

Department of Homeland Security



U.S. Immigration
and Customs
Enforcement

Office of Investigations

Denaturalization Investigations Handbook

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Foreword

The Denaturalization Investigations Handbook provides a single source of national policies, procedures, responsibilities, guidelines, and controls that should be followed by U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents when conducting denaturalization investigations. This Handbook contains instructions and guidance that will help ensure uniformity and operational consistency at all OI field offices. The Denaturalization Investigations Handbook is available on the OI Proprietary Web site.


Chapter 22 of the Immigration and Naturalization Service (INS) Special Agent Field Manual entitled "Denaturalization Investigations," and all other previous issuances by INS or by ICE OI on this subject are hereby superseded.

The Denaturalization Investigations Handbook is an internal policy of OI and is not intended to confer any right or benefit on any private person or party. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the OI Information Disclosure Unit, Mission Support Division, as well as the appropriate ICE Counsel and/or U.S. Attorney, should be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public. Any further request for disclosure of this Handbook or information contained herein should be referred to the OI Information Disclosure Unit.

The OI Policy Unit is responsible for coordinating the development and issuance of OI policy. All suggested changes or updates to this Handbook should be submitted to the OI Policy Unit which will coordinate all needed revisions with the Identity and Benefit Fraud Unit.



Marcy M. Forman
Director, Office of Investigations



Date

DENATURALIZATION INVESTIGATIONS HANDBOOK

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DENATURALIZATION INVESTIGATIONS HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The Denaturalization Investigations Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents when conducting investigations relating to naturalization fraud and illegality that could result in the revocation of U.S. citizenship and the cancellation of the certificate of naturalization.

Chapter 2. BACKGROUND

Denaturalization investigations are both challenging and technical. Successful execution of this type of investigation requires knowledge of naturalization and denaturalization law, criminal statutes relating to naturalization at the time citizenship was granted, the most current OI policies and procedures, and court decisions. With this knowledge and background, an investigator can plot the direction of the investigation required to support civil and criminal denaturalization proceedings.

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The U.S. Judicial Branch clearly recognizes the near absolute authority of Congress to establish qualifications for citizenship (Article I of the Constitution assigns to Congress the power “[t]o establish a uniform Rule of Naturalization,” U.S. Const. Art. I, § 8, cl. 4). Congress established the qualifications for citizenship in the Immigration and Nationality Act (INA). *See generally* Title 8 of the United States Code (U.S.C.), Subchapter III. The INA charges U.S. Attorneys with the duty to institute denaturalization proceedings upon a showing of good cause. *See* 8 U.S.C. § 1451.

Complications that could affect the outcome of denaturalization proceedings should be carefully considered, (b) (7)(E)

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Chapter 3. DEFINITIONS

The following definitions are provided for the purposes of this Handbook:

3.1 Alien

An alien is any person who is not a citizen or national of the United States. 8 U.S.C. § 1101(a)(3).

3.2 Denaturalization

Denaturalization, also known as revocation of naturalization, is the revoking and setting aside of the order admitting a person to citizenship and canceling the certificate of naturalization. 8 U.S.C. § 1451(a).

3.3 Lawful Permanent Resident

A lawful permanent resident is an alien who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with immigration law. 8 U.S.C. § 1101(a)(20).

3.4 Naturalization

The term naturalization means the conferring of the nationality of a state upon a person after birth by any means whatsoever. 8 U.S.C. § 1101(a)(23).

3.5 United States

The United States is defined geographically as the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands. 8 U.S.C. § 1101(a)(38).

3.6 U.S. Citizen

A U.S. citizen is a native of the United States, a person who naturalized in the United States, or a person who derived U.S. citizenship (from one or both parents), who owes allegiance to the United States and is entitled to its full rights, privileges, and protection. *See generally*, Title III of 8 U.S.C.

3.7 U.S. National

A U.S. national is either a citizen of the United States, or a person who, though not a U.S. citizen, owes permanent allegiance to the United States. 8 U.S.C. § 1101(a)(22).

