Immigration and Human Rights Law Review

Volume 1 | Number 1 Article 1

2019

Maslenjak v. United States: A Concern about Prosecutors' Limitless Leverage regarding the International Refugee Policy

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CASE NOTE

Maslenjak v. United States: A concern about prosecutors' limitless leverage regarding the international refugee policy

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I. Introduction

American citizenship has been long recognized as a "precious right," and that [i]t would be difficult to exaggerate its value and importance.[2] While many Americans are blessed with that right by virtue of their birth, many others have obtained it by virtue of naturalization. Throughout the American history, naturalized Americans have enriched all areas of the national life; 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." [3]

Fifty-years ago, in the landmark case, *Afroyim v. Rusk*, the Court held that Fourteenth Amendment prevents Congress from taking away citizenship without the citizen's assent.[4] Regarding the holding, there is a critical exception in the regulation, which prohibits procured citizenship "contrary to law." [5] In terms of the interpretation of "contrary to law," [6] the circuit courts had split on the question of whether the false statement must be material to the granting of citizenship, under the circumstance which the predicate crime is a false statement to immigration officials. [7]

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1 Associate Member, 2018-2019 *Immigration and Human Rights Law Review*
2 *Schneiderman v. U.S.,* 320 U.S. 118, 122 (1943).
3 *Knauer v. U.S.,* 328 U.S. 654, 658 (1946).
4 387 U.S. 253, 254, 87 S. Ct. 1660, 1661 (1967).
5 18 U.S.C. § 1425(a) (Lexis 2018).
6 *Id*.
7 18 U.S.C. § 1015(a) (Lexis 2018) (prohibiting "knowingly mak[ing] any false statement under oath" in a naturalization proceeding).

In the recent case, *Maslenjak v. United States*, [8] the Supreme Court resolved the circuit split, holding that if the underlying illegal act is a false statement to government officials, the government must show that the falsehood influenced the decision to grant citizenship.[9]

This case note will first address those critical facts controlling the issue(s) in part II. Next, part III will introduce the Supreme Court's holding on each relevant issue. Part III will discuss prior law, including a reading of the regulation[10] and the circuit split prior to the case at hand. Moreover, part IV will describe and analyze the Supreme Court's reasoning and decision. Lastly, part V will conclude this case note.

II. Facts

Divna Maslenjak, an ethnic Serb, lived in Bosnia during its civil war in the 1990s.[11] In 1998, she sought refugee status in the United States.[12] Maslenjak stated under oath that her family faced persecution from both sides of the war: from Muslims, because of the family's Serbian ethnicity, and from Serbs, because her husband had fled conscription in the Bosnian Serb Army.[13] Based on her testimony, the family was granted refugee status.[14] She was naturalized as a U.S. citizen.[15] Six years after arriving in the United States, Maslenjak applied for naturalization.[16] On the application form, Maslenjak marked "no" under oath to two questions asking whether she had ever lied to government officials during immigration proceedings.[17]

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8 *137* S. Ct. 1918 (2017).
9 *Id.* at 1923.
10 18 U.S.C. § 1425(a).
11 *Maslenjak,* 137 S. Ct. at 1923.
12 *Id.*
13 *Id.*
14 *Id.*
15 *Maslenjak,* 137 S. Ct. at 1920.
16 *Maslenjak,* 137 S. Ct. at 1923.
17 *Id.*

She affirmed those responses under oath in a subsequent interview.[18]

Soon after, the government found that Maslenjak had in fact made false statements.[19] Immigration officials uncovered records showing that Maslenjak's husband had been an officer in the Bosnian Serb Army and had served in a brigade involved in massacring approximately 8000 civilian Bosnian Muslims.[20] Within a year, he was convicted of making false statements on immigration documents.[21] Maslenjak, testifying in an attempt to stop his deportation, admitted that she had been aware of his role in the war.[22]

In response, the government charged Maslenjak with violating 18 U.S.C. § 1425(a) by "knowingly 'procur[ing]'" her naturalization "contrary to law."[23] The underlying illegality was making false statements under oath in a naturalization proceeding in violation of 18 U.S.C. § 1015(a) — namely, the answers in her naturalization application and interview assuring her past honesty.[24] Despite an objection by Maslenjak, the United States District Court for the Northern District of Ohio instructed the jury that any falsehood, regardless of whether it influenced the decision to grant naturalization, would suffice for a conviction.[25] The jury found Maslenjak guilty, and the district court accordingly stripped her of citizenship.[26]

The Sixth Circuit affirmed, upholding the district court's jury instructions.[27] According to the Sixth Circuit, the plain language of the statute and the overall statutory scheme of

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18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.* Quoting 18 U.S.C. § 1425(a) (2012).
24 *Id.* at 1924.
25 *Id.*
26 *Id.*
27 *U.S. v. Maslenjak*, 821 F.3d 675, 686 (6th Cir. 2016).

denaturalization did not compel a materiality requirement.[28] Because making a false statement to immigration officials violated naturalization law, the court reasoned that the making of such a statement automatically constituted procuring citizenship "contrary to law" in violation of § 1425(a); regardless of whether the statement influenced the naturalization outcome.

