjoying the benefits of the same through the grossest frauds.

WEIL, *supra* note 1 at 16.

7. *See* 8 U.S.C. § 1451(a) (2019); 18 U.S.C. § 1425 (2019); *see also infra* note 149 (describing assignment of roles within the Department of Justice).

8. *E.g.*, Teo Armus, *Virginia Man Accused of Human Rights Abuses Charged With Lying on Citizenship Form*, WASH. POST (Aug. 18, 2018), <https://www.washingtonpost.com/local/public-safety/virginia-man-accused-of-human-rights-abuses-charged-with-lying-on-citizenship-form/2018/08/18/>

Unfortunately, much of the discussion surrounding denaturalization, and especially the law governing the civil denaturalization process, has been inaccurate, poorly researched, and/or shown a lack of appreciation for critical nuance. At the extreme, some have even argued that the United States should eliminate denaturalization entirely, without regard to the nature of the case or the degree of fraud.⁹ Although there are some similarities between civil and criminal denaturalization, including the ultimate loss of citizenship, the two follow different processes and offer defendants different protections. This essay focuses on civil denaturalization, which has been the method most criticized recently, in part due to the civil nature of the proceedings and the lack of a statute of limitations.¹⁰

54094660-a2f1-11e8-83d2-70203b8d7b44_story.html?utm_term=.97a419e3e405; Scott Glover, *How a Convicted Terrorist Became a US Citizen*, CNN (Apr. 25, 2019), <https://www.cnn.com/2019/04/25/us/convicted-terrorist-us-citizen-invs/index.html>; *US Revokes Citizenship of Indian Native Who Now Faces Deportation*, TIMES OF INDIA (Jan. 9, 2018), <https://timesofindia.indiatimes.com/nri/us-canada-news/us-revokes-citizenship-of-indian-native-who-now-faces-deportation/articleshow/62434424.cms>; *Feds Revoke Citizenship of New Jersey Man Who Used Alias to Enter U.S.*, CBS NEWS (Jan. 11, 2018), <https://www.cbsnews.com/news/feds-revoke-citizenship-baljinder-singh-using-alien-enter-us-new-jersey/>; Tina Vasquez, *A 'McCarthy-Like Witch Hunt': Legal Experts Weigh in on Operation Targeting Immigrants for Denaturalization*, REWIRE.NEWS (Jan. 12, 2018), <https://rewire.news/article/2018/01/12/mccarthy-like-witch-hunt-legal-experts-weigh-operation-targeting-immigrants-denaturalization/>; Stephen Gruber-Miller, *U.S. Seeking to Revoke Citizenship of Iowa Man Accused in Bosnian Killings*, USA TODAY (Jan. 18, 2018), <https://www.desmoinesregister.com/story/news/crime-and-courts/2018/01/18/iowa-man-accused-bosnian-killings-charged-lying-enter-u-s/1045291001/>; Rick Anderson, *U.S. Authorities Seek to Strip Citizenship of Bosnian War Criminal Living in Oregon*, L.A. TIMES (Apr. 6, 2018), <https://www.latimes.com/nation/la-na-oregon-war-criminal-20180406-story.html>; *U.S. Seeks to Revoke Citizenship of Convicted Ex-Bosniak Soldiers*, RADIO FREE EUROPE/RADIO LIBERTY (Apr. 4, 2018), <https://www.rferl.org/a/us-citizen-bosniak-soldiers-croat-serb-muslim-trusina/29145963.html>.

9. Cassandra Burke Robertson & Irina D. Manta, *(Un)Civil Denaturalization*, 94 N.Y.U. L. REV. 402, 454–64 (2019) (arguing that civil denaturalization is inconsistent with both substantive and procedural due process); John Ganz, *Trump's New Target in the Politics of Fear: Citizenship*, N.Y. TIMES (July 23, 2018), <https://www.nytimes.com/2018/07/23/opinion/trump-birthright-citizenship-mccarthy.html> (“The future of American democracy demands we guarantee now that citizenship cannot be stripped.”).

10. See *infra* Section I and IV.

In light of the apparent widespread lack of familiarity with civil denaturalization, some clarification is in order. In this essay, we address four of the most widespread misunderstandings regarding the potential for naturalized United States citizens to lose their citizenship, namely: (1) that civil denaturalization is a new tool of, or one being used in a novel way by, the current Administration; (2) that the potential for denaturalization means that naturalized citizens are “second class” in some way to those who are citizens by birth; (3) that denaturalization discourages lawful naturalization; and (4) that minor discrepancies or misstatements made during immigration proceedings can result in denaturalization. These misunderstandings fail to account for the long history of denaturalization in the United States and the high bar Congress and the Supreme Court have imposed on the executive branch to prove an individual was never lawfully naturalized.¹¹

First, a considerable percentage of media attention regarding the Department of Justice’s recent efforts to denaturalize people who fraudulently naturalized suggests denaturalization is a new tool or one being used by the current Administration in a novel manner.¹² In particular, United States Citizenship and Immigration Services’ (“USCIS”) “task force” to identify individuals who naturalized after having been ordered removed (typically under a different claimed identity) has been singled out repeatedly.¹³ Denaturalization in the United States, however, is not new. The first statute specifically authorizing civil denaturalization is more than a century old.¹⁴ Prior to 1906, courts cancelled naturalization certificates under their inherent

11. *Id.*

12. See, e.g., Vasquez, *supra* note 8; Aline Barros, *Prospect of More US Denaturalizations Worries Immigrant Advocates*, VOA NEWS (Jan. 21, 2018), <https://www.voanews.com/a/prospect-of-more-denaturalizations-worries-immigrant-advocates/4217267.html>; *Second Class Citizenship: Using Immigration Law Against Naturalized US Citizens*, LAW AT THE MARGINS, <http://lawatthemargins.com/08022018-denaturalizationtaskforce/> (last visited July 23, 2019).

13. See *id.*

14. Naturalization Act of 1906, Pub. L. No. 338, § 15, 34 Stat. 596, 601 (1906). The Naturalization Evidence Act of 1816 provided for denaturalization for procedural irregularities, but not for fraud. John P. Roche, *Pre-Statutory Denaturalization*, 35 CORNELL L. Q. 120, 122 (1949–1950) [hereinafter Roche, *Pre-Statutory Denaturalization*] (citing the Naturalization Evidence Act of 1816, ch. 32, 3 Stat. 258–59 (1816)). It was never used and was repealed in 1824. *Id.* at 122–23.

power to correct their own judgments for fraud on the court.¹⁵ The current statutory provision authorizing civil denaturalization proceedings was part of the original Immigration and Nationality Act of 1952.¹⁶ Denaturalization has been used consistently over the years, though with a frequency reflecting the high bar on the government in denaturalization cases. Notably, because civil denaturalization is not subject to a statute of limitations period, it has been an especially important tool in human rights cases in which incriminating facts often do not emerge for years or decades afterwards, often from archives long after a conflict ends.¹⁷ The most prominent example is the many cases related to Nazis who fraudulently obtained immigrant visas contrary to the Displaced Persons Act.¹⁸

USCIS' abovementioned "task force" to identify individuals who naturalized after having been ordered removed highlights the need for such freedom from a statute of limitations.¹⁹ USCIS' often-criticized current project, which relies on relatively recently-developed fingerprint technology, addresses fraud committed over multiple

15. *United States v. Mansour*, 170 F. 671, 675 (D.C.S.D.N.Y. 1908) ("[C]ourts granting naturalization have for generations revoked or cancelled their own grants or judgments, when convinced that they had been imposed upon, or deceived . . ."); see generally Roche, *Pre-Statutory Denaturalization*, *supra* note 14.

16. Immigration and Nationality Act of 1952, Pub. L. No. 414, § 340, 66 Stat. 163, 262–63 (1952).

17. See Josh Gerstein, *Trump Officials Pushing to Strip Convicted Terrorists of Citizenship*, POLITICO (June 8, 2019), <https://www.politico.com/story/2019/06/08/trump-convicted-terrorists-citizenship-1357278> ("[T]he best-known citizenship-stripping campaign in recent years was the one Justice Department Nazi-hunters mounted against SS guards and others alleged to have hidden their wartime records when becoming U.S. citizens. More than 100 people lost their American citizenship due to involvement with Nazi-era war crimes; most were deported.").

18. See, e.g., *id.*; WEIL, *supra* note 1, at 12 ("Nowadays, denaturalization is used primarily as a tool for targeting individuals who commit crimes against humanity, including former Nazis and others responsible for acts of genocide."); *Justice Department Secures Denaturalization of Convicted War Criminal Who Fraudulently Obtained Refugee Status and U.S. Citizenship*, U.S. DEP'T OF JUSTICE (Aug. 22, 2018), <https://www.justice.gov/opa/pr/justice-department-secures-denaturalization-convicted-war-criminal-who-fraudulently-obtained>; Camila Domonoske, *Alleged Nazi Labor Camp Guard Deported to Germany*, NPR (Aug. 21, 2018), <https://www.npr.org/2018/08/21/640474479/alleged-nazi-labor-camp-guard-deported-to-germany>.

19 *Id.*

decades when the technology was in its infancy or procedures necessary to effectively utilize it were not yet in place. As a result, individuals could employ fraudulent identities to obtain United States citizenship despite being subject to prior orders of removal.²⁰ Although formally created during the current Administration, USCIS' "task force" is the next phase of investigations that began under the Bush Administration and continued throughout the Obama Administration. The investigations have now reached the stage at which more organizational structure is needed for USCIS to refer cases for civil enforcement proceedings in federal court and provide relevant litigation support.

