

1989

**DENATURALIZATION AND DEPORTATION OF NAZI WAR  
CRIMINALS IN THE UNITED STATES: UPHOLDING  
CONSTITUTIONAL PRINCIPLES IN A SINGLE PROCEEDING**

David Birnbaum

Follow this and additional works at: [https://digitalcommons.nyls.edu/  
journal\\_of\\_international\\_and\\_comparative\\_law](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law)



Part of the [Law Commons](#)

---

**Recommended Citation**

Birnbaum, David (1989) "DENATURALIZATION AND DEPORTATION OF NAZI WAR CRIMINALS IN THE UNITED STATES: UPHOLDING CONSTITUTIONAL PRINCIPLES IN A SINGLE PROCEEDING," *NYLS Journal of International and Comparative Law*. Vol. 10 : No. 2 , Article 5.  
Available at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law/vol10/iss2/  
5](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol10/iss2/5)

This Notes and Comments is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.

# DENATURALIZATION AND DEPORTATION OF NAZI WAR CRIMINALS IN THE UNITED STATES: UPHOLDING CONSTITUTIONAL PRINCIPLES IN A SINGLE PROCEEDING

## I. INTRODUCTION

United States legislation regarding the denaturalization and deportation of suspected Nazi war criminals<sup>1</sup> requires change to effectuate the United States Immigration and Naturalization Services policy. In the late 1940s and early 1950s, many Nazi war criminals became naturalized United States citizens.<sup>2</sup> Today, a naturalized citizen accused of war crimes must first be denaturalized and then deported in separate and

---

1. A war criminal as defined by the International Military Tribunal is an individual that committed or conspired to commit:

- (a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts committed by any persons in execution of such plan.

Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis, Charter of the International Military Tribunal *opened for signature* August 8, 1945, art. 6, 59 Stat. 1544, 1547, E.A.S. No. 472, 82 U.N.T.S. 279 [hereinafter *The London Agreement*].

2. See *Fedorenko v. United States*, 449 U.S. 490 (1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Sprogis*, 763 F.2d 115 (2d Cir. 1985); see also *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981). Defendants in all of the above cases were at one time naturalized citizens.

lengthy proceedings,<sup>3</sup> and this dual process has been known to last as long as a decade.<sup>4</sup> Consequently, alleged war criminals remain in the United States indefinitely while appealing both actions.<sup>5</sup> The United States Government bears the burden of proof in both proceedings and is unnecessarily forced to argue its case twice. The precious nature of citizenship with rights granted by the United States Constitution is an obvious reason for the exhaustive proceedings.<sup>6</sup> The absence of a statute of limitations for illegal entry into the United States, however, suggests that expelling an individual who has not met the standards of entry is as important as protecting that individual's constitutional rights. Swift administration of justice requires that denaturalization and deportation be decided in one proceeding<sup>7</sup> while continuing to uphold constitutional rights.

In most cases,<sup>8</sup> suspected Nazi war criminals "illegally procured"<sup>9</sup> United States citizenship under the Displaced Persons Act of 1948,<sup>10</sup> the Immigration and Nationality Act of 1952<sup>11</sup> or the Refugee Relief Act of 1953.<sup>12</sup> In direct violation of these immigration laws, suspects willfully

3. See 8 U.S.C. § 1451(a) (1988) (originally enacted as Immigration and Nationality Act of 1952, ch. 477, § 340(a), 66 Stat. 260); see also *Alleged Nazi War Criminals: Hearings Before the Subcomm. on Immigration, Citizenship, and International Law of the House Comm. on the Judiciary*, 95th Cong., 2d Sess. 1,102 (1979) [hereinafter 1979 *House Hearings*].

4. *Fedorenko*, 449 U.S. at 490 (the *Fedorenko* case is typical of deportation cases which commonly require six or seven years of litigation in the United States as well as additional litigation after deportation); see also *Demjanjuk*, 518 F. Supp. at 1362 (*Demjanjuk* is currently appealing a death sentence of an Israeli court); *Maikovskis v. Immigration & Naturalization Service*, 773 F.2d 435, 437 (2d Cir. 1985) (stating that the INS instituted deportation proceedings in 1976).

5. See *Fedorenko*, 449 U.S. at 490; *Demjanjuk*, 518 F. Supp. at 1362; *Maikovskis*, 773 F.2d at 435.

6. U.S. CONST. amend. XIV, § 1 (stating "[a]ll persons born or naturalized in the United States . . . are citizens of the United States. . .").

7. One method suggested by Congress for expediting deportation was to combine the denaturalization and deportation procedures. *N.Y. Times*, Feb. 17, 1980, at A34, col. 1.

8. H.R. REP. NO. 1452, 95th Cong., 2d Sess., reprinted in, 1978 U.S. CODE CONG. & ADMIN. NEWS 4700, 4702 (stating that the majority of cases concerned individuals who were admitted under the Displaced Persons Act of 1948 or the Refugee Relief Act of 1953).

9. 8 U.S.C. § 1427(a) (1988) (originally enacted as Immigration and Nationality Act of 1952, ch. 477, § 316(a), 66 Stat. 242). Section 1427(a) states that a person must be "lawfully admitted" to the United States in order to be granted citizenship.

10. Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009, amended by 64 Stat. 219 (1950) [hereinafter DPA].

11. 8 U.S.C. § 1451 (1988).

12. Refugee Relief Act of 1953, Pub. L. No. 83-203, 1953 U.S. CODE CONG. & ADMIN. NEWS (83 Stat.) 444. Because none of the suspected war criminals discussed herein entered under this Act, it will not be addressed in the text. Under the Act refugees were given "special nonquota status." *Id.* at 445. Like other post-war immigration acts, the Refugee Relief Act was a reaction to continuing problems of displaced persons in Europe. *Id.* at

concealed war-time activities in order to acquire United States entry visas and eventually became citizens.<sup>13</sup> Service as an armed concentration camp guard, for example, is *per se* evidence that the individual lacks the requisite "good moral character" imposed by Congress to become a citizen.<sup>14</sup> Concealment of such service constitutes a "material misrepresentation"<sup>15</sup> under immigration laws, and should result in exclusion, or denaturalization in the case of the naturalized citizen. Denaturalization/deportation proceedings require an arduous seven to ten years to complete and have resulted in the execution of the defendant.<sup>16</sup>

The two leading cases pertaining to deportation are *Fedorenko v. United States*<sup>17</sup> and *United States v. Demjanjuk*.<sup>18</sup> In *Fedorenko*, the Supreme Court for the first time, affirmed the denaturalization of a Nazi war criminal and as a result, the decision is closely followed by other courts.<sup>19</sup> The defendant, Feodor Fedorenko, was subsequently deported,<sup>20</sup>

---

2104. The Act allowed 240,000 refugees to enter the United States with "special quota immigrant visas." *Id.* at 2103.

13. See *Fedorenko v. United States*, 449 U.S. 490 (1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981); *Maikovskis v. Immigration & Naturalization Service*, 773 F.2d 435 (2d Cir. 1985).