Chapter 4. RESPONSIBILITIES

4.1 Director, Office of Investigations

The Director of OI has the overall responsibility for the oversight and implementation of the policies and procedures set forth in this Handbook.

4.2 Special Agents in Charge

OI Special Agents in Charge are responsible for implementing the policies and procedures set forth in this Handbook within their areas of responsibility.

4.3 Special Agents

OI Special Agents are responsible for complying with the provisions of this Handbook.

Chapter 5. AUTHORITY FOR NATURALIZATION AND DENATURALIZATION

5.1 Constitutional and Statutory Authority to Grant Naturalization and Jurisdiction

The Constitution of the United States empowers Congress to establish a uniform rule of naturalization. Under this authority, Congress has enacted laws prescribing the process of naturalization. Prior to 1990, the power to naturalize persons as citizens of the United States resided with the courts. *See* 8 U.S.C. § 1421 (1988). The Immigration Act of 1990, Pub. L. 101-649 (effective October 1, 1991), transferred the sole authority to naturalize from the courts to the Attorney General. *See* 8 U.S.C. § 1421(a) (1994), Chapter 8 of the Code of Federal Regulations (C.F.R.) § 310.1.

The Homeland Security Act of 2002, Pub. L. No. 107-296, transferred citizenship and immigration authorities from the Attorney General to the Secretary of Homeland Security. The Secretary of Homeland Security now has sole authority to naturalize citizens of the United States. *See* 8 U.S.C. § 1103(a); 8 U.S.C. § 1421(a); 8 C.F.R. § 310.1.

The Secretary of Homeland Security, in turn, delegated, among other authorities, the authority to administer the oath of allegiance to U.S. Citizenship and Immigration Services (USCIS) in Section 2V of the Department of Homeland Security (DHS) Delegation Number 0150.1, “Delegation to the Bureau of Citizenship and Immigration Services.” As a result, USCIS has the authority to administer the oath of allegiance.

Note: The courts retain a role in naturalization by administering oaths of allegiance and maintaining a judicial review role. First, upon notice, eligible courts have exclusive authority to administer oaths. This authority lasts 45 days from the date USCIS certifies an applicant’s eligibility for naturalization. 8 U.S.C. § 1421(b)(1)(B). After 45 days, the authority to administer oaths is transferred to DHS. In some jurisdictions, the courts have relinquished the right to exclusive jurisdiction to administer oaths during the 45-day period. Even absent exclusive jurisdiction, an applicant may elect to have the oath administered by an eligible court. 8 U.S.C. § 1421(b)(1)(A), 8 C.F.R. § 310.3(a). Second, the courts play a judicial review role in that an applicant may seek judicial review of a denied naturalization application or a pending naturalization application that

has not been adjudicated by the end of 120 days after an examination. 8 U.S.C. §§ 1421(c), 1447(b).

5.2 Statutory Authority to Revoke Naturalization

There are both civil and criminal judicial denaturalization proceedings. The law in effect as of the date of issuance of this Handbook provides procedures for the revocation of naturalization.

- A. The civil statute, 8 U.S.C. § 1451(a), states that U.S. Attorneys for the respective districts have the duty, upon affidavit showing good cause, to institute proceedings to revoke citizenship and cancel the certificate of naturalization on the grounds that naturalization was “illegally procured” or was “procured by concealment of a material fact or by willful misrepresentation.” Revocation on these bases is also covered by 8 C.F.R. § 340.2.
- B. Authority for criminal prosecution of unlawful procurement of citizenship or naturalization is found in 18 U.S.C. § 1425. When a person has been convicted of a violation of 18 U.S.C. § 1425, the court where the conviction occurred must revoke the order admitting such person to citizenship and must declare the certificate of naturalization canceled. The same court that has jurisdiction over the trial also has jurisdiction to revoke naturalization upon a conviction. 8 U.S.C. § 1451(e).

5.3 Procedural Considerations

The U.S. Attorney’s Offices, the former Immigration and Naturalization Service, and the Office of Immigration Litigation (OIL) of the Civil Division of the Department of Justice (DOJ) entered into a Memorandum of Understanding (MOU) on January 22, 2000, regarding the parties’ mutual responsibilities in denaturalization actions. The MOU details the steps to be followed by the parties in instituting and litigating civil denaturalization actions.