Second, the fact that there are legal avenues to denaturalize individuals who naturalize unlawfully does not amount to second-class citizenship.²¹ Naturalization can be revoked through civil proceedings for two reasons: (1) the naturalization was illegally procured, which means the person was statutorily ineligible to naturalize; or (2) the naturalization was procured by concealment or material misrepresentation.²² The latter requires a willful misrepresentation or omission of material information in the naturalization application or interview and a fair inference of ineligibility based on the concealed true facts.²³ Under either theory, the government effectively must show that the defendant was not eligible to naturalize in the first place, which prevents naturalization from becoming a safe harbor that applies regardless of whether the person broke the law or lied to obtain citizenship.²⁴

20. See generally OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-16-130, POTENTIALLY INELIGIBLE INDIVIDUALS HAVE BEEN GRANTED U.S. CITIZENSHIP BECAUSE OF INCOMPLETE FINGERPRINT RECORDS (2016) [hereinafter "OIG Report"] at 4–5, <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf>. Notably, the report notes that the FBI's digital fingerprint database was created in 1999. *Id.* at 5.

21. See *infra* Section II.

22. 8 U.S.C. § 1451(a) (2019).

23. *Kungys v. United States*, 485 U.S. 759, 781 (1988).

24. By contrast, "[m]ost European countries have some provisions for citizenship withdrawal from persons who have acted or intended to act against the security of *their* State." Rainer Bauböck & Vesco Paskalev, *Citizenship Deprivation: A Normative Analysis*, 82 CEPS LIBERTY & SECURITY IN EUROPE, 1, 15 (2015), https://www.ceps.eu/system/files/LSE82_CitizenshipDeprivation.pdf; see also Irina Manta, *Denaturalizing for Post-Citizenship Crimes*, VOLOKH CONSPIRACY (Mar. 22, 2019), <https://reason.com/2019/03/22/denaturalizing-for-post-citizenship-crim>

Third, hard data suggests the possibility of denaturalization does not discourage lawful naturalization. Annually, roughly 750,000 people become naturalized citizens, while the number of people who are denaturalized each year is in the dozens.²⁵ Most civil denaturalization cases fall into one of four categories: (1) convicted terrorists and individuals who pose national security concerns; (2) human rights violators and war criminals; (3) serious felons (including a large number who committed sexual offenses against minors); and (4) fraud cases.²⁶ The overwhelming majority of naturalized citizens do not fall into any of these categories.²⁷ As early as 1909, a Department of Justice guidance document mandated that denaturalization proceedings be commenced only for “willful and deliberate fraud” to “protect the body politic” and required that “some substantial results . . . be achieved thereby in the way of the betterment of the

(discussing Italy’s 2018 law “that would allow the revocation of citizenship for individuals convicted of particular terrorist offense” which “would apply to entirely post-naturalization criminal actions.”); *United States v. Doe*, 323 F. Supp. 3d 368, 388 (E.D.N.Y. 2018) (noting that Great Britain has revoked the citizenship of “approximately eighty-four foreign fighters . . . between 2006 and 2016.”). In addition, Australia and New Zealand both have broad discretion to revoke citizenship for acts deemed contrary to national interest. Craig Forcece, *A Tale of Two Citizenships: Citizenship Revocation for “Traitors and Terrorists,”* 39 *QUEEN’S L.J.* 551, 562–63 (2014) (noting “American law is considerably more restrained.”).

25. See *infra* Section III.

26. See *infra* note 120.

27. See Jillian Blake, *Could Trump’s Denaturalization Task Force Take Away My U.S. Citizenship?*, NOLO, <https://www.nolo.com/legal-encyclopedia/could-trumps-denaturalization-task-force-take-away-my-u-s-citizenship.html> (last visited July 23, 2019) (“Immigrants who naturalized under a false identity or have serious criminal offenses that they concealed during the naturalization process should be the most concerned that they could be investigated.”); see also Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration’s War on Immigration?*, *N.Y. TIMES* (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html> (quoting USCIS Director L. Francis Cissna as saying “This is about people who lied about having been deported, and then faked that identity, and then came in under Identity No. 2 and became a citizen somehow.”); cf. Alex Nowrasteh, *Terrorists by Immigration Status & Nationality: A Risk Analysis, 1975–2017*, 866 *CATO INST. POLICY ANALYSIS* 1 (May 7, 2019), <https://www.cato.org/publications/policy-analysis/terrorists-immigration-status-nationality-risk-analysis-1975-2017> (statistical study of the nationality of those who commit terrorist acts).

citizenship of the country.”²⁸ To the extent that naturalization applicants are discouraged from committing fraud because it might later result in their denaturalization, that is an appropriate and beneficial outcome for the United States and the rule of law in general.

Finally, some have expressed concern that minor misstatements or omissions during the naturalization process could result in denaturalization.²⁹ For example, at oral argument in a criminal denaturalization case, *Maslenjak v. United States*, Chief Justice John Roberts asked whether a misrepresentation during a naturalization interview about a prior speeding violation could lead to denaturalization.³⁰ Concerns like Justice Roberts’ are unfounded in the civil context because those kind of immaterial misrepresentations cannot give rise to a denaturalization case (nor, following the Supreme Court’s decision in *Maslenjak*, will it support a criminal case, either). Rather, for the Department of Justice to bring suit, decades-old Supreme Court precedent requires a showing that the defendant either specifically intended to deceive the immigration authorities in order to obtain an immigration benefit, like naturalization, or they misrepresented or concealed a fact during the naturalization process and such fact was material to the grant of the application.³¹

Thus, as explained more fully below, the number of naturalized citizens who face civil denaturalization proceedings is exceedingly small, the standard of proof is higher than in an ordinary civil case, and the protections offered to defendants are substantial (though admittedly less than those that would exist in an ordinary criminal case, which carries additional significant consequences, including the possibility of imprisonment). In general, the only persons who need fear denaturalization are those who have deliberately falsified or concealed

28. WEIL, *supra* note 1, at 28 (quoting U.S. DEP’T OF JUSTICE, INSTRUCTIONS AS TO NATURALIZATION MATTERS: DEPARTMENT CIRCULAR LETTER NO. 107 (Sept. 20, 1909)); *see also* Regents of Univ. of Cal. v. DHS, 908 F.3d 476, 487–88 (9th Cir. 2018) (quoting U.S. Dep’t of Justice, Circular Letter No. 107); Amanda Frost, Online Essay, *Alienating Citizenship*, 114 NW. UNIV. L. REV. 241, 249 (2019) (same).

29. *See infra* Section IV.

30. Transcript of Oral Argument at 27–30, *Maslenjak v. United States*, 137 S. Ct. 1918 (2017), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/16-309_b97c.pdf.

31. *Kungys v. United States*, 485 U.S. 759, 767 (1988).

who they are or what they have done in a manner calculated to deceive a government official.

I. DENATURALIZATION IS NOT A NOVEL LEGAL OR POLICY DEVELOPMENT

A recurring theme in recent articles about denaturalization is that it is merely part of a policy shift of the current Administration in favor of increased immigration enforcement.³² In reality, denaturalization is decades-old, rooted in long-standing statutes and precedent, and is not something that is readily susceptible to bend to political winds.³³ It is true that denaturalization filings are on the rise.³⁴ However, much of this increase can be attributed to a surge of identity fraud cases identified by USCIS³⁵ that began a decade ago³⁶ during the closing months of the Bush Administration, continued throughout the Obama Administration, and which concern encounters between those individuals and the Immigration and Naturalization Service (“INS”) that began as early as 1990.³⁷ Indeed, as *The New York Times* reported, “[s]everal former Obama officials [said] that the spike in court cases by

32. See *supra* note 12.

33. For example, although administrative denaturalization was attempted in the 1990s, it was permanently enjoined, *Gorbach v. Reno*, 219 F.3d 1087, 1091 (9th Cir. 2000), and the relevant regulations have been rescinded, 76 Fed. Reg. 53769, 53804 (Aug. 29, 2011) (rescinding 8 C.F.R. § 340.1).

34. See Patricia Mazzei, *Congratulations, You Are Now a U.S. Citizen. Unless Someone Decides Later You’re Not*, N.Y. TIMES (July 23, 2018), <https://www.nytimes.com/2018/07/23/us/denaturalize-citizen-immigration.html>; (“Since President Trump took office, the number of denaturalization cases has been growing . . .”). See *infra* Section III for further discussion of the increased number of filings.

35. See *Justice Department Secures First Denaturalization As a Result of Operation Janus*, U.S. DEP’T OF JUSTICE (Jan. 9, 2018), <https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus> [hereinafter U.S. DEP’T OF JUSTICE, *Justice Department Secures First Denaturalization*] (noting that USCIS intends to refer approximately 1,600 cases for judicial proceedings).

36. See generally OIG Report, *supra* note 20 (noting that investigation began at U.S. Customs and Border Protection in 2008).

37. See *id.* at 4.

the Trump administration might look similar under a Democratic administration.”³⁸

As noted above, the government can institute denaturalization proceedings under two different statutes. A criminal action may be brought under 18 U.S.C. § 1425, which criminalizes knowing naturalization fraud. A civil action may be brought under 8 U.S.C. § 1451(a), which provides for denaturalization under two causes of action: (1) illegal procurement, or (2) procurement of naturalization “by concealment of a material fact or by willful misrepresentation.”³⁹ This language concerning the second civil cause of action—procurement “by concealment of a material fact or by willful misrepresentation”—dates to the Immigration and Nationality Act of 1952.⁴⁰ The illegal procurement cause of action was added in 1961.⁴¹ Although the illegal procurement cause of action was omitted in the 1952 Act, both it and the concealment cause of action, though with slightly different verbiage, were present in the Naturalization Act of 1906.⁴²

“Illegal procurement” means simply that the now-naturalized citizen was ineligible for citizenship at the time they took the oath of allegiance. There are numerous reasons that an individual might have been ineligible for naturalization, including that he or she was never lawfully admitted for permanent residence,⁴³ did not accrue the

38. Wessler, *supra* note 27; cf. Gerstein, *supra* note 17 (noting that President Trump, himself, “doesn’t appear to have directly endorsed his administration’s citizenship-stripping campaign.”).

