No. 16-309

IN THE
Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the Sixth Circuit erred by holding that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement.

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INTRODUCTION

This Court has long recognized that American citizenship is a "precious right," and that "[i]t would be difficult to exaggerate its value and importance." *Schneiderman v. United States*, 320 U.S. 118, 122 (1943). While many Americans are blessed with that right by virtue of their birth, many others have obtained it by virtue of naturalization. Throughout our history, naturalized Americans have enriched all areas of our national life, including business, government, law, science, sports, and the arts. A naturalized citizen is as much a citizen as any other: "[c]itizenship obtained through naturalization is not a second-class citizenship." *Knauer v. United States*, 328 U.S. 654, 658 (1946).

Although the Constitution expressly authorizes Congress "to establish a uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4, it contains no corresponding general authority to strip Americans—either natural-born or naturalized—of their citizenship. That is no oversight: "In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship." *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967). Thus, as a general matter, the only way American citizenship can be lost is "by the voluntary renunciation or abandonment by the citizen himself." *Id.* at 266. There is but one exception to that rule: "naturalization unlawfully procured can be set aside." *Id.* at 267 n.23 (citing cases).

And even that exception has been narrowly circumscribed. Because denaturalization seeks to deprive an American citizen "of the priceless benefits

that derive from that status," *Schneiderman*, 320 U.S. at 122, "naturalization decrees are not lightly to be set aside," *Costello v. United States*, 365 U.S. 265, 269 (1961) (internal quotation omitted). This Court "presume[s] that Congress was motivated" by "a desire to secure the blessings of liberty ... to all those upon whom the right of American citizenship has been conferred by statute, as well as to the native-born." *Schneiderman*, 320 U.S. at 120. Thus, in a denaturalization proceeding, "the facts and the law should be construed as far as it is reasonably possible in favor of the citizen." *Id.* at 122.

That did not happen here. The Sixth Circuit held below that a naturalized American can be stripped of her citizenship in a criminal proceeding based on an *immaterial* false statement. But nothing in the relevant statute authorizes, much less compels, that result. To the contrary, the statute makes it a crime to "knowingly *procure*[]" naturalization "contrary to law." 18 U.S.C. § 1425(a) (emphasis added). The Sixth Circuit never explained how someone could "procure" naturalization based on an immaterial false statement. As a general matter, after all, a false statement is material only "if it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it is addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988) (internal quotation omitted). If a statement has no tendency or capability to influence a naturalization decision, by definition it cannot "procure" that decision. That simple textual point is the beginning and the end of this case.

The Sixth Circuit concluded otherwise by observing that "the term 'material' is found nowhere

in § 1425(a)." Pet. App. 8a. But that observation, while true, misses the point. The statute *does* use the words "procure ... contrary to law," and those words, naturally read, require a causal link—"procurement"—between the underlying violation of law and the naturalization decision. The district court here dispensed with that causal link by instructing the jury that it could convict petitioner by finding that she (1) "obtained United States citizenship," and (2) "acted in violation of at least one law governing naturalization." Pet. App. 85a. In other words, the jury was not required to find that the underlying violation of law *procured* the naturalization. By upholding petitioner's conviction under these instructions, the Sixth Circuit essentially read the unlawful procurement element out of the unlawful procurement statute.

Although the Sixth Circuit's erroneous interpretation of Section 1425(a) provides reason enough to reverse the judgment, the court committed a second—quite similar—error in interpreting 18 U.S.C. § 1015(a), one of the predicate offenses alleged here. According to the Sixth Circuit, that crime also must be interpreted to encompass immaterial false statements because it does not include the word "material." But that simplistic interpretation fails to take proper account of "the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct." *United States v. Wells*, 519 U.S. 482, 498 (1997). A proper textualist approach requires analysis and understanding of the background legal norms that inform the meaning of statutory text. That error too warrants reversal of the judgment below.

As a result of her conviction in this case, petitioner—a naturalized American originally from Bosnia—was stripped of her citizenship and deported from this country. But this case is not just about her citizenship rights, but about the citizenship rights of all naturalized Americans. Precisely because those rights are so precious, there is no basis to conclude that Congress did (or constitutionally could) provide for them to be lost as the result of an immaterial false statement. Accordingly, this Court should reverse the judgment.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 821 F.3d 675, and is reprinted in the Petition Appendix ("Pet. App.") at 1-39a. The district court's colloquy with counsel on the jury instructions is unreported, and relevant excerpts are set forth at Pet. App. 75-82a. The district court's jury instructions are unreported, and relevant excerpts are set forth at Pet. App. 83-89a. The district court's unreported denaturalization order is set forth at Pet. App. 95-96a.

JURISDICTION

The Sixth Circuit entered judgment on April 7, 2016, Pet. App. 1a, and denied a timely petition for rehearing *en banc* on May 27, 2016, Pet. App. 40a. On August 3, 2016, Justice Kagan extended the time within which to file a petition for a writ of certiorari until and including September 26, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

18 U.S.C. § 1425 provides in relevant part:

> Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person … Shall be fined under this title or imprisoned not more than [10 to 25 years], … or both.

18 U.S.C. § 1015 provides in relevant part:

> Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens … Shall be fined under this title or imprisoned not more than five years, or both.

8 U.S.C. § 1451(a) provides in relevant part:

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

8 U.S.C. § 1451(e) provides in relevant part:

> When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Divna Maslenjak, an ethnic Serb, was born and raised in a predominantly Serb village in modern-day Bosnia. Pet. App. 3a. After the collapse of the former Yugoslavia in the early 1990s, clashes broke out between Bosnia's majority Muslim population and its minority Serbs, and members of each group reported persecution by the other. *Id.*

In April 1998, Mrs. Maslenjak, along with her husband and their two children, met in Belgrade, Yugoslavia (now Serbia), with an American immigration official designated to assist refugees from Bosnia's ethnic strife. *Id.* As that official testified below, the refugees she interviewed in that position "were pretty much always ethnic Serbs that had been living in Bosnia and they were ... basically forced out of Bosnia, from ... their place they lived because of ethnic cleansing." Pet. App. 51a.

