**United States Supreme Court**

**FEDORENKO v. UNITED STATES, (1981)**

**No. 79-5602**

**Argued: October 15, 1980    Decided: January 21, 1981**

MARSHALL, J., delivered the opinion of the Court, in which BRENNAN, STEWART, POWELL, and REHNQUIST, JJ., joined. BURGER, C. J., concurred in the judgment. BLACKMUN, J., filed an opinion concurring in the judgment, post, p. 518. WHITE, J., post, p. 526, and STEVENS, J., post, p. 530, filed dissenting opinions.

Brian M. Gildea argued the cause and filed a brief for petitioner.

Attorney General Civiletti argued the cause for the United States. On the brief were Solicitor General McCree, Assistant [449 U.S. 490, 493]   Attorney General Heymann, Deputy Solicitor General Geller, Allan A. Ryan, Jr., and David B. Smith. [\*](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f*)

[ [Footnote \*](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "t*) ] Briefs of amici curiae urging affirmance were filed by Phil Baum, Nathan Z. Dershowitz, and Marc D. Stern for the American Jewish Congress et al.; and by Harold P. Weinberger, Justin J. Finger, Jeffrey P. Sinensky, and Richard A. Weisz for the Anti-Defamation League of B'nai B'rith et al.

JUSTICE MARSHALL delivered the opinion of the Court.

Section 340 (a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, as amended, 8 U.S.C. 1451 (a), requires revocation of United States citizenship that was "illegally procured or . . . procured by concealment of a material fact or by willful misrepresentation." [1](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f1) The Government brought this denaturalization action, alleging that petitioner procured his citizenship illegally or by willfully misrepresenting a material fact. The District Court entered judgment for petitioner, but the Court of Appeals reversed and ordered entry of a judgment of denaturalization. We granted certiorari, [444 U.S. 1070](http://caselaw.findlaw.com/us-supreme-court/444/1070.html) , to resolve two questions: whether petitioner's failure to disclose, in his application for a visa to come to this country, that he had served during the Second World War as an armed guard at the Nazi concentration camp at Treblinka, Poland, rendered his citizenship revocable as "illegally procured" or procured by willful misrepresentation of a material fact, (we are not covering the second issue)

**I**

**A**

Petitioner was born in the Ukraine in 1907. He was drafted into the Russian Army in June 1941, but was captured by the Germans shortly thereafter. After being held in a series of prisoner-of-war camps, petitioner was selected to go to the German camp at Travnicki in Poland, where he received training as a concentration camp guard. In September 1942, he was assigned to the Nazi concentration camp at Treblinka in Poland, where he was issued a uniform and rifle and where he served as a guard during 1942 and 1943. The infamous Treblinka concentration camp was described by the District Court as a "human abattoir" at which several hundred thousand Jewish civilians were murdered. [2](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f2) After an armed uprising by the inmates at Treblinka led to the closure of the camp in August 1943, petitioner was transferred to a German labor camp at Danzig and then to the German prisoner-of-war camp at Poelitz, where he continued to serve as an armed guard. Petitioner was eventually transferred to Hamburg where he served as a warehouse guard. Shortly before the British forces entered that city in 1945, petitioner discarded his uniform and was able to pass as a civilian. For the next four years, he worked in Germany as a laborer. [449 U.S. 490, 495]

**B**

In 1948, Congress enacted the Displaced Persons Act (DPA or Act), 62 Stat. 1009, to enable European refugees driven from their homelands by the war to emigrate to the United States without regard to traditional immigration quotas. The Act's definition of "displaced persons" [3](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f3) eligible for immigration to this country specifically excluded individuals who had "assisted the enemy in persecuting civil[ians]" or had "voluntarily assisted the enemy forces . . . in their operations . . . ." [4](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f4) Section 10 of the DPA, 62 Stat. 1013, placed the burden of proving eligibility under the Act on the person seeking admission and provided that "[a]ny person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States." The Act established an elaborate system for determining eligibility for displaced person status. Each applicant was first interviewed by representatives of the International Refugee Organization of the United Nations (IRO) who ascertained that the person was a refugee or displaced person. [5](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f5) The applicant [449 U.S. 490, 496]   was then interviewed by an official of the Displaced Persons Commission, [6](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f6) who made a preliminary determination about his eligibility under the DPA. The final decision was made by one of several State Department vice consuls, who were specially trained for the task and sent to Europe to administer the Act. [7](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f7) Thereafter, the application was reviewed by officials of the Immigration and Naturalization Service (INS) to make sure that the applicant was admissible into the United States under the standard immigration laws.