39. Two other statutes provide for denaturalization of military members who naturalize under provisions of law exclusive to military members and are then discharged under other than honorable conditions within five years of naturalizing. See 8 U.S.C. §§ 1439(f), 1440(c) (2019). The authors have found no reported cases relying on these provisions that postdate the Supreme Court’s 1967 decision in *Afroyim v. Rusk*.

40. Immigration and Nationality Act of 1952, Pub. L. No. 414, § 340, 66 Stat. 163, 260–62 (1952).

41. Act of Sept. 26, 1961, Pub. L. No. 87-301, § 18(a), 75 Stat. 656 (1961) (codified at 8 U.S.C. § 1451(a)).

42. Naturalization Act of 1906, Pub. L. No. 338, § 15, 34 Stat. 596, 601 (1906).

43. Lawful admission, in this context, means lawful admission in accordance with substantive law. Persecutors, for example, are inadmissible, and therefore cannot be lawfully admitted for permanent residence. Similarly, procuring admission by fraud or willful misrepresentation, or adjusting status while under an order of removal, could all show lack of (substantively) lawful admission for permanent residence, and therefore would constitute illegal procurement of naturalization. See 8 U.S.C. §

necessary physical presence or continuous residence,⁴⁴ lacked the requisite good moral character,⁴⁵ or failed to adhere to any other precondition to naturalization.⁴⁶ “Procurement by concealment of a material fact or by willful misrepresentation” requires essentially two things: (1) a willful misrepresentation or concealment of some material fact that has a natural tendency to influence the adjudicator’s decision, and (2) a fair inference that the applicant was ineligible to naturalize at the time he or she was naturalized.⁴⁷

A civil denaturalization action under 8 U.S.C. § 1451(a) contains two important safeguards against wanton or reckless governmental action. First, a complaint may be filed only if it is accompanied by an “affidavit showing good cause.”⁴⁸ Thus, in addition to the usual demands placed on the attorney signing the complaint by Rule 11 of the Federal Rules of Civil Procedure, an affiant must also be willing to swear to the factual basis for the lawsuit.⁴⁹ Like a grand jury, the affidavit requirement prevents prosecutors from acting unilaterally and gives a federal judge a basis by which to ensure there is good cause for the institution of the proceeding.⁵⁰ Second, denaturalization under

1101(a)(20) (2019); *e.g.*, *Savoury v. U.S. Attorney Gen.*, 449 F.3d 1307, 1313 (11th Cir. 2006).

44. *See* 8 U.S.C. § 1427(a), (c) (2019) (describing requirements for naturalization).

45. Although Congress did not define what constitutes good moral character under the Immigration and Nationality Act, in 8 U.S.C. § 1101(f) it specified certain classes of conduct that demonstrate a lack of good moral character, including false testimony, conviction of an aggravated felony, and participating in genocide, torture, or extra-judicial killings. *See* 8 U.S.C. § 1101(f)(6), (f)(8), and (f)(9).

46. *Fedorenko v. United States*, 449 U.S. 490, 506 (1981).

47. *Kungys v. United States*, 485 U.S. 759, 783–801 (1988) (Brennan, J., concurring). Justice Brennan’s concurring opinion, which described the “fair inference” standard, has generally been viewed as controlling as the views of the Justice who concurred on the narrowest grounds. *See Marks v. United States*, 430 U.S. 188, 193 (1977).

48. 8 U.S.C. § 1451(a) (2019); *see also* *United States v. Zucca*, 351 U.S. 91, 99–100 (1956); *Lucchese v. United States*, 356 U.S. 256, 257 (1958) (“The affidavit must be filed with the complaint when the proceedings are instituted.”).

49. *See Zucca*, 351 U.S. at 100 (noting that the purpose of this provision is to ensure that an individual is not subjected “to legal proceedings to defend his citizenship without a preliminary showing of good cause.”).

50. *Id.* (noting that “[e]ven if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged”).

either civil cause of action demands proof by “clear, unequivocal, and convincing” evidence.⁵¹ Justice Black described this burden as “substantially identical with that required in criminal cases—proof beyond a reasonable doubt.”⁵²

Given these heightened filing and proof requirements, the significant resources that must be devoted to investigating and litigating a civil action, and the fact that civil denaturalization does not trigger prison time or automatic deportation,⁵³ it is unsurprising that relatively few cases have been brought. The denaturalization actions that have been filed have historically focused on human rights abusers.⁵⁴ Similarly, and as further discussed below, the current Administration has identified terrorists and other serious felons who concealed their past criminal conduct during the naturalization process as a denaturalization priority.⁵⁵

Apart from these ongoing efforts against terrorists, human rights abusers, and convicted criminals, the Department of Justice also institutes denaturalization proceedings to protect the integrity of the naturalization process itself.⁵⁶ Importantly, the Constitution gives

51. See *Fedorenko*, 449 U.S. at 505 (quoting *Schneiderman v. United States*, 320 U.S. 118, 125 (1943)).

52. *Klapprott v. United States*, 335 U.S. 601, 612 (1949).

53. See *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 286 (1966) (“The immediate hardship of deportation is often greater than that inflicted by denaturalization which does not, immediately at least, result in expulsion from our shores.”); see also *Fact Sheet on Denaturalization*, NAT’L IMMIGRATION FORUM (Oct. 2, 2018), <https://immigrationforum.org/article/fact-sheet-on-denaturalization/> [hereinafter NAT’L IMMIGRATION FORUM, *Fact Sheet on Denaturalization*] (“The individual may face deportation if he or she does not have lawful immigration status after they are denaturalized and/or serve jail time if their U.S. citizenship was revoked because of a criminal conviction.”).

54. WEIL, *supra* note 1, at 12 (“Nowadays, denaturalization is used primarily as a tool for targeting individuals who commit crimes against humanity, including former Nazis and others responsible for acts of genocide.”); see also *id.* at 178–79 (describing government’s efforts to denaturalize individuals who had not disclosed their Nazi pasts, and the judicial response to government’s efforts to denaturalize those guilty of human rights violations); Michelle Heyer, *Practical Questions & Answers About OSI for AUSAs*, 54 U.S. ATTYS’ BULL. 1, 22 (2006) (discussing use of civil denaturalization in Nazi cases).

55. Jeff Sessions, *Introduction*, 65 U.S. ATTYS’ BULL. 1, 1 (2017).

56. Circular Letter No. 107, *supra* note 28 (“This does not mean that such proceeding should not be instituted in any case where wilful and deliberate fraud

Congress authority to establish “an uniform Rule of Naturalization,” and thus define the terms on which a person may naturalize.⁵⁷ Although Congress has done so, individuals applying for naturalization do not always follow the law. For instance, USCIS recently began referring to the Department of Justice a large volume of cases involving identity fraud—specifically cases involving individuals ordered removed under one identity who then fraudulently naturalized under a different identity.⁵⁸

For many years, applicants for immigration benefits have been required to submit their fingerprints as part of certain applications, including naturalization.⁵⁹ The primary reasons for this are to allow the government to conduct criminal background checks, principally through the Federal Bureau of Investigation (“FBI”), and to gather other information pertinent to immigration benefit eligibility.⁶⁰ However, the FBI did not establish a digital fingerprint repository until 1999,⁶¹ and it was not until 2008 that United States Immigration and Customs Enforcement (“ICE”) required all fingerprints from immigration encounters be forwarded to the FBI.⁶² Thus, until recently, an applicant who had no criminal history in this country could submit an immigration application under one name and, if it was denied, submit another application under a different name (but with the same fingerprints) without much fear of being caught.⁶³

In 2008, USCIS began to take fingerprints digitally rather than on ink-on-paper cards (the latter are often referred to as “wet”

appears, as the perpetration of such fraud would indicate lack of the moral qualifications necessary for citizenship.”).

57. WEIL, *supra* note 1, at 179 (“The second modern ground for denaturalization is for fraud or misrepresentation committed during the naturalization process.”). With respect to Congress’s authority, *see* U.S. CONST. art. I, § 8, cl. 4; *see also* 8 U.S.C. § 1421(d) (2019).

58. *See United States Files Denaturalization Complaints in Florida, Connecticut and New Jersey Against Three Individuals Who Fraudulently Naturalized After Having Been Ordered Deported Under Different Identities*, U.S. DEP’T OF JUSTICE (Sept. 19, 2017), <https://www.justice.gov/opa/pr/united-states-files-denaturalization-complaints-florida-connecticut-and-new-jersey-against>.

59. OIG Report, *supra* note 20, at 2–3.

60. *Id.* at 2.

61. *Id.* at 5.

62. *Id.* at 4.