III. Holding

The Supreme Court vacated and remanded the case, held that: (1) the text of 18 U.S.C. § 1425(a) -- which prohibits "procur[ing], contrary to law, the naturalization of any person" -- makes clear that, to secure a conviction, the Federal Government must establish that the defendant's illegal act played a role in her acquisition of citizenship; [29] (2) when the underlying illegality alleged in a Section 1425(a) prosecution is a false statement to government officials, a jury must decide whether the false statement so altered the naturalization process as to have influenced an award of citizenship; [30] and (3) measured against this analysis, the jury instructions in this case were in error, and the government's assertion that any instructional error was harmless is left for resolution on remand.[31]

IV. Discussion of Prior Law

Although the Constitution expressly authorizes Congress "to establish a uniform Rule of Naturalization,"[32] it contains no corresponding general authority to strip Americans-either natural-born or naturalized-of their citizenship. That is no

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[28] *Id.* at 682–83.
[29] *Maslenjak v. U.S.*, 137 S. Ct. at 1921 (2017).
[30] *Id.*
[31] *Id.* at 1922 (2017).
[32] U.S. Const. art. I, § 8, cl. 4.

oversight: "in our country the people are sovereign, and the Government cannot sever its relationship to the people by taking away their relationship to the people by taking away their citizenship." [33] Thus, as a general matter, the only way American citizenship can be lost is "by the voluntary renunciation or abandonment by the citizen himself."[34] There is but one exception to that rule: "naturalization unlawfully procured can be set aside." [35]

A. The Federal Statutes: 18 U.S.C. §§1425(a); 1015 (a); and 8 U.S.C. §1451(e).

Section 1425(a) of Title 18 of the United States Code provides that a person:

> 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.§1425(a).

Upon a conviction, Section 1451(e) of Title 8 of the United States Code requires revocation of that person's certificate of naturalization as provided in the Statute:

> 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

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[33] *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967).
[34] *Id.*
[35] *Id.* at 267 n.23.

> admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.

8 U.S.C.§1451(e).

One of the conducts "contrary to law"[36] is "making false statements under oath," as provided under 18 U.S.C. §1015(a):

> 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.

18 U.S.C. §1015(a).

Due to widespread fraud and abuse in procurement of naturalization, Act of June 29, 1906, of which predecessor to 18 U.S.C. §1425 was part, was passed as attempt to remedy and to prevent occurrence of fraud in naturalization proceedings.[37] The Regulation provides the basis for the Government to strip the citizenship from a naturalized citizen if he/she procured the citizenship "contrary to law." Further, under 8 U.S.C. §1451, it granted the Government the power to revoke naturalized citizenship if the citizenship was procured by fraud or illegally procured.[38] An element of "materiality" is not mentioned in the plain language in Section 1451(e), however, it was required in the prior subsections of Section 1451.

Under 18 U.S.C. §1015(a), a conviction under Section

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[36] 18 U.S.C. § 1425(a).
[37] *See* 18 U.S.C. § 1425.
[38] *See* 8 U.S.C. § 1451.

1451(e) and Section 1425 (a) can be found for false swearing in naturalization proceedings. [39] Regarding the conviction, "materiality" was not an element of the crime of knowingly making false statement under oath in naturalization proceeding under the Regulation. However, "any false statement," whether such false statement is material or immaterial, could satisfy the requirement by Section 1015(a).[40] Therefore, under plain text of the Regulation, materiality of false statement is not an element of §1015(a).

B. The circuit split on the Regulations

Courts have grappled with delineating the precise contours of the window for denaturalization entitled by the Regulations. One area the jurisdiction is split on is delineating the question of whether a false statement must be material to the granting of citizenship, when the predicate crime is the false statement to immigration officials. For example, in some jurisdictions, any false statement, regardless of impact on the naturalization decision, justifies a conviction under 18 U.S.C. § 1425(a).[41]

However, in other jurisdictions, to find a conviction under Section 1425(a), Courts require the fact in the false statement must have been *material*, and the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment.[42] The courts further advocates for a definition of materiality that is consistent with general legal usage: a material misrepresentation must have at least a natural tendency to produce the conclusion that the applicant was qualified for

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[39] *See* 18 U.S.C. § 1015.