In October 1949, petitioner applied for admission to the United States as a displaced person. Petitioner falsified his visa application by lying about his wartime activities. He told the investigators from the Displaced Persons Commission that he had been a farmer in Sarny, Poland, from 1937 until March 1942, and that he had then been deported to Germany and forced to work in a factory in Poelitz until the end of the war, when he fled to Hamburg. [8](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f8) Petitioner told the same [449 U.S. 490, 497]   story to the vice consul who reviewed his case and he signed a sworn statement containing these false representations as part of his application for a DPA visa. Petitioner's false statements were not discovered at the time and he was issued a DPA visa, and sailed to the United States where he was admitted for permanent residence. He took up residence in Connecticut and for three decades led an uneventful and law-abiding life as a factory worker.

In 1969, petitioner applied for naturalization at the INS office in Hartford, Conn. Petitioner did not disclose his wartime service as a concentration camp armed guard in his application, [9](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f9) and he did not mention it in his sworn testimony to INS naturalization examiners. The INS examiners took petitioner's visa papers at face value and recommended that his citizenship application be granted. On this recommendation, the Superior Court of New Haven County granted his petition for naturalization and he became an American citizen on April 23, 1970.

**C**

Seven years later, after petitioner had moved to Miami Beach and become a resident of Florida, [10](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f10) the Government filed this action in the United States District Court for the Southern District of Florida to revoke petitioner's citizenship. The complaint alleged that petitioner should have been deemed ineligible for a DPA visa because he had served as an armed guard at Treblinka and had committed crimes or atrocities [449 U.S. 490, 498]   against inmates of the camp because they were Jewish. The Government charged that petitioner had willfully concealed this information both in applying for a DPA visa and in applying for citizenship, and that therefore petitioner had procured his naturalization illegally or by willfully misrepresenting material facts. [11](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f11)

The Government's witnesses at trial included six survivors of Treblinka who claimed that they had seen petitioner commit specific acts of violence against inmates of the camp. [12](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f12) Each witness made a pretrial identification of petitioner from a photo array that included his 1949 visa photograph, and three of the witnesses made courtroom identifications. The Government also called as a witness Kempton Jenkins, a career foreign service officer who served in Germany after the war as one of the vice consuls who administered the DPA. Jenkins had been trained to administer the Act and had reviewed [449 U.S. 490, 499]   some 5,000 visa applications during his tour of duty. Record 711-714, 720-722. Without objection from petitioner, Jenkins was proffered by the Government and accepted by the court, as an expert witness on the interpretation and application of the DPA. Id., at 719-721, 726-727, 734.

Jenkins testified that the vice consuls made the final decision about an applicant's eligibility for displaced person status. [13](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f13) He indicated that if there had been any suggestion that an applicant "had served or been involved in" a concentration camp, processing of his application would have been suspended to permit a thorough investigation. Id., at 766. If it were then determined that the applicant had been an armed guard at the camp, he would have been found ineligible for a visa as a matter of law. Id., at 767-768, 822. Jenkins explained that service as an armed guard at a concentration camp brought the applicant under the statutory exclusion of persons who "assisted the enemy in persecuting civil[ians]," regardless of whether the applicant had not volunteered for service [14](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f14) or had not committed atrocities against inmates. Id., at 768, 797-798. Jenkins emphasized that this interpretation of the Act was "uniformly" accepted by the vice consuls, and that furthermore, he knew of no case in which a known concentration camp guard was found eligible for a DPA visa. [15](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f15) Id., at 767. Jenkins also described the elaborate [449 U.S. 490, 500]   system that was used to screen visa applicants and he testified that in interviewing applicants, the vice consuls bent over backwards in interrogating each person to make sure the applicant understood what he was doing. Id., at 746.