Attorneys from ICE’s Central Revocation Unit (CRU) of the Enforcement Law Division of the Office of the Principal Legal Advisor (OPLA) pursue denaturalization actions on behalf of ICE and coordinate with the U.S. Attorney’s Offices and OIL. The CRU is available to assist Special Agents with matters that arise during the course of a denaturalization investigation (whether criminal or civil) and with the initiation of a denaturalization action.

ICE may refer a case to the U.S. Attorney’s Office for criminal prosecution of unlawful procurement of citizenship or naturalization under 18 U.S.C. § 1425. ICE must notify OIL of its intention to refer such a case. Special Agents should consult with a CRU attorney prior to referral.

The U.S. Attorney's Office is responsible for the prosecution of actions under 18 U.S.C. § 1425. The U.S. Attorney's Office must notify ICE whether it intends to prosecute the action. If the U.S. Attorney's Office declines to prosecute or intends to proceed with a civil denaturalization action, or if the U.S. Attorney's Office wishes to negotiate a plea to a different offense, it must notify ICE and OIL. ICE and OIL may contact the designated U.S. Attorney's Office regarding the status of an action.

OIL, and ICE attorneys detailed to OIL, litigate civil denaturalization cases. However, the U.S. Attorney's Office may choose to assume primary or exclusive responsibility for litigating any civil denaturalization case.

OPLA's CRU attorneys are responsible for preparing referral packets relating to denaturalization cases for referral to OIL for approval. The referral packet must include an executed Affidavit of Good Cause, which is a procedural requirement to the initiation of civil denaturalization proceedings and which must be filed with the complaint. *See* 8 U.S.C. §1451(a).

Generally, the Special Agent involved in a particular denaturalization investigation executes the corresponding Affidavit of Good Cause. The Special Agent executing the affidavit need not have personal knowledge of the facts, and may base the affidavit upon information from official files. *See United States v. DeLucia*, 256 F.2d 487 (1958), *cert. denied*, 358 U.S. 836. Special Agents should consult with a CRU attorney prior to preparing the affidavit and initiating a civil denaturalization action.

The Office of Special Investigations (OSI) within DOJ's Criminal Division handles the investigation and litigation of all denaturalization cases against Nazi persecutors.

ICE and OSI share joint investigative authority regarding non-Nazi era human rights violator denaturalization cases. Special Agents must coordinate with OSI on all denaturalization investigations relating to naturalized U.S. citizens who are suspected of committing or participating in torture, genocide, or extrajudicial killings.

5.4 Statute of Limitations and Right to Jury Trial

The offense of unlawful procurement of citizenship or naturalization in violation of 18 U.S.C. § 1425 has a 10-year statute of limitations from the date of the commission of the offense. *See* 18 U.S.C. § 3291 ("No person shall be prosecuted, tried, or punished for violation of any provision of sections 1423 to 1428, inclusive, of chapter 69 and sections 1541 to 1544, inclusive, of chapter 75 of title 18 of the United States Code, or for conspiracy to violate any of such sections, unless the indictment is found or the information is instituted within ten years after the commission of the offense."). The defendant has the right to a trial by jury.

There is no statute of limitations for bringing a civil denaturalization action. *See* 8 U.S.C. § 1451(a); *see also United States v. Nunez-Garcia*, 262 F.Supp.2d 1073, 1087 (C.D. Cal.

2003). There is no right to a jury trial in civil denaturalization proceedings. *Luria v. United States*, 231 U.S. 9, 27-28 (1913).

Chapter 6. GROUNDS FOR DENATURALIZATION

6.1 Criminal Denaturalization, 18 U.S.C. § 1425

A conviction of unlawful procurement of U.S. citizenship or naturalization in violation of 18 U.S.C. § 1425 results in the automatic revocation of naturalization. Upon conviction, the court in which the defendant was convicted must “revoke, set aside, and declare void the final order admitting such person to citizenship” and must “declare the certificate of naturalization of such person to be canceled.” 8 U.S.C. § 1451(e).