[40] *Id*.

[41] *U.S. v. Maslenjak*, 821 F.3d 675, 685–86 (6th Cir. 2016) .

[42] *U.S. v. Munyenyezi*, 781 F.3d 532, 534 (1st Cir. 2015); *See also U.S. v. Alferahin*, 433 F.3d 1148, 1154–56 (9th Cit. 2006) (The United States Court of Appeals for the Ninth Circuit holds that § 1425(a) contains a materiality requirement); *U.S. v. Aladekoba*, 61 F. App'x 27, 28 (4th Cir. 2003). (Held that in order to convict under 18 U.S.C. § 1425(a), …the statements must be material in order to be contrary to law).

citizenship.[43]

IV. Opinion Description and Analysis

A. Reasoning by the Supreme Court

The Supreme Court resolved the jurisdiction split, vacated and remanded the case.[44] Justice Kagan[45] wrote for the Court, held that: the Government must establish that an illegal act by the defendant played some role in her acquisition of citizenship.[46] When the illegal act is a false statement, that means demonstrating that the defendant lied about facts that would have mattered to an immigration official, because they would have justified denying naturalization or would predictably have led to other facts warranting that result.[47]

The Supreme Court first took a close look at Section 1425(a), and concluded that "to procure" something is "to get possession of" it, [48] and "procur[ing], contrary to law, naturalization" [49] meant obtaining citizenship illegally.[50] The "most natural" reading of that phrase, in turn, was that "the illegal act must have somehow contributed to the obtaining of citizenship. [51] The Supreme Court suggested an example regarding this "most natural" reading of the phrase: consider if someone said to you: "John obtained that painting illegally."[52] You might imagine that he stole it off the walls of a museum; or that he paid for it with a forged check.[53] But in all events, you

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43 *U.S. v. Alferahin,* 433 F.3d at 1151 (9th Cit. 2006).
44 *Maslenjak*, 137 S. Ct. at 1931.
45 Chief Justice Roberts, Justices Kennedy, Ginsburg, Breyer, and Sotomayor, joined the majority.
46 *Maslenjak*, 137 S. Ct. at 1923.
47 *Id*.
48 *Maslenjak*, 137 S. Ct. at 1924.
49 18 U.S.C. § 1425(a) (2012).
50 *Maslenjak,* 137 S. Ct. at 1925.
51 *Id*. at 1925.
52 *Id*.
53 *Id*.

would imagine illegal acts in some kind of means-end relation—or otherwise said, in some kind of causal relation—to the painting's acquisition.[54]

And the same goes for naturalization.[55] If whatever illegal conduct occurring within the naturalization process was a causal dead-end, then the act cannot support a charge that the applicant obtained naturalization illegally.[56]

The government's argument to the contrary, the court observed, "falters on the way language naturally works."[57] Imagine, the court suggested, a scenario in which "an applicant for citizenship fills out the necessary paperwork in a government office with a knife tucked away in her handbag (but never mentioned or used)."[58] Although the applicant has violated the law barring weapons in federal buildings, and "has surely done so in the course of procuring citizenship,"[59] the court concluded, she has not obtained citizenship "contrary to law,"[60] because the relationship between the violation of law and the acquisition of citizenship "are in that example merely coincidental: The one has no causal relation to the other."[61]

The Court was also concerned that a broad reading of the Regulation by the government would create a profound mismatch between the requirements for naturalization on the one hand and those for denaturalization on the other.[62] The immigration statute requires all applicants for citizenship to have "good moral character."[63] The Government argued, observed by the Court, that some legal violations that do not justify *denying*

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54 *Id*.
55 *Id*.
56 *Id*.
57 *Id*.
58 *Id*. at 1926.
59 *Id*.
60 *Id*.
61 *Id*.
62 *Id*. at 1926-1927.
63 8 U.S.C. § § 1427(a)(3), 1101(f).

citizenship under that definition would nevertheless *revoke* it later.[64] Regarding the argument made by the Government, the Court stated that the statute's description of "good moral character" singles out a specific class of lies "false testimony for the purpose of obtaining immigration benefits" as a reason to deny naturalization.[65] The rationale behind this reasoning by the Court, is that the Court concerned a broad reading of the Statute will open "the door to a world of disquieting consequences,"[66] in which a lie "would always provide a basis for rescinding citizenship," [67] even if the lie merely resulted from "embarrassment, fear, or a desire for privacy."[68] Indeed, the Court suggested, the Government's rule would give "prosecutors nearly limitless leverage"[69]a concern for many justices in the recent relevant cases.[70]