Petitioner took the stand in his own behalf. He admitted his service as an armed guard at Treblinka and that he had known that thousands of Jewish inmates were being murdered there. Id., at 1442, 1451-1452, 1465. Petitioner claimed that he was forced to serve as a guard and denied any personal involvement in the atrocities committed at the camp, id., at 1276, 1297-1298, 1539-1540; he insisted that he had merely been a perimeter guard. Petitioner admitted, however, that he had followed orders and shot in the general direction of escaping inmates during the August 1943 uprising that led to closure of the camp. Id., at 1507-1509, 1546, 1564. Petitioner maintained that he was a prisoner of war at Treblinka, id., at 1495, although he admitted that the Russian armed guards significantly outnumbered the German soldiers at the camp, [16](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f16) that he was paid a stipend and received a good service stripe from the Germans, and that he was allowed to leave the camp regularly but never tried to escape. Id., at 1467-1471, 1489-1494, 1497, 1508. [17](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f17) Finally, petitioner conceded that he deliberately gave false statements about his wartime activities to the investigators from the Displaced Persons Commission and to the vice consul who reviewed his visa application. Id., at 1518-1524.

The District Court entered judgment in favor of petitioner. [449 U.S. 490, 501]   455 F. Supp. 893 (1978). The court found that petitioner had served as an armed guard at Treblinka and that he lied about his wartime activities when he applied for a DPA visa in 1949. [18](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f18) The court found, however, that petitioner was forced to serve as a guard. The court concluded that it could credit neither the Treblinka survivors' identification of petitioner nor their testimony, [19](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f19) and it held that the Government had not met its burden of proving that petitioner committed war crimes or atrocities at Treblinka.

. . ..

**II**

Our examination of the questions presented by this case must proceed within the framework established by two lines of prior decisions of this Court that may, at first blush, appear to point in different directions.

On the one hand, our decisions have recognized that the right to acquire American citizenship is a precious one, and that once citizenship has been acquired, its loss can have severe and unsettling consequences. See Costello v. United States, [365 U.S. 265, 269](http://caselaw.findlaw.com/us-supreme-court/365/265.html#269) (1961); Chaunt v. United States, [364 U.S., at 353](http://caselaw.findlaw.com/us-supreme-court/364/350.html#353) ; Baumgartner v. United States, [322 U.S. 665, 675](http://caselaw.findlaw.com/us-supreme-court/322/665.html#675) -676 (1944); Schneiderman v. United States, [320 U.S. 118, 122](http://caselaw.findlaw.com/us-supreme-court/320/118.html#122) (1943). For these reasons, we have held that the Government "carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship." Costello v. United States, supra, at 269. The evidence justifying revocation of citizenship must be "`clear, unequivocal, and convincing'" and not leave "`the issue in doubt.'" Schneiderman v. United States, supra, at 125 (quoting Maxwell Land-Grant Case, [121 U.S. 325, 381](http://caselaw.findlaw.com/us-supreme-court/121/325.html#381) (1887)). Any less exacting standard would be inconsistent with the importance of the right that [449 U.S. 490, 506]   is at stake in a denaturalization proceeding. And in reviewing denaturalization cases, we have carefully examined the record ourselves. See, e. g., Costello v. United States, supra; Chaunt v. United States, supra; Nowak v. United States, [356 U.S. 660](http://caselaw.findlaw.com/us-supreme-court/356/660.html) (1958); Baumgartner v. United States, supra.

At the same time, our cases have also recognized that there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship "illegally procured," and naturalization that is unlawfully procured can be set aside. 8 U.S.C. 1451 (a); Afroyim v. Rusk, [387 U.S. 253, 267](http://caselaw.findlaw.com/us-supreme-court/387/253.html#267) , n. 23 (1967). See Maney v. United States, [278 U.S. 17](http://caselaw.findlaw.com/us-supreme-court/278/17.html) (1928); United States v. Ness, [245 U.S. 319](http://caselaw.findlaw.com/us-supreme-court/245/319.html) (1917); United States v. Ginsberg, [243 U.S. 472](http://caselaw.findlaw.com/us-supreme-court/243/472.html) (1917). As we explained in one of these prior decisions:

"An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon terms and conditions specified by Congress. . . .