And that was true for Mrs. Maslenjak: as the immigration official testified, the basis for Mrs. Maslenjak's claim of refugee status for her family was that "because they were ethnic Serbs, they had

been forced to flee their home—the place they lived in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible." Pet. App. 56a; *see also* Pet. App. 58a (Mrs. Maslenjak's refugee application based on "fear that [her family] would be mistreated on account of their ethnicity if they returned back to their home"); Pet. App. 64a (Trial Exhibit 26) (stating that Mrs. Maslenjak and her family "are registered refugees in [Yugoslavia]," who "see no prospects for local integration on account of their refugee status," and "fear maltreatment on account of their ethnicity if they return to their home village"). In addition, the immigration official testified that Mrs. Maslenjak stated that, after a temporary stay in Yugoslavia, she and her children "had gone back to Bosnia, but a different part that was Serb held; but the husband did not return, because he was afraid that he would be forced to serve in the [Bosnian Serb] military if he went back to that part of Bosnia." Pet. App. 56-57a. The latter statement was untrue: Mrs. Maslenjak and her children in fact had lived with Mr. Maslenjak in Bosnia during that period, and he had served in the Bosnian Serb military.

Mrs. Maslenjak and her family were granted refugee status in 1999 and immigrated to the United States in 2000. Pet. App. 4a. They settled near Akron, Ohio, where two of Mrs. Maslenjak's sisters, who were also refugees, were living.

In December 2006, Mrs. Maslenjak applied for naturalization. Pet. App. 65-74a. As part of the application process, she was asked numerous questions, including whether she had "ever given false or misleading information to any U.S.

government official while applying for any immigration benefit." Pet. App. 72a (Question 23). A separate question asked whether she had ever "lied to any U.S. government official to gain entry or admission into the United States." *Id.* (Question 24). Mrs. Maslenjak answered both questions in the negative. *See id.* She obtained United States citizenship on August 3, 2007. Pet. App. 5a.

Shortly before Mrs. Maslenjak applied for citizenship, her husband was arrested on charges of making a false statement on government documentation. Pet. App. 4-5a. Specifically, the Government charged him with failing to report on his immigration application that he had served in the Bosnian Serb military during the Bosnian civil war. *Id.* He was convicted in 2007 and, because his conviction subjected him to removal, taken into custody by U.S. Immigration and Customs Enforcement. Pet. App. 5a.

In an effort to avoid her husband's removal, Mrs. Maslenjak testified at her husband's asylum hearing in April 2009. *Id.* In that testimony, Mrs. Maslenjak admitted that her husband had served in the Bosnian Serb military during the Bosnian civil war, that the family had lived together in Bosnia (although not in their home village) from 1992 to 1997, and that she had misrepresented these facts during her 1998 interview for refugee status. Pet. App. 5-6a.

B. Proceedings Below

In March 2013, a grand jury indicted Mrs. Maslenjak for violating 18 U.S.C. § 1425(a), which makes it a crime to "knowingly procure[]" naturalization "contrary to law." *See* Pet. App. 41-

42a. As relevant here, the indictment charged Mrs. Maslenjak with making "material false statements" in response to Questions 23 and 24 of her 2006 naturalization application, on the theory that she "then well knew that she had lied to government officials when applying for her refugee status" in 1998. Pet. App. 42a.

A major issue at trial was the impact, if any, of Mrs. Maslenjak's 1998 statements about her husband's military service on her application for refugee status. The Government tried to show that Mrs. Maslenjak, who acted as the Primary Applicant ("PA") for her family, had been granted refugee status based on those statements. *See, e.g.*, Pet. App. 44-45a. Mrs. Maslenjak, in contrast, tried to show that she had been granted refugee status based on fear of ethnic persecution by Muslims in Bosnia. *See, e.g.*, Pet. App. 64a.

Although the indictment charged Mrs. Maslenjak with making "material false statements," Pet. App. 41a, and the Government "adduced proof at trial relevant to the materiality element," Pet. App. 26a, the Government took the position at trial that proof of a material false statement was not necessary for a conviction under either § 1425(a) or 18 U.S.C. § 1015(a), which proscribes "mak[ing] any false statement under oath" in a naturalization proceeding and served as a predicate offense for the § 1425(a) charge in this case, Pet. App. 81-82a.[1] Over Mrs.

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[1] In addition to charging Maslenjak with a predicate violation of 18 U.S.C. § 1015(a), the Government charged her with a predicate violation of 8 U.S.C. § 1427(a)(3), which makes "good moral character" a requirement for naturalization. *See* Pet.

Maslenjak's objection, *see* Pet. App. 75-82a, the district court (Pearson, J.) sided with the Government, and instructed the jury:

> Count 1 of the indictment charges the defendant with violating Section 1425(a) of Title 18 of the United States Code.
>
> * * *
>
> In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt.
>
> * * *
>
> First, that defendant procured naturalization;
>
> Second, defendant procured her naturalization contrary to law; and
>
> Third, defendant acted knowingly.
>
> Element Number 1: Procured Naturalization. The government must prove beyond a reasonable doubt that defendant procured naturalization. To establish this element, the government must prove that defendant obtained United States citizenship.
>
> * * *

App. 9a. A person cannot satisfy that requirement if she "has given false testimony for the purpose of obtaining any benefits under this chapter," 8 U.S.C. § 1101(f)(6), regardless of whether that "testimony" is material, *see Kungys*, 485 U.S. at 779-82.

> Element Number 2: Contrary to Law. In order to prove that defendant acted "contrary to law," the government must prove that defendant acted in violation of at least one law governing naturalization.
>
> * * *
>
> Element Number 3: Knowingly. To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

Pet. App. 84-86a.

With respect to Element Number 2 ("contrary to law"), the court explained that a predicate offense was 18 U.S.C. § 1015(a), which "prohibits an applicant from knowingly making any false statement under oath, relating to naturalization." Pet. App. 85a. And the court specifically instructed the jury that, in order to convict, it did not have to find that any such false statement was material:

> A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case. Even if you find that a false statement *did not influence* the decision to approve the defendant's naturalization, the government need only prove that one of the defendant's statements was false.