Therefore, the Court found that the general statutory context reinforced Maslenjak's reading of § 1425(a)[71] because the Government's reading would create a "profound mismatch" between the requirements for naturalization on the one hand and those for denaturalization on the other. And this effect, coupled with the fact that many individuals may, for innocuous reasons, fail to be entirely truthful regarding inconsequential matters while navigating the citizenship process.[72] The Court further found that Congress intended such severe consequences would require "far stronger textual support" than that provided in the statutory text of § 1425(a) which requires a causal relationship between the illegal act and the

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64 *Maslenjak*, 137 S. Ct. at 1926-1927.
65 *Id*. at 1927.
66 *Id*.
67 *Id*.
68 *Id*.
69 *Id*.
70 *See Bond v. U.S.*, 134 S. Ct. 2077 (2014); *Yates v. U.S.*, 135 S. Ct. 1074 (2015).
71 *Maslenjak*, 137 S. Ct. at 1926.
72 *Id*. at 1927.

procurement of citizenship.[73]

Next, the Court took a close examination of a "more operational" question of how the causation requirement should apply in practice for prosecutions in which a false statement to government officials was the predicate illegal act.[74] The Court held that the issue a jury must decide in a case like this one is "whether a false statement sufficiently altered those processes as to have influenced an award of citizenship."[75]

The Court articulated two means by which a false statement could have the required effect on the naturalization decision by adopting an objective approach. First, if the misrepresented facts themselves justified denying citizenship; and second, if the misrepresentation threw investigators off a trail that could have led to disqualifying facts.[76] In the first scenario, "an obvious causal link" exists between the falsehood and the granting of citizenship.[77] In the second scenario, dubbed the "investigation-based theory," the government can establish the requisite causal connection with a two-part showing.[78] First, the government must show that the misrepresented fact was "sufficiently relevant" to a qualification for citizenship, such that an immigration official seeking evidence about naturalization criteria would have been prompted to engage in further investigation.[79] Next, the government must establish that the ensuing investigation "would predictably have disclosed" a dis-qualifying fact.[80] Even if the government succeeds in this two-part showing, the defendant can overcome it by

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73 *Id*.
74 *Id*.
75 *Id*. at 1928.
76 *Id*. at 1928-1929.
77 *Id*. at 1928.
78 *Id*. at 1929.
79 *Id*.
80 *Id*. Quoting Kungys, 485 U.S. at 774. (This "demanding but still practicable" standard, *id*. at 1930, accounts for the difficulty of proving the path of a hypothetical investigation, as well as the fact that the defendant, rather than the government, would have caused that evidentiary difficulty. *id*. at 1929.)

demonstrating that she is actually qualified for citizenship because it is a "complete defense."[81]

Applying this analysis, the Court found error in the district court's jury instructions.[82] Because the instructions stated that no causal link was necessary between Maslenjak's false statements and the government's decision to grant her naturalization, the jury did not make any of the required findings regarding causation.[83] The Court vacated the judgment of the Sixth Circuit, remanded the question of whether Maslenjak's misrepresentations would have affected the decision to grant her citizenship.[84]

Justice Gorsuch, joined by Justice Thomas, concurred in the judgment.[85] He agreed with the Court's reasoning that the statute's plain text and structure required the government to establish causation as an element of a conviction under § 1425(a).[86] However, He argued that the Court should have left to lower courts the task of fleshing out the precise causal relationship required between the illegality and the granting of citizenship.[87] He also points out that the question presented and the briefing before the Court focused primarily on "whether the statute contains a *materiality* element, not on the contours of a *causation* requirement."[88]

Justice Alito concurred in the judgment.[89] From his perspective, while the majority viewed the statute's plain text as containing a causation requirement, he eschewed that framing. Instead, Justice Alito reasoned that when the predicate crime is a false statement, the language of § 1425(a) contains an implied

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81 *Id.* at 1930.
82 *Id.*
83 *Id.* at 1930-1931.
84 *Id.* at 1931.
85 *Id.*
86 *Id.*
87 *Id.* at 1931-1932.
88 *Id.*
89 *Id.* at 1932.

materiality element.[90] In his view, the federal law under which Maslenjak was convicted does require her lie to have been material, but it "does not require proof that a false statement actually had some effect on the naturalization decision."[91]

To be material, the false statement must have a "natural tendency to influence" the outcome of a naturalization decision.[92] Understood in this way, Section 1425(a) does not require proof that a false statement actually had some effect on the naturalization decision. The operative statutory language-"procure" naturalization "contrary to law"-imposes no such requirement.[93] For example, Justice Alito suggested, eight co-workers jointly buy two season tickets to see their favorite football team play.[94] They all write their names on a piece of paper and place the slips in a hat to see who will get the tickets for the big game with their team's traditional rival.[95] One of the friends puts his name in twice, and his name is drawn.[96] Under such circumstance, the guy "procured" the tickets "contrary to" the rules of the drawing even though he might have won if he had put his name in only once.[97]