. . . . .

"No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it . . . and demand its cancellation unless issued in accordance with such requirements." United States v. Ginsberg, supra, at 474-475.

This judicial insistence on strict compliance with the statutory conditions precedent to naturalization is simply an acknowledgment of the fact that Congress alone has the constitutional authority to prescribe rules for naturalization, [25](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f25) and the courts' task is to assure compliance with the particular prerequisites to the acquisition of United States citizenship [449 U.S. 490, 507]   by naturalization legislated to safeguard the integrity of this "priceless treasure." Johnson v. Eisentrager, [339 U.S. 763, 791](http://caselaw.findlaw.com/us-supreme-court/339/763.html#791) (1950) (Black, J., dissenting).

Thus, what may at first glance appear to be two inconsistent lines of cases actually reflect our consistent recognition of the importance of the issues that are at stake - for the citizen as well as the Government - in a denaturalization proceeding. With this in mind, we turn to petitioner's contention that the Court of Appeals erred in reversing the judgment of the District Court.

**III**

Petitioner does not and, indeed, cannot challenge the Government's contention that he willfully misrepresented facts about his wartime activities when he applied for a DPA visa in 1949. Petitioner admitted at trial that he "willingly" gave false information in connection with his application for a DPA visa so as to avoid the possibility of repatriation to the Soviet Union. [26](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f26) Record 1520. The District Court specifically noted that there was no dispute that petitioner "lied" in his application. 455 F. Supp., at 914. Thus, petitioner falls within the plain language of the DPA's admonition that "[a]ny person who shall willfully make a misrepresentation for the purposes of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States." 62 Stat. 1013. This does not, however, end our inquiry, because we agree with the Government [27](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f27) that this provision only applies to willful misrepresentations about "material" facts. [28](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f28) The first issue we must [449 U.S. 490, 508]   examine then, is whether petitioner's false statements about his activities during the war, particularly the concealment of his Treblinka service, were "material."

**A**

At the outset, we must determine the proper standard to be applied in judging whether petitioner's false statements were material. Both petitioner and the Government have assumed, as did the District Court and the Court of Appeals, that materiality under the above-quoted provision of the DPA is governed by the standard announced in Chaunt v. United States, [364 U.S. 350](http://caselaw.findlaw.com/us-supreme-court/364/350.html) (1960). But we do not find it so obvious that the Chaunt test is applicable here. In that case, the Government charged that Chaunt had procured his citizenship by concealing and misrepresenting his record of arrests in the United States in his application for citizenship, and that the arrest record was a "material" fact within the meaning of the denaturalization statute. [29](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f29) Thus, the materiality standard announced in that case pertained to false statements in applications for citizenship, and the arrests that Chaunt failed to disclose all took place after he came to this country. The case presented no question concerning the lawfulness of his initial entry into the United States.

In the instant case, however, the events on which the Government relies in seeking to revoke petitioner's citizenship took place before he came to this country and the Government [449 U.S. 490, 509]   is seeking to revoke petitioner's citizenship because of the alleged unlawfulness of his initial entry into the United States. Although the complaint charged that petitioner misrepresented facts about his wartime activities in both his application for a visa and his application for naturalization, both the District Court and the Court of Appeals focused on the false statements in petitioner's application for a visa. Thus, under the analysis of both the District Court and the Court of Appeals, the misrepresentation that raises the materiality issue in this case was contained in petitioner's application for a visa. [30](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f30) These distinctions plainly raise the important question whether the Chaunt test for materiality of misrepresentations in applications for citizenship also applies to false statements in visa applications.