63. *See generally* OIG Report, *supra* note 20.

fingerprints).⁶⁴ Since then, the digital fingerprints have been stored in the Automated Biometric Identification System (“IDENT”), a system created by the former INS in 1994 to facilitate border crossings.⁶⁵ IDENT became a Department of Homeland Security-wide (“DHS”) initiative in 2007, and by 2008, ICE was directing that all fingerprints taken during future enforcement encounters be sent to and retained in both the IDENT and FBI databases.⁶⁶ Nevertheless, many older, pre-existing “wet” fingerprint records were not uploaded into IDENT.⁶⁷ For instance, DHS subsequently identified undigitized fingerprint records of 315,000 individuals who had been ordered removed in or after 1990, had criminal records, or were fugitives.⁶⁸

In 2012, DHS received \$5 million in funding to digitize these records; digitizing 167,000 of them before the funding was exhausted.⁶⁹ Of the 167,000 records that were digitized, at least 1,811 individuals (roughly 1%) had naturalized under one identity after being ordered removed under a different identity.⁷⁰ A sample of 216 files was reviewed by the DHS Office of Inspector General (“OIG”), and none of the naturalized citizens in the sample had admitted in their naturalization application to previously using another identity.⁷¹

The DHS OIG released its report in September 2016.⁷² Notably, the DHS Inspector General specifically recommended that USCIS “evaluat[e] the eligibility of each naturalized citizen whose fingerprint records reveal deportation orders under a different identity” and “if the

64. *Id.* at 4.

65. *Id.* at 3–4.

66. *Id.* at 4.

67. *See id.*

68. *Id.*

69. *Id.*

70. *Id.* at 1 & n.3 (identifying 858 individuals who naturalized despite a final order of removal and whose fingerprints were not digitally available at the time the naturalization application was adjudicated, plus another 953 individuals where it could not be determined whether the fingerprints were available at the time the naturalization application was adjudicated). This does not appear to account for 170 individuals whose fingerprints under a different identity were electronically available at the time of naturalization, which, if taken into account, would increase the percentage to about 1.2 percent. *See id.* at 5.

71. *Id.* at 6.

72. *See generally* OIG Report, *supra* note 20.

individual is determined to be ineligible, . . . recommend[] whether to seek denaturalization through criminal or civil proceedings.”⁷³

Using the results of USCIS’ investigation, the Department of Justice began filing civil denaturalization actions in September 2017.⁷⁴ USCIS indicated that it intends to refer approximately 1,600 targets for possible civil denaturalization.⁷⁵ With 53% (167,000 of 315,000) of the missing fingerprints digitized and an approximately 1% fraud rate for those files, it seems logical to assume a total of approximately 3,000 individuals will be identified as part of this project. These “wet” fingerprint records date from 1990 to 2010 (when all fingerprints obtained in an immigration encounter or benefit application began being stored in IDENT)—a span of twenty years.⁷⁶ With approximately 12.5 million naturalizations during that timeframe,⁷⁷ and assuming the sample size already reviewed as representative, we calculate the expected rate of identity fraud across all naturalizations as approximately 1 in 4,140: less than 0.035%. Put differently, out of the hundreds of thousands of people who naturalized each year during the relevant timeframe, only about 100 per year naturalized after having been ordered removed.⁷⁸

While the raw number of civil cases that could potentially be filed in court is significant in terms of the resources required for a few hundred or even a few thousand cases, the rate of identity fraud in naturalization appears to be exceedingly low. It is lower than the rate

73. *Id.* at 8.

74. See U.S. DEP’T OF JUSTICE, *Justice Department Secures First Denaturalization*, *supra* note 35.

75. *Id.*

76. OIG report, *supra* note 20, at 4.

77. *Naturalization in the United States, 1910-Present*, MIGRATION POLICY INSTITUTE, <https://www.migrationpolicy.org/programs/data-hub/charts/number-immigrants-who-became-us-citizens> (last visited July 27, 2019).

78. Title 8 U.S.C. § 1429 (2019), entitled “Prerequisite to naturalization; burden of proof” provides in relevant part: “[E]xcept as provided in sections 1439 and 1440 of this title no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act”

of credit card fraud⁷⁹ and comparable to or lower than the rates other types of fraud.⁸⁰

In summary, while the number of civil denaturalization actions has increased, nothing has changed about the long-established statutory remedy nor is it a novel policy decision. Instead, it is the natural outgrowth of an improved ability to detect fraud.

II. THE POSSIBILITY OF REVOKING UNLAWFULLY PROCURED NATURALIZATION DOES NOT MEAN NATURALIZATION IS SECOND CLASS CITIZENSHIP

“Today all democracies provide for the possibility of voiding citizenship recently granted if a naturalized person is found to have lied about a criminal record prior to accession to citizenship.”⁸¹ In the United States, this is true even if the naturalization happened decades ago⁸² and regardless of whether the lie relates to the person’s criminal record.⁸³ Citizenship may be revoked where the naturalized citizen was never eligible to naturalize in the first place,⁸⁴ yet naturalized contrary

79. See Richard J. Sullivan, *The Changing Nature of U.S. Card Payment Fraud: Industry & Public Policy Options*, 2010 ECON. REV. 101, 113, Table 3 (average loss rate of \$0.092 per \$100 transaction value in the United States), <https://www.kansascityfed.org/PUBLICAT/ECONREV/PDF/10q2Sullivan.pdf>.

80. See FED. TRADE COMM’N, CONSUMER SENTINEL NETWORK DATA BOOK FOR JANUARY - DECEMBER 2014 (2015), <https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2014/sentinel-cy2014-1.pdf> (noting a rate of fraud between 0.03% to 0.1% and other complaints varying state to state).

81. WEIL, *supra* note 1, at 56.

82. See *Costello v. United States*, 365 U.S. 265, 283–84 (1961) (explaining that there is no statute of limitations barring initiation of denaturalization proceedings when citizenship was procured by fraud); see also *United States v. Mandycz*, 447 F.3d 951, 964 (6th Cir. 2006) (rejecting the argument that the government is subject to the doctrine of laches in denaturalization proceedings); see, e.g., *United States v. Szehinskyj*, 277 F.3d 331, 339 (3d Cir. 2002) (affirming the denaturalization of concentration camp guard Theodor Szehinskyj more than four decades after he was naturalized).

83. For example, a lie concerning eligibility for an underlying visa or eligibility for adjustment of status could constitute “illegal procurement,” and a lie concerning eligibility for naturalization itself could form the basis for a charge of procurement by concealment or willful misrepresentation of a material fact.

84. Or, with respect to the cause of action for “procur[ing] . . . naturalization by concealment of a material fact or willful misrepresentation,” where the concealed or

to Congress's express limitation that "[a] person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this subchapter *and not otherwise*."⁸⁵ Similarly, "in theory, a denaturalized person has never been a citizen,"⁸⁶ at least not lawfully, and thus cannot transmit citizenship to their children.⁸⁷ It does not follow, however, that naturalized citizens constitute an inferior class of citizens to those who are citizens at birth, whether by birth within the United States or birth abroad to United States citizen parents.⁸⁸

misrepresented matter raises a fair inference of ineligibility. *See Kungys v. United States*, 485 U.S. 759, 783 (1988) (Brennan, J., concurring).

85. 8 U.S.C. § 1421(d) (2019) (emphasis added); *see also* *INS v. Pangilinan*, 486 U.S. 875, 884 (1988) (quoting 8 U.S.C. § 1421(d)); *Fedorenko v. United States*, 449 U.S. 490, 506 (1981). The "procurement" element of the cause of action for procurement by concealment of a material fact or willful misrepresentation does the same work. *See Kungys*, 485 U.S. at 783 (Brennan, J., concurring) (requiring a showing that there is a "fair inference" the individual was ineligible to naturalize).

86. WEIL, *supra* note 1, at 2 (citing *Luria v. United States*, 231 U.S. 9, 24 (1913)) (explaining denaturalization is "an action by the sovereign to nullify the status of a naturalized person that should never have been a citizen."). *See also* 8 U.S.C. § 1451(a), (e) (2019) (both providing that the order granting citizenship and the certificate of naturalization are retroactively revoked and canceled as of their original date). However, some courts have held that criminal conduct that took place while a denaturalized individual was a citizen cannot support a charge of deportability. *See Okpala v. Whitaker*, 908 F.3d 965, 969–70 (5th Cir. 2018) (citing *Costello v. Immigration & Naturalization Serv.*, 376 U.S. 120, 122–23 (1964)); *see also* *Adams v. U.S. Atty. Gen.*, 472 Fed. Appx. 898, 898 (11th Cir. 2012).

87. One who has derived citizenship through a naturalized relative loses their derivative citizenship by operation of law if the relative (such as a parent) is subsequently denaturalized for procuring naturalization by concealment of a material fact or willful misrepresentation. 8 U.S.C. § 1451(d) (2019). One who has derived citizenship through a naturalized relative who illegally procured naturalization has likely themselves illegally procured citizenship, but our review of the law suggests revocation requires a separate civil action and does not occur automatically by operation of law. *See id.*

88. *Contra, e.g.*, Andy J. Semotiuk, *Why Foreign-Born Citizens Are About to Become Second-Class Americans*, FORBES (Aug. 16, 2018), www.forbes.com/sites/andyjsemotiuk/2018/08/16/why-foreign-born-citizens-are-about-to-become-second-class-americans/#43e409855e32 (arguing that "denaturalization assumes that there can be degrees of citizenship. It creates two classes of citizenship, where the foreign-born second-class individuals are treated differently than U.S.-born citizens, since their citizenship can be revoked."); *see also* Ganz, *supra* note 9 ("Even the small possibility that naturalized citizens can lose

The Supreme Court has been clear that, apart from eligibility to become President, naturalized citizens and citizens at birth are equal.⁸⁹ However, the premise that naturalized citizenship and citizenship by birth are equal assumes that the citizenship was obtained lawfully.⁹⁰ Denaturalization concerns *eligibility* to naturalize: it is not a penalty or punishment for things that happen after naturalization.⁹¹ As Justice Kagan recently noted, the Supreme Court has “never read a statute to strip citizenship from someone who met the legal criteria for acquiring it.”⁹²

their[] [citizenship] makes them, in effect, second-class citizens, unable to freely participate in public life without looming state repression.”).