14. 8 U.S.C. § 1427(a) (1988). Section 1427(a) states in pertinent part that to be admitted to the United States, an applicant must be "a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order of the United States." *Id.*

15. Materiality is a component of the law of torts that was adapted to denaturalization. The Restatement (Second) of Torts states:

(1) Reliance upon a fraudulent misrepresentation is not justifiable unless the matter misrepresented is material.

(2) The matter is material if

(a) a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or

(b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.

RESTATEMENT (SECOND) OF TORTS § 538 (1976).

16. See cases cited *supra* note 2. *But see* *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981) (where the proceeding took approximately two years).

17. 449 U.S. 490 (1981).

18. 518 F. Supp. 1362 (N.D. Ohio 1981).

19. *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981); *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *Maikovskis v. Immigration & Naturalization Service*, 773 F.2d 435 (2d Cir. 1985); *United States v. Sprogis*, 763 F.2d 115 (2d Cir. 1985); *United States v. Sokolov*, 814 F.2d 864 (2d Cir. 1987) (all of the above cases cite *Fedorenko*).

20. N.Y. Times, Dec. 23, 1984, at A12, col. 3.

tried by a Soviet court,<sup>21</sup> and executed.<sup>22</sup> In *Demjanjuk*, the defendant is currently appealing a death sentence in Israel.<sup>23</sup> In both *Fedorenko* and *Demjanjuk*, the defendants were denaturalized nearly thirty years after their illegal entry to the United States, and both cases involved lengthy proceedings of nearly a decade.<sup>24</sup> *Fedorenko* resulted in an execution,<sup>25</sup> whereas *Demjanjuk* resulted in a death sentence.<sup>26</sup>

An equally important case, though not as highly publicized, is *United States v. Sprogis*.<sup>27</sup> In *Sprogis*, the United States Government failed to meet its stringent burden of proof, and the denaturalization suit was dismissed.<sup>28</sup> Unlike *Fedorenko* and *Demjanjuk*, however, *Sprogis* was disposed of in less than two years because the matter was settled in *one proceeding*. The Court's decision in favor of the defendant was the sole reason for the brief litigation period. Had the United States successfully argued its case, further appeals by the defendant, a deportation proceeding, and a trial abroad would have taken place.

The *Fedorenko* and *Demjanjuk* cases spanned nearly a decade and resulted in an execution and a death sentence. These outcomes should prompt Congress to reexamine the procedure of having separate denaturalization and deportation trials. Congress should consider whether United States law should allow Nazi war criminals residing in the United States to live out their natural lives free from prosecution. Forty-five years have elapsed since the conclusion of World War II, and suspected Nazi war criminals are aging. Now more than ever, a speedy trial is of the utmost importance. Time cannot allow the world to forget the grotesque crimes committed by the Nazis.<sup>29</sup> Those responsible for the crimes must face the consequences of their actions no matter how long ago they were perpetrated.

West Germany sent this message to the world when it suspended the statute of limitations on war crimes.<sup>30</sup> The United States courts, however, are hesitant to sacrifice constitutional principles in order to

---

21. *Id.*, June 20, 1986, at A2, col. 5.

22. *Id.*, July 28, 1987, at A3, col. 5.

23. *Id.*, Apr. 26, 1988, at A1, col. 3.

24. *Fedorenko v. United States*, 449 U.S. 490 (1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981).

25. N.Y. Times, July 28, 1987, at A3, col. 5.

26. *Id.*, Apr. 26, 1988, at A1, col. 3.

27. 763 F.2d 115 (2d Cir. 1985).

28. *Id.*

29. *United States v. Sprogis*, No. CV-82-1804, slip. op. at 1579 (E.D.N.Y. May 18, 1984) (stating that "we must resolve never to forget" the crimes committed by the Nazis).

30. The West German Government voted to suspend the statute of limitations on murder, primarily to continue the prosecution of Nazi war criminals. N.Y. Times, July 4, 1979, at A1, col. 2.

deport war criminals before their natural deaths. A delicate balance between the right of the government to expel defendants who do not meet the standards of citizenship and the need to safeguard the constitutional rights of those defendants must be reached. This balance may be achieved in a single proceeding; separate trials are unnecessary.

## II. LAWS GOVERNING DENATURALIZATION AND DEPORTATION

United States courts have long recognized that citizenship is a "priceless treasure."<sup>31</sup> Strict laws governing the entry of immigrants, imposed to prevent the immigration of criminals, have historically played a role in United States immigration policy.<sup>32</sup> Congress requires that immigration to the United States or acquisition of citizenship should be granted only to "a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."<sup>33</sup>

Membership in organizations hostile to the principles of the Constitution and the United States is considered *prima facie* evidence that an individual lacks good moral character.<sup>34</sup> Hence, Nazi war criminals, whose ideals were contrary to the principles of civilized nations, were barred from entry to the United States and certainly from application for citizenship.<sup>35</sup> The Nazi regime offended the world by committing crimes that have been described as contrary to "the general principles of law recognized by civilized nations."<sup>36</sup> The United States Government, along with other world powers, condemned the Nazi acts and committed themselves to bringing war criminals to justice at the conclusion of World War II.<sup>37</sup> Vigorous pursuit of this policy at the Nuremberg Trials<sup>38</sup> resulted in the conviction and punishment of

---

31. Comment, *Denaturalization of Nazi War Criminals: Is There Sufficient Justice for Those Who Would Not Dispense Justice?*, 40 MD. L. REV. 39, 44 (1981) (quoting *Johnson v. Eisentrager*, 339 U.S. 763, 791 (1950) (Black, J., dissenting)).

32. R. STEEL, *STEEL ON IMMIGRATION LAW* 1-3 (1985).

33. 8 U.S.C. § 1427(a) (1988).

34. *Id.*

35. *Fedorenko v. United States*, 449 U.S. 490, 510-11 n.32 (1981).

36. Statute of the International Court of Justice, June 26, 1945, art. 38(1)(c), 59 Stat. 1055, T.S. No. 993.

37. The United States formalized its commitment by signing The London Agreement. See *supra* note 1. Signatories included the United States, France, the Soviet Union, and the United Kingdom. *Id.*

38. The London Agreement established the International Military Tribunal for the purpose of administering justice. Because the proceedings took place in the city of Nuremberg, they are commonly known as the Nuremberg Trials. See The London Agreement, *supra* note 1.

individuals guilty of war crimes.<sup>39</sup>

In furtherance of this obligation, Congress instituted the Displaced Persons Act of 1948 (the "DPA"),<sup>40</sup> which operated in conjunction with the operations of the United Nations International Refugee Organization (the "IRO").<sup>41</sup> Although the DPA was implemented to insure that individuals uprooted by the war could freely immigrate to the United States,<sup>42</sup> it also sought to prevent those who participated in war-time atrocities<sup>43</sup> from entering the United States.<sup>44</sup> Laws adopted after World War II were consistent with the principles of the Constitution and affirmed the United States' commitment to a strict immigration policy.

