

No. 21- _____
In the
SUPREME COURT of the UNITED STATES
October Term, 2021

ALISON GU,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether making false statements on a passport application form as to which the mandatory oath was never administered, the statements were never sworn to, and the application was never signed violates 18 U.S.C. § 1542.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption of this petition, the following individuals were party to the proceeding before the court whose judgment is sought to be reviewed: Matthew Abel.

CORPORATE DISCLOSURE

There are no corporate entities involved in this case.

RELATED CASES

- *United States v. Gu*, No. 19-86, U.S. Court of Appeals for the Second Circuit. Judgment entered Aug. 5, 2021.
- *United States v. Gu (Abel)*, No. 19-136, U.S. Court of Appeals for the Second Circuit. Judgment entered Aug. 5, 2021.
- *United States v. Gu and Abel*, No. 2:16-cr-84, U.S. District Court for the District of Vermont. Judgments entered Dec. 28, 2018.

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Petitioner Alison Gu respectfully petitions for a writ of certiorari to review the decision and order of the United States Court of Appeals for the Second Circuit entered in this case.¹

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Second Circuit, *United States v. Gu, et al.*, 8 F.4th 82 (2d Cir. 2021), dated August 5, 2021, appears as Appendix (“App.”) A to this petition. The Opinion and Order of the District of Vermont denying petitioner’s post trial motions, entered February 1, 2018, appears in App. B. The

¹Unless otherwise indicated, quotations in this petition omit all internal alterations, quotation marks, footnotes, and citations.

judgment of the district court, entered December 28, 2018, is attached as App. C. The order of the Second Circuit on Gu’s petition for rehearing and rehearing *en banc*, dated October 21, 2021, is attached as App. D.

JURISDICTION

The opinion of the Court of Appeals for the Second Circuit was entered on August 5, 2021. The petition for rehearing and rehearing *en banc* was denied by that Court on October 21, 2021. This Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATION PROVISIONS INVOLVED

See Appendix E for the pertinent portions of section 1542 of Title 18 and section 513 of Title 22, United States Code, and sections 51.1, 51.5, 51.20, and 51.21 of Title 22 of the Code of Federal Regulations.

STATEMENT OF THE CASE

Background

Petitioner appealed to the United States Court of Appeals for the Second Circuit from a judgment of the United States District Court for the District of Vermont (Reiss, D.J.), entered December 28, 2018, convicting her, after a jury trial, of Bank Fraud, in violation of Title 18, United States Code, sections 1344(1) and 2 (Count One); Making False Statements in Support of a Passport Application, in violation of Title 18, United States Code, section 1542 (Count Two); and Aggravated Identity Theft, in violation of Title 18, United States Code, section 1028(1) (Count Three). This petition arises from

Count Two, making false statements in support of a passport application, and collaterally from the aggravated identity theft charge in Count Three for which Count Two is the predicate.

In order to apply for a passport, one must fill out an application form and, as required, certain supplemental forms. Additional documentation (such as a photograph, proof of citizenship, and identification) must also be submitted. A passport agent performs an initial review to determine if additional information or documentation is required. When (but only when) that process is complete, a first time applicant must be administered an oath, swear to the truth of the information in the application, and sign the application form. The adjudication of the application follows satisfactory completion of all of these steps.

In this case, the government presented evidence that petitioner, using a false identity, filled out an unsigned, unsworn application form that included false information, and presented it for an initial review by a passport agent. She was told to fill out a supplemental form and provide additional documentation. No oath was administered, the application was never signed, and Ms. Gu never swore to its truth. Instead, she decided not to go forward with the application and it was never adjudicated. She asked the agent for her papers back and left the passport office. *None of these facts are in dispute.*

The court below found that the described actions by petitioner constituted making a false statement in a passport application within the meaning of 18 U.S.C. § 1542.² Stated differently, the court concluded that being placed under oath by a passport agency official, signing the application, and swearing to the statements therein – all required by the statute and regulations thereunder before the application can be adjudicated – were unnecessary in order to find Ms. Gu guilty under this criminal statute. This petition asks whether this finding below is correct or not. More particularly, petitioner submits that, while section 1542 does not specifically state that a statement must be sworn to and signed, it does forbid making a false statement in an application for a passport “contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws....” Those laws and rules require that a passport application must be signed and sworn. Thus, we urge that a completed form does not become an application for a passport until it is signed and, for a first time applicant, an oath is administered wherein the applicant swears to the truth of the information. Unless and until those requirements are satisfied, there is no adjudication of the application.

²As pertinent, section 1542 makes it unlawful to “willfully and knowingly make[] any false statement in an application for passport with intent to induce or secure the issuance of a passport . . . contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws.”

Pertinent Facts

A passport specialist working at the Vermont Passport Agency, Manuel Pacheco (“Pacheco”), was the government’s principal witness regarding the section 1542 charge against Ms. Gu. He explained that his job entailed “adjudicat[ing] passport applications”:

We review the application for citizenship evidence, identification, proper photo. We ensure that the fees are paid; and if one is working at a passport agency that has a public counter, we have to make decisions about expediting the passport based on submitted evidence. . . . [A person applying for a passport] needs to submit a passport application filled out completely, a passport photo taken within the past six months, certified copies of citizenship evidence such as birth certificates or naturalization certificates or a prior passport, and primary form of identification, usually in the form of a full-term driver’s license or state-issued ID card or military ID card.