B. A 9-0 Decision: An Outcome Highly Driven by the Concern about Unbounded Prosecutorial Discretion by the Government.

In regard of the holding of the instant case, §1425(a) requires a causal link between false statements and the decision to grant citizenship. In the majority's opinion, the Court

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90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.*
94 *Id.*
95 *Id.*
96 *Id.*
97 *Id.*

expressed its concern about the unbounded prosecutorial discretion by the Government through a broad reading of the Statute. Therefore, the Court rejected a broad argument by the government that any lie told over the course of the naturalization process could be the basis for denaturalization. The holding in *Maslenjak* indicated the Court's attempt to develop a coherent approach to interpreting statutes that raise prosecutorial discretion issues, over a potential incompatibility between the gravity of an offense and the attendant consequences.

In the oral argument, Justices evinced hostility towards the Government's broad reading.[98]

Chief Justice Roberts stated that there was "certainly a problem of prosecutorial abuse" under the government's reading, since "the government will have the opportunity to denaturalize anyone they want."[99] As for testing the limits of the Government's position, Chief Justice Roberts asked a question, in which 20 years after a person was naturalized as a citizen, whether the Government officials simply notify that person, that he is not an American citizen after all because of a minor criminal offense, even if there was no arrest, conducted by him 20 years ago and forgot to disclose in his application form seeking American citizenship.[100] The Government lawyer persistently held an unyielding position that the Government may revoke the citizenship of Americans who made even trivial misstatements in their naturalization proceedings.[101]

After the questions asked by Chief Justice Roberts, Justice Kennedy also questioned the Government's position. Justice Kennedy pointed out that the Government lawyer should arguing for what citizenship is and ought to mean, instead of demeaning

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98 Transcript of Oral Argument at 36, *Maslenjak*, 137 S. Ct. 1918 (2017) (No. 16-309).
99 *Id.* at 54.
100 *Id.*
101 *Id.* at 54-55.

the priceless value of citizenship.[102]

Justices Kagan and Sotomayor expressed doubts at the Government's stance that even seemingly inconsequential lies, like those about one's weights[103] or a childhood nickname,[104] could be the basis for denaturalization. Justice Kanga and Sotomayor's questions also indicated the Court's concern, that if the Court takes the Government's position, a lie would always provide a basis for rescinding citizenship, even if the lie merely resulted from "embarrassment, fear, or a desire for privacy."[105]

Justice Breyer addressed that the Government's reading "would throw into doubt the citizenship of vast percentages of all naturalized citizens."[106] Justice Ginsburg raised her doubt by asking maybe "a simple-minded question," that "how can an immaterial statement procure naturalization?"

It is not surprising, that the Court delivered its opinion, although having already decided that the plain text of the statute does not required a causal link between false statements and the granting of citizenship, the causal link should be required to find a conviction under Section 1425(a) by using the most natural reading of the Statute. The doubts raised by the Justices in the oral argument was apparent in the Court's opinion.

The Court addressed that the Government's broad reading of the statute as opening the door to a world of disquieting consequences.[107] For instance, the Court gave an example of a woman who, while applying for citizenship, failed to disclose membership in an online support group or a prior speeding violation, and a prosecutor could scour her paperwork and bring a §1425(a) charge on that basis, even many years after she

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102 *Id.* at 55.
103 Transcript of Oral Argument at 36, *Maslenjak,* 137 S. Ct. 1918 (2017) (No. 16-309).
104 *Id*. at 30-31.
105 *Maslenjak*, 137 S. Ct. at 1927.
106 *Id*. at 32.
107 *Maslenjak*, 137 S. Ct. at 1927.

became a citizen.[108] Permitting such prosecutions would give prosecutors nearly limitless leverage. Without an explicit, textual expression of congressional intent, such limitless leverage held by the Government could not be countenanced by the Court.[109] The concern about prosecutorial discretion by the Government is hence a crucial indicator driving the Court's opinion to reject the Government's broad reading of the Statute.[110]

Regarding the concern, the Court has already delivered a line of statutory interpretation cases in which the Court, concerned about the ever-expanding criminal code and the attendant shift of power into the hands of prosecutors, has spurned broad government readings of federal criminal statutes.