89. *Luria*, 231 U.S. at 22 (“Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency.”).

90. See John P. Roche, *Statutory Denaturalization: 1906-1951*, 13 U. PITT. L. REV. 276, 279 (1952) (“Technically speaking, denaturalization does not work loss of citizenship. In theory, the person denaturalized *has never been a citizen* in the same sense that a person whose marriage is annulled legally has not been married.”).

91. *Trop v. Dulles*, 356 U.S. 86, 98 (1958) (“Denaturalization is not imposed to penalize the alien for having falsified his application for citizenship”). Even Section 1451(c), which describes how membership in or affiliation with certain organizations shortly after naturalizing can provide *prima facie* evidence for denaturalization, raises only a rebuttable evidentiary presumption of ineligibility to naturalize. See 8 U.S.C. § 1451(c) (2019) (providing that joining an organization described in 8 U.S.C. § 1424 within five years of naturalizing raises a rebuttable presumption that the citizen did not *at the time of naturalization* support the Constitution and lacked the requisite disposition to the good order and happiness of the United States); S. REP. NO. 81-1515, at 730 (1950) (“The subcommittee wishes to emphasize that this recommendation is not intended to place a condition subsequent upon naturalization. Its effect will be to create a rule of evidence”). Military members who are discharged under other than honorable conditions within five years of expedited naturalization under 8 U.S.C. §§ 1439 or 1440 are subject to denaturalization on the basis of conduct post-dating naturalization. See 8 U.S.C. §§ 1439(f) & 1440(c) (2019). However, we have found only one reported case applying either of these provisions, and it predates the Supreme Court’s decision in *Afroyim v. Rusk*, 387 U.S. 253 (1967) concerning intent to relinquish citizenship. See *United States v. Sommerfeld*, 211 F. Supp. 493 (E.D. Pa. 1962).

92. *Maslenjak v. United States*, 137 S. Ct. 1918, 1930 (2017) (“[A]ll our denaturalization decisions share this crucial feature: We have never read a statute to strip citizenship from someone who met the legal criteria for acquiring it.”). *But see supra* notes 39 and 91 (discussing the dormant military-specific provisions at 8 U.S.C. §§ 1439 & 1440).

In addition, proving one's citizenship is a burden that any citizen may face, regardless of the basis on which the citizenship is claimed or how it was acquired. For instance, citizens at birth who are born outside of the United States have the burden to establish their citizenship via parentage.⁹³ Parents of children born outside of the United States may apply for a Consular Report of Birth Abroad for minor children.⁹⁴ Individuals over age 18 who were born outside the United States but were citizens at birth through parentage may apply for a Certificate of Citizenship.⁹⁵ Where the government determines that such a certificate was illegally or fraudulently obtained, the certificate can be *administratively* cancelled—without the necessity of a court judgment.⁹⁶ Even those who claim to have been born within the United States may be asked to prove it, with the burden of proof on the putative citizen.⁹⁷ Eligibility for naturalization at the time it was acquired is likewise subject to evidentiary challenge and, if the naturalized citizen was ineligible, subject to revocation.⁹⁸ Revoking naturalization requires far more process than an administrative cancellation of a certificate of birth abroad for a putative citizen at birth. For instance, denaturalization requires filing a lawsuit and obtaining a court judgment, and unlike proceedings to demonstrate eligibility for a passport, the government bears the burden of proof.⁹⁹

93. See *Matter of Leyva*, 16 I. & N. Dec. 118, 119 (BIA 1977).

94. *Birth of U.S. Citizens Abroad*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/international-travel/while-abroad/birth-abroad.html> (last visited July 29, 2019).

95. *Form N-600, Application for Certificate of Citizenship*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/n-600> (last visited July 29, 2019).

96. See 8 U.S.C. § 1453 (2019); 8 C.F.R. § 342.1 (2019) (regarding notice requirements for administrative cancellation of citizenship); 8 U.S.C. § 1504 (2019) (cancellation of passports and Consular Reports of Birth); 22 C.F.R. §§ 50.7(d), 51.62(c) (2019); 7 U.S. DEP'T OF STATE, FOREIGN AFFAIRS MANUAL, 1442(b) (Consular Reports of Birth Abroad); see also *Matter of Zhang*, 27 I. & N. Dec. 569, 573–75 (BIA 2019) (“[S]ince the respondent obtained a Certificate of Naturalization without completing the statutorily prescribed naturalization process, he never lawfully naturalized, and his certificate was properly cancelled”).

97. For example, individuals with genuine, official records of birth in both the United States and another country may be denied passports for failure to establish birth in the United States. See 8 U.S.C. § 1503 (2019); 22 C.F.R. § 51.40 (2019).

98. See 8 U.S.C. § 1451 (2019).

99. See *Gorbach v. Reno*, 219 F.3d 1087, 1093 (9th Cir. 2000).

In short, entitlement to and the evidentiary burdens of United States citizenship at birth within the United States, at birth outside of the United States, or acquired through naturalization are different but constitutionally permissible. Importantly, however, once a person is lawfully naturalized, these differences disappear and all citizens are equal (save for eligibility to be President).¹⁰⁰ Distinctly, the prospect of losing citizenship acquired unlawfully presents no legal disability to lawfully naturalized citizens. For the small minority of naturalized citizens whose claim to citizenship is “exercised without right, and by means of fraud and corruption[,]”¹⁰¹ they stand to lose only what is not, and never was, rightfully theirs.

III. THE POSSIBILITY THAT NATURALIZATION MAY BE REVOKED FOR SOME INDIVIDUALS OUGHT NOT SCARE ALL NATURALIZED CITIZENS AND HAS NOT DETERRED NEW APPLICANTS

Two recurring misconceptions are that (1) all naturalized United States citizens have reason to fear denaturalization, and (2) that denaturalization discourages would-be applicants from lawfully applying for naturalization.¹⁰² Neither the statistics nor the information

100. See *Knauer v. United States*, 328 U.S. 654, 658 (1946).

101. WEIL, *supra* note 1, at 4.

102. See, e.g., Stephanie deGooyer, *Why Trump’s Denaturalization Task Force Matters*, THE NATION (July 10, 2018), <https://www.thenation.com/article/trumps-denaturalization-task-force-matters/> (opining that “the threat of denaturalization now hangs over the heads of America’s immigrant population” and “[m]any others, afraid of being targeted or tripped up in a lie, may now never pursue naturalization at all, even if they are eligible.”); see also *Understanding Denaturalization & Its Impact on Your Clients*, IMMIGRANT LEGAL RESOURCE CENTER (May 30, 2019), <https://www.ilrc.org/webinars/understanding-denaturalization-and-its-impact-your-clients> (“While the absolute number of denaturalization cases per year remains low, there is a fear that these efforts will have a chilling effect on the number of legal permanent residents applying for U.S. citizenship.”); Jack Holmes, *Surely the Trump Administration Will Follow All the Rules When Stripping People of Citizenship*, ESQUIRE (July 5, 2018), <https://www.esquire.com/news-politics/a22061884/denaturalization-task-force-trump-citizenship/> (opining that “the creation of a denaturalization task force” “is simply the latest attempt on the part of Republicans—before and, with a turbo charge, under this president—to prevent the browning of America, or at least the American electorate.”); Jamelle Bouie, *White Fight: Donald Trump Is Leading the Republican Charge to Preserve a Shrinking Minority*, SLATE (July 5, 2018), <https://slate.com/news-and-politics/2018/07/donald-trump-is-leading-the-republican-charge-to-preserve-a-shrinking-white->

available on the types of conduct that result in civil denaturalization actions supports these assertions. Indeed, a proper understanding of civil denaturalization is important both for minimizing unwarranted fear and appropriately deterring those who would otherwise seek to naturalize unlawfully.

First, denaturalization efforts appear to have little to no correlation with the number of immigrants applying to become a United States citizen. According to the DHS, the department tasked with adjudicating naturalization applications, the numbers of both applicants and approvals have fluctuated over the years but have not significantly decreased in recent history.¹⁰³ Indeed, while the number of people naturalized in fiscal year 2017 was lower than the number in fiscal year 2016, it was still above the annual average.¹⁰⁴ Perhaps even more telling, the number of applicants—i.e., people who voluntarily applied to become naturalized United States citizens and paid the requisite \$725

majority.html; Ruth Ellen Wasem, *Opinion: Trump Administration Now Has Naturalized Citizens in Its Sights*, THE HILL (July 17, 2018), <https://thehill.com/opinion/immigration/396923-trump-administration-now-has-naturalized-citizens-in-its-sights> (discussing “[t]he historic heyday of denaturalization . . . during McCarthyism, when the Internal Security Act of 1950 added provisions that stripped citizenship based upon political and antigovernment beliefs.”).