Moreover, he testified that a passport application must be signed after an oath is administered verbally.³ Pacheco clarified that the requirement that the oath be administered before an applicant signed the application was to make sure “that they understand what they’re doing when they’re signing the document.” He went on to confirm that Ms. Gu never signed the application; instead, she “chose to withdraw her application during the interview.”

³The oath appears in writing on the first page of the application, above the signature block: “I have not knowingly and willingly made false statements or included false documents in support of this application.”

Pacheco provided additional details. He was working at the counter on March 27, 2015, when a woman presented a passport application in the name of Ally Lynn Koo. The application included a Social Security number that, as the government would show, was that of a deceased individual. Other issues relating to the identification documentation flagged potential problems for Pacheco. For instance, he found it “unusual . . . to see birth certificates with name changes at this stage of a person’s life.”

During his interview of “Ally Lynn Koo,” Pacheco decided to have her fill out a biographical questionnaire requiring an applicant to “list previous residences, family members, education, employers,” because the identification she had provided was insufficient and more biographical information would allow him to verify the information using various databases.⁴ When she returned the completed questionnaire to him “and slid it under the glass, she also informed me that she wished to abandon the application, that she would return to New Hampshire to apply there because she had more identification.” He stated that he was surprised, as he was attempting to validate her identity and didn’t get a chance to look at the supplemental questionnaire, which made him suspicious. After making copies, Pacheco returned her ID documents.

⁴Some of the information provided in the questionnaire proved to be false in light of other evidence presented by the government. “Ally Lynn Koo” had signed the supplemental questionnaire below an oath stating, “I declare under penalty of perjury that all responses contained in this document are true and correct to the best of my knowledge.”

Pacheco “wanted to turn the copies of the application over to our fraud office and discuss the application. One reason is we can alert other passport agencies if we have suspicions about passport applicants who may go to another agency to get a passport.” His other reason was to have someone else look over all the documents and “do a more in-depth investigation.” It was at this point that he “googled” her and found that the birth certificate was for someone who was deceased. He turned the application over to the Diplomatic Security agent at the passport office.

The Second Circuit’s Opinion

The opinion of the Second Circuit (App. A) noted that “[t]he core of the parties’ dispute is the meaning of ‘an application for passport’ as used in § 1542.” (App. A, p. 11) Analyzing the statute in the context of the “broader statutory scheme governing the issuance and validity of U.S. passports,” (*id*), the court noted that 22 U.S.C. § 213 requires an applicant to submit a written application containing a true recital of necessary facts and, for first-time applicants, that the application be verified by oath before a person authorized by the Secretary of State to administer oaths.” (App. A, p. 12) Further, the court noted that 22 C.F.R. §51.1 defines a passport application as the application form and all photographs, documents and statements submitted in support of it while 22 C.F.R. § 51.5(b) requires that the application and supporting documents, photographs and statements be examined by a passport officer, and 22 C.F.R. § 51.20(b) states “that providing false information as part of a passport application, whether contemporaneously

with the form or at any other time, is subject to prosecution under applicable Federal criminal statutes.” (App. A, pp. 12-13) Finally, the court noted that first time applicants are required by 22 C.F.R. § 51.21(a) “to appear in person before a passport agent, to verify the application by oath or affirmation, and to sign the completed application.” (App A, p. 13)

Defining the term “application for a passport,” the court found Ms. Gu submitted a passport application when “she provided a U.S. passport official her fully filled out, but unsigned, DS-11 form, spent an hour in the passport office seeking to obtain a passport, and filled out a supplemental form.” (App. A, p.15) While section 1542 does not define “an application for passport,” the Panel found, “the broader statutory and regulatory scheme governing the passport process makes clear that such an application exists when the standard application form DS-11, and any supporting materials are submitted to a passport official for review,” and “the broader statutory structure at issue indicates that an oath and signature are not prerequisites for passport application.” (*Id.*)

REASON FOR GRANTING THE WRIT

**THE SECOND CIRCUIT COURT OF APPEALS HAS
INTERPRETED 18 U.S.C. § 1542 INCORRECTLY. ITS
RULING IN THIS CASE IS CONTRARY TO THE
STATUTE ITSELF AND THE REGULATIONS
THEREUNDER. IT IS ALSO CONTRARY TO THE
RELEVANT DECISIONS OF THIS COURT AND
OTHER COURTS OF APPEALS. GRANTING
CERTIORARI ON THIS IMPORTANT MATTER WILL
RESOLVE THESE CONFLICTS.**

Central to the question before this Court is the requirement, as discussed above, that someone seeking a passport must sign the application. A condition precedent to such signature, for a first-time applicant, is that an oath must be administered in advance of the signing of the application form. As the court below recognized:

The [DS- 11] application form contains a portion that specifically notes that an individual should “STOP” there and “NOT SIGN [THE] APPLICATION UNTIL REQUESTED TO DO SO BY AN AUTHORIZED AGENT.”