It is, of course, clear that the materiality of a false statement in a visa application must be measured in terms of its effect on the applicant's admissibility into this country. See United States v. Rossi, 299 F.2d 650, 652 (CA9 1962). At the very least, a misrepresentation must be considered material if disclosure of the true facts would have made the applicant ineligible for a visa.. . .we conclude that disclosure of the true facts about 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, Section 2 (b) of the DPA, 62 Stat. 1009, by incorporating the definition of "[p]ersons who will not be [considered displaced [449 U.S. 490, 510]   persons]" contained in the constitution of the IRO, see n. 3, supra, specifically provided that individuals who "assisted the enemy in persecuting civil[ians]" were ineligible for visas under the Act. [31](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f31) Jenkins testified that petitioner's service as an armed guard at a concentration camp - whether voluntary or not - made him ineligible for a visa under this provision. [32](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f32) Jenkins' testimony was based on his firsthand [449 U.S. 490, 511]   experience as a vice consul in Germany after the war reviewing DPA visa applications. Jenkins also testified that the practice of the vice consuls was to circulate among the other vice consuls the case files of any visa applicant who was shown to have been a concentration camp armed guard. Record 826. Thus, Jenkins and the other vice consuls were particularly well informed about the practice concerning the eligibility of former camp guards for DPA visas. The District Court evidently agreed that a literal interpretation of the statute would confirm the accuracy of Jenkins' testimony. 455 F. Supp., at 913. But by construing 2 (a) as only excluding individuals who voluntarily assisted in the persecution of civilians, the District Court was able to ignore Jenkins' uncontroverted testimony about how the Act was interpreted by the officials who administered it. [33](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f33)   [449 U.S. 490, 512]

The Court of Appeals evidently accepted the District Court's construction of the Act since it agreed that the Government had failed to show that petitioner was ineligible for a DPA visa. 597 F.2d, at 953. Because we are unable to find any basis for an "involuntary assistance" exception in the language of 2 (a), we conclude that the District Court's construction of the Act was incorrect. The plain language of the Act mandates precisely the literal interpretation that the District Court rejected: an individual's service as a concentration camp armed guard - whether voluntary or involuntary - made him ineligible for a visa. That Congress was perfectly capable of adopting a "voluntariness" limitation where it felt that one was necessary is plain from comparing 2 (a) with 2 (b), which excludes only those individuals who "voluntarily assisted the enemy forces . . . in their operations . . . ." Under traditional principles of statutory construction, the deliberate omission of the word "voluntary" from 2 (a) compels the conclusion that the statute made all those who assisted in the persecution of civilians ineligible for visas. [34](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f34) See National Railroad Passenger Corp. [449 U.S. 490, 513]   v. National Assn. of Railroad Passengers, [414 U.S. 453, 458](http://caselaw.findlaw.com/us-supreme-court/414/453.html#458) (1974); Botany Worsted Mills v. United States, [278 U.S. 282, 289](http://caselaw.findlaw.com/us-supreme-court/278/282.html#289) (1929). As this Court has previously stated: "We are not at liberty to imply a condition which is opposed to the explicit terms of the statute. . . . To [so] hold . . . is not to construe the Act but to amend it." Detroit Trust Co. v. The Thomas Barlum, [293 U.S. 21, 38](http://caselaw.findlaw.com/us-supreme-court/293/21.html#38) (1934). See FTC v. Sun Oil Co., [371 U.S. 505, 514](http://caselaw.findlaw.com/us-supreme-court/371/505.html#514) -515 (1963). Thus, the plain language of the statute and Jenkins' uncontradicted and unequivocal testimony leave no room for doubt that if petitioner had disclosed the fact that he had been an armed guard at Treblinka, he would have been found ineligible for a visa under the DPA. [35](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f35) This being so, we must conclude that petitioner's [449 U.S. 490, 514]   false statements about his wartime activities were "willfu[l] [and material] misrepresentation[s] [made] for the purpose of gaining admission into the United States as an eligible displaced person." 62 Stat. 1013. Under the express terms of the statute, petitioner was "thereafter not . . . admissible into the United States." Ibid.