Note: A conviction under other criminal provisions, such as 18 U.S.C. § 1001 (relating to false statements), does not require the court to automatically revoke citizenship and will result in the U.S. Government having to engage in separate denaturalization proceedings.

The elements for prosecution under 18 U.S.C. § 1425(a) are that the defendant (1) knowingly and (2) contrary to law (3) procured or attempted to procure the naturalization of any person, or documentary or other evidence of naturalization or citizenship.

The elements for prosecution under 18 U.S.C. § 1425(b) are that the defendant (1) for himself or herself or for another person, issued, procured, obtained, or applied for, or otherwise attempted to procure naturalization or citizenship (or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, or duplicates or copies of any of the foregoing); (2) was not entitled to naturalization or citizenship; and (3) knew that he or she was not entitled to naturalization or citizenship.

The courts are divided as to whether materiality is an element in a prosecution under 18 U.S.C. § 1425(a). Even though the statute does not specifically require it, the Ninth Circuit has read 18 U.S.C. § 1425(a) to require materiality in order for misrepresentation to be contrary to law. *See United States v. Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992). Other courts have taken the view that materiality is not an element of 18 U.S.C. § 1425(a). *See, e.g., United States v. Rogers*, 898 F. Supp. 219, 220-21 (S.D.N.Y. 1995). Courts in several circuits also have read a requirement of intent, or *mens rea*, for a conviction under 18 U.S.C. § 1425. *See, e.g., United States v. Alameh*, 341 F.3d 167, 175 (2d Cir. 2003).

6.2 Civil Denaturalization, 8 U.S.C. § 1451(a)

The U.S. Government may bring a civil denaturalization action in federal court based on two general grounds: (1) illegal procurement of naturalization and (2) procurement of naturalization by willful concealment or misrepresentation of a material fact.

To prove illegal procurement of naturalization, the U.S. Government must show that the naturalized citizen did not fulfill one or more of the statutory requirements for naturalization. There must be strict compliance with all congressionally-imposed prerequisites to the acquisition of citizenship. *Fedorenko v. United States*, 449 U.S. 490, 506 (1981).

The basic prerequisites to naturalization are lawful admission for permanent residence, good moral character, and physical presence. *See* 8 U.S.C. §§ 1427, 1429. With a few exceptions, the “statutory period” for permanent residence and good moral character begins 5 years prior to the application for naturalization and extends until the applicant takes the oath of allegiance. 8 U.S.C. § 1427(a)

An applicant for naturalization may not be naturalized if he or she is subject to an outstanding final finding of deportability. 8 U.S.C. § 1429. Additionally, an applicant’s naturalization application may not be considered if he or she is in removal proceedings during the naturalization process. *Id.*

To be eligible for naturalization, an applicant must have been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA. *See* 8 U.S.C. § 1429. Thus, any fraud or impropriety in which the applicant may have participated in order to obtain his or her initial entry visa may be used as a basis for a denaturalization action on illegal procurement grounds.

A naturalization applicant must demonstrate that he or she is a person of good moral character. 8 U.S.C. § 1427(a)(3). The INA does not define “good moral character,” but there are statutory and regulatory bars to establishing good moral character. *See* 8 U.S.C. § 1101(f); 8 C.F.R. § 316.10.

- A. A person convicted of murder at any time lacks good moral character. 8 C.F.R. § 316.10(b)(1)(i).
- B. A person convicted of an aggravated felony on or after November 29, 1990, is permanently barred from establishing good moral character. 8 U.S.C. § 1101(f)(8); 8 C.F.R. § 316.10(b)(1)(ii).
- C. A person who, during the statutory period, is convicted of, or admits committing, the following offenses lacks good moral character: (a) one or more crimes involving moral turpitude (petty offense exception applies); (b) a controlled substance offense (30 grams of marijuana exception applies); (c) two or more offenses for which the applicant was sentenced to 5 years or more; (d) alien smuggling; (e) prostitution and commercialized vice; (f) polygamy. 8 U.S.C. § 1101(f)(3).
- D. A person lacks good moral character if he or she has been convicted of two or more gambling offenses committed during the statutory period. 8 U.S.C. § 1101(f)(5).