(App. A, p. 5) The oath (which appears on the form above the signature block) substantially tracks the statutory language found in 18 U.S.C. § 1542. It reads: “I have not knowingly and willingly made false statements or included false documents in support of this application.”

The oath is so critical to the application process that it must be administered verbally, in addition to being printed on the application. Yet, the effect of the holding here is that the act of signing the application after being administered the oath is meaningless: under the Second Circuit formulation, if the application contained false information when

the applicant reached the window at the passport agency, the violation of section 1542 was already complete even though the truth of the information contained in it had never been sworn to and the form had never been signed. This holding renders the requirement that a person be administered the prescribed oath, swear to the truthfulness of the information in it, and sign the form entirely superfluous and without effect.

It is a well-settled principle of statutory construction that a statute should be interpreted so as to give every part of it meaning, and not render any part superfluous. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001) (“[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”); *Bloate v. United States*, 559 U.S. 196, 209 (2010). The decision below fails to give effect to this principle.

The Second Circuit’s ruling is also at odds with the proper application of the rule of lenity. The court rejected petitioner’s assertion that the statute is, at best, ambiguous with regard to what constitutes making an application for a passport – specifically, whether a completed application form constitutes an application before it is sworn to and signed. We submit that the court’s resolution of the issue before this Court necessarily relies on an ambiguity and that, under the rule of lenity, such an ambiguity should be resolved in petitioner’s favor.

To find that the rule of lenity did not apply, the panel of the Second Circuit that decided the matter declared the application of the statute unambiguous because (1) “the

statutes and regulations provide a clear definition of application,” and (2) “once Gu submitted her application form and supporting materials to Pacheco, she had made ‘an application for passport’ and was criminally liable for knowing and willful statements contained within that application made with the intent to secure a U.S. passport.” (App. A, p. 20)

This ruling ignores the actual process encountered by an applicant filling out the application form, which demonstrates the ambiguity in section 1542 and the entire statutory scheme. The DS-11 application form instructs an applicant to “STOP” and not sign the application form until being administered an oath. As rehearsed *supra*, p. 8, the wording of the oath appears above the signature block on the first page of the form. In short, the application form and the entire process that surrounds it, informs applicants that if they sign and swear to the truth of the information in the application and incorporated documents, they will violate the law and be subject to punishment if any of the information is false. If, as the panel’s opinion concludes, section 1542 penalizes providing false information in the application *whether or not* an applicant signs it and swears to its truth, it is at the very least ambiguous.

As Justice Scalia noted in *United States v. Santos*, 553 U.S. 507, 514 (2008), “[t]he rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.” *Santos* elaborates:

This venerable rule not only vindicates the fundamental principle that no citizen should be held accountable for a

violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed. It also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps courts from making criminal law in Congress's stead.

Id. Here, the application form itself and the procedures accompanying it warned petitioner that if she signed the form, she would be exposed to criminal liability if information she supplied was false. She did not sign it. The Second Circuit placed her in the same position as if she had. She had no notice that she would be acting criminally unless and until she signed and swore to the application.

The ambiguity in section 1542 is underscored by Pacheco's actions: he did not attempt to have Ms. Gu arrested; instead, he simply returned her papers to her, as she requested, and allowed her to leave the passport office. He referred the case for further investigation not because he believed she had already violated section 1542, but because he was concerned that she might go to another passport office and attempt to make an application containing false information.⁵

It would not violate 18 U.S.C. § 1542 to fill out an application for a passport containing false information, and then just put it away in a desk drawer. This would be so even if it were shown that the applicant had the intent to induce and secure a passport at some future time by means of the false information provided on the stowed-away form. Making an application for a passport requires more than simply filling out an application

⁵He was also concerned, after discovering that the Social Security Number she had supplied was that of a deceased person, further investigation was merited.

form. Completing the application *process* of applying for a passport, as specified by the laws and rules regulating the issuance of such passports, is essential to the act of applying for a passport. And those laws and rules require that an application be signed and, for a first time applicant (like petitioner), that it be made after administration of the prescribed oath, and only then sworn to and signed. Only then can the government make out a violation of the criminal statute.

The ruling of the Second Circuit directly conflicts with the established precedent of this Court, as well as precedents of other circuit courts of appeals. In *Browder v. United States*, 312 U.S. 335 (1941), the Court considered 22 U.S.C. § 220, the substantively identical predecessor to 18 U.S.C. § 1542 that was then in force. The Court explained that the statute reflected that “the Congress viewed with concern and punished with equal severity the securing of passports by false statements and their use.” *Id.* at 337. It went on to explain:

The crimes denounced are not the securing or the use but either of such actions made criminal only by the false statements in the procurement of the passport. If the misrepresentation is withdrawn nothing culpable remains in the use.

Id. Manifestly, the ruling of the Second Circuit conflicts with this precedent. Missing from the lower court’s analysis is the element of causation that is inherent in *Browder*. Because Ms. Gu did not take *any* of the steps required by the statute or the regulations that would have been necessary to “induce or secure the issuance of a passport,” nothing

has been “made criminal.” We ask that the petition be granted to correct the incompatible ruling of the Second Circuit.