Pet. App. 86a (emphasis added).

During deliberations, the jury sent the court the following note:

> At start of trial jury was told that Divna applied for refugee status due to a fear of persecution due to her husband not serving in the military during the war.
>
> On Exhibit #26 it states that Divna was applying for refugee status due to fear of persecution due to her ethnicity.
>
> What was her refugee status granted on?
>
> Fear of not serving?
>
> Or fear of ethnic backlash[?]

Pet. App. 90a. The court responded by telling the jury:

> You must make your decision based only on the evidence you saw and heard here in court. ... You may also rely on your collective memories. ... You have now what you need to decide the case.

Pet. App. 89a.

The jury returned a guilty verdict both on Count 1 (violation of § 1425(a), which results in automatic loss of citizenship), Pet. App. 91-92a, and Count 2 (violation of 18 U.S.C. § 1423, which does not result in loss of citizenship), Pet. App. 93-94a.[2] The jury's

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[2] Count 2 charged Mrs. Maslenjak with a violation of 18 U.S.C. § 1423, which provides that "[w]hoever knowingly uses for any purpose any ... certificate of naturalization ... unlawfully issued or made ... 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." Pet. App. 42a. Because that Count applies only insofar as a certificate of naturalization was "unlawfully issued," it is derivative of Count 1, which involves the validity of the underlying certificate. Indeed, with the

verdict on Count 1 was a general one, and did not specify which of the two charged predicate offenses (18 U.S.C. § 1015(a) and 8 U.S.C. § 1427(a)(3), *see supra* n.1) Mrs. Maslenjak had committed. *See* Pet. App. 91-92a. Shortly thereafter, the district court entered an order revoking Mrs. Maslenjak's citizenship under 8 U.S.C. § 1451(e) as a mandatory and automatic consequence of her conviction under Section 1425(a). Pet. App. 95-96a; *see generally United States v. Latchin*, 554 F.3d 709, 715-16 (7th Cir. 2009); *United States v. Inocencio*, 328 F.3d 1207, 1210 (9th Cir. 2003); *United States v. Moses*, 94 F.3d 182, 187-88 (5th Cir. 1996); *United States v. Maduno*, 40 F.3d 1212, 1217-18 (11th Cir. 1994); *cf. Fedorenko v. United States*, 449 U.S. 490, 517 (1981) (in civil context, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts.").

Mrs. Maslenjak appealed her conviction and the revocation of her citizenship, but the Sixth Circuit affirmed. Pet. App. 1-39a. As relevant here, the court held, "[b]ased on the plain language of the statute as well as the overall statutory scheme for denaturalization," that "proof of a material false statement is not required to sustain a conviction

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parties' agreement, the district court instructed the jury that it could convict Mrs. Maslenjak on Count 2 *only* if it found her guilty on Count 1. *See* Pet. App. 93a ("Complete this page only if your verdict on Verdict Form - Count 1 is guilty."). Thus, if this Court were to reverse the judgment as to Count 1, it follows that Count 2 would necessarily fail as well.

under 18 U.S.C. § 1425(a)," Pet. App. 7a, or a predicate offense at issue here, 18 U.S.C. § 1015(a), Pet. App. 18-19a, 21a, 24a.

With respect to the statutory text, the court noted that "the term 'material' is found nowhere in § 1425(a)." Pet. App. 8a. "Without statutory support for an element of materiality," the court declared, "we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a)." *Id.* Similarly, "[a] material false statement is not an element of the crime under § 1015(a)." Pet. App. 21a; *see also* Pet. App. 18-19a.

And with respect to the statutory structure, the court stated that the federal immigration laws create "what are essentially two alternative paths for denaturalization," one civil and one criminal. Pet. App. 10a. The civil path includes an express materiality requirement for false statements. *Id.* (citing 8 U.S.C. § 1451(a) and *Kungys*, 485 U.S. at 772-73). The criminal path does not. Pet. App. 12-13a. Rather than construing these two paths in tandem, the Sixth Circuit concluded that "the explicit requirement of materiality under one approach but not the other is actually consistent with a two-track statutory scheme for denaturalization":

> In a civil denaturalization suit, the government can bring its case simply by filing an equitable petition, proceed as in a civil case, and satisfy a lesser burden of proof than beyond a reasonable doubt. In light of the slightly lower burden of proof, Congress has required the government to prove that the naturalized citizen has

> concealed a material fact. By contrast, in a criminal case resulting in denaturalization, the government must prove the charge under 18 U.S.C. § 1425 beyond a reasonable doubt while meeting the demands of constitutional due process. Congress has not required proof of materiality in that scenario arguably because of the higher burden of proof, the additional safeguards for the naturalized citizen's constitutional rights, and the broad sweep of § 1425 itself.

Pet. App. 29a.

In so holding, the Sixth Circuit recognized that Mrs. 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)," but "[b]y and large" deemed these decisions "unpersuasive." Pet. App. 22-23a (citing *United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir. 2015); *United States v. Mensah*, 737 F.3d 789, 808-09 (1st Cir. 2013); *Latchin*, 554 F.3d at 712, 713 n.3; *United States v. Aladekoba*, 61 F. App'x 27, 28 (4th Cir. 2003) (*per curiam*); *United States v. Agyemang*, No. 99-4496, 230 F.3d 1354, 2000 WL 1335286, at *1 (4th Cir. Sept. 15, 2000) (*per curiam*); *United States v. Agunbiade*, No. 98-4581, 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999) (*per curiam*); *United States v. Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992)).

Judge Gibbons concurred "with some reluctance," and characterized the result as "troublesome." Pet. App. 39a (concurring opinion). As she explained, "[i]nitially, I was not inclined to differ from our sister

circuits' interpretation of 18 U.S.C. § 1425(a)," but ultimately was "persuaded ... that the view most faithful to the statute is that materiality is not an element" of that provision. *Id.* She emphasized, however, that "I am uncertain what goal Congress intended to further by omitting materiality" from the requirements for criminal denaturalization, and noted that she had "located no other federal criminal statute that punishes a defendant for an immaterial false statement." *Id.* Nor, for that matter, had she "located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." *Id.* Indeed, "the government, in response to questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial." *Id.*

Mrs. Maslenjak then sought a writ of certiorari, which this Court granted on January 13, 2017. In October 2016, while the petition was under consideration, Mrs. Maslenjak and her husband were deported from the United States to Serbia.