- E. A person incarcerated for 180 days or more in a penal institution during the statutory period lacks good moral character. 8 U.S.C. § 1101(f)(7).
- F. A person lacks good moral character if he or she, during the statutory period, willfully failed or refused to support dependents or participated in an extramarital affair that tended to destroy an existing marriage, unless he or she establishes extenuating circumstances. 8 C.F.R. § 316.10(b)(3)(i), (ii).
- G. Probation, parole, or suspended sentence during the statutory period *may be considered* in determining good moral character. 8 C.F.R. § 316.10(c)(1). A naturalization application will not be approved until probation, parole, or a suspended sentence has been completed. *Id.*
- H. A person lacks good moral character if he or she, during the statutory period, committed, or was convicted or imprisoned for, unlawful acts that adversely reflect upon the applicant's moral character, unless he or she establishes extenuating circumstances. 8 C.F.R. § 316.10(b)(3)(iii). The "unlawful acts" regulation is an important tool for the U.S. Government because, often, the subject committed a crime before naturalization but was convicted after naturalization and the crime was uncovered after the subject was already a citizen. *See United States v. Dang*, - F.3d -, 2007 WL 1500310, No. 04-17529 (9th Cir. May 24, 2007) (upholding the "unlawful acts" regulation); *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005) (a naturalized U.S. citizen who committed a drug offense during the statutory period prior to naturalization, but was arrested and convicted after naturalization, was subject to denaturalization for lacking good moral character).
- I. A person who, during the statutory period, provides false testimony for the purpose of obtaining any benefit under the INA is precluded from establishing good moral character. 8 U.S.C. § 1101(f)(6); 8 C.F.R. § 316.10(b)(2)(vi). This preclusion applies to cases in which (a) there were affirmative misrepresentations, not merely omissions or concealment; (b) there were oral statements, not merely falsified documents; (c) statements were made under oath; and (d) the misrepresentations were made for the purpose of obtaining an immigration benefit. *Kungys v. United States*, 485 U.S. 759, 780-81 (1988).

The denaturalization ground of illegal procurement based on false testimony differs from the denaturalization ground of willful concealment or misrepresentation of a material fact because in a false testimony claim, the U.S. Government need not establish materiality. *Id.* at 780-83; 8 C.F.R. § 316.10(b)(2)(vi).

To prove procurement of naturalization by misrepresentation or concealment, the U.S. Government must show that the naturalized citizen misrepresented or concealed some

fact, that the misrepresentation or concealment was willful, that the fact was material, and that the misrepresentation or concealment occurred during the naturalization process. *Kungys v. United States*, 485 U.S. 759, 767, 772 (1988). This denaturalization ground covers omissions, as well as affirmative misrepresentations, and the misrepresentation need not have been under oath. The test for materiality is whether the misrepresentation or concealment “had a natural tendency to influence the decisions” of DHS. *Id.* at 772.

6.3 Additional Grounds for Denaturalization

Additional grounds for denaturalization are: (1) within 5 years after naturalization, becoming a member of or affiliated with an organization in which membership or affiliation at the time would have precluded naturalization; (2) refusing, within 10 years after naturalization, to testify as a witness before a congressional committee concerning subversive activities, if such refusal results in a conviction for contempt; and (3) in certain circumstances, the discharge from the U.S. Armed Forces under other than honorable conditions. 8 U.S.C. § 1451(a), (c); 8 U.S.C. § 1439(c); 8 U.S.C. § 1440(c).

6.4 Administrative Denaturalization

Administrative denaturalization is not available, even though that option was available by regulation. *See* 8 C.F.R. § 340.1 (1996). There is a nationwide permanent injunction preventing DHS from using administrative denaturalization procedures. *See Gorbach v. Reno*, 219 F.3d 1087 (9th Cir) (en banc); *Gorbach v. Reno*, No. C-98-0278R, 2001 WL 34145464 (W.D. Wash. Feb. 14, 2001). Therefore, a denaturalization action must be brought in federal court.