A review of the jurisprudence in many of the sister circuits reveals additional conflicts with the Second Circuit decision here. We detail these decisions at the margin⁶ and note that we have been unable to find cases that are in accord with the decision in this case. Based on these conflicts as well, we urge that the petition be granted.

⁶See, e.g., *United States v. Cox*, 593 F.2d 46, 48 (6th Cir. 1979) (“The gravamen of the offense denounced in section 1542 is the making of a false statement. The securing or use of a passport is only made criminal if false statements are proven to have been involved in its procurement” (citing *Browder*)); *United States v. Winn*, 577 F.2d 86, 91 (9th Cir. 1978) (“The clerk read the oath of truthfulness to [the defendant], and he swore that all the statements on the application were true. Moreover, immediately above his signature with a false name was a warning that false statements on the application were violations of law. The evidence was sufficient”); *United States v. O’Bryant*, 775 F.2d 1528, 1535 (11th Cir. 1985) (“The crime is complete when one makes a statement one knows is untrue to *procure* a passport” (emphasis added)).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinion and order of the Second Circuit, and upon such review, Counts Two and Three of the judgment should be vacated and the courts below should be directed to resentence Ms. Gu only on Count One.

Respectfully submitted,

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January, 2022

APPENDIX A

19-86-cr (L)

United States v. Alison Gu, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2020

(Argued: May 4, 2021

Decided: August 5, 2021)

Docket Nos. 19-86-cr (L), 19-136-cr (con)

UNITED STATES OF AMERICA,
Appellee,

V.

ALISON GU, AKA ALISON LING, AKA ALLY KOO, AKA AI J. CHEN, AKA JING SHAO, AKA YIJING GU, AKA YIJING LIN, AKA ALISON YI GU, AKA AI JEN CHEN, and MATTHEW ABEL,

Defendants-Appellants.

Before: POOLER, RAGGI, and CARNEY, *Circuit Judges*.

Appeal from the judgment of the United States District Court for the

²⁹ District of Vermont (Reiss, J.) convicting Alison Gu, after a jury trial, of three

30 counts: (1) bank fraud, in violation of 18 U.S.C. §§ 1344(1) & 2; (2) making false

31 statements in support of a passport application, in violation of 18 U.S.C. § 1542;

1 and (3) aggravated identity theft, in violation of 18 U.S.C § 1028A(a)(1). Gu
2 argues that the district court erred by failing to grant her motion for an acquittal
3 based on her failure to complete the passport application paperwork and swear
4 an oath affirming to its veracity. We agree with the district court that submitting
5 a fraudulent passport application, even when unsigned and without swearing
6 the required oath, satisfies the elements of 18 U.S.C. § 1542. Accordingly, we
7 AFFIRM the judgment of the district court.

8

9 JESSE M. SIEGEL, New York, N.Y., *for Defendant-*
10 *Appellant Alison Gu.*

11 RANDOLPH Z. VOLKELL, Merrick, N.Y., *for Defendant-*
12 *Appellant Matthew Abel.*

13 MICHAEL P. DRESCHER, Assistant United States
14 Attorney (Gregory L. Waples, Assistant United States
15 Attorney, *on the brief*), for Jonathan A. Ophardt, Acting
16 United States Attorney for the District of Vermont,
17 Burlington, VT, *for Appellee.*

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22 POOLER, *Circuit Judge:*

23 Defendant-Appellant Alison Gu seeks to vacate her conviction and
24 sentence for two of the three counts of her conviction. At trial, Gu was convicted
25 of three counts: (1) bank fraud, in violation of 18 U.S.C. §§ 1344(1) & 2; (2)

1 making false statements in support of a passport application, in violation of 18
2 U.S.C. § 1542; and (3) aggravated identity theft, in violation of 18 U.S.C
3 § 1028A(a)(1). On appeal, Gu seeks to reverse her convictions as to Counts 2
4 and 3. Before the district court, Gu argued that her withdrawal of her passport
5 application and failure to sign and swear the required oath to finalize the
6 application, meant that as a matter of law, she could not be convicted of passport
7 fraud and, therefore, of aggravated identity theft.¹ The district court rejected this
8 argument, holding that the jury could conclude Gu submitted a falsified
9 application with the intent to obtain a passport and that her subsequent
10 withdrawal of the application did not abrogate Gu's criminal liability for that
11 submission.

12 We agree. Gu's argument that an oath and signature on the passport
13 application form are required to establish criminal liability is not supported by
14 the statute and regulations defining a passport application. The statute and
15 regulations define a passport application as the submitted application form and
16 supporting documents. Submission occurs when a person provides a federal

¹ A person is guilty of aggravated identity theft if "during and in relation to" certain enumerated felonies, including passport fraud, she "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person." 18 U.S.C § 1028A(a)(1),(c)(7).

1 official with an application form and any supporting materials for review. Gu
2 acknowledged submission of a falsified application form to a passport officer.
3 Therefore, we affirm the judgment of the district court.