SUMMARY OF ARGUMENT

As a result of her conviction under 18 U.S.C. § 1425(a), and subsequent denaturalization under 8 U.S.C. § 1451(e), petitioner Divna Maslenjak was stripped of her American citizenship and deported from this country. She now lives halfway around the world, far removed from her children in Ohio. This Court should reverse her conviction for two separate and independent reasons.

First, Section 1425(a) requires the Government to prove that a defendant "procure[d] or attempt[ed] to procure" American citizenship "contrary to law." As

a matter of law and logic, that "procurement" requirement obliges the Government to establish some causal nexus between an underlying violation of law and the procurement (or attempted procurement) of American citizenship. And where, as here, the underlying violation of law is a false statement, the Government must establish at a minimum that the statement was material, *i.e.*, that it had some tendency to influence the naturalization decision. By definition, an immaterial statement cannot "procure" an official decision. This interpretation not only harmonizes the civil and criminal denaturalization provisions, but avoids the potential constitutional problem that would arise by effectively reading the unlawful procurement element out of the unlawful procurement statute.

Second, an underlying predicate offense charged here—18 U.S.C. § 1015(a)—also requires the Government to prove that the alleged false statement was material. Although Section 1015(a) does not contain an express materiality requirement, that point alone does not end the inquiry. Rather, this Court generally, and properly, presumes that Congress does not intend to criminalize trivial matters like immaterial statements: *de minimis non curat lex*. To be sure, particular criminal provisions may include language that effectively limits their scope even in the absence of a materiality requirement, and thus obviates the need to read in such a requirement. But Section 1015(a) contains no such limiting language, and thus should be construed to require a material false statement to prevent it from becoming an open-ended crime.

ARGUMENT

The Sixth Circuit Erred By Holding That A Naturalized American Citizen Can Be Stripped Of Her Citizenship In A Criminal Proceeding Based On An Immaterial False Statement.

This case presents the question whether the Government can strip a naturalized American of her citizenship based on a false statement that was not material to the naturalization process and thus could not have procured her citizenship. The Sixth Circuit answered that question in the affirmative, and thereby erred as a matter of law.

At issue here is the interplay of several statutory provisions. The first is located in Title 8 ("Aliens and Nationality"), and governs "[r]evocation of naturalization." 8 U.S.C. § 1451. As relevant here, that provision directs a court to "revoke, set aside and declare void the final order admitting [a naturalized American] to citizenship" when that person "shall be convicted under section 1425 of title 18 of knowingly procuring naturalization in violation of law." 8 U.S.C. § 1451(e).

Section 1425 of title 18, in turn, is part of the federal criminal code. That provision, which is entitled "Procurement of citizenship or naturalization unlawfully," specifies in relevant part that "[w]hoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person … Shall be fined under this title or imprisoned not more than [10 to 25 years], … or both." 18 U.S.C. § 1425(a). It thus creates a naturalization "procurement" crime distinct from, but derivative of, an underlying violation of law.

Proof of a predicate violation of law is *necessary*, but not *sufficient*, for conviction under Section 1425(a).

To satisfy the "contrary to law" element of Section 1425(a) in this case, the Government alleged two different predicate offenses. The first—and the one at issue here—was a violation of 18 U.S.C. § 1015(a), which prohibits "knowingly mak[ing] any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens." The second was a violation of 8 U.S.C. § 1427(a)(3), which prohibits obtaining naturalization without "good moral character."

By holding that Mrs. Maslenjak could be convicted under Section 1425(a) and thus lose her citizenship under Section 1451(e) based on an immaterial false statement, the Sixth Circuit erred on two separate and independent grounds. *First*, the Sixth Circuit misconstrued Section 1425(a) by upholding a conviction where the Government failed to prove a causal link between the predicate violation and the procurement of naturalization. And *second*, the Sixth Circuit misconstrued Section 1015(a), one of the predicate offenses at issue here, by holding that it does not require proof of a material false statement. As explained below, each of these errors warrants reversal of the judgment.

A. The Sixth Circuit Misconstrued Section 1425(a) By Upholding A Conviction Where The Government Failed To Prove A Causal Link Between The Predicate Violation And The Procurement Of Naturalization.

1. The Text Of Section 1425(a) Requires A Causal Link Between The Predicate Violation And The Procurement Of Naturalization.

This is a straightforward textual case. Section 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure" naturalization "contrary to law." 18 U.S.C. § 1425(a).[3] Construing that language, the Sixth Circuit held that the Government could establish a violation of Section 1425(a) simply by proving that, with the requisite knowledge, a defendant (1) procured naturalization, and (2) violated the law. *See* Pet. App. 14-30a. By thus treating Section 1425(a)'s requirements as independent rather than causally linked, the court excused the Government from having to prove that the defendant procured naturalization *as a result* of a violation of law.

That is, to say the least, an unnatural way to read the text. As a matter of ordinary English, to "procure" is "to obtain or get by care, effort, or the use of special means." *Random House Dictionary of the English Language* 1543 (2d ed. 1987); *see also*

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[3] Section 1451(e), which cross-references Section 1425(a), paraphrases somewhat by referring to "knowingly procuring naturalization in violation of law." 8 U.S.C. § 1451(e).

Webster's Ninth New Collegiate Dictionary 938 (1988) (defining "procure" as "to get possession of: obtain by particular care and effort"); Bryan A. Garner, *A Dictionary of Modern Legal Usage* 698 (2d ed. 1995) (defining "procure" as "a formal word for *get* (the ordinary word) or *obtain* (a semiformal word)."). And the words "contrary to law," set off by commas, make up an adverbial phrase modifying the verb phrase "procures or attempts to procure." Thus, Section 1425(a) does not simply proscribe any procurement of naturalization; rather, it proscribes procurement in a particular way—"contrary to law." In other words, the procurement of naturalization and the underlying violation of law must be causally linked. It would be odd indeed to say that a person procures (or attempts to procure) something contrary to law if the violation, in fact, has no effect on the procurement. Rather, the violation of law must have been the means of procurement.