Our conclusion that petitioner was, as a matter of law, ineligible for a visa under the DPA makes the resolution of this case fairly straightforward. As noted, supra, at 506-507, our cases have established that a naturalized citizen's failure to comply with the statutory prerequisites for naturalization renders his certificate of citizenship revocable as "illegally procured" under 8 U.S.C. 1451 (a). In 1970, when petitioner filed his application for and was admitted to citizenship, 316 (a) and 318 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1427 (a) and 1429, required an applicant for citizenship to be lawfully admitted to the United States for permanent residence. [36](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f36) Lawful admission for permanent [449 U.S. 490, 515]   residence in turn required that the individual possess a valid unexpired immigrant visa. At the time of petitioner's initial entry into this country, 13 (a) of the Immigration and Nationality Act of 1924, ch. 190, 43 Stat. 153, 161 (repealed in 1952), provided that "[n]o immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa . . . ." [37](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f37) The courts at that time consistently held that 13 (a) required a valid visa and that a visa obtained through a material misrepresentation was not valid. See, e. g., Ablett v. Brownell, 99 U.S. App. D.C. 387, 391, 240 F.2d 625, 629 (1957); United States ex rel. Jankowski v. Shaughnessy, 186 F.2d 580, 582 (CA2 1951). Section 10 of the DPA, 62 Stat. 1013, provided that "all immigration laws, . . . shall be applicable to . . . eligible displaced . . . persons who apply to be or who are admitted into the United States pursuant to this Act." And as previously noted, petitioner was inadmissible into this country under the express terms of the DPA. Accordingly, inasmuch as petitioner failed to satisfy a statutory requirement which Congress has imposed as a prerequisite to the acquisition of citizenship by naturalization, we must agree with the Government that petitioner's citizenship must be revoked because it was "illegally procured." See Polites v. United States, [364 U.S. 426, 436](http://caselaw.findlaw.com/us-supreme-court/364/426.html#436) -437 (1960); Schwinn v. United States, [311 U.S. 616](http://caselaw.findlaw.com/us-supreme-court/311/616.html) (1940); Maney v. United States, [278 U.S., at 22](http://caselaw.findlaw.com/us-supreme-court/278/17.html#22) -23; United States v. Ginsberg, [243 U.S., at 475](http://caselaw.findlaw.com/us-supreme-court/243/472.html#475) ; Luria v. United States, [231 U.S. 9, 17](http://caselaw.findlaw.com/us-supreme-court/231/9.html#17) (1913); Johannessen v. United States, [225 U.S. 227, 240](http://caselaw.findlaw.com/us-supreme-court/225/227.html#240) (1912). Cf. Schneiderman v. United States, [320 U.S., at 163](http://caselaw.findlaw.com/us-supreme-court/320/118.html#163) (Douglas, J., concurring). [38](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f38) In the lexicon [449 U.S. 490, 516]   of our cases, one of the "jurisdictional facts upon which the grant [of citizenship] is predicated," Johannessen v. United States, supra, at 240

. . .

In sum, we hold that petitioner's citizenship must be revoked under 8 U.S.C. 1451 (a) because it was illegally procured. Accordingly, the judgment of the Court of Appeals is affirmed. [40](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "f40)

So ordered.

[ [Footnote 4](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "t4) ] The IRO Constitution provided that the following persons would not be eligible for refugee or displaced person status:

"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." Annex I, Part II, 62 Stat. 3051-3052.

[ [Footnote 32](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "t32) ] Jenkins testified as follows:

"Q If through investigation or interview you had determined that [a visa] applicant in fact did serve at a death camp . . . in occupied Poland as a Ukrainian Guard would you have denied the visa application?

"A Yes, I would.

"Q And in your expert opinion would such a person have qualified as an eligible displaced person?

"A No, he would not have.

"Q I may have asked this question, if I have permit me to ask it again, . . . are you aware of any case whatsoever in which an axis auxiliary who served in a capacity as a camp guard was ever legally qualified as a displaced person?

"A No, I am not. I am reasonably certain that there was no such case.

. . . . .

"Q Mr. Jenkins, referring to the last question and answer, would it have made any difference whatsoever to you as a visa officer if the person could have been proven to have been a guard but you could not prove that he committed an atrocity?

"A No.

"THE COURT: Why? Why?

