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US IMMIGRATION & NATIONALITY LAW

NOTWITHSTANDING TRUMP'S THREATS, CAN THE GOVERNMENT REALLY TAKE AWAY A PERSON'S CITIZENSHIP?

*Posted on July 15, 2025 by Cyrus Mehta & Kaitlyn Box**

In recent weeks, the Trump administration's immigration enforcement efforts have increasingly turned towards U.S. citizens. Indeed President Trump has been insinuating that his administration would look into taking away the citizenship of a number of high profile people.

A June 11, 2025 memorandum entitled Civil Division Enforcement Priorities and authored by Assistant Attorney General Brett A. Shumate states that:

> *The Department of Justice may institute civil proceedings to revoke a person's United States citizenship if an individual either "illegally procured" naturalization or procured naturalization by "concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a). The benefits of civil denaturalization include the government's ability to revoke the citizenship of individuals who engaged in the commission of war crimes, extrajudicial killings, or other serious human rights abuses; to remove naturalized criminals, gang members, or, indeed, any individuals convicted of crimes who pose an ongoing threat to the United States; and to prevent convicted terrorists from returning to U.S. soil or traveling internationally on a U.S. passport. At a fundamental level, it also supports the overall integrity of the naturalization program by ensuring that those who unlawfully procured citizenship, including those who obtained it through fraud or concealment of material information, do not maintain the benefits of the unlawful procurement.*
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> *The Civil Division shall prioritize and maximally pursue denaturalization proceedings in all cases permitted by law and supported by the evidence. To*

promote the pursuit of all viable denaturalization cases available under 8 U.S.C. § 1451 and maintain the integrity of the naturalization system while simultaneously ensuring an appropriate allocation of resources, the Civil Division has established the following categories of priorities for denaturalization cases:

1. *Cases against individuals who pose a potential danger to national security, including those with a nexus to terrorism, espionage, or the unlawful export from the United States of sensitive goods, technology, or information raising national security concerns;*
2. *Cases against individuals who engaged in torture, war crimes, or other human rights violations;*
3. *Cases against individuals who further or furthered the unlawful enterprise of criminal gangs, transnational criminal organizations, and drug cartels;*
4. *Cases against individuals who committed felonies that were not disclosed during the naturalization process;*
5. *Cases against individuals who committed human trafficking, sex offenses, or violent crimes;*
6. *Cases against individuals who engaged in various forms of financial fraud against the United States (including Paycheck Protection Program ("PPP") loan fraud and Medicaid/Medicare fraud);*
7. *Cases against individuals who engaged in fraud against private individuals, funds, or corporations;*
8. *Cases against individuals who acquired naturalization through government corruption, fraud, or material misrepresentations, not otherwise addressed by another priority category;*
9. *Cases referred by a United States Attorney's Office or in connection with pending criminal charges, if those charges do not fit within one of the other priorities; and*
10. *Any other cases referred to the Civil Division that the Division determines to be sufficiently important to pursue.*

If a U.S. citizen is convicted of an offense relating to some of the factors in the Shumate memo, such as perpetuating fraud against an individual or in the course of obtaining a PPP loan, there should not be a basis for finding that he "illegally procured" naturalization or procured naturalization by "concealment

of a material fact or by willful misrepresentation" under 8 U.S.C. § 1451(a) if the illegal acts occurred exclusively after he naturalized. The DOJ recently succeeded in denaturalizing Elliot Duke, who was arrested and charged with distribution of child pornography after he naturalized. However, Duke confessed to downloading and distributing child pornography even prior to his naturalization, and had answered "no" to the question on Form N-400 that asks whether one has "ever committed a crime or offense for which you were not arrested". In *U.S. v. Olivar*, which is the subject of further analysis in a prior blog, the Ninth Circuit upheld the revocation of an individual's citizenship who had agreed to commit crimes in the future, although he had not committed any overt act prior to naturalization. Unlike Duke, Olivar's citizenship was revoked not because of his responses on Form N-400, but on the basis that he lacked good moral character during the five-year period preceding his naturalization. Although Oliver had not actually engaged in any criminal activity before becoming a U.S. citizen, his agreement to commit crimes occurred prior to naturalization.