4 **BACKGROUND**

5 On July 19, 2016, a grand jury in Burlington, Vermont, charged Gu and
6 Matthew Abel with a scheme to defraud several banks by obtaining mortgages
7 for certain real properties in multiple states using several false identities. Gu was
8 also charged with making a false statement in an application for a United States
9 passport and with aggravated identity theft, based on her use of the identity of
10 another in the commission of the passport offense. On October 17, 2017, Abel
11 pled guilty to the bank fraud offense and was subsequently sentenced to six
12 months of imprisonment followed by five years of supervised release.² Gu
13 proceeded to trial.

14 At trial, the government called two witnesses to testify regarding the
15 charge of making false statements in support of passport application. Passport

² Here, Randolph Z. Volkell, counsel to Abel, moves to be relieved pursuant to *Anders v. California*, 386 U.S. 738 (1967). The government also moves for summary affirmance of Abel's conviction and sentence. Upon due consideration, counsel's *Anders* motion is granted, and the motion for summary affirmance is granted with respect to Abel's conviction, special conditions of supervised release, and special assessment, as they present no nonfrivolous issues. We dismiss *nostra sponte* Abel's appeal of his term of imprisonment as this term has concluded.

1 Specialist Manuel Pacheco testified that, on March 27, 2015, he was on duty at the
2 St. Albans, Vermont United States Passport Agency station. Pacheco's role was to
3 adjudicate passport applications, which included reviewing applications for
4 evidence of citizenship and making decisions about expediting passports. The St.
5 Albans office serves individuals seeking passports on expedited bases, largely for
6 imminent international travel.

7 Pacheco testified as to the required process for applying for a passport at
8 the passport agency. The applicant must provide a passport application form
9 ("DS-11") completed in all respects except for the applicant's attesting signature.
10 With the form, the applicant must submit a passport photo, certified copies of
11 evidence of citizenship, and a primary form of identification. A DS-11 form is
12 entitled "APPLICATION FOR A U.S. PASSPORT." Suppl. App'x at 134. The
13 application form contains a portion that specifically notes that an individual
14 should "STOP" there and "NOT SIGN [THE] APPLICATION UNTIL
15 REQUESTED TO DO SO BY AN AUTHORIZED AGENT." Suppl. App'x at 134.
16 Pacheco testified that passport specialists, upon concluding that an application
17 satisfies the requirements for a passport, administer an oath to the applicant,

1 which is printed in full on the application form, and direct the applicant to sign
2 the application.

3 On March 27, 2015, Gu arrived at the St. Albans, Vermont office and
4 provided Pacheco a DS-11 form that, consistent with the form's own instructions,
5 was complete up to the point where applicants are instructed to stop; thus, the
6 application remained unsigned. The application falsely provided Gu's name as
7 Ally Lynn Koo and provided a false social security number ending in 5683. Gu
8 concedes that the name and social security number were not hers.

9 In support of her application, Gu provided an identification card from
10 Johnson State College, a temporary New Hampshire driver's license, and a social
11 security card, all in the name of Ally Lynn Koo. She also provided a Texas birth
12 certification for Thi Thanh Thuy Tran, along with a May 2014 amendment
13 changing Tran's name to Ally Lynn Koo under the authority of a court order
14 from an Alabama probate court. As part of her expedited application, Gu
15 provided a falsified JetBlue itinerary, showing that she planned to travel to
16 Jamaica in April 2015. Pacheco conducted an interview where he asked Gu
17 questions about her request for a passport. This interview led Pacheco to ask
18 further questions about the submission.

1 Due to the unusual nature of the submission, Pacheco asked Gu to fill out
2 a supplemental form ("DS-5520"), entitled "SUPPLEMENTAL
3 QUESTIONNAIRE TO DETERMINE IDENTITY FOR A U.S. PASSPORT." Suppl.
4 App'x at 140. Pacheco testified that he wanted to verify Gu's statements based on
5 her answers to this questionnaire. Gu filled out this form, in which she falsely
6 stated that she was Ally Lynn Koo, her birth date was October 20, 1982, her social
7 security number ended in 6783, falsely named her parents, and provided a false
8 high school. Gu signed this form. The form noted that the signature was under
9 penalty of perjury.

10 When she provided the form to Pacheco, Gu told him that she wanted to
11 abandon the application and return to New Hampshire and apply there, as she
12 had more identification documents in New Hampshire. Pacheco made copies of
13 the materials submitted by Gu and then returned them to her. Gu asked for and
14 received a new passport application form. She left the office without swearing
15 the oath or signing the withdrawn application form. Pacheco testified that the
16 entire interaction lasted about an hour.

17 After Gu left, Pacheco suspected fraud and looked up the birth name on
18 the Texas birth certificate provided by Gu. From an internet search, he

1 discovered the individual named on the certificate was deceased. He provided
2 the documents to his superiors to investigate. Scott Rogers, a Diplomatic Security
3 Service investigator, received the case from the director of the passport agency
4 station in St. Albans. Rogers testified that he reviewed Gu's submitted
5 documents, interviewed Pacheco, and examined the video of the interaction
6 between Gu and Pacheco, all of which were entered into evidence at trial. Based
7 on Rogers's investigation, the government concluded that Gu had manufactured
8 the Ally Lynn Koo identity and falsified a number of identity documents.