#### A. *The Displaced Persons Act of 1948*

The DPA,<sup>45</sup> the first significant immigration act of the post-war era, was implemented to alleviate the serious refugee problem in war-torn Europe. Enacted by Congress as a humanitarian measure, the DPA granted entry visas to "eligible displaced persons" as defined by the constitution of the International Refugee Organization (the "IRO").<sup>46</sup> The requirements of the DPA had to be met before an applicant could be admitted to the United States.<sup>47</sup> Eligible displaced persons, defined as victims of the Nazi regime or individuals persecuted because of race, religion, national origin or political beliefs,<sup>48</sup> became a "concern"<sup>49</sup> of the

39. *Id.*

40. See DPA, *supra* note 10 and accompanying text.

41. Constitution of the International Refugee Organization, opened for signature December 16, 1946, 62 Stat. 3037, T.I.A.S. No. 1846 [hereinafter IRO Constitution].

42. DPA, *supra* note 10, § 2(c). At the close of hostilities in Europe, the Allied armies found themselves overseeing approximately 8,000,000 persons which included civilian refugees, prisoners of war, and survivors of concentration camps. Seven million of these uprooted individuals were repatriated by 1948 leaving some 1,000,000 displaced persons. *United States v. Demjanjuk*, 518 F. Supp. 1362, 1378 (N.D. Ohio 1981).

43. The atrocities committed by the Nazis were numerous. In *Fedorenko*, the District Court described the operation of Treblinka, a concentration camp responsible for the death of at least 800,000 individuals, as a "human abattoir" where prisoners were executed the same day they arrived. *United States v. Fedorenko*, 455 F. Supp. 893, 901 n.12 (S.D. Fla. 1978). For a detailed description of camp operations see W. SHIRER, *THE RISE AND THE FALL OF THE THIRD REICH 1967-74* (1960).

44. IRO Constitution, *supra* note 41, Annex I, Part II, at 3051.

45. DPA, *supra* note 10.

46. *United States v. Osidach*, 513 F. Supp. 51, 64 (C.C.E.D. Pa. 1981).

47. See DPA, *supra* note 10.

48. IRO Constitution, *supra* note 41, Annex I, Part I, at 3049. The IRO defines refugees as:

(a) victims of the nazi or fascist regimes or of regimes which took part on their side in the second world war, or of the quisling or similar regimes

IRO and as a result, the DPA. Elimination of normal immigration quotas<sup>50</sup> allowed scores of individuals to enter the United States, thereby easing the European refugee problem.<sup>51</sup> Ineligible displaced persons who collaborated with the Nazi regime were denied entry to the United States.<sup>52</sup> Consistent with the ideals of the IRO Constitution and that of other civilized nations, the United States excluded suspected Nazi war criminals from immigration.<sup>53</sup> Nevertheless, the majority of war criminals that the government seeks to deport today, misrepresented themselves and entered the country under the DPA.<sup>54</sup>

Those seeking to enter the United States under the DPA after World War II faced a series of complex procedures designed to screen applicants for eligibility.<sup>55</sup> As an adjunct of the IRO, the DPA drew upon definitions contained in the IRO Constitution to establish criteria for eligibility.<sup>56</sup> Before applying for admission under the DPA, a candidate had to file for IRO assistance and pass a series of interviews.<sup>57</sup>

- which assisted them against the United Nations . . . ;
- (c) persons who were considered refugees before the outbreak of the second world war, for reasons of race, religion, nationality or political opinion.

*Id.*

49. *Id.* Annex I, Part I, at 3049-52.

50. DPA, *supra* note 10, § 3(a).

51. IRO Constitution, *supra* note 41, preamble. The preamble mandates that the IRO assist refugees in resettling. *Id.* Thus, it followed that the purpose of the DPA, an arm of the IRO, was to relieve the refugee problem created by the war in Europe.

52. DPA, *supra* note 10, § 2(b) adopted the IRO's definition of a displaced person. While defining an "eligible displaced person" the IRO also noted exceptions, stating in pertinent part:

*Persons who will not be the concern of the Organization.*

1. War criminals, quislings and traitors.
2. Any other persons who can be shown:
  - (a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or
  - (b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations.

IRO Constitution, *supra* note 41, Annex I, Part II, at 3051-52.

53. *See generally* IRO Constitution, *supra* note 45.

54. *Fedorenko v. United States*, 449 U.S. 490 (1981); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981). Defendants in all the above cases were at one time naturalized citizens.

55. *Fedorenko v. United States*, 449 U.S. 490, 495 (1981).

56. DPA, *supra* note 10, § 2(b), at 1009.

57. *Fedorenko*, 449 U.S. at 490; *Demjanjuk*, 518 F. Supp. at 1378. The *Demjanuk* court stated that an IRO officer would administer the interviews with emphasis on the applicant's war-time activities. *Id.* The primary source of information was the applicant himself.



Ironically, investigators relied solely on information supplied by the applicant to determine eligibility.<sup>58</sup> If successful, the applicant would receive certification as an "eligible displaced person" within the meaning of the IRO Constitution.<sup>59</sup> After IRO certification, the candidate could then file an application under the DPA.

To implement its policy, the DPA established the Displaced Persons Commission (the "DPC").<sup>60</sup> The DPC became the final arbiter of an applicant's eligibility for assistance under the DPA.<sup>61</sup> Refugees seeking to enter the country bore the burden of proving their eligibility.<sup>62</sup> Unfortunately, DPC investigators did not interview applicants, but relied exclusively on files supplied by the IRO to determine eligibility under the DPA.<sup>63</sup> After an applicant passed both the IRO and DPC examinations, INS officials issued visas, relying on scant files forwarded by the DPC.<sup>64</sup> DPC investigators indicated that if a candidate disclosed participation in Nazi persecution, application would be denied.<sup>65</sup> Therefore, Nazis wishing to enter the United States simply lied to investigators who did not question the credibility of their testimony.<sup>66</sup>

Under the DPA applicants were required to disclose truthful information about their war-time activities.<sup>67</sup> Section 10 of the DPA specifically stated that an individual who willfully misrepresented himself "for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States."<sup>68</sup> Some Nazi war criminals who were granted United

Therefore, it was most likely that the official took the misleading statements by a prospective immigrant at face value.