6.5 Requirements for Naturalization Under Prior Laws

In seeking grounds upon which to base a denaturalization action, only those naturalization requirements that were in effect at the time naturalization was conferred are germane. *See Kungys v. United States*, 485 U.S. 759, 789 (1988). Therefore, when conducting an investigation, a Special Agent must know what substantive and procedural provisions were in effect when the naturalization was procured. Special Agents may consult with a CRU attorney to determine which law applies in a particular case. If the U.S. Attorney’s Office is handling a case, then the U.S. Attorney will determine which law governs that case.

Chapter 7. EVIDENCE IN DENATURALIZATION PROCEEDINGS

7.1 Compliance with the General Rules of Evidence

In all denaturalization proceedings, a Special Agent must comply with OI policy regarding evidence handling and ensure that evidence complies with general rules of admissibility. Many decisions in denaturalization cases are based on documentary evidence. (b) (7)(E)

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7.2 Burden of Proof

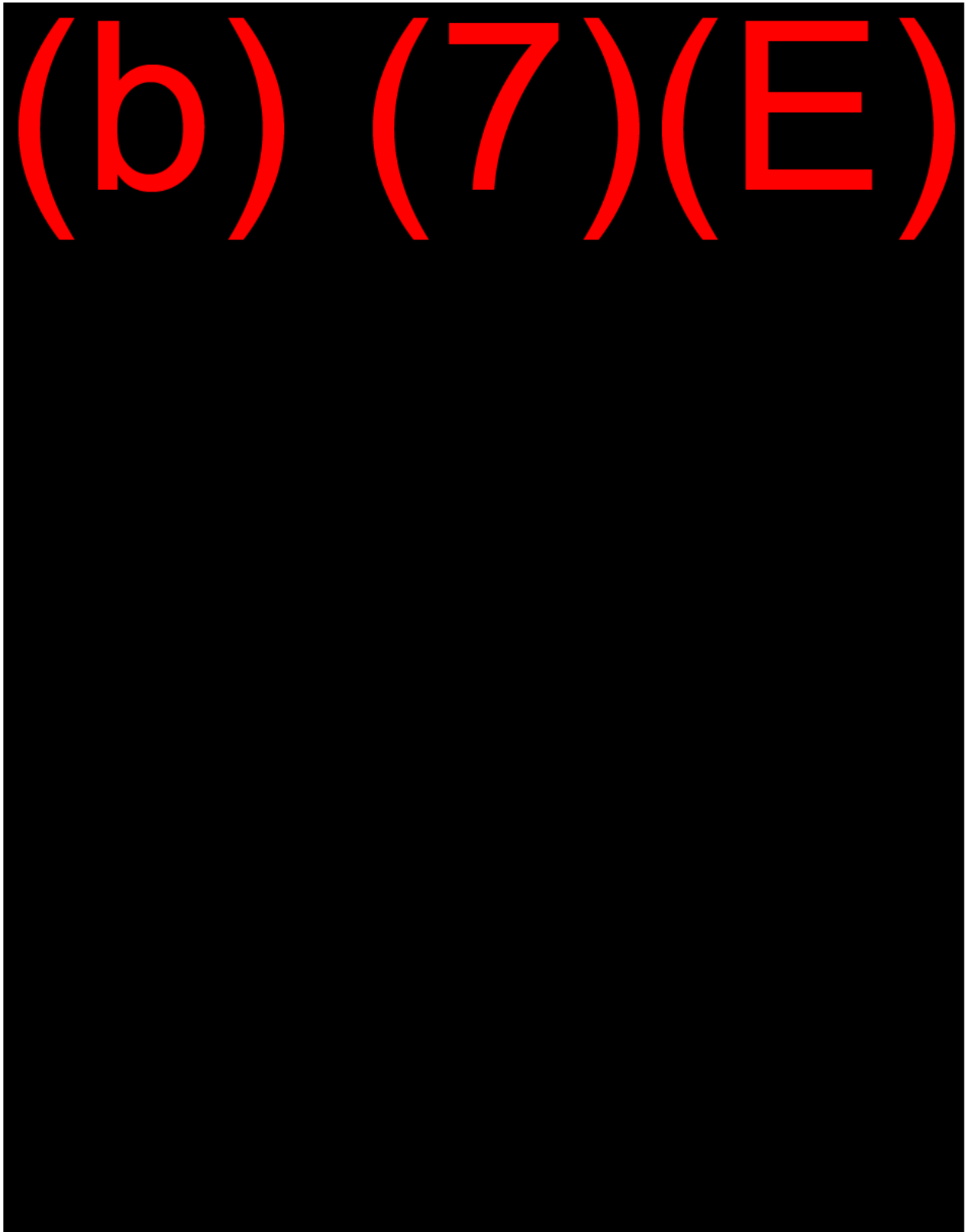
To successfully prosecute under 18 U.S.C. § 1425, as in all other criminal cases, the U.S. Government has the burden of proving the commission of the offense and that the offense was committed by the accused. It is a basic tenet of due process that a criminal defendant's conviction must rest upon a jury's finding "beyond a reasonable doubt" that the defendant is guilty of "every element of the crime with which he is charged." *United States v. Gaudin*, 515 U.S. 506, 509-510 (1995).