9 Gu testified in her own defense. She denied that she was in the passport
10 office on the day in question. At the conclusion of evidence, Gu moved for an
11 acquittal on Counts 2 and 3, *see* Fed. R. Crim. P. 29(a), arguing that the evidence
12 was insufficient as a matter of law to support guilty verdicts on those counts
13 because a withdrawn DS-11 was not a "passport application" under the relevant
14 federal passport fraud statute. The district court denied the motion, finding
15 nothing in the statute required the passport application form to be completed for
16 the charged crime to occur. The jury returned a guilty verdict on all counts on
17 November 7, 2017.

1 After the verdict, Gu again moved for an acquittal or new trial on Counts 2
2 and 3 under Rules 29 and 33 of the Federal Rules of Criminal Procedure. Gu
3 argued that “the application was initially submitted but then clearly and
4 permanently withdrawn,” and this prevented criminal liability from attaching to
5 her conduct. Suppl. App’x at 116. Gu also argued that, as she had never signed or
6 sworn to the DS-11 form, it could not be considered a passport application. In a
7 written order denying Gu’s motion, the district court found that Gu submitted a
8 passport application, and a withdrawal did not eliminate criminal liability. *See*
9 *United States v. Gu*, No. 16-cr-84, 2018 WL 671227, at *4–5 (D. Vt. Feb. 1, 2018).

10 On December 27, 2018, the district court sentenced Gu to concurrent
11 twelve month terms of imprisonment on Counts 1 and 2, followed by a
12 mandatory, consecutive twenty-four month term of imprisonment on Count 3,
13 and a total of three years of supervised release. With respect to the Count 1 bank
14 fraud, the district court also ordered restitution in the amount of \$107,117.55 to
15 the Bank of Bennington, and a forfeiture money judgment of \$109,104.00.
16 Judgment was entered on December 28, 2018. Gu filed a timely notice of appeal
17 on January 8, 2019.

18

DISCUSSION

2 We review *de novo* a district court’s denial of a motion for judgment of

1 “We begin, as always, with the language of the statute.” *Duncan v. Walker*,

2 533 U.S. 167, 172 (2001); *see Epskamp*, 832 F.3d at 162. The criminal statute

3 prohibiting passport fraud provides the following:

4 Whoever willfully and knowingly makes any false
5 statement in an application for passport with intent to
6 induce or secure the issuance of a passport under the
7 authority of the United States, either for his own use or
8 the use of another, contrary to the laws regulating the
9 issuance of passports or the rules prescribed pursuant to
10 such laws; . . .

11 Shall be fined under this title, imprisoned not more than
12 ... 10 years (in the case of the first or second such offense,
13 if the offense was not committed to facilitate such an act
14 of international terrorism or a drug trafficking crime), or
15 15 years (in the case of any other offense), ... or both.

16 18 U.S.C. § 1542.

19 The core of the parties’ dispute is the meaning of “an application for

20 passport” as used in § 1542. In construing the phrase, we consider it in context.

21 Specifically, § 1542 sits within a broader statutory scheme governing the issuance

22 and validity of U.S. passports, and that context provides insight as to the

23 meaning of § 1542’s text. *See Epskamp*, 832 F.3d at 162 (“A particular statute’s

24 plain meaning can best be understood by looking to the statutory scheme as a

25 whole and placing the particular provision within the context of that statute.”

1 (internal quotation marks omitted)).

2 The process for obtaining a passport is provided at 22 U.S.C § 213: “Before
3 a passport is issued to any person by or under authority of the United States such
4 person shall subscribe to and submit a written application which shall contain a
5 true recital of each and every matter of fact which may be required by law or by
6 any rules authorized by law to be stated as a prerequisite to the issuance of any
7 such passport.” The statute requires an additional procedure for first time
8 applicants: “If the applicant has not previously been issued a United States
9 passport, the application shall be duly verified by his oath before a person
10 authorized and empowered by the Secretary of State to administer oaths.” *Id.*

11 Separate regulation require the collection of a fee for the filing of each application
12 for a passport. 22 C.F.R. §§ 51.21; 51.56

13 Derivative federal regulations flesh out the statutory context. Notably, 22
14 C.F.R. § 51.1 defines a passport application as “the application form for a United
15 States passport, as prescribed by the [State] Department pursuant to 22 U.S.C. [§]
16 213 and all documents, photographs, and statements submitted with the form or
17 thereafter in support of the application.” 22 C.F.R. § 51.1. Additionally, 22 C.F.R.
18 § 51.5(b) requires that “[a] passport authorizing officer will examine the passport

1 application and all documents, photographs and statements submitted in
2 support of the application," and 22 C.F.R. § 51.20(b) states that "[a]ll information
3 and evidence submitted in connection with an application is considered part of
4 the application" and that "providing false information as part of a passport
5 application, whether contemporaneously with the form or at any other time, is
6 subject to prosecution under applicable Federal criminal statutes." The
7 regulations also require first time applicants to appear in person before a
8 passport agent, to "verify the application by oath or affirmation", and to "sign
9 the completed application." 22 C.F.R § 51.21(a).