The Sixth Circuit's interpretation of Section 1425(a) divorces the adverbial phrase ("contrary to law") from its object ("procures or attempts to procure"). Under that interpretation, the procurement (or attempted procurement) could be entirely lawful and untainted by the defendant's violation of law, but still lead to a conviction. As a result, naturalized citizenship could be revoked even if there were nothing untoward about the naturalization, and even if the predicate crime were trivial. That is simply not a plausible interpretation of the statute; to the contrary, the predicate violation of law must at least be a contributory cause of the naturalization (or, put differently, the naturalization itself must be tainted by the underlying illegality).

That commonsense point is confirmed by other provisions of the federal criminal code involving procurement. These provisions likewise involve some wrongdoing to procure some action, and logically entail a causal link between the wrongdoing and the action. *See, e.g.*, 18 U.S.C. § 214 ("Whoever stipulates for or gives or receives ... any fee, commission, bonus, or thing of value for procuring or endeavoring to procure from any Federal Reserve bank any advance, loan, or extension of credit ... [without formal disclosure] ... shall be [punished]."); 18 U.S.C. § 2235 ("Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be [punished]."). Without a causal link, one cannot sensibly say that the defendant unlawfully "procured" a loan under Section 214 or a search warrant under Section 2235.

That reading also properly aligns Section 1425(a) with its civil counterpart, 8 U.S.C. § 1451(a). In pertinent part, the latter statute provides for the denaturalization of citizens whose naturalization was "procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a). Giving that language its ordinary meaning, this Court has held that, at a minimum, "the naturalized citizen must have procured citizenship *as a result* of the misrepresentation or concealment." *Kungys*, 485 U.S. at 767 (emphasis added). That same basic point applies here: when Congress made it a crime to procure, or attempt to procure, naturalization "contrary to law," it required a causal link between

the procurement of naturalization and the predicate violation of law.[4]

Because the offense charged here involves alleged false statements, Mrs. Maslenjak tried to address the need for a causal link by arguing that the relevant statements must, at a minimum, be material to "procure" naturalization under Section 1425(a), as several courts of appeals have held. *See, e.g.*, *Munyenyezi*, 781 F.3d at 536; *Latchin*, 554 F.3d at 712-15; *United States v. Alferahin*, 433 F.3d 1148, 1154-56 (9th Cir. 2006); *Puerta*, 982 F.2d at 1301-02. Although the indictment in this case charged Mrs. Maslenjak with making "material false statements" in her naturalization application, Pet. App. 41a, the Government nevertheless vigorously—and

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[4] To be sure, *Kungys*—which has been described as "maddeningly fractured" decision, *Latchin*, 554 F.3d at 713—failed to produce a majority opinion on the precise nature of that causal link. As noted in the text, however, the critical point for present purposes is that all of the participating Justices agreed that "procurement" requires *some* causal link. *See* 485 U.S. at 767; *see also id.* at 777 ("[T]he 'procured by' language can and should be given *some* effect beyond the mere requirement that the misrepresentation have been made in the application proceeding.") (Scalia, J., joined by Rehnquist, C.J., and Brennan, J.; emphasis added); *id.* at 787-88 (Stevens, J., joined by Marshall and Blackmun, JJ., concurring in the judgment) (agreeing with the Court that the "procurement" requirement establishes "a causal connection between the misrepresentation and the award of citizenship," but advocating an even more demanding causal link); *id.* at 801 (O'Connor, J., concurring in part and dissenting in part) (joining Part II.A of the Court's opinion); *id.* at 803 (White, J., dissenting) (same). Because the jury in this case was allowed to convict on the basis of *no causal link at all*, this Court need not determine the precise nature of the requisite causal link to resolve this case.

successfully—opposed Mrs. Maslenjak's request for a materiality instruction. *See, e.g.*, Pet. App. 81a. And the Sixth Circuit affirmed the conviction by "hold[ing] that the district court's instruction on the 'contrary to law' element was a correct statement of the law," Pet. App. 15a—*i.e.*, that it suffices for the Government to prove that the defendant "acted in violation of at least one law governing naturalization," Pet. App. 85a, as opposed to proving that the violation procured the naturalization decision.

Neither the Government nor the Sixth Circuit ever explained, however, how an immaterial false statement could "procure" naturalization. As a general matter, a material false statement is one that "has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Kungys*, 485 U.S. at 770 (internal quotation omitted). If a statement does not even meet that standard, by definition it cannot "procure" naturalization. Indeed, as noted above, one of the few points on which all of the Justices agreed in *Kungys* is that procurement involves something *more* than the mere existence of a material false statement. *See* 485 U.S. at 767; *see also id.* at 776-77 (plurality opinion of Scalia, J., joined by Rehnquist, C.J., and Brennan, J.); *id.* at 787-88 (Stevens, J., joined by Marshall and Blackmun, JJ., concurring in the judgment); *id.* at 801 (O'Connor, J., concurring in part and dissenting in part); *id.* at 803 (White, J., dissenting).

The Sixth Circuit thus missed the point by insisting that Section 1425(a) does not contain the word "material." *See* Pet. App. 8a, 18a. The statute

does contain the word "procure[]," and a person cannot "procure" citizenship "contrary to law" based on an immaterial false statement. Indeed, the fact that the statute does not contain the word "material" is particularly unilluminating in this context. By its terms, Section 1425(a) applies to *any* actions "contrary to law" that procure naturalization, not just false statements that do so. Given the provision's scope, it would be incongruous for Congress to include a word like "material," which would apply only in the subset of cases involving statements and not in cases involving a non-statement predicate offense (such as bribery of an immigration official in violation of 18 U.S.C. § 201(b)(1)). *Cf.* 8 U.S.C. § 1451(a) (using the word "material" to modify *only* misrepresentation and concealment offenses, not other offenses that may "illegally procure[]" citizenship). The Sixth Circuit thus erred by affirming Mrs. Maslenjak's conviction under § 1425(a), and her subsequent loss of citizenship under 8 U.S.C. § 1451(e), where the Government was never required to prove that her alleged false statements were even material.