103. See Table 20. *Petitions for Naturalization Filed, Persons Naturalized, and Petitions for Naturalization Denied: Fiscal Years 1907 to 2017*, U.S. DEP’T OF HOMELAND SEC. (Oct. 2, 2018), <https://www.dhs.gov/immigration-statistics/yearbook/2017/table20> [hereinafter U.S. DEP’T OF HOMELAND SEC., Table 20]; *Naturalization Fact Sheet*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet> (last updated May 19, 2017). Between 2000 and 2017, the number of individuals naturalized in a fiscal year ranged from a high of 1,046,539 in 2008 to a low of 462,435 in 2003 and averaged approximately 680,000 per year. In FY 2017, the United States naturalized 707,265 individuals. See Table 20, *supra*. The numbers for naturalization applications (also called “petitions for naturalization”) follows a similar trend. Between 2000 and 2017, the number of individuals applying for naturalization in a fiscal year ranged from a high of 1,382,993 in 2007 to a low 460,916 in 2000 and averaged approximately 750,000 per year. In FY 2017, 986,851 individuals applied for naturalization—the second highest annual number in the past twenty years. See *id.*

104. See *id.*

fee¹⁰⁵—*increased* in fiscal year 2017 over fiscal year 2016.¹⁰⁶ The numbers for fiscal year 2018 further belie the false narrative that there has been a chilling effect: “[t]he number of people who became U.S. citizens reached a five-year high in fiscal 2018.”¹⁰⁷ Indeed, the number of newly naturalized citizens was nearly 16% higher than in fiscal 2014 and the number of naturalization applications has “shot up” over the past two years.¹⁰⁸

The fact that filing denaturalization actions against some individuals does not discourage others from applying makes sense. Indeed, just comparing the number of naturalized citizens to the number of civil denaturalization filings shows that the filings are relatively rare. Based on publicly-available numbers, the United States has filed 305 civil denaturalization cases since 1990,¹⁰⁹ and during the Obama Administration, the Department of Justice filed an average of sixteen

105. See *Form N-400, Application for Naturalization*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/n-400> (last visited July 29, 2019).

106. See U.S. DEP’T OF HOMELAND SEC., Table 20, *supra* note 103.

107. Abigail Hauslohner, *Number of People Who Became U.S. Citizens Reached Five-Year High in Fiscal 2018*, WASH. POST (June 3, 2019), https://www.washingtonpost.com/immigration/number-of-people-who-became-us-citizens-reached-five-year-high-in-fiscal-2018/2019/06/03/87792204-8608-11e9-a491-25df61c78dc4_story.html?utm_term=.86a34f547a42.

108. *Id.*; see also U.S. CITIZENSHIP & IMMIGRATION SERVS., 2018 USCIS STATISTICAL ANNUAL REPORT: FY 2014-2018, https://www.uscis.gov/sites/default/files/USCIS/statistics/2018_USCIS_Statistical_Annual_Report_Final_-_OPQ_5.28.19_EXA.pdf (last visited July 30, 2019).

109. See *Trump Administration Launches Bid to Catch Citizenship Cheaters*, NBC NEWS (June 11, 2018), <https://www.nbcnews.com/politics/justice-department/trump-administration-launches-bid-catch-citizenship-cheaters-n882166>; see also Adiel Kaplan, *Miami Grandma Targeted As U.S. Takes Aim at Naturalized Immigrations With Prior Offenses*, MIAMI HERALD (July 9, 2018), <https://www.miamiherald.com/news/local/immigration/article214173489.html>.

civil denaturalization lawsuits per year.¹¹⁰ In 2017, the last year for which numbers are available, thirty civil cases were filed.¹¹¹

These numbers show the odds are heavily in one's favor that naturalization will last a lifetime. For instance, using, for the sake of argument, the generous assumption that the number of denaturalization actions filed annually under the Trump Administration might quintuple over the number of cases filed during the Obama Administration, the number would still result in an infinitesimally small likelihood that any individual naturalized citizen would be sued.¹¹² This quintupled annual number would equate to less than 0.000004% of the United States' more than 22 million naturalized citizens being named in a civil denaturalization action.¹¹³ Indeed, the number of annual civil

110. See Dara Lind, *Denaturalization, Explained: How Trump Can Strip Immigrants of Their Citizenship*, VOX (July 18, 2018), <https://www.vox.com/2018/7/18/17561538/denaturalization-citizenship-task-force-janus>; Anita Vogel, *Trump Administration Revoking Citizenship for Application Fraudsters*, FOX NEWS (Jan. 4, 2019), <https://www.foxnews.com/politics/trump-administration-revoking-citizenship-for-application-fraudsters>; see also Wessler, *supra* note 27 (noting that “from 2004 to 2016” a combined average of 46 civil and criminal denaturalization were filed annually).

111. Kaplan, *supra* note 109; NAT'L IMMIGRATION FORUM, *Fact Sheet on Denaturalization*, *supra* note 53. But see Mazzei, *supra* note 34 (indicating “about 25” cases were filed in 2017).

112. The generous nature of this assumption is born out by the statistics: indeed, “[s]ince President Donald Trump took office, about 70 denaturalization cases were filed . . . about twice the pace for such cases at the end of the Obama administration.” Gerstein, *supra* note 17.

113. Because denaturalization actions are sometimes filed many years after an individual has naturalized, when the fraud and often criminal conduct has been discovered, see, e.g., *Kungys v. United States*, 485 U.S. 759, 764 (1988) (action filed 28 years after defendant naturalized) and *United States v. Szehinskyj*, 277 F.3d 331, 333 (3d Cir. 2002) (41 years), the number of such actions is most appropriately compared to the total number of naturalized U.S. citizens. As of FY 2017, “22 million immigrants were naturalized U.S. citizens.” Zie Zong et al., *Frequently Requested Statistics on Immigrants & Immigration in the United States*, MIGRATION POLICY INSTITUTE (Mar. 14, 2019), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Naturalization>.

Assuming the annual number of denaturalization actions in FY 2018 quintupled to 80, as compared to the 16 averaged during the Obama Administration, only about 0.000004% of naturalized U.S. citizens would be named as defendants in federal civil lawsuits to revoke their citizenship. See also Blake, *supra* note 27 (“Considering that 7.4 million people became naturalized U.S. citizens in just the past ten years, and there

denaturalization cases would still account for less than 0.001% of the number of *new* naturalized citizens each year.¹¹⁴ A naturalized citizen has better lifetime odds of being struck by lightning¹¹⁵ than of being named as a defendant in a civil denaturalization action.

Further, the risk of getting caught and prosecuted for immigration fraud is very low.¹¹⁶ It is hard to imagine that 0.001% is the actual rate of naturalization fraud, yet that is a generous calculation of the rate at which naturalization fraud is prosecuted civilly each year.¹¹⁷ Thus, the statistics suggest that even individuals who intentionally defraud the United States to obtain citizenship are unlikely to have it revoked.¹¹⁸ If anything, the numbers suggest the possibility that too few denaturalization cases are being filed, not too many.

Additionally, a review of publicly-available information suggests that most denaturalization cases fall into one of four categories: (1) convicted terrorists and other national security concerns; (2) human

are currently more than 20 million naturalized citizens in the U.S., the chances of any one person being targeted by this initiative are low.”).

114. Again, even assuming the annual number of denaturalization actions were to quintuple in FY 2018, *see supra* note 113, it would amount to only 0.00011% of the 707,265 new citizens in FY 2017, individuals, *see* U.S. DEP’T OF HOMELAND SEC., Table 20 *supra* note 103.

115. *See Flash Facts About Lightning*, NAT’L GEOGRAPHIC (June 24, 2005), <https://news.nationalgeographic.com/news/2004/06/flash-facts-about-lightning/> (1 in 3,000 lifetime odds).

116. As the U.S. Court of Appeals for the Ninth Circuit noted in 2015: there is “an unfortunate reality that makes immigration cases so different from all other American adjudications: Fraud, forgery and fabrication are so common—and so difficult to prove—that they are routinely tolerated.” *Angov v. Lynch*, 788 F.3d 893, 901 (9th Cir. 2015). The Ninth Circuit went on to note the “reason for this deplorable state of affairs” including that “[g]aining a lawful foothold in America is an incalculable benefit” which “sets an immigrant on the path to a peaceful life in a free society, economic prosperity, citizenship and the opportunity to bring family members in due course” and “the risk of getting caught is low.” *Id.*

117. *See supra* Section I (calculating the rate of identity fraud alone as 0.035%).

118. *Cf.* Ailsa Chang, *White House Launches Effort to Take Citizenship from Those Who Lied to Get It*, NPR (July 4, 2018), <https://www.npr.org/2018/07/04/625980910/white-house-launches-effort-to-take-citizenship-from-those-who-lied-to-get-it> (“This idea that there might even be a couple of thousand people who lied on their applications is a very small number compared to the number of naturalized citizens we have in this country. We have millions of them. And a third of the people in this country who are foreign born are naturalized citizens.”).

rights violators and war criminals; (3) serious felons (including a large number who committed sexual offenses against minors); and (4) cases involving knowing and intentional identity fraud.¹¹⁹ The overwhelming majority of naturalized citizens do not fall into any of these categories, and those who have engaged in such conduct know they have done so.¹²⁰

Thus, based on both the low risk of getting caught for immigration fraud and the serious nature of the conduct that actually leads to denaturalization proceedings, the average naturalized citizen should not fear denaturalization. Indeed, in light of the narrow circumstances in which denaturalization is authorized, further narrowed in large part to the types of cases noted above, the politically-charged comparisons to “McCarthyism” seem to be hyperbole at best and fear mongering at worst.¹²¹ Finally, to the extent that current or future naturalization

119. A review of the press releases issued by the Department of Justice’s Civil Division indicate that since January 2017, the Department has filed actions to denaturalize at least three individuals convicted of national-security related offenses, five war criminals or human rights violators, eleven convicted sex offenders, three individuals with significant felony convictions (including against individuals convicted of leading a drug organization responsible for conspiring to distribute more than 40 kilograms of cocaine and 1,600 kilograms of marijuana). *See, e.g., Justice Department Seeks to Revoke Citizenship of Convicted Felon Who Led Drug Organization in Florida*, U.S. DEP’T OF JUSTICE (July 26, 2018), <https://www.justice.gov/opa/pr/justice-department-seeks-revoke-citizenship-convicted-felon-who-led-drug-organization-florida>; *Justice Department Seeks to Revoke Citizenship of Convicted Felons Who Conspired to Defraud U.S. Export-Import Bank of More Than \$24 Million*, U.S. DEP’T OF JUSTICE (May 8, 2018), <https://www.justice.gov/opa/pr/justice-department-seeks-revoke-citizenship-convicted-felons-who-conspired-defraud-us-export> (individual denaturalized for defrauding the U.S. Export-Import Bank of more than \$24 million); *Civil Division Press Room*, U.S. DEP’T OF JUSTICE, https://www.justice.gov/civil/civil-division-press-room?keys=denaturalize&items_per_page=25 (last visited July 31, 2019) (eight individuals who allegedly intentionally committed identity fraud).