58. *Fedorenko*, 499 U.S. at 490.

59. *Id.*

60. Pursuant to the DPA, the Displaced Persons Commission, [the "DPC"], was created "to carry out the provisions and accomplish the purposes of this Act." DPA, *supra* note 10, § 8.

61. *Id.* Though the DPC, was the final arbiter of who would qualify for DPC assistance, the INS issued the entry visas. 1979 *House Hearings*, *supra* note 3, at 105 (statement of Almanza Tripp, former Immigration and Naturalization Service officer stationed in Europe under the DPA).

62. DPA, *supra* note 10, § 10; see 8 U.S.C. § 1427(e) (1988).

63. 1979 *House Hearings*, *supra* note 3, at 106-08 (statement of Almanza Tripp, former Immigration and Naturalization Service officer stationed in Europe with the Displaced Persons Act).

64. *Id.* at 106.

65. *Fedorenko v. United States*, 449 U.S. 490 (1981). Approximately 12,134 persons were refused visas under Section 13 of the DPA. *Alleged Nazi War Criminals: Hearings Before the Subcomm. on Immigration, Citizenship, and International Law of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 1, 86 (1978) [hereinafter 1978 *House Hearings*].

66. See *supra* notes 57-58 and accompanying text.

67. See DPA *supra* note 10.

68. DPA, *supra* note 10, § 10. Additionally, the DPA fined persons who knowingly

States citizenship willfully misrepresented themselves to qualify for immigration as displaced persons.<sup>69</sup> Failure to disclose the truth about war-time activities resulted in denial of admission to the United States or revocation of an entry visa already issued.<sup>70</sup>

Under normal conditions, the Immigration and Naturalization Service investigated each applicant thoroughly, contacting relatives, friends and employers to verify a candidate's statements. A growing refugee population, prompted by upheaval in post-war Europe and the desire to provide speedy relief,<sup>71</sup> however, resulted in less than thorough investigations.<sup>72</sup> Lengthy investigations might have reduced immigration to a trickle.<sup>73</sup> The alternative might have been to leave pre-war immigration quotas in place,<sup>74</sup> thereby slowing Europe's recovery.

### B. *The Immigration and Nationality Act of 1952*

Today, a suspected war criminal's citizenship is subject to revocation under the Immigration and Nationality Act of 1952 (the "INA"). Section 1451(a) of the INA provides that a United States citizenship illegally procured or "procured by concealment of a material fact or by willful misrepresentation" must be revoked.<sup>75</sup> Legal entry into the United States is a condition precedent to obtaining citizenship.<sup>76</sup> In addition, Section 1451(a) provides a mechanism for revocation of citizenship but does not mandate deportation, which is achieved through a separate proceeding.<sup>77</sup> Cases against violators of immigration laws are instituted with the benefit

---

violated DPA provisions:

Any person or persons who knowingly violate or conspire to violate any provision of this Act, except section 9, shall be guilty of a felony, and upon conviction thereof shall be fined not less than \$500 nor more than \$10,000, or shall be imprisoned not less than two or more than ten years, or both.

*Id.* § 14.

69. *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981). *But see United States v. Sprogis*, 763 F.2d 115 (2d Cir. 1985). Defendant Elmars Sprogis truthfully reported his war-time activities as a Latvian police chief, however, no investigation was conducted at the time of his immigration.

70. DPA, *supra* note 10, § 10.

71. *1978 House Hearings*, *supra* note 65, at 103.

72. *Id.*

73. *Id.* at 103-04. Testimony indicated that a thorough investigation, including inquiries to the Berlin document center which supplied information on war criminals would have caused "a 3-week breakdown in the Program." *Id.*

74. Abrams, *American Immigration Policy: How Strait the Gate?*, 45 LAW & CONTEMP. PROBS. 137, 138 (1982).

75. 8 U.S.C. § 1451(a) (1988). For a definition of a materiality, see *supra* note 15.

76. 8 U.S.C. § 1451(a) (1988).

77. *Id.*

of information not available to the DPA immediately after World War II, as well as the time to do exhaustive investigations.<sup>78</sup>

### III. DENATURALIZATION CASES INVOLVING NAZI WAR CRIMINALS

Between the end of World War II and the mid-1970s, no action was taken to expel Nazi war criminals who illegally entered<sup>79</sup> the United States in violation of the DPA and the INA.<sup>80</sup> Most suspected Nazi war criminals entered the United States representing themselves as "eligible displaced persons"<sup>81</sup> under the DPA and remained in the United States unimpeded by prosecution until the late 1970s.<sup>82</sup> The United States Government's failure to pursue Nazi war criminals and enforce immigration laws allowed those individuals statutorily forbidden from entering the country to enter and to remain long enough to become naturalized citizens.<sup>83</sup> Once a naturalized citizen, a suspected Nazi war criminal must be denaturalized and deported in separate proceedings.<sup>84</sup>

In the late 1970s, the United States Government renewed its commitment to bring war criminals to justice. The Special Litigation Unit was organized to pursue Nazi war criminals.<sup>85</sup> The Unit's primary

---

78. See *supra* notes 55-66 and accompanying text.

79. Illegal procurement is defined as failing to comply with the prerequisites to the acquisition of citizenship. *Fedorenko v. United States*, 449 U.S. 490, 506 (1980).

80. Part of the reason for the failure to prosecute Nazi war criminals has been blamed on the United States' obsession with fighting communism. *1978 House Hearings, supra* note 65, at 12 (Response by the Honorable Joshua Eilberg to the Carey Report). In addition, poor cooperation from communist block countries in the United States investigations has stopped the flow of information essential to denaturalization cases. See GAO REPORT, *supra* note 86, at 13-14.

81. DPA, *supra* note 10.

82. On October 30, 1978, President Carter renewed the American commitment to uphold the principles of The London Agreement, *supra*, note 1, by signing a bill to deport Nazi collaborators that entered the country after 1952. See Immigration and Nationality Act of 1952, Pub. L. No. 95-549, 92 Stat. 2065 (codified as amended at 8 U.S.C. § 1182 (1988)); see also *supra* note 75; *United States v. Fedorenko* 597 F.2d 946 (5th Cir. 1979); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981); *United States v. Koziy*, 540 F. Supp. 25 (S.D. Fla. 1982). These cases illustrate that suspected war criminals acquired citizenship and remained in the United States free from prosecution until the late 1970s, and in the *Koziy* case, until 1981.

83. *Fedorenko*, 449 U.S. at 490; *United States v. Sokolov*, 814 F.2d 864 (2d Cir. 1987); *Maikovskis v. Immigration & Naturalization Service*, 773 F.2d 435 (2d Cir. 1985); *Demjanjuk*, 518 F. Supp. at 1362; *Linnas*, 527 F. Supp. at 426; *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981).