2. Background Rules Of Statutory Interpretation Support A Causal Link Between The Predicate Violation And The Procurement Of Naturalization.

The gravity of denaturalization underscores the need for a causal link between an underlying violation of law and a naturalization decision. Over the years, this Court has exhausted superlatives in describing the value of American citizenship—"a most precious right," *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963), a "priceless treasure,"

Fedorenko, 449 U.S. at 507 (internal quotation omitted), and "the highest hope of civilized men," *Schneiderman*, 320 U.S. at 122. Citizenship, after all, is "membership in a political society," and the foundation of all other civil rights. *Luria v. United States*, 231 U.S. 9, 22 (1913). Thus, "[t]o take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others." *Klapprott v. United States*, 335 U.S. 601, 616 (1949) (Rutledge, J., concurring in judgment); *see also Knauer*, 328 U.S. at 659 ("[D]enaturalization ... may result in the loss of all that makes life worth living.") (internal quotation omitted); *cf.* Edward Everett Hale, *The Man Without a Country*, Atlantic Monthly, Dec. 1863, at 665-80. Because the draconian consequence of denaturalization flows automatically from conviction under Section 1425(a), *see* 8 U.S.C. § 1451(e), this Court should not lightly assume that Congress intended to allow the Government to procure such a conviction based on an immaterial false statement.

Indeed, it is anomalous to suppose that Congress intended to authorize denaturalization in a criminal proceeding but not a civil proceeding *based on the very same statement*. Yet that is the upshot of the decision below. As noted above, a misrepresentation or concealment must be "material" to warrant denaturalization in a civil proceeding. 8 U.S.C. § 1451(a); *see generally Kungys*, 485 U.S. at 767. There is no reason to suppose that Congress would have intended to authorize denaturalization in a criminal proceeding—which can, in addition, lead to imprisonment for up to 25 years—based on a *less* demanding substantive standard. Indeed, the

Government itself has conceded in many cases in many courts over many years that the materiality requirement of Section 1451(a) also applies to Section 1425(a). *See*, *e.g.*, *United States v. Shordja*, 598 F. App'x 351, 354 (6th Cir. 2015) ("[T]he Government concedes that [§ 1425(a)] contains a materiality element."); *Latchin*, 554 F.3d at 712 ("Both sides agree that a false statement has to be 'material' to sustain a conviction."); *Puerta*, 982 F.2d at 1301 ("[T]he government agrees with [the defendant] that § 1425(a) implies a materiality requirement similar to the one used in the denaturalization context.").

The Sixth Circuit attempted to rationalize that anomaly by asserting that defendants in criminal cases enjoy enhanced *procedural* protections. *See* Pet. App. 27-29a. But that assertion is a *non sequitur*. Criminal proceedings involve greater procedural protections than civil proceedings because they generally entail a more serious threat to life, liberty, or property. *See, e.g.*, *In re Winship*, 397 U.S. 358, 363-64 (1970). It hardly follows that Congress deliberately tries to offset those protections by watering down the substantive elements of the criminal law to make convictions easier to obtain. The Sixth Circuit's efforts to reconcile the criminal and civil denaturalization provisions fail to satisfy the judicial obligation "to make sense rather than nonsense out of the *corpus juris*." *West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991).

The more extensive procedural protections of the criminal law thus do not justify interpreting the substantive proscriptions of the criminal law less rigorously than their civil-law counterparts. Indeed,

that approach turns the law upside down—the venerable rule of lenity requires that ambiguity in criminal provisions be construed in favor of the accused, and thus, if anything, more narrowly than their civil-law counterparts. *See, e.g.*, *Liparota v. United States*, 471 U.S. 419, 427 (1985). As Judge Gibbons noted in her concurring opinion below, she could not locate "any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." Pet. App. 39a.

And lenity is particularly appropriate in the denaturalization context. As this Court has long recognized, the consequences of denaturalization are "more serious than a taking of one's property, or the imposition of a fine or other penalty." *Schneiderman*, 320 U.S. at 122; *see also Klapprott*, 335 U.S. at 611 (plurality opinion) ("Denaturalization consequences may be more grave than consequences that flow from conviction for crimes."). Thus, this Court has long insisted that, in a denaturalization proceeding, "the facts and the law should be construed as far as is reasonably possible in favor of the citizen." *Schneiderman*, 320 U.S. at 122. That rule effectively extends the rule of lenity to *civil* denaturalization proceedings, where the Government must carry its burden of proof by "'clear, unequivocal, and convincing evidence which does not leave the issue in doubt.'" *Kungys*, 485 U.S. at 781 (quoting *Schneiderman*, 320 U.S. at 158). It follows *a fortiori* that the defendant in a *criminal* denaturalization proceeding like this one should get the benefit of any doubt on the law and the facts.

Finally, the canon of constitutional avoidance also counsels in favor of construing Section 1425(a) to require, in cases based on alleged false statements, that the statements at the very least be material. As a general rule, the law knows no difference between classes of citizens—a naturalized citizen is every bit as much of an American as one whose forebears arrived on the *Mayflower*. *See*, *e.g.*, *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 827 (1824) ("A naturalized citizen ... becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native."). That general rule prevents naturalized Americans from being "second-class" citizens, and is thus subject to only a few "strict" exceptions, *Knauer*, 328 U.S. at 658 & n.3—eligibility for certain specific political offices, *see* U.S. Const. art. I, § 2, cl. 2; *id.* art. I, § 3, cl. 3; *id.* art. II, § 1, cl. 5, and the threat of denaturalization. Whereas a natural-born American can *never* be stripped of her citizenship, a naturalized American can be—but if, and only if, she "unlawfully procured" her citizenship in the first instance. *Afroyim*, 387 U.S. at 267 n.23. Beyond this one exception, Congress lacks the constitutional power to strip away American citizenship. *See id.* at 256-67.