For example, in *Yates v. United States*,[111] a 2015 decision, the Court overturned the conviction of a fishing boat captain, who had thrown overboard undersized red grouper found on his vessel, for violating an obstruction of justice statute that prohibits destroying or altering "any record, document or tangible object."[112] The Court found that the law covered only physical items that held information, but not fish disposed of to frustrate an investigation.[113] That conclusion drew a sharp retort from Justice Kagan in a dissenting opinion, who wrote that "a 'tangible object' is an object that's tangible."[114] This narrow interpretation of the obstruction law in the Yates decision required a majority of the Justices to ignore the obvious meaning of "tangible" to impose a limit on prosecutorial discretion. Accepting the government's position would mean almost anything that someone changed or disposed of could result in an

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108 *Id.*
109 *Id.*
110 *See id.* at 1931.
111 135 S. Ct. 1074 (2015).
112 *Id.* at 1079-1080.
113 *Id.* at 1080.
114 *Id.* at 1092.

obstruction of justice charge, especially because the statute applies to conduct even when there is no pending investigation.

Later, in *McDonnell v. United States*,[115] decided in 2016, the Court unanimously overturned the conviction of former Virginia governor who had received over $100,000 in gifts from a friend interested in securing government support for a new dietary supplement.[116] The Justices concluded that merely "arranging a meeting, contacting another official or hosting an event" did not constitute an "official act" under federal bribery and unlawful gifts law.[117] The court expressed concern that "we cannot construe a criminal statute on the assumption that the government will use it responsibly."[118] The narrower interpretation keeps prosecutors from using the statute to reach conduct many would consider to be a part of ordinary politics.

On June 33, 2017, the Supreme Court announced its decision in the instant case, *Maslenjak v. United States*, overturning a conviction for unlawfully procuring citizenship by making a false statement on an application.[119]

The apprehension in these decisions is that the Government lawyer is essentially arguing that judges should not be too concerned about a broad interpretation of the law, because the Government can be trusted to bring only those cases that involve real misconduct and not mere technical violations. The problem with this approach is that it is often difficult to distinguish benign conduct that might be illegal under a broad interpretation of the law but should not be pursued from wrongdoing acts truly worthy of a criminal prosecution. The issue is especially pertinent when in some cases, the impact of simply filing criminal charges can be so significant and a "not

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115 136 S. Ct. 2355 (2016).
116 *See id.* at 2362.
117 *See id.* at 2368.
118 *Id.* at 2374.
119 *Maslenjak v. United States*, 137 S. Ct. 1918 (2017).

guilty" verdict does little to restore a reputation. Therefore, *Maslenjak* indicated the Court's anxiety about such cases involving prosecutorial abuse. However, the reasoning in the instant case left some questions, which were also mentioned in the concurring opinions by the Justices.

C. Materiality vs. Causation.

In the Majority's opinion, the Court is concerned about the Government's broad reading of Section 1425(a) would create a "profound mismatch" between the requirements for naturalization on the one hand and those for denaturalization on the other. This mismatch could be more crucial when many individuals may, for innocuous reasons, fail to be entirely truthful regarding inconsequential matters while answering the questions to the Government officials.[120] Therefore, the Court held § 1425(a) must require a causal relationship between the illegal act and the procurement of citizenship.[121]

In the Briefs written by the parties,[122] the Petitioner arguing that a materially element is required by Section 1425(a) and Section 1015(a).[123] Therefore, the Petitioner further arguing, that 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.[124] In response to that, the United States arguing that materiality is not an element of 18 U.S.C. 1425(a).[125] The Government also arguing that the Petitioner's claim that

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120 *Id*. at 1927.
121 *Id*.
122 *See Brief for the United States*, *Maslenjak* 137 S. Ct. (No. 16-309) (scotusblog); *see also Brief for Petitioner*, *Maslenjak* 137 S. Ct (No. 16-309) (scotusblog).
123 *See Brief for Petitioner*, *Maslenjak* 137 S. Ct (No. 16-309) (scotusblog).
124 *Id*.
125 *See Brief for the United States*, *Maslenjak* 137 S. Ct. (No. 16-309) (scotusblog).

materiality is an element of 18 U.S.C. 1015(a) is not properly before this Court and lacks merits in any event.[126] If Congress had wanted a materiality requirement to apply to Section 1425(a), the Government suggests, it would have said so specifically – as it has done in other statutes, either by using the word "material" or by using other terms, such as "perjury," that are "understood to include a materiality requirement."[127] But it didn't do so here, the Government continues, which "provides compelling evidence that the statute does not require such proof." [128] Reading a "materiality" requirement into the law would also make it difficult to apply the law consistently, the Government adds, because Section 1425(a) is an "umbrella" statute that applies to anyone whose naturalization is obtained through methods that are "contrary to other laws."[129] The statute applies to a wide range of underlying offenses, some of which – such as making a false statement under oath with regard to a material fact – already require materiality, while others – such as bribing an immigration official – do not or cannot.