Trump has already threatened Zohran Mamdani, the Democratic nominee for mayor of New York City and a naturalized U.S. citizen, stating: "A lot of people are saying he's here illegally. We're going to look at everything". In response to assertions that Mr. Mamdani would not impede ICE's efforts to make arrests in New York City, Trump replied, "Well then we'll have to arrest him." In a letter addressed to Attorney General Pam Bondi, Republican Congressman Ogles requested that the Justice Department open an investigation into whether Mr. Mamdani should be subject to "denaturalization proceedings" over rap lyrics Mr. Ogles claimed expressed solidarity with individuals convicted of terrorism-related offenses, before he was a U.S. citizen.

Trump has also threatened to rescind the U.S. citizenship of former talk show host Rosie O'Donnell, stating on Truth Social, "Because of the fact that Rosie O'Donnell is not in the best interests of our Great Country, I am giving serious consideration to taking away her Citizenship". INA 349 provides that acts such as obtaining naturalization in a foreign state, entering the armed forces of a foreign state as an officer or if such armed forces are in hostilities against the United States, obtaining employment in the government of a foreign state after acquiring the nationality of that foreign state, or making a formal renunciation of nationality before a consular officer. A U.S. citizen can also lose citizenship if s/he is convicted of treason or related subversive acts. The provision requires

that an individual voluntary perform these expatriating acts "with the intention of relinquishing United States nationality." In *Afroyim v. Rusk*, 387 U.S. 253 (1967), the Supreme Court held that a U.S. citizen has "... constitutional right to remain in a free country unless he voluntarily relinquishes that citizenship." In a subsequent decision, *Vance v. Terrazas*, 444 U.S. 253 (1980), the Court held that "in establishing loss of citizenship, the Government must prove an intent to surrender United States citizenship, not just the voluntary commission of an expatriating act such as swearing allegiance to a foreign nation. Congress does not have any general power to take away an American citizen's citizenship without his 'assent,' which means an intent to relinquish citizenship, whether the intent is expressed in words or is found as a fair inference from his conduct." These cases are discussed at length in a prior blog.

While the threats against Mamdani and O'Donnell have no basis, the Trump administration under the Shumate Memorandum may try to denaturalize citizens based on concealment of a material fact or by willful misrepresentation before they naturalized. However, it is a high burden on the government to commence denaturalization proceedings against a citizen in federal court. "The immigration courts have no jurisdiction over U.S. citizens, so the only way for the administration to attempt to strip citizenship is to go through the actual federal judiciary, which is far more independent and much less likely to look favorably upon efforts to target the relatively ironclad protections of citizenship," according to an article in Slate where Cyrus Mehta is quoted. In civil cases the government must prove its case by clear, convincing, and unequivocal evidence, leaving no reasonable doubt . For a criminal conviction, the federal government must show "proof beyond a reasonable doubt" that the individual violated 18 U.S.C. § 1425 because the individual knowingly obtained or attempted to obtain naturalization through fraud for him or herself or for another individual. Denaturalization as a result of a criminal conviction is subject to a ten-year statute of limitation.

In 2017, the Supreme Court held in a unanimous decision in *Maslenjak v. United States* that only an illegal act that played a role in an individual's acquisition of U.S. citizenship could lead to criminal denaturalization, narrowing the scope under which an individual may be denaturalized under 18 U.S.C. § 1425. In *Maslenjak*, the government under the Obama and Trump administrations sued to revoke Diana Maslenjak's U.S. citizenship for making false statements regarding her husband's membership in a Bosnian Serb militia in the 1990s.

The Supreme Court ruled that if an applicant made a false statement during the citizenship process, the statement must have played some role in the individual obtaining citizenship in order to warrant the revocation of citizenship. The court stated that "small omissions and minor lies" that did not influence the award of citizenship do not necessitate denaturalization.

As discussed in a prior blog, this ruling is significant. It prohibits a government official from revoking a naturalized American's citizenship based on an insignificant omission or misrepresentation. If the applicant did not indicate that she was a member of her school club to the question on the naturalization application asking about membership in any club at anytime and anywhere in the world, a vindictive prosecutor can no longer use this as a basis to indict her under 18 USC 1425(a), seek a conviction and then revoke her citizenship.

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