That constitutional limitation has important implications for the interpretation of Section 1425(a). Given that Congress has no constitutional power to strip a naturalized American of citizenship except where that citizenship was "unlawfully procured," the unlawful procurement statute must be strictly construed to fit within that limited constitutional power. Here, as noted above, the Sixth Circuit essentially read the unlawful procurement

requirement out of the unlawful procurement statute, and thereby cut Section 1425(a) loose from its constitutional moorings. Thus, to preserve the provision's constitutionality, this Court should give the procurement element its ordinary meaning, and require the Government to prove that that the naturalized citizen would not have obtained American citizenship but for a predicate violation of law. At a minimum, where—as here—a denaturalization proceeding is based on a false statement, the Government must prove that the statement was material. Construing Section 1425(a) to allow the Government to strip a naturalized American of her citizenship based on an immaterial false statement would give rise to very serious constitutional questions, and thus is not a proper construction. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 403 (2010); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *Crowell v. Benson*, 285 U.S. 22, 62 (1932).

B. The Sixth Circuit Misconstrued Section 1015(a) By Holding That It Does Not Require Proof Of A Material False Statement.

An alternative path to the same result is to interpret 18 U.S.C. § 1015(a)—one of the two predicate offenses alleged here for the Section 1425(a) charge—to require proof of a material false statement. The jury returned a general verdict that did not specify whether Mrs. Maslenjak's conviction on Count 1 was based on the Section 1015(a) or the Section 1427(a)(3) predicate offense (or both). *See* Pet. App. 91-92a. Accordingly, it follows that her

conviction is legally invalid if *either* of the alternative theories of guilt is legally invalid. *See*, *e.g., Skilling*, 561 U.S. at 414; *Hedgpeth v. Pulido*, 555 U.S. 57, 58 (2008) (*per curiam*); *Yates v. United States*, 354 U.S. 298, 312 (1957). If Section 1015(a) requires proof of a material false statement, then Mrs. Maslenjak's conviction under Section 1425(a) and subsequent denaturalization under Section 1451(e) cannot stand.

Section 1015(a) provides, in pertinent part, that "[w]hoever knowingly makes any false statement under oath in any case, proceeding, or matter relating to ... naturalization ... shall be fined under this title or imprisoned not more than five years, or both." 18 U.S.C. § 1015(a). Although the defense argued at trial that the Government had to prove that any false statement was material, Pet. App. 76-77a, 79-80a, the district court concluded otherwise, and instructed the jury that "[a] false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case." Pet. App. 86a (emphasis added). And the Sixth Circuit upheld that instruction, squarely holding that "§ 1015(a) does not require proof of a false statement of material fact." Pet. App. 19a.

The Sixth Circuit did not undertake any independent analysis of Section 1015(a). Rather, it based its holding on one of its own prior (unpublished) decisions, as well as two decisions from other Circuits. *See* Pet. App. 18-19a, 24a (citing *United States v. Tongo*, 16 F.3d 1223, 1994 WL 33967, at *3-4 (6th Cir. 1994) (*per curiam*); *United States v. Youssef*, 547 F.3d 1090, 1094 (9th Cir. 2008) (*per curiam*); and *United States v. Abuagla*, 336 F.3d

277, 278 (4th Cir. 2003)). These decisions, in turn, effectively began and ended their analysis by pointing out that Section 1015(a) does not contain the word "material."

But that simplistic approach ignores the judicial responsibility to consider—in addition to the words of a criminal statute—"the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992); *see also Neder*, 527 U.S. at 21. To read a criminal statute without reference to such background principles would have the effect of extending the prohibitions to conduct never thought worthy of criminal punishment—like reading a murder statute without the background principle of self-defense or statutes about threats or conversion of government property without the background principle of intent. *See, e.g.*, *Elonis v. United States*, 135 S. Ct. 2001, 2009-10 (2015); *Morissette v. United States*, 342 U.S. 246, 250-63 (1952).

One such background principle is "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles')." *William Wrigley*, 505 U.S. at 231; *see also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992); *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992); *Ingraham v. Wright,* 430 U.S. 651, 674 (1977); *Abbott Laboratories v. Portland Retail Druggists Ass'n,* 425 U.S. 1, 18 (1976); *Industrial Ass'n of S.F. v. United States*, 268 U.S. 64, 84 (1925). Centuries ago, with reference to perjury, Sir William Blackstone wrote that "if [the false statement] only be in some trifling collateral circumstance, to which

no regard is paid, it is not penal." 4 William Blackstone, *Commentaries* *137; *see also* 3 Edward Coke, *Institutes* 164 (6th ed. 1680) (describing perjury as a crime committed by one who "sweareth absolutely, and falsely in a matter material to the issue.").

Our laws are written with this background principle in mind. As a general rule, it is unlikely that Congress intends legal proscriptions (especially criminal proscriptions) to apply to immaterial false statements—*i.e.*, statements that by definition have no tendency or capability to influence an official decision. Thus, the absence of the word "material" does not invariably mean that Congress intends a statute to apply to immaterial statements. *See, e.g.*, *Neder*, 527 U.S. at 21-23.

To be sure, the *de minimis non curat lex* background presumption is not absolute: it can be overcome by statutory language that in essence supplies the constraints that a materiality requirement would otherwise provide. That was the case in *Wells*, on which the decisions cited by the court below relied in interpreting Section 1015(a). *Wells* involved a provision of the criminal code, 18 U.S.C. § 1014, which—like Section 1015—does not contain an express materiality requirement. In declining to read such a requirement into that provision, the *Wells* Court duly noted that fact. *See* 519 U.S. at 490.[5] But the Court did not end its

[5] The Court noted that some prior statutes incorporated into Section 1014 had contained a materiality requirement that was subsequently omitted in 1948. *See Wells*, 519 U.S. at 493. Prior versions of Section 1015(a) similarly contained a

analysis there. To the contrary, the Court went on to determine whether its reading of Section 1014 would have the unintended consequence of "'ma[king] a surprisingly broad range of unremarkable conduct a violation of federal law.'" 519 U.S. at 498 (quoting *Williams v. United States*, 458 U.S. 279, 286-87 n.8 (1982)). The Court thus addressed whether a literal reading of Section 1014 would lead to sweeping applications that Congress, despite its use of broad language, is unlikely to have intended.