The Petitioner sees this reasoning as a point in its favor.[130] She counters that the absence of the word "material" from Section 1425(a) is "particularly unilluminating," precisely because it would not have made sense for Congress to include it when the statute "applies to any actions 'contrary to law' that procure naturalization, not just false statements that do so."[131]

The Petitioner's interpretation of Section 1425(a) to include a materiality requirement is also more consistent, the party argues, with the civil statute that authorizes the government to revoke citizenship that was obtained through the "concealment of a material fact or a willful

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126 *Id.*
127 *Id.*
128 *Id.*
129 *Id.*
130 *See Brief for Petitioner*, *Maslenjak* 137 S. Ct (No. 16-309) (scotusblog).
131 *Id.*

misrepresentation."[132] It would be "anomalous," it maintains, for Congress to "authorize denaturalization in a criminal proceeding but not a civil proceeding based on the very same statement."[133]

But the Government dismisses any alleged inconsistencies in the two statutes. First, it pointed out, that another part of the same civil statute allows citizenship to be revoked if it was "illegally procured" – a term that does not require materiality.[134] Second, the civil and criminal denaturalization statutes are not coextensive.[135]

The Petitioner further argues that Section 1425(a) requires a causal connection between the false statements and efforts to obtain American citizenship.[136] "It would be odd indeed," the Petitioner reasons, "to say that a person procures (or attempts to procure) something contrary to law if the violation, in fact, has no effect on the proceeding." For false statements, the Petitioner says, this means that the Government must show that the statement was material, because a statement that is not material "cannot 'procure' an official decision."[137] This interpretation is most consistent with common sense, the Petitioner suggests, because there is no reason "Congress would want to punish (with criminal fines and imprisonment of up to five years) conduct that has no tendency to influence official decision-making."[138] If anything, the Petitioner continues, "the natural assumption would be just the opposite: that Congress meant to reserve such heavy punishment for statements of consequence."[139]

As for the holding of the instant case, the Court did not

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132 *Id*.
133 *Id*.
134 *See Brief for the United States*, *Maslenjak* 137 S. Ct. (No. 16-309) (scotusblog).
135 *Id*.
136 *See Brief for Petitioner*, *Maslenjak* 137 S. Ct (No. 16-309) (scotusblog).
137 *Id*.
138 *Id*.
139 *Id*.

fully address whether the Regulations require a "materiality" element.[140] Instead of this, the Court held that the Government must establish that an illegal act by the defendant played some role in her acquisition of citizenship.[141] When the illegal act is a false statement, that means demonstrating that the defendant lied about facts that would have mattered to an immigration official, because they would have justified denying naturalization or would predictably have led to other facts warranting that result.[142] Although the Majority used "materiality" and "causation" as two inter-changeable terms in its reasoning, it held that there was no finding that the citizen's false statement in the naturalization process that she had made no false statements to the government was not shown to be *causally connected* to the decision to grant naturalization.[143]

However, "materiality" and "causation" are two different legal standards. As mentioned in Justice Gorsuch's concurring opinion, joined with Justice Thomas, although the practical test expressed in the Majority's opinion is surely thoughtful and may prove entirely sound, the question presented before the Court should focus primarily on "whether the statute contains a *materiality* element, not on the contours of a *causation* requirement."[144] The outcomes should be different if the Regulation requires "materiality" as an element instead of a pure causal link under some circumstances.[145] For example, as suggested by Justice Alito, eight co-workers jointly buy two season tickets to see their favorite football team play.[146] They all write their names on a piece of paper and place the slips in a hat to see who will get the tickets for the big game with their

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140 *Maslenjak v. U.S.,* 137 S. Ct. at 1932 (2017).
141 at 1920.
142 at 1923.
143 at 1920.
144 *Id*. at 1931.
145 *See Id*. at 1932
146 *Id*.

team's traditional rival.[147] One of the friends puts his name in twice, and his name is drawn.[148] Under such circumstance, the guy "procured" the tickets "contrary to" the rules of the drawing even though he might have won if he had put his name in only once.[149]

In Justice Gorsuch's concurring opinion, he further stated that the lower courts have not had a chance to pass on any of these questions in the first instance illustrated by the Court.[150] The reality is that most cases cited by the Court "have [again] focused only on the materiality (not causation) question; none has tested the elaborate operational details advanced today."[151]