"THE WITNESS: Because under the Displaced Persons Act and in the International Refugee Organization constitution by . . . definition such a person could not be a displaced person." Record 767-768.

On cross-examination, Jenkins was asked:

"Q Despite the apparent assumption that a guard at a concentration camp was there voluntarily, a non-German was there voluntarily, if a non-German guard came to you and said to you that his service there was [449 U.S. 490, 511]   involuntary would that guard have been eligible under the Displaced Persons Act and would he have been granted a visa?

"A I don't believe so. In the first place I can't imagine this hypothetical situation. And secondly, I think the language of the Act is so clear that participation or even acquiesce[nce] in really doesn't leave the vice consul that kind of latitude.

. . . . .

"THE COURT: . . . What is there about it that would make you think it was so clear that you had no latitude, if he had according to the hypothetical, persuaded you that his service as a guard was involuntary? How would that differ from involuntary service in the Waffen SS [Axis combat unit]?

"A Because the crime against humanity that is involved in the concentration camp puts it into a different category . . . ." Id., at 822-823.

[ [Footnote 33](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "t33) ] The District Court felt compelled to impose a voluntariness requirement because it was concerned that a literal interpretation of 2 (a) would "bar every Jewish prisoner who survived Treblinka because each one of them assisted the SS in the operation of the camp." 455 F. Supp., at 913. The court noted that working prisoners led arriving prisoners to the lazaret where they were murdered, cut the hair of the women who were to be executed, or played in the orchestra at the gate to the camp as part of the Germans' ruse to persuade new arrivals that the camp was other than what it was. The court pointed out that such actions could [449 U.S. 490, 512]   technically be deemed assistance, and concluded that it would be "absurd to deem their conduct `assistance or acquiescence' inasmuch as it was involuntary - even though the word `voluntarily' was omitted from the definition." Ibid. In addition, the court noted that Jenkins testified that visa applicants who had served in Axis combat units and who could prove that their service was involuntary were found eligible for visas. Id., at 912. But see n. 34, infra.

[ [Footnote 34](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "t34) ] The solution to the problem perceived by the District Court, see n. 33, supra, lies, not in "interpreting" the Act to include a voluntariness requirement that the statute itself does not impose, but in focusing on whether particular conduct can be considered assisting in the persecution of civilians. Thus, an individual who did no more than cut the hair of female inmates before they were executed cannot be found to have assisted in the persecution of civilians. On the other hand, there can be no question that a guard who was issued a uniform and armed with a rifle and a pistol, who was paid a stipend and was regularly allowed to leave the concentration camp to visit a nearby village, and who admitted to shooting at escaping inmates on orders from the commandant of the camp, fits [449 U.S. 490, 513]   within the statutory language about persons who assisted in the persecution of civilians. Other cases may present more difficult line-drawing problems but we need decide only this case. As for the District Court's concern about the different treatment given to visa applicants who had served in Axis combat units who were found eligible for visas if they could show that they had served involuntarily, this distinction was made by the Act itself.

[ [Footnote 35](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "t35) ] The District Court refused to give conclusive weight to Jenkins' testimony on this issue largely because it felt that Jenkins' testimony did not recognize the "voluntariness" exception that the court read into 2 (a). However, Jenkins' testimony was in accordance with the plain language of the statute. Because the District Court mistakenly applied the law to the facts of this case in concluding that petitioner was lawfully admitted into this country, 455 F. Supp., at 915, we reject its conclusion.

The dissenting opinion of JUSTICE STEVENS argues that the Government "expressly disavowed" our interpretation of the DPA, post, at 530, and that the Government "unequivocally accepted" the District Court's construction of 2 (a), post, at 535. Elsewhere, the dissent suggests that the District Court's construction is "the Government's interpretation of the statute," post, at 536. The sole basis for these assertions is a footnote in the Government's brief in the Court of Appeals which merely stated: "The United States has no quarrel with [the District Court's] construction [of 2 (a)] in this case" (emphasis added). In our judgment, none of the dissent's claims is borne out by this statement. The suggestion that the Government "unequivocally accepted" the District Court's interpretation of the Act is at best an exaggeration, and we have found no evidence in the record or briefs in this case of the Government's [449 U.S. 490, 514]   "express disavowal" of our construction of 2 (a). Furthermore, being neither endowed with psychic powers nor privy to the Government's deliberations, we cannot join JUSTICE STEVENS, see post, at 535-536, in speculating about the reasons that the Government chose not to "quarrel with" the District Court's interpretation of 2 (a) "in this case."