84. See 8 U.S.C. § 1451(a) (1988).

85. U.S. COMP. GEN. REPORT, WIDESPREAD CONSPIRACY TO OBSTRUCT PROCESS OF ALLEGED NAZI WAR CRIMINALS NOT SUPPORTED BY AVAILABLE EVIDENCE — CONTROVERSY MAY CONTINUE BY THE COMPTROLLER GENERAL OF THE UNITED STATES, WIDESPREAD CONSPIRACY TO OBSTRUCT PROBES OF ALLEGED NAZI WAR CRIMINALS NOT SUPPORTED BY

function was, and continues to be, to "expedite investigations and prosecutions of Nazi war criminals."<sup>86</sup> Since its inception, virtually all prosecution of Nazi war criminals in United States courts has been handled by the Unit.<sup>87</sup>

In addition to the Unit's efforts, in 1978, Congress amended the Immigration and Nationality Act of 1952 to expand the definition of excludable individuals.<sup>88</sup> The amendment was designed to facilitate the deportation of aliens that persecuted civilian populations during the Nazi reign.<sup>89</sup> The amendment incorporated into permanent law, provisions that previously only appeared in special refugee acts such as the DPA.<sup>90</sup> Under the amendment, the government has the power to deport *anyone* that "ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion" between March 23, 1933 and May 8, 1945.<sup>91</sup> The requirement that the suspect be convicted of a crime before the government could take action was eliminated.<sup>92</sup> Unquestionably, the new law facilitates government prosecution,<sup>93</sup> however, it has not hastened deportation and

AVAILABLE EVIDENCE — CONTROVERSY MAY CONTINUE at v (May 15, 1978) [hereinafter GAO REPORT].

86. *Id.*

87. Letter from Diane Kelly, Administrative Officer of the Office of Special Investigations, Criminal Divisions, in Washington, D.C. to David Birnbaum (Mar. 14, 1989) (on file at the office of N.Y.L. SCH. J. INT'L & COMP. L.).

88. Immigration and Nationality Act of 1952, Pub. L. No. 95-549, 92 Stat. 2065 (codified as amended at 8 U.S.C. § 1182 (1988)).

89. H.R. REP. NO. 1452, 95th Cong., 2d Sess., *reprinted in*, 1978 U.S. CODE CONG. & ADMIN. NEWS 4700, 4700.

90. *Id.* at 4702.

91. 8 U.S.C. § 1182 (a)(33) (1988). Section 1182(a)(33) allows the government to exclude:

(33) Any alien who during the period beginning on March 23, 1933, and ending May 8, 1945, under the direction of, or in association with-

- (A) the Nazi government in Germany,
- (B) any government in any area occupied by the military forces of the Nazi government of Germany, or
- (C) any government established with the assistance or cooperation of the Nazi government of Germany, or
- (D) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

*Id.*

92. *Id.* Congressional history suggests that the amendment expanded the meaning of the law to include non-physical harm. H.R. REP. NO. 1452, 95th Cong., 2d Sess., *reprinted in*, 1978 U.S. CODE CONG. & ADMIN. NEWS 4700, 4704.

93. See *United States v. Sokolov*, 814 F.2d 864 (2d Cir. 1987) (under the amended law the government was able to denaturalize the defendant for authoring Nazi propaganda).

denaturalization procedures.<sup>94</sup>

Naturalized citizens are afforded the same rights and privileges as persons born in the United States.<sup>95</sup> Because United States citizenship is a priceless treasure, a heavy burden is placed on the government in attempting to prove that a defendant misrepresented himself.<sup>96</sup> In order to succeed in denaturalization cases, the government must prove its case by "clear, unequivocal, and convincing evidence which does not leave the issue in doubt' . . . ."<sup>97</sup> Therefore, unless the government rests its case without any doubts, the suspected Nazi war criminal retains his certificate of citizenship.

#### A. *The Chaunt Materiality Test*

In *Chaunt v. United States*,<sup>98</sup> the Supreme Court established a test to determine what constitutes a material misrepresentation on an application for entry into the United States.<sup>99</sup> To prove that a defendant misrepresented or concealed a material fact, it must be found that "(1) facts were suppressed 'which, if known, would have warranted denial of citizenship' or (2) that their disclosure 'might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship.'"<sup>100</sup>

In *Chaunt*, the defendant failed to report three arrests in the United States, which occurred subsequent to obtaining an entry visa, and prior to the issuance of naturalized citizenship.<sup>101</sup> The Court found that the arrests would not have resulted in a denial of the certificate of naturalization, nor would these facts have prompted an investigation leading to a denial of citizenship, and thus, the misrepresentation was not material.<sup>102</sup> The Court held that the government must prove that the concealed facts, if known, would have resulted in denial of citizenship, or would have led to an investigation resulting in denial.<sup>103</sup> Applying the *Chaunt* materiality

94. The amendment did not change the procedure of denaturalization and deportation. See 8 U.S.C. § 1182 (1988).

95. U.S. CONST. amend. XIV, § 1 (stating that "[a]ll persons born or naturalized in the United States . . . are citizens of the United States. . .").

96. *United States v. Fedorenko*, 455 F. Supp. 893, 898 (S.D. Fla. 1978).

97. *Schneiderman v. United States*, 320 U.S. 118, 158 (1943) (quoting *Maxwell Land Grant Case*, 121 U.S. 325, 381 (1887)).

98. 364 U.S. 350 (1960).

99. See RESTATEMENT SECOND OF TORTS §538 (1976).

100. *Chaunt v. United States*, 364 U.S. 350, 355 (1960).

101. *Id.* at 352.

102. *Id.* at 355.

103. *Id.*

test to the case of a suspected Nazi war criminal, concealment is material because possible involvement in Nazi war crimes constitutes a fact that if known, would bar entry and citizenship.<sup>104</sup>

The Court distinguished *Chaunt* in *Fedorenko*. *Chaunt* involved misrepresentation on a naturalization application, whereas *Fedorenko* involved a misrepresentation on a visa application prior to immigration.<sup>105</sup> In *Fedorenko*, the Court held that the *Chaunt* materiality test only applied to cases involving misrepresentation at the time of naturalization.<sup>106</sup> In a concurring opinion, however, Justice Blackmun stated that there was virtually no difference between false information given at the time of entry or at the time of naturalization.<sup>107</sup> Although the Court refused to apply the *Chaunt* materiality test in *Fedorenko*, the test is still used by lower courts to determine whether a defendant's false statements were material.<sup>108</sup>

The material misrepresentation requirement protects naturalized citizens from being denaturalized as a result of inconsequential or unsubstantiated allegations. At the time of immigration, or application for citizenship, the government must demonstrate that there was willful misrepresentation.<sup>109</sup> Once citizenship is attained, however, the government must prove that such misrepresentation was both willful *and* material. If truthful disclosure of personal history would have denied the applicant citizenship, such misrepresentation is considered material.<sup>110</sup> War crimes were considered material *per se* because if disclosed, they would have barred immigration under the DPA and the INA. Thus, Nazi war criminals residing in the United States who did not fully disclose war-time activities illegally entered the United States through willful and material misrepresentation. Consequently, their citizenship was illegally procured and is subject to revocation.<sup>111</sup>

---

104. *Fedorenko v. United States*, 449 U.S. 490, 499 (1981).