120. *See* Blake, *supra* note 27; Wessler, *supra* note 27.

121. *See, e.g.,* Holmes, *supra* note 102; Ganz, *supra* note 9; Wasem, *supra* note 102; Nimra Azmi & Sirine Shebaya, *Why We’re Fighting Donald Trump’s Denaturalization Task Force*, REWIRE.NEWS (Aug. 24, 2018), <https://rewire.news/article/2018/08/24/why-were-fighting-donald-trumps-denaturalization-task-force/> (asserting that “[t]he last time the U.S. government pursued denaturalization at anything nearing this scale was during the Red Scare when suspicion against communism led to targeting those accused of communist ties for denaturalization.”); Chang, *supra* note 118.

applicants are discouraged from committing fraud because they are concerned that they might be denaturalized for it later, that is an appropriate and beneficial deterrent for the United States and the rule of law in general. No one has the right to fraudulently naturalize.

IV. NATURALIZATION CANNOT BE REVOKED BASED ON UNINTENTIONAL MINOR MISSTATEMENTS OR OMISSIONS

Reading newspaper articles and opinion pieces, one might conclude that a person could be denaturalized for minor misstatements or omissions during the naturalization process.¹²² For instance, one writer suggested that denaturalization is possible even where the person might merely be “tripped up in a lie.”¹²³ Others question whether applicants actually lied about their names during the naturalization process at all, suggesting instead that the name discrepancies might result from naming formulations unfamiliar to government employees or mere translation errors when “originally recording [an applicant’s] name” on immigration paperwork.¹²⁴ Others suggest that citizenship might be revoked “from someone who committed neither crime nor fraud,”¹²⁵ and perhaps based on decades old parking tickets.¹²⁶ Even the United States Supreme Court has expressed concern that an inadvertent or

122. Even some commentators who should be better informed are not, furthering this unfortunate situation. For example, writing for Forbes, one “U.S. and Canadian immigration lawyer” showed a clear lack of understanding about the high burden of proof in civil denaturalization proceedings, that such proceedings are judicial not administrative, and the fact that it is already the law that unintentional minor misstatements or omissions cannot be the basis for denaturalization. *See Semotiuk, supra* note 88 (arguing both that civil denaturalization should be abolished and that “[t]hose who have *materially* misrepresented themselves, should not remain unpunished.”).

123. deGooyer, *supra* note 102.

124. Robertson & Manta, *supra* note 9, at 405; *see also* Ingrid Rojas Contreras, *Donald Trump’s Denaturalization Task Force Is a New Way to Threaten the American Dream*, USA TODAY (July 25, 2018), <https://www.usatoday.com/story/opinion/2018/07/24/donald-trump-denaturalization-goals-threaten-american-dream-column/815592002/>.

125. Cassandra Burke Robertson & Irina D. Manta, *Trump Administration Seeks to Strip More People of Citizenship*, THE CONVERSATION (Dec. 10, 2018), <http://theconversation.com/trump-administration-seeks-to-strip-more-people-of-citizenship-104628>.

126. Frost, *supra* note 28, at 248.

minor misrepresentation might be interpreted as justifying denaturalization. As mentioned at the beginning of this essay, at oral argument in *Maslenjak v. United States*, Chief Justice Roberts asked whether lying about a prior speeding violation during a naturalization interview could result in denaturalization.¹²⁷ Other Justices expressed similar concerns, asking the government's attorney whether intentional omission of embarrassing or derogatory nicknames could result in denaturalization.¹²⁸

These concerns are unfounded in civil cases: an applicant *cannot* be denaturalized for misrepresentations unless the misrepresentation was either intentional, material, or both.¹²⁹ As previously mentioned, decades-old case law requires a showing that either (1) the applicant had the specific intent to deceive the immigration authorities in order to

127. Transcript of Oral Argument at 27–30, *Maslenjak v. United States*, 137 S. Ct. 1918 (2017), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/16-309_b97c.pdf.

128. For instance, Justice Sotomayor asked, “In which of those processes has there ever been the kind of immaterial statement that the Chief Justice gave, lying about a traffic ticket, where there’s been no injury to anybody and no claim of reckless driving, other than the speeding?” *Id.* at 52. Justice Breyer expressed similar concerns, commenting, “It’s not a serious constitutional question of whether an American citizen can be—have his citizenship taken away because 40 years before, he did not deliberately put on paper what his nickname was or what—or what his speeding record was 30 years before that, which was, in fact, totally immaterial. That’s not a constitutional question?” *Id.* at 53.

129. Notably, the Justices’ questions during oral argument in *Maslenjak* arose in the context of a *criminal* case in which the very question before the court was whether the jury had been properly instructed that a knowingly false statement made during naturalization interview, in violation of 18 U.S.C. § 1015(a), did not need to be material in order to support a conviction for procuring naturalization contrary to law, in violation of 18 U.S.C. § 1425. *See Maslenjak v. United States*, 137 S. Ct. 1918, 1930 (2017) (“the District Court told the jury that it could convict based on any false statement in the naturalization process (*i.e.*, any violation of §1015(a)), no matter how inconsequential to the ultimate decision. . . . But as we have shown, the jury needed to find more than an unlawful false statement.”). The Supreme Court expressly noted that it was not calling into question its prior holding in *Kungys*, that an individual could lack good moral character based on an immaterial but intentionally false statement. *Id.* at 1930–31 (“The jury could have convicted if that earlier dishonesty (*i.e.*, the thing she misrepresented when seeking citizenship) were itself a reason to deny naturalization—say, because it counted as ‘false testimony for the purpose of obtaining [immigration] benefits and thus demonstrated bad moral character.’”).

obtain naturalization, or (2) the fact misrepresented or concealed during the process was material to the grant of the application.¹³⁰ To understand whether the government must prove specific intent or materiality, one must first understand the two distinct causes of action provided for in the civil denaturalization statute.¹³¹

As to the first cause of action, a person must be denaturalized when the government establishes by clear, unequivocal, and convincing evidence that the individual's citizenship was "illegally procured."¹³² The Supreme Court has instructed that "illegal procurement" occurs when an applicant naturalizes despite failing to comply with all of the congressionally imposed prerequisites to naturalization.¹³³ In this way, the defendant acts in derogation of Congress's constitutionally enumerated role to establish the terms and conditions under which one may naturalize.¹³⁴

130. *See* *Kungys v. United States*, 485 U.S. 759, 781 (1988) (addressing specific intent requirement for false testimony); *id.* at 767 (noting that other misrepresentations or omissions can result in revocation of citizenship only where they are both willful and material).

131. For an example of why a proper understanding of denaturalization must begin with an understanding of the legal standards, *see* *Wessler*, *supra* note 27 (stating that "the standards for denaturalization are more lax; prosecutors have no burden to prove intent[,] but failing to acknowledge that the quoted basis for denaturalization in the example case was taken from one portion of the government's brief that addressed only one of multiple bases for denaturalization, lack of paternity, and which might not be present in other cases).

132. *See* 8 U.S.C. § 1451(a) (2019).

133. *Fedorenko v. United States*, 449 U.S. 490, 506 (1981).

134. *Id.* In *Fedorenko*, the Supreme Court reiterated its long-standing position that:

[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. . . . This judicial insistence on strict compliance with the statutory conditions precedent to naturalization is simply an acknowledgment of the fact that Congress alone has the constitutional authority to prescribe rules for naturalization, and the courts' task is to assure compliance with the particular prerequisites to the acquisition of United States citizenship by naturalization legislated to safeguard the integrity of this "priceless treasure."

Id. at 506–07 (citing 8 U.S.C. § 1451(a); *Afroyim*, 387 U.S. at 267, n.23; *Johnson v. Eisentrager*, 339 U.S. 763, 791 (1950) (Black, J., dissenting); *Maney v. United States*,

One eligibility requirement, for instance, is that the applicant establish he or she was (and still is) a “person of good moral character” for the entirety of a specified statutory period.¹³⁵ Congress has provided examples of when an individual lacks “good moral character,”¹³⁶ including most relevant to this discussion, where an individual gives false testimony to obtain an immigration benefit.¹³⁷ Such testimony is limited in scope: it must have been an oral statement, made both under oath and “with the subjective intent of obtaining immigration or naturalization benefits.”¹³⁸ In contrast, false testimony “made for other reasons, such as embarrassment, fear, or a desire for privacy, [are] *not* deemed sufficiently culpable to brand the applicant as someone who lacks good moral character.”¹³⁹ Notably, however, and as the Supreme Court made clear more than thirty years ago, false testimony does not need to be material to find that the person lacked good moral character.¹⁴⁰ Rather, the false testimony provision “denominates a person to be of bad moral character on account of having given false testimony if he has told even the most immaterial of lies *with the subjective intent of obtaining immigration or naturalization benefits.*”¹⁴¹ In light of its “built-in limitations” and the

278 U.S. 17 (1928); *United States v. Ness*, 245 U.S. 319 (1917); and *United States v. Ginsberg*, 243 U.S. 472 (1917)).

135. *See* 8 U.S.C. § 1427(a)(3) (2019). The length of the statutory period depends on the applicant’s asserted basis for naturalization eligibility. For example, where the applicant is applying based on having been a lawful permanent resident for five years, the statutory period begins five years before the date on which the applicant filed his naturalization application and continues until the time he takes the oath of allegiance and becomes a U.S. citizen. *See id.*; 8 C.F.R. § 316.10(a)(1) (2019). Where the applicant applies based on marriage to a U.S. citizen, however, the statutory period begins three years before the date on which the applicant filed his naturalization application and continues until the time he takes the oath of allegiance and becomes a U.S. citizen. *See* 8 U.S.C. §§ 1427(a)(3), 1430 (2019).; 8 C.F.R. § 316.10(a)(1) (2019).