Regarding the complicated practical test designed by the Court in the instant case, Justice Gorsuch concerned about whether the Majority should step such far to bear the risk of yielding the insight of their "thoughtful colleagues on the district and circuit benches."[152] The Court was using the materiality and causation as two inter-changeable terms in its majority's opinion. However, the Petitioner treated the two concepts separately in its arguments. For example, in the oral argument, the Petitioner started the argument by asking for a causal link between the false statement and the procuring of the citizenship.[153] Justice Kennedy asked the Petitioner attorney for whether the false statement made by the Petitioner is material.[154] Petitioner admitted material should be treated as an element, but whether the Petitioner's false statement is material to procure the citizenship should be a question left to the jury.[155]

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147 *Id*.
148 *Id*.
149 *Id*.
150 *Maslenjak,* 137 S. Ct. at 1931.
151 *Id*.
152 *Id*.
153 Transcript of Oral Argument at 36, *Maslenjak*, 137 S. Ct. 1918 (2017) (No. 16-309).
154 *Id*.
155 *Id*.

Such argument makes clear that materiality and causation are two different concepts in the context of Petitioner's argument. It could also be indicated in the Brief of Petitioner.[156] The Petitioner attorney made two separated argument in the brief, asking for: (1) "Section 1425 requires a causal link between the predicate violation and the procurement of naturalization;" [157] and (2) "Section 1015(a) requires proof of a materially false statement." [158] There is no place in the brief for Government even mentioned an argument denying a causal link. The Government only argued the materiality is not an element required by either Section 1425(a) or Section 1015(a). [159] However, the holding by the Majority found both materiality and causation as required by the Statutes.

In Justice Alito's concurring opinion, he repeated the standard of the materiality, a standard also mentioned by the Majority in its opinion, that is: a person violates the statute by procuring naturalization through an illegal false statement which has a "natural tendency to influence" the outcome—that is, the obtaining of naturalization.[160] Understood in this way, Justice Alito further stated, that Section 1425(a) does *not* require proof that a false statement actually had some effect on the naturalization decision. [161] Because the operative statutory language-"procure" naturalization "contrary to law"-imposes no such requirement. [162] Justice Alito suggested an example, imagine, a runner who holds the world's record in an event wants to make sure she wins the gold medal at the Olympics, so she takes a performance enhancing drug.[163] She wins the race

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156 *Brief for Petitioner*, *Maslenjak* 137 S. Ct. (No. 16-309) (scotusblog).
157 *Id*. at 20.
158 *Id*. at 25.
159 *See Brief for the United States, Maslenjak* 137 S. Ct. (No. 16-309)(scotusblog).
160 *Maslenjak,* 137 S. Ct. at 1933.
161 *Id*.
162 *Id*.
163 *Id*.

but fails a drug test and is disqualified.[164] The second-place time is slow, and sportswriters speculate that she would have won without taking the drug.[165] But it would be entirely consistent with standard English usage for the race officials to say that she "procured" her first-place finish "contrary to" the governing rules.[166]

In Justice Alito's opinion, the example illustrates that the language of 18 U. S. C. §1425(a) does not require that an illegal false statement have a demonstrable effect on the naturalization decision.[167] Instead, the statute applies when a person makes an illegal false statement to obtain naturalization, and that false statement is material to the outcome. There is no "indication that Congress meant to require more."[168]

In the two concurring opinions, "causation" puts a higher burden on the Government to prove the conviction than "materiality" did. It could be majority's intent to step further to use a stronger standard to avoid the Government's broad reading of the Statute raising the argument later, that "a defendant knowingly performs a substantial act that he or she thinks will procure naturalization, that is sufficient for conviction."[169] The Majority intentionally took a more clear approach to articulate a new test to avoid sentencing discretion granted by ambiguous statutes.

V. Conclusion

This case is the result of the concern by the Court about a mismatch: one between the gravity of the offense and the severity of the consequences, due to the mandatory denaturalization upon conviction in the Statutes. *Maslenjak*,

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164 *Id.*
165 *Id.*
166 *Id.*
167 *Id.*
168 *Id.*
169 *Id.*

particularly in the oral argument, the Justices indicated such concerns of growing anxiety about prosecutorial overreach in their reasoning.

Moreover, by giving hypothetical cases, the Court addressing its concern about potential problematic reality, not referring to cases plainly arise from a mismatch between statute and defendant, but rather due to a potential incompatibility between the gravity of an offense and the consequences. The broad reading of the statute will likewise result naturalized citizen accused of immigration-related crimes. Namely, a minor lie would be met with the drastic punishment of denaturalization, without any opportunity for a mitigating exercise of the prosecution. The Court made a compromise of a wait-and-see approach, which might offer more insight to the Court by district and circuit courts, for the urgent need to articulate a clear approach for interpreting broadly worded criminal statutes.