105. *Id.* at 508-09.

106. *Id.*

107. *Id.* at 518 (Blackmun, J., concurring).

108. *Maikovskis v. Immigration & Naturalization Service*, 773 F.2d 435, 441 (1985) (stating that all circuit courts regard the *Chaunt* test as applicable to misrepresentations in visa applications); *see also* *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Linnas*, 527 F. Supp. 426, 440 (E.D.N.Y. 1981); *United States v. Osidach*, 513 F. Supp. 51 (E.D. Pa. 1981). These cases used the *Chaunt* test to determine materiality.

109. *Demjanjuk*, 518 F. Supp. at 416; *Osidach*, 513 F. Supp. at 51.

110. *United States v. Fedorenko*, 455 F. Supp. 893, 916 (S.D. Fla. 1978).

111. Naturalization is "illegally procured" if some statutory requirement which is a condition precedent to naturalization is absent at the time the petition for naturalization is granted." *Demjanjuk*, 518 F. Supp. at 1380 (citing H.R. REP. No. 1086, 87th Cong., 1st Sess. 39, reprinted in U.S. CODE CONG. & ADMIN. NEWS 2950, 2983 (1961)).

*B. Fedorenko v. United States*

*Fedorenko v. United States*,<sup>112</sup> is widely accepted as the most significant denaturalization case.<sup>113</sup> It marked the first time the Court affirmed the revocation of a Nazi war criminal's citizenship.<sup>114</sup> Fedorenko was the first, and only, Nazi war criminal to be successfully denaturalized,<sup>115</sup> deported<sup>116</sup> and subsequently executed.<sup>117</sup> Although the District Court ruled in favor of the defendant<sup>118</sup> because the government did not meet its burden of proof,<sup>119</sup> the Fifth Circuit reversed the lower court's opinion.<sup>120</sup> Ultimately, the case was affirmed by the Supreme Court.<sup>121</sup> Thus, *Fedorenko v. United States* is an important precedent that has since been followed.<sup>122</sup>

Nearly thirty years passed from the time Fedorenko immigrated to the United States until the time the government instituted an action against him.<sup>123</sup> Similar to actions instituted against suspected war criminals presently residing in the United States,<sup>124</sup> the government had the burden of proving "by clear, unequivocal and convincing evidence, which [did] not leave the issue in doubt,"<sup>125</sup> that the defendant made misrepresentations on his visa application.<sup>126</sup> The government had to prove that Fedorenko materially and willfully misrepresented himself for the purpose of entering the United States and obtaining a naturalization

---

112. 449 U.S. 490 (1981).

113. See cases cited *supra* note 19.

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

115. *Id.*

116. Hermine Braunsteiner Ryan was extradited after voluntarily consenting to denaturalization. 1979 *House Hearings*, *supra* note 3, at 64-70 (statement of Anthony Devito, former Immigration and Naturalization Service investigator).

117. *N.Y. Times*, July 28, 1987, § 1, at 3, col. 5.

118. *United States v. Fedorenko*, 455 F. Supp. 893 (S.D. Fla. 1978).

119. *Id.* at 921.

120. *United States v. Fedorenko*, 597 F.2d 946, 954 (5th Cir. 1979).

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

122. *United States v. Sprogis*, 763 F.2d. 115, 121 (2d Cir. 1985); *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981); *United States v. Linnas*, 527 F. Supp. 426, 428 (E.D.N.Y. 1981); *United States v. Osidach*, 513 F. Supp. 51 (C.C.E.D. Pa. 1981).

123. *United States v. Fedorenko*, 455 F. Supp. 893, 896 (S.D. Fla. 1978).

124. See *Demjanjuk*, 518 F. Supp. at 1362; *Linnas*, 527 F. Supp. at 426; *Osidach*, 513 F. Supp. at 51.

125. *Schneiderman v. United States*, 320 U.S. 118, 158 (1943).

126. *Id.*

certificate.<sup>127</sup> The government prevailed in the case by illustrating that Fedorenko lacked the "good moral character" necessary to enter the United States and to acquire citizenship under the INA due to Fedorenko's war-time activities.<sup>128</sup>

Fedorenko, a soldier in the Russian army, was captured by the Germans and was held as a prisoner of war.<sup>129</sup> Although a prisoner, he was selected to serve at Treblinka, a concentration camp in Poland.<sup>130</sup> Fedorenko claimed that after receiving training, he was involuntarily assigned to serve as a guard in the Nazi concentration camp.<sup>131</sup> As a guard he was issued a uniform and a gun,<sup>132</sup> received a stipend, and was allowed to leave the camp for hours at a time.<sup>133</sup> Fedorenko served as an armed guard from 1942 until the end of the war.<sup>134</sup> Six witnesses were able to identify Fedorenko and testified against him at his trial.<sup>135</sup>

Fedorenko argued that involuntary service as a guard was indistinguishable from involuntary service as a concentration camp inmate; if inmates were not held liable for their actions, then he should not be held liable for his actions as a guard.<sup>136</sup> The District Court held that there was no distinction between inmates who involuntarily cut the hair of female inmates before execution and involuntary service as a guard.<sup>137</sup> When the case was brought before the Supreme Court, Fedorenko argued that if a guard who served involuntarily was convicted, inmates who involuntarily assisted in the persecution of civilians should also be convicted of war crimes.<sup>138</sup> The Court, however, distinguished armed guards, who received pay and could leave the grounds of the camp, from inmates who were forced to serve involuntarily, who could not leave the camp and received no pay.<sup>139</sup> Thus, an armed guard who was free to regularly leave the concentration camp fit the statutory description of one who persecuted civilians and should have been barred from entering the

---

127. See 8 U.S.C. § 1451(a) (1988).

128. *Fedorenko v. United States*, 449 U.S. 490, 493 (1981).

129. *Id.* at 494.

130. *Id.*

131. *Id.* at 513-14. Fedorenko lied to officials of the DPC about his activities during the war. He told the investigators that he had been a farmer in Poland and then was deported to Germany when witnesses placed him at Treblinka. *Id.* at 496.

132. *Id.* at 494.