10 Gu does not contest that she knowingly and willfully made false
11 statements in her passport application form, that she submitted that form to
12 Pacheco, or that she intended thereby to obtain a passport. Gu argues that the
13 statutes and regulations defining a passport application demonstrate that the
14 application must be sworn to and signed before criminal liability attaches under
15 Section 1542. Gu points to the criminal statute's incorporation of the laws and
16 rules regulating the issuance of passports and notes that the statute states that
17 the application must be verified, and the regulations require the oath and
18 signature to execute the application. Because Gu never signed, swore, or paid the

1 required fees, she argues that she never executed the application. Gu argues that
2 the government's contrary interpretation would render the oath and signature
3 requirements of 22 U.S.C. § 213 and 22 C.F.R § 51.21(a) superfluous, as the crime
4 would have occurred prior to the oath or signature.

5 The government responds that the regulations define a passport
6 application as the passport application form and "all documents, photographs,
7 and statements submitted with the form." 22 C.F.R § 51.1. Further, the
8 government notes that what the applicant must "sign" is "the completed
9 application," 22 C.F.R § 51.21, indicating that "an application" as referenced in 18
10 U.S.C. § 1542 can exist prior to signature and oath. Accordingly, Gu's crime was
11 complete when she submitted her passport application form and supporting
12 materials for Pacheco's review.³ To require an oath and signature before

³ In its briefing, the government appeared to argue that the crime of passport fraud is completed as soon as an individual lies on the application form with the requisite intent to obtain a passport, citing to the First Circuit's language in *United States v. Salinas* that Section 1542 "creates a classic point-in-time offense: at the moment that an applicant makes a false statement with the intent to procure a passport, the crime is complete." 373 F.3d 161, 168 (1st Cir. 2004). When questioned on this point at oral argument with a hypothetical individual, who lied on the application form with the requisite intent to obtain a passport, but never submitted the application form and kept it in a desk drawer, the government suggested that the statute would cover this conduct and referenced our language in *United States v. George*, 386 F.3d 383, 389 (2d Cir. 2004).

We doubt that the statute extends to cover conduct prior to the submission of an application form and note that the language in *George* came in the context of a submitted application, but, because the evidence here established Gu's submission of the relevant materials to Pacheco, we need not decide whether this non-submission scenario would survive a sufficiency challenge.

1 recognizing a submitted form DS-11 as “an application for passport,” 18 U.S.C.
2 § 1542, would graft additional requirements onto the statute, which this court has
3 refused to do in other contexts.

4 We define the term “application for passport” in this criminal statute, and
5 hold Gu submitted a passport application when she provided a U.S. passport
6 official her fully filled out, but unsigned, DS-11 form, spent an hour in the
7 passport office seeking to obtain a passport, and filled out a supplemental form.
8 Accordingly, there is sufficient evidence for the jury to find Gu violated Section
9 1542.

10 A straightforward reading makes clear that Gu’s conduct violates the
11 statute. The statute criminalizes false statements “in an application for passport”
12 with intent to secure issuance of a U.S. passport. 18 U.S.C. § 1542. While
13 Section 1542 does not itself define “an application for passport,” the broader
14 statutory and regulatory scheme governing the passport process makes clear that
15 such an application exists when the standard application form DS-11 and any
16 supporting materials are submitted to a passport official for review. Despite Gu’s
17 contrary argument, the broader statutory structure at issue indicates that an oath
18 and signature are not prerequisites for passport application.

1 First, the regulations define “passport application” as “the application
2 form for a United States passport, as prescribed by the Department pursuant to
3 22 U.S.C. [§] 213 and all documents, photographs, and statements submitted with
4 the form or thereafter in support of the application.” 22 C.F.R. § 51.1. Notably,
5 this definition explicitly does not require that the application form be signed
6 under oath before it can be considered a “passport application.”

7 Second, 22 C.F.R. § 51.5(b) requires an applicant to provide a passport
8 official with a “passport application” and any supporting materials for
9 examination. This indicates that the application exists when submitted for
10 review, which is before signature and oath. This conclusion is only reinforced by
11 22 C.F.R. § 51.20(b), which requires the applicant to “truthfully answer all
12 questions” in the review process—that is, all questions on the form submitted for
13 review—and states that false information on this “passport application” is
14 punishable under federal law. 22 C.F.R. § 51.20(b).

15 Third, only after questioning the applicant and “examin[ing] the passport
16 application,” 22 C.F.R. § 51.5(b), does a passport official administer an oath and
17 instruct the applicant to “sign the completed application,” 22 C.F.R. § 51.21. The
18 language of this regulation indicates that a passport application exists for

1 purposes of Section 1542 when submitted for review, although it is “completed”
2 when the official directs that it be signed under oath.

3 Gu points to the statutory language regarding the issuance of passports, 22
4 U.S.C. § 213, in arguing that an oath and signature are required for a passport
5 application. However, this statute states that a passport may be issued to the
6 applicant only after the applicant has “subscribe[d] to and submit[ted] a
7 [truthful] written application” that is “verified by his oath.” 22 U.S.C. § 213. This
8 describes requirements for issuing a passport; it does not state what constitutes a
9 passport application.

10 In sum, the language of the statutory and regulatory scheme detailing the
11 passport application process makes clear that a “passport application” exists
12 prior to an applicant signing the application form under oath. Indeed, the
13 relevant regulations indicate that, once the applicant submits the passport form
14 and supporting materials to the passport official for his review, the applicant has
15 submitted “an application for passport.” Therefore, the application element of
16 § 1542 is satisfied, and liability may attach when an applicant submits for official
17 review a DS-11 containing false statements. Gu did so here.