As for JUSTICE STEVENS' belief that our interpretation of the statute is "erroneous," see post, at 533, we simply note that he is unable to point to anything in the language of the Act that justifies reading into 2 (a) the "voluntariness" limitation that Congress omitted. Thus, we must conclude that JUSTICE STEVENS' real quarrel is with Congress, which drafted the statute. It is not the function of the courts to amend statutes under the guise of "statutory interpretation." See Potomac Electric Power Co. v. Director, Office of Workers' Compensation Programs, ante, at 274. Finally, since the term "persecution" does not apply to some of the tasks performed by concentration camp inmates, see n. 34, supra, we reject the speculation that our decision "may jeopardize the citizenship of countless survivors of Nazi concentration camps," post, at 530 (STEVENS, J., dissenting).

Section 2 (a) of the DPA was "adopted" from the Constitution of the International Refugee Organization (see ante, at 510, n. 31), which described in Part II of Annex I "Persons who will not be [considered as displaced persons]." The second listing had two classifications:

"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 [449 U.S. 490, 534]

"(b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations."

The District Court recognized that the section dealing with assisting enemy forces contained the word "voluntarily," while the section dealing with persecuting enemy populations did not. The District Court refused to construe the statute to bar relief to any person who assisted the enemy, whether voluntarily or not, however, because such a construction would have excluded the Jewish prisoners who assisted the SS in the operation of the concentration camp. 455 F. Supp., at 913. These prisoners performed such tasks as cutting the hair of female prisoners prior to their execution and performing in a camp orchestra as a ruse to conceal the true nature of the camp. I agree without hesitation with the District Court's conclusion that such prisoners did not perform their duties voluntarily and that such prisoners should not be considered excludable under the DPA. [4](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "ff4) The Court resolves the dilemma perceived by the District Court by concluding that prisoners who did no more than cut the hair of female inmates before they were executed could not be considered to be assisting the enemy in persecuting civilian populations. See ante, at 512-513, n. 34. Thus the Court would give the word "persecution" some not yet defined specially limited reading. In my opinion, the term "persecution" clearly applies to such conduct; indeed, it probably encompasses almost every aspect of life or death in a concentration camp.

The Court's resolution of this issue is particularly unpersuasive [449 U.S. 490, 535]   when applied to the "kapos," the Jewish prisoners who supervised the Jewish workers at the camp. According to witnesses who survived Treblinka, the kapos were commanded by the SS to administer beatings to the prisoners, and they did so with just enough force to make the beating appear realistic yet avoid injury to the prisoner. Record 293-295, 300-302 (Kohn), 237 (Turowski). [5](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "ff5) Even if we assume that the kapos were completely successful in deceiving the SS guards and that the beatings caused no injury to other inmates, I believe their conduct would have to be characterized as assisting in the persecution of other prisoners. [6](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "ff6) In my view, the reason that such conduct should not make the kapos ineligible for citizenship is that it surely was not voluntary. The fact that the Court's interpretation of the DPA would exclude a group whose actions were uniformly defended by survivors of Treblinka, id., at 236-239 (Turowski), 300 (Kohn), 1157-1159 (Epstein), merely underscores the strained reading the Court has given the statute. [7](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "ff7)

The Government was apparently persuaded by the force of the District Court's reasoning. In the Court of Appeals the Government unequivocally accepted the District Court's [449 U.S. 490, 536]   view that 2 (a) should be construed to read "persons who can be shown to have voluntarily assisted the enemy." [8](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "ff8) The Government did not retreat from that concession before this Court. [9](http://caselaw.findlaw.com/us-supreme-court/449/490.html" \l "ff9) The reasons for agreeing with the