133. *United States v. Fedorenko*, 455 F. Supp. 893, 912-13 (S.D. Fla. 1978).

134. *Fedorenko v. United States*, 449 U.S. 490, 494 (1981).

135. *Fedorenko*, 455 F. Supp. at 901.

136. *Id.* at 913.

137. *Id.*

138. *Fedorenko*, 449 U.S. at 511, 512 n.34.

139. *Id.*



United States.<sup>140</sup>

Fedorenko testified that he did not disclose his war-time activities on either his 1949 application for admission to the United States as a displaced person or his 1970 application for a naturalization certificate in order to avoid repatriation to Russia.<sup>141</sup> Fedorenko informed investigators from the DPC that he was a farmer in Poland from 1937 to March 1942 at which time he was deported to Germany and forced to work in a factory until the end of the war.<sup>142</sup> These statements were consistent with those made to the vice council, whose task it was to review applications for final approval.<sup>143</sup> Testimony at the trial confirmed that if investigators from the DPC or the vice council had been aware of Fedorenko's activities as an armed guard, whether it was voluntary or involuntary, Fedorenko's entry would have been denied as a matter of policy.<sup>144</sup> In addition, Fedorenko failed to disclose his war-time activities to the INS when he applied for naturalization. Despite his continuous misrepresentations, Fedorenko was granted United States citizenship in 1970.<sup>145</sup>

Fedorenko was not among the class of individuals intended to benefit from the DPA or the IRO.<sup>146</sup> Upon entering the United States, Fedorenko willfully misrepresented himself as an eligible displaced person for the purpose of obtaining citizenship.<sup>147</sup> By concealing his war-time activities as an armed guard at the Nazi death camp, Treblinka,<sup>148</sup> he violated Section 10 of the DPA.<sup>149</sup> Such misrepresentation constituted a violation of immigration regulations which, if discovered at the time of his application, would have rendered Fedorenko's entry illegal.<sup>150</sup> It was the policy of the IRO, the DPC, and immigration officials to deny entry to those who had "assisted the enemy in persecuting civil[ian]"<sup>151</sup> populations.<sup>152</sup> The Court thus determined "that disclosure of the true facts about the petitioner's service as an armed guard at Treblinka would, as a matter of law, have made him ineligible for a visa under the DPA

---

140. *Id.*

141. *Id.* at 507.

142. *Id.* at 496-97.

143. *Id.* at 511-12.

144. *Id.* at 510, 512 n.32.

145. *United States v. Fedorenko*, 455 F. Supp. 893, 895 (S.D. Fla. 1978).

146. DPA, *supra* note 10; IRO Constitution, *supra* note 41, Annex I at 3049.

147. 8 U.S.C. § 1451(a) (1988).

148. *Fedorenko v. United States*, 449 U.S. 490, 514 (1981).

149. DPA, *supra* note 10, § 10.

150. *Fedorenko*, 449 U.S. at 506 (1981).

151. IRO Constitution, *supra* note 45, Annex I, Part II, at 3051.

152. *Id.*

. . . ."<sup>153</sup> Fedorenko's misrepresentations were therefore material under the *Chaunt* test.

Fedorenko's citizenship was illegally procured and subject to revocation under Section 340(a) of the INA.<sup>154</sup> In addition, having served as an armed guard, Fedorenko was not "attached to the principles of the Constitution"<sup>155</sup> and therefore lacked the "good moral character" necessary to become a United States citizen.<sup>156</sup>

Although the government sustained its burden of proof in *Fedorenko*, by clear and convincing evidence, it took four years for deportation to occur.<sup>157</sup> The first proceeding only served to revoke Fedorenko's citizenship;<sup>158</sup> the government then had to successfully prove its case a second time in a deportation hearing, which it did.<sup>159</sup>

### C. Post-Fedorenko Cases: *Demjanjuk* and *Sprogis*

In denaturalization cases adjudicated since *Fedorenko*, the constitutional rights of alleged Nazi war criminals have been protected. Although the government has compiled an extensive list of suspected Nazi war criminals residing in the United States,<sup>160</sup> only a select few have been brought to trial.<sup>161</sup> This trend indicates that the government will not bring a weak or frivolous case to trial.<sup>162</sup> In cases thus far, when the government unequivocally proves its case for willful misrepresentation, the defendant is denaturalized.<sup>163</sup> On the other hand, when the government fails to prove its case by "clear, unequivocal and convincing evidence," the defendant is invariably acquitted.<sup>164</sup> There is no evidence to suggest that a naturalized citizen has ever been unjustly accused of being a Nazi war criminal and consequently denaturalized; nor has an individual been

153. *Fedorenko v. United States*, 449 U.S. 490, 513 (1981).

154. Current version at 8 U.S.C. § 1451(a) (1988).

155. *See id.* §1427(a).

156. *See id.* § 1427(a). This section imposes upon immigrants the requirement of good moral character. *Id.* Fedorenko's activities as a concentration camp guard were evidence of his lack of good moral character.

157. N.Y. Times, Dec. 23, 1984, § 1, at 12, col. 3.

158. 8 U.S.C. § 1427(a) (1988).

159. *See 1979 House Hearings, supra* note 3.

160. *See* H. Friedlander & E. Malarrick, *Nazi Criminals in the United States: Denaturalization after Fedorenko*, in 3 SIMON WEISENTHAL CENTER ANNUAL 47 (1985).

161. *Id.*

162. *Id.*

163. *See cases cited supra* note 2.

164. *United States v. Sprogis*, 763 F.2d 115 (2d Cir. 1985) (both defendants were acquitted when the government failed to meet its burden of proof).

proven innocent subsequent to deportation.<sup>165</sup>

Two cases best exemplify the pattern the courts have followed since the Supreme Court's decision in *Fedorenko: United States v. Demjanjuk*,<sup>166</sup> and *United States v. Sprogis*.<sup>167</sup> These cases illustrate the divergent paths denaturalization cases may take. In *Demjanjuk*, the defendant was deported and is currently appealing a death sentence in Israel. In *Sprogis*, the defendant retained citizenship and remained in the United States. These cases demonstrate the court's reluctance to denaturalize a citizen unless the government proves willful material misrepresentation "by clear, unequivocal and convincing evidence."<sup>168</sup>

John (Ivan) Demjanjuk acquired citizenship under circumstances startlingly similar to that of Fedorenko—Demjanjuk willfully misrepresented himself for the purpose of obtaining United States citizenship.<sup>169</sup> When Demjanjuk applied for a visa under the DPA, he failed to disclose his service as an armed guard at the Treblinka concentration camp.<sup>170</sup> Like Fedorenko, Demjanjuk had been captured by the German army and forced to serve as a guard involuntarily. In addition, he continued his deception in subsequent naturalization application procedures and interviews.<sup>171</sup> Based on these false representations, Demjanjuk was granted United States citizenship in 1958.<sup>172</sup>

Relying on the testimony of six survivors of Treblinka<sup>173</sup> and the defendant's identification card (containing a photograph, signature, and physical description of him),<sup>174</sup> the government sustained its burden, proving that Demjanjuk violated Section 10 of the DPA by illegally entering the United States. Therefore, he was subject to denaturalization under Section 340(a) of the INA.<sup>175</sup> Like Fedorenko, Demjanjuk lost his denaturalization case but was able to avoid deportation for three years due to the lengthy deportation proceedings.