136. *See* 8 U.S.C. § 1101(f) (2019).

137. 8 U.S.C. § 1101(f)(6) (2019).

138. *Kungys v. United States*, 485 U.S. 759, 780 (1988).

139. Supplemental Brief for United States at 3, *Kungys v. United States*, 485 U.S. 759, 780 (1988).

140. *Kungys*, 485 U.S. at 780. Although materiality is not required to establish false testimony, the government can most easily meet its burden to show the requisite specific intent where the testimony is material. *See id.* at 780–81.

141. *Id.* at 780 (emphasis added); *see also* 8 C.F.R. § 316.10(b)(2)(vi) (2019).

“evident purpose” of the false testimony provision, the Supreme Court found “no reason for straining to avoid its natural meaning”: that even immaterial lies intended to manipulate immigration authorities into approving one’s naturalization application render the applicant ineligible for naturalization.¹⁴²

A second civil cause of action provides that a person must be denaturalized when such individual procured his or her citizenship “by concealment of a material fact or by willful misrepresentation.”¹⁴³ As the Supreme Court noted in 1988, this cause of action “plainly contains four independent requirements: the naturalized citizen must have misrepresented or concealed some fact, the misrepresentation or concealment must have been willful, the fact must have been material, and the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment.”¹⁴⁴ Indeed, that the government needs to prove both “willfulness” and “materiality” to succeed on this cause of action has been clear since at least 1961.¹⁴⁵

Accordingly, long-standing Supreme Court case law has limited civil denaturalization proceedings to contexts where an individual either (1) was ineligible for naturalization, including because the individual intentionally gave false testimony during the naturalization interview, or (2) where the individual willfully made material misrepresentations or omissions during the naturalization process.¹⁴⁶

142. See *Kungys*, 485 U.S. at 781. This ineligibility is not permanent, however, as the false testimony provision specifically is limited to the statutory period. See 8 U.S.C. § 1101(f) (2019) (noting that the limitations apply “during the period for which good moral character is required to be established”). But see 8 C.F.R. § 316.10(a)(2) (noting that immigration authorities are “not limited to reviewing the applicant’s conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant’s conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant’s present moral character.”).

143. 8 U.S.C. § 1451(a) (2019); *Kungys*, 485 U.S. at 767.

144. *Kungys*, 485 U.S. at 767.

145. See *Fedorenko*, 449 U.S. at 508 n.28 (“Although the denaturalization statute speaks in terms of ‘willful misrepresentation’ or ‘concealment of a material fact,’ this Court has indicated that the concealment, no less than the misrepresentation, must be willful and that the misrepresentation must also relate to a material fact.”).

146. *Kungys*, 485 U.S. at 781.

Moreover, most of the concerns voiced with the regard to the prospect of denaturalization based on a minor and unintentional misrepresentation arise in connection with the creation of USCIS' denaturalization "task force." This "task force" was created to address identity fraud that went undetected based on the failure to digitize "wet" fingerprint cards for comparison against later applications, as described above.¹⁴⁷ The preliminary review of potential cases is being handled by USCIS, which stated it is only referring to the Department of Justice cases involving "deliberate acts of fraud relating to the use of false identities."¹⁴⁸ Notably, the referrals are not the end of the story: the Department of Justice, which litigates the cases, has to agree that the facts and law in a given case warrant filing a denaturalization lawsuit, and the United States Attorney must institute each proceeding individually.¹⁴⁹

Ultimately, the federal judiciary, not an executive branch agency, has the final say in any denaturalization suit, and it has long-established precedent to guide it in determining whether a person should be denaturalized.¹⁵⁰ That precedent, discussed above, precludes

147. See, e.g., deGooyer, *supra* note 102; Holmes, *supra* note 102; Bouie, *supra* note 102.

148. See, e.g., Tal Kopan, *Trump Admin Creates New Office to Investigate Citizenship Fraud*, CNN (June 13, 2018), <https://www.cnn.com/2018/06/13/politics/citizenship-fraud-office/>; see Semotiuk, *supra* note 88 ("According to [USCIS Director] Cissna, the U.S. government is not interested in minor discrepancies in applications, but wants to target people who deliberately changed their identities to dupe officials into granting immigration benefits.").

149. See 8 U.S.C. § 1451(a) (2019) (providing that "[i]t shall be the duty of the United States attorneys for the respective districts . . . to institute proceedings . . . for the purpose of revoking and setting aside the order admitting such person to citizenship . . ."); *Justice Manual* § 4-7.200, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/jm/jm-4-7000-immigration-litigation> (last visited Jan. 9, 2019) ("No suit shall be instituted by the USAO to revoke naturalization under 8 U.S.C. § 1451 without prior consultation with the District Court Section in any case for which OIL is responsible and USCIS[,], and with the Criminal Division's Human Rights and Special Prosecutions Section in any case involving a Nazi persecutor or human rights abuser (see JM 4-1.217)"); Wessler, *supra* note 27 (noting that the Department of Homeland Security "refer[s]" cases "to the Justice Department to consider for prosecution.").

150. Indeed, unlike in other civil cases, default judgment is generally not available in a civil denaturalization case. See *Klapprott v. United States*, 335 U.S. 601, 612 (1949) (expressing disfavor for default judgment in denaturalization

denaturalization based on unintentional and immaterial misrepresentations. Rather, the government must show either that the defendant intentionally lied during her naturalization interview to obtain citizenship or that she willfully made a material misrepresentation or omission.¹⁵¹ Individuals who did neither should not be afraid of revocation of their naturalized United States citizenship.

CONCLUSION

United States citizenship, whether acquired by birth or naturalization, is truly a “priceless treasure.”¹⁵² It is worth both seeking and defending. As President Teddy Roosevelt noted in a State of the Union Address more than 100 years ago, however, protecting the meaning and value of United States citizenship requires that the government address situations where naturalization applicants acted fraudulently to obtain naturalization, including instances where they concealed their ineligibility.

Too often, and certainly of late, myths and misunderstandings about denaturalization—about what it means, who is reasonably facing denaturalization actions, and the circumstances under which those actions can be brought—are promulgated and perpetuated by

proceedings). Thus, the government is not entitled to judgment of denaturalization unless it “offers proof of its charges sufficient to satisfy the burden imposed on it, even in cases where the defendant has made default in appearance.” *Id.* at 612–13. The fact that denaturalization can solely be accomplished by judicial order makes the United States somewhat unique. *See, e.g.,* Graeme Wood, *Don’t Strip ISIS Fighters of Citizenship*, ATLANTIC (Feb. 25, 2019), <https://www.theatlantic.com/ideas/archive/2019/02/isis-fighters-begum-and-muthana-should-remain-citizens/583450/> (discussing the United Kingdom’s ability to denaturalize an individual). In the United Kingdom, for example, the government has had the power since 2002 to “deprive people of citizenship through executive power alone.” *Id.*; *see also* Patrick Weil & Nicholas Handler, *Revocation of Citizenship & Rule of Law: How Judicial Review Defeated Britain’s First Denaturalization Regime*, 36 L. & HIST. REV. 296, 296 (2018) (“The Home Office has retained the authority to revoke citizenship continuously from 1914 until the present.”).

151. *See* Gerstein, *supra* note 17 (“There’s only two ways to lose your citizenship: one is when a person voluntarily gives it up and two is when there’s some fraud or illegality in its procurement . . . If you’re a native-born citizen, obviously you didn’t commit fraud to get your citizenship, so only a naturalized citizen can lose their citizenship involuntarily.”).

152. *Johnson v. Eisenstrager*, 339 U.S. 763, 791 (1950) (Black, J., dissenting).

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commentators, academics, and journalists. This misinformation unreasonably alarms naturalized citizens, the overwhelming majority of whom lawfully naturalized. Only a vanishingly small proportion of naturalized citizens could ever be subject to denaturalization proceedings and those who have misrepresented their identity or conduct in order to naturalize likely already know who they are.

Greater public awareness of the true nature of denaturalization is needed. For instance, greater attention should be paid to denaturalization's role in protecting the integrity of naturalization for the hundreds of thousands of law abiding new Americans each year, the limitations and safeguards attendant to its use, and denaturalization's importance in combating terrorism, human rights abuses, serious crimes, and fraud. As described in this paper, incomplete, politicized, and alarmist information creates unnecessary fear and antipathy toward what remains an important, if infrequently-employed enforcement mechanism. Civil denaturalization has a long and important history in the United States and, under the contours defined by Congress and further clarified by the Supreme Court, denaturalization plays an important role in both protecting the United States and maintaining the integrity of United States citizenship.