To that end, the *Wells* Court considered the text of Section 1014 as a whole, looking to see whether it contained any other requirement, akin to a materiality requirement, that might cabin the provision's potentially open-ended reach. And it found just such a requirement: Section 1014 specifies that the defendant must have made a false statement "'for the purpose of influencing' a bank." 519 U.S. at 499 (quoting 18 U.S.C. § 1014). That requirement was substantially similar to a requirement that the Court had previously found important in construing 8 U.S.C. § 1101(f)(6)—another statute lacking an express materiality requirement—that a person have given false testimony "with the subjective intent of obtaining immigration benefits." *Kungys*, 485 U.S. at 780; *see also United States v. Kay*, 303 U.S. 1, n.1 (1938) (construing provision of the Home Loan Act applicable to false statements "for the purpose of

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materiality requirement, which was dropped in 1909. *See United States v. Abuagla*, 215 F. Supp. 2d 684, 685 (E.D. Va. 2002), *aff'd*, 336 F.3d 277, 278 (4th Cir. 2003).

influencing in any way the action [of specified agencies and officials]").

Following the path set in *Kungys*, the *Wells* Court observed: "A statement made 'for the purpose of influencing' a bank will not usually be about something a banker would regard as trivial, and 'it will be relatively rare that the Government will be able to prove that' a false statement 'was ... made with the subjective intent' of influencing a decision unless it could first prove that the statement has 'the natural tendency to influence the decision.'" *Wells*, 519 U.S. at 499 (quoting *Kungys*, 485 U.S. at 780-81). As a result, the *Wells* Court saw no need to imply materiality as an element of Section 1014, pointing out that "the literal reading of the statute will not normally take the scope of § 1014 beyond the limit that a materiality requirement would impose." 519 U.S. at 499.

If the Sixth Circuit had undertaken a similarly close textual examination in this case, it would have perceived that Section 1015(a) is a very different statute. Nothing in that provision demands that a false statement be made for the purpose of influencing an immigration official or obtaining an immigration benefit. Thus, insofar as such a purpose requirement can act as a proxy for a materiality requirement, and thereby "avoid the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct," *Wells*, 519 U.S. at 498, those protections are absent here. While it would be "relatively rare" for a prosecution under Sections 1101(f)(6) or 1014 to be grounded in immaterial false statements, the Sixth Circuit's reading of Section 1015(a) means that

prosecutors will have such an option in *every* case in which they can identify a false statement, no matter how trivial or harmless, in a naturalization proceeding. That is a textbook example of making "a surprisingly broad range of unremarkable conduct a violation of federal law." *Wells*, 519 U.S. at 498 (internal quotation omitted).

Nor does Section 1015(a) contain other language that might forestall such prosecutorial overreaching. Although the statute does require that false statements be made "knowingly," that language only protects against prosecutions for inadvertent falsehoods, not trivial ones. And the language in Section 1015(a) requiring false statements to be made "under oath" does little to narrow its reach: virtually all statements made in naturalization proceedings, no matter how insignificant, are sworn under oath. *See*, *e.g.*, Pet. App. 74a.

The fundamental question, then, is whether the absence of the word "material" in Section 1015(a) is, by itself, enough to justify a sweeping reading of that provision. It is not. Although Congress certainly could have specified that false statements under Section 1015(a) must be material, as it has done in other statutes, the fact is that federal "false statement" statutes are anything but a testament to precise drafting. As both the majority and dissenting opinions in *Wells* recognized, there are more than one hundred federal statutes that penalize the making of false statements, many of which have an express requirement of materiality and many of which do not. *See Wells,* 519 U.S. at 493 n.14; *id.* at 505-06 & nn.9-10 (Stevens, J., dissenting). Nothing in the history of these wide-ranging provisions—

which have undergone a variety of revisions and recodifications over time—suggests that Congress was following a strict template under which it deliberately omitted the word "material" to send a signal that materiality was irrelevant.

The notion that Congress had any such intention in Section 1015(a) is even more far-fetched given the Government's inability to explain why Congress would want to punish (with criminal fines and imprisonment for up to five years) conduct that has no tendency to affect official decisionmaking. Indeed, the natural assumption would be just the opposite: that Congress meant to reserve such heavy punishments for statements of consequence. And, if the meaning of a particular criminal statute is open to serious question, as it is here, the rule of lenity properly assures that persons are not imprisoned for actions that Congress did not intend to make criminal in the first place. *See*, *e.g.*, *United States v. Lanier*, 520 U.S. 259, 266 (1997); *United States v. Bass*, 404 U.S. 336, 348 (1971).

In short, there is no good reason to construe Section 1015(a) to apply to immaterial false statements, and ample reason not to do so. Because the jury in this case was incorrectly instructed on this score, Mrs. Maslenjak is entitled to a new trial on this ground as well.[6]

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[6] In its brief in opposition to the petition, the Government argued harmless error, on the theory that Mrs. Maslenjak's false statement actually was material. *See* Pet. Opp. 18. But the Government made a deliberate decision, over Mrs. Maslenjak's objection, to urge the district court to keep the materiality issue away from the jury. *See* Pet. App. 81a ("The

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment.

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United States believes that we could easily prove that the statement was material, but we don't think that we have to under the law."). Thus, at the Government's urging, the district court specifically instructed the jury that it need *not* find Mrs. Maslenjak's statement material to convict. *See* Pet. App. 86a. If materiality is indeed an element of the crime, then a properly instructed jury should determine whether the Government proved that element beyond a reasonable doubt. *See, e.g.*, *United States v. Gaudin*, 515 U.S. 506, 509-23 (1995). Although this Court has held that instructions omitting an element of the offense are amenable to harmless-error analysis, *see, e.g.*, *Neder v. United States*, 527 U.S. 1, 8-15 (1999), this Court need not and should not undertake such a fact-intensive analysis in the first instance. *See*, *e.g.*, *Skilling*, 561 U.S. at 414 (remanding for harmless-error review).