To sustain a civil denaturalization action under 8 U.S.C. § 1451(a), the U.S. Government must prove by "clear, unequivocal and convincing evidence" that does "not leave the issue in doubt" that the naturalized citizen illegally procured naturalization or procured naturalization by concealment or misrepresentation of a material fact. *Schneiderman v. United States*, 320 U.S. 118, 125, 135 (1943). "This burden is substantially identical with that required in criminal cases – proof beyond a reasonable doubt." *Klapprott v. United States*, 335 U.S. 601, 612 (1949).

Chapter 8. CONDUCTING A DENATURALIZATION INVESTIGATION

An all-inclusive list of steps to follow while conducting a denaturalization investigation cannot be set forth as such steps differ from case to case. To successfully prepare a case, however, certain steps must be taken in the majority of these investigations. In many cases, information is received several years after naturalization. When conducting an

investigation relating to naturalization fraud or illegality, Special Agents should consider the following steps for building their case:



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Chapter 9. PREPARING THE DENATURALIZATION REPORT

In addition to the Report of Investigation (b) (7)(E) [REDACTED] (b) (7)(E) [REDACTED] the Special Agent may need to prepare a prosecutorial report for consideration by the U.S. Attorney (the policy of the local U.S. Attorney's Office will dictate whether this report is required and the specific format). In the absence of the case agent, this report will describe the case to an indictment committee or other supervising managerial official whose approval may be required to move forward on the case. As a result, the prosecution report must stand on its own without further explanation of the facts required and should:

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Chapter 11. PROCESSING THE DENATURALIZATION ORDER

After a court issues an order revoking the defendant's naturalization, the case agent should coordinate with USCIS Headquarters (b) (7)(E) (b) (7)(E) to reflect the defendant's new status. Generally, the defendant reverts to the status he or she had at the time of naturalization. The defendant may or may not be subject to removal.

The A-file and the denaturalization order should be sent to the Section Chief for Record Services at USCIS Headquarters so that the records staff may update the Central Index System.

Note: As of the date of issuance of this Handbook, the address is: (b) (7)(E)

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The A-file should then be obtained for determination of removability and, if necessary, issuance of removal charging documents.

ACRONYMS

A-B

C

CFR Code of Federal Regulations
CRU Central Revocation Unit

D

DHS Department of Homeland Security
DOJ Department of Justice

E-H

I

ICE U.S. Immigration and Customs Enforcement
INA Immigration and Nationality Act
INS Immigration and Naturalization Service

J-L

M

MOU Memorandum of Understanding

N

O

OI Office of Investigations
OIL Office of Immigration Litigation
OPLA Office of the Principal Legal Advisor
OSI Office of Special Investigations

P-T

U

USC United States Code
USCIS U.S. Citizenship and Immigration Services

V-Z