---

165. There are no known cases where a defendant was later found innocent. Once deported, Fedorenko was found guilty of war crimes in a Russian court. Demjanjuk was found guilty of similar offenses in Israel.

166. 518 F. Supp. 1362 (N.D. Ohio 1981).

167. 763 F.2d 115 (2d Cir. 1985).

168. *Schneiderman v. United States*, 320 U.S. 118, 158 (1943).

169. *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981).

170. *Id.* at 1378-79.

171. *Id.* at 1380.

172. *Id.*

173. *Id.* at 1369-73.

174. *Id.* at 1366-68. Expert testimony determined that the document was "a service identification card" issued by the SS, an elite corps of the Nazi military. *Id.* at 1366.

175. See *supra* note 2 and accompanying text.

In *United States v. Sprogis*,<sup>176</sup> the government was not able to sustain its burden of proof.<sup>177</sup> Unlike other cases discussed herein, the defendant in *Sprogis* did not misrepresent himself to the government on his visa or naturalization applications.<sup>178</sup> Elmars Sprogis truthfully reported his service as a police officer in the town of Latvia. Despite his disclosure, the government attempted to denaturalize him, arguing that he illegally procured his citizenship because as a police officer he was not eligible for a visa under Sections 10 and 13 of the DPA.<sup>179</sup>

Unlike Fedorenko and Demjanjuk, who were members of an organization barred by the United States, Sprogis's activities were not prima facie evidence warranting a denial of citizenship.<sup>180</sup> It is unclear whether Latvian police officers were hostile to the civilian population, and there was no evidence that Sprogis, himself, committed any acts constituting persecution of civilians.<sup>181</sup> Without sufficient evidence, the government fell short of its burden and the Court ruled in favor of Sprogis.<sup>182</sup>

#### IV. THE AFTERMATH OF THE DENATURALIZATION CASES

Evidence suggests that the government is highly selective in bringing cases involving Nazi war criminals to trial.<sup>183</sup> In 1982, the United States Department of Justice maintained files on approximately 200 suspected Nazi war criminals, yet only a fraction of these cases were ever brought before the courts.<sup>184</sup> This suggests that the government will not institute denaturalization proceedings unless there is an overwhelmingly strong case.

Of the few denaturalization cases brought to trial, the government must prove its case "by clear, unequivocal and convincing evidence . . . leav[ing] no issue in doubt"<sup>185</sup> to succeed.<sup>186</sup> In *Fedorenko* and *Demjanjuk*, willful and material misrepresentation was demonstrated "by clear,

---

176. 763 F.2d 115 (2d Cir. 1985).

177. *United States v. Sprogis*, No. CV-82-1804, slip op. at 1579-80 (E.D.N.Y. May 18, 1984).

178. *Id.* at 1501.

179. *Id.* at 1498.

180. *Id.* at 1501.

181. *Id.* at 1578.

182. *Id.* at 1580.

183. See *supra* notes 174-176 and accompanying text.

184. Note, *Denaturalization of Nazi War Criminals After Fedorenko*, 15 N.Y.U. J. INT'L L. & POL. 169 (1982); see sources cited *supra* note 88 and accompanying text.

185. *Schneiderman v. United States*, 320 U.S. 118, 158 (1943).

186. *Id.*

unequivocal and convincing evidence that [left] no issue in doubt."<sup>187</sup> In addition, Fedorenko and Demjanjuk, both armed concentration camp guards, lacked the "good moral character" necessary to acquire citizenship as a matter of law. Yet, after the defendants were denaturalized, they remained free from prosecution in the United States while awaiting deportation.

In *Sprogis*, on the other hand, the government could not meet its stringent burden of proof. Sprogis made no willful misrepresentations, but instead, candidly reported his service as police chief of Latvia. Sprogis's service, unlike Fedorenko's and Demjanjuk's, was not *per se* evidence that he lacked "good moral character." When the government failed to prove that Sprogis committed war crimes by clear and convincing evidence, the case was dismissed.

The constitutional right of naturalized Nazi war criminals to an appeal has been unfailingly upheld in denaturalization proceedings.<sup>188</sup> Because denaturalization does not result in automatic deportation, a defendant may argue his case a second time in a deportation proceeding, and the government must twice bear its burden of proof. Consequently, the United States policy and obligation to bring to justice those individuals who assisted the Nazi regime is not being effectuated.

#### V. CONCLUSION

Nearly fifty years after World War II "the holocaust lives fresh in [the] memories"<sup>189</sup> of those who survived the war. The courts recognize that

[r]ather than putting this black period out of our minds, we must resolve to never forget the abominable atrocities inflicted at the hands of Hitler's Nazis and those who would follow the madman. Whatever our faith, we must ensure that our children are taught well the lessons we have learned so that history can never repeat itself.<sup>190</sup>

It is true that our emotions should not "cloud our judgment nor move us to reach decisions unsupported by the quantum of evidence the law requires."<sup>191</sup> The courts are capable of addressing the complex issues surrounding the deportation of Nazi war criminals in a single denaturali-

---

187. *Id.*

188. See Comment, *supra* note 31 and accompanying text.

189. *United States v. Sprogis*, No. CV-82-1804, slip op. at 1579 (E.D.N.Y. May 18, 1984).

190. *Id.* at 1579-80.

191. *Id.* at 1580.

zation/deportation proceeding. If denaturalization is warranted, the judge may immediately rule on deportation.<sup>192</sup> If the decision calls for both denaturalization and deportation, the defendant is free to appeal the case to as high an authority as the Supreme Court. Although the appeal process may take four years, the denaturalization/deportation decision would be final, and the defendant would no longer be at liberty to remain a free person in the United States while awaiting a separate deportation hearing. The courts should at the very least, however, be allowed to hear all the evidence pertaining to suspected Nazi war criminals in one, expedited proceeding.

*David Birnbaum*

---

192. It has been suggested that Congress could entrust the courts with the deportation function. 1 C. GORDON & H. ROSENFELD, IMMIGRATION LAW AND PROCEDURE § 5.1, at 6 (1988). The courts have in fact had some power over the deportation procedure in the past. See *United States v. Woo Jan*, 245 U.S. 552 (1918).