18 In any event, as the district court found, Gu conceded below that she

1 submitted the application when she provided a completed but unsigned DS-11
2 form to Pacheco and attempted to pursue her application over the next hour. In
3 her argument below, Gu stated, “the application was initially submitted but then
4 clearly and permanently withdrawn,” which, she maintained, prevented criminal
5 liability from attaching to her conduct. Suppl. App’x at 116. We agree with the
6 district court that Gu submitted the application form and supporting documents
7 with the requisite intent.

8 The statute offers no indication that a withdrawal removes criminal
9 liability for a false application that has been submitted. Gu argues that finding
10 she committed a crime would render the oath requirement superfluous, and this
11 cannot be the purpose or intent of the passport fraud statute. Gu argues that the
12 statute is intended to prevent passport fraud. Until they have taken the oath,
13 applicants may be unaware of the gravity of their conduct and finding in her
14 favor would emphasize the importance of the oath. Gu concludes that allowing
15 applicants an opportunity to abandon their efforts to submit false documents
16 before taking the oath would do more to reduce passport fraud than prosecuting
17 individuals who never had a real chance at obtaining a passport.

1 We need not here assess the policy-merits of this argument because the
2 language of the statute does not accord with this interpretation. “[I]t is not, and
3 cannot be, our practice to restrict the unqualified language of a statute to the
4 particular evil that Congress was trying to remedy—even assuming that it is
5 possible to identify that evil from something other than the text of the statute
6 itself.” *Brogan v. United States*, 522 U.S. 398, 403 (1998). For the reasons already
7 discussed, the language of the statute, construed in context, clearly defines an
8 “application for passport” as the submitted application form.

9 As we find the statutory language unambiguous, we also reject Gu’s
10 invocation of the rule of lenity. This rule “requires ambiguous criminal laws to
11 be interpreted in favor of the defendants subjected to them.” *United States v.*
12 *Scott*, 990 F.3d 94, 120 (2d Cir. 2021) (*en banc*) (quoting *United States v. Santos*, 553
13 U.S. 507, 514 (2008)). However, “we have always reserved lenity for those
14 situations in which a reasonable doubt persists about a statute’s intended scope
15 even *after* resort to the language and structure, legislative history, and motivating
16 policies of the statute.” *Moskal v. United States*, 498 U.S. 103, 108 (1990) (internal
17 quotation marks omitted); *see Mendez v. Barr*, 960 F.3d 80, 87 (2d Cir. 2020). We
18 do not hold such doubts here; the statutes and regulations provide a clear

1 definition of application: a passport application form and supporting
2 documentation submitted to a U.S. passport official for review prior to signature
3 and oath. Once Gu submitted her application form and supporting materials to
4 Pacheco, she had made “an application for passport” and was criminally liable
5 for knowing and willful false statements contained within that application made
6 with the intent to secure a U.S. passport. *See* 18 U.S.C. § 1542.⁴

7 We conclude that application means exactly what the regulation defining it
8 states. It is “the application form for a United States passport, as prescribed by
9 the Department pursuant to 22 U.S.C. [§] 213 and all documents, photographs,
10 and statements submitted with the form or thereafter in support of the
11 application.” 22 C.F.R. § 51.1. The regulation explicitly calls one document the
12 application form, and then refers thereafter to “the application” as a submitted
13 package of the form and supporting documentation. *Id.* The evidence here shows
14 that Gu submitted a passport application form containing willfully false
15 statements for review by a passport official. Thus, her sufficiency challenge fails
16 on the merits.

⁴ Having rejected Gu’s challenge to her Section 1542 conviction on Count 2, we necessarily find that she committed the required predicate offense to affirm her conviction for § 1028A(a)(1) aggravated identity theft on Count 3.

1

CONCLUSION

2 As set out above, the jury reasonably concluded that Gu submitted a
3 passport application with numerous falsehoods and did so with the intent to
4 obtain a passport. Accordingly, the judgment of the district court upholding Gu's
5 convictions on Counts 2 and 3 is affirmed.

6 Further, Abel's counsel's *Anders* motion is granted. The government's
7 motion for summary affirmance is also granted with respect to Abel's conviction,
8 special conditions of supervised release, and special assessment as they present
9 no nonfrivolous issues and we dismiss *nostra sponte* Abel's appeal of his term of
10 imprisonment as this term has concluded.

APPENDIX B

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2018 FEB -1 PM 2:04

CLERK

BY (AW)
DEPUTY CLERK

UNITED STATES OF AMERICA,)
)
 v.)
)
 ALISON GU,)
)
 Defendant.)

Case No. 2:16-cr-00084-1

**OPINION AND ORDER DENYING DEFENDANT'S
MOTIONS FOR JUDGMENT OF ACQUITTAL AND FOR A NEW TRIAL
(Doc. 193)**

Pending before the court are Defendant Alison Gu's motions for a judgment of acquittal and for a new trial. Defendant was charged in the Superseding Indictment with three Counts: Count One: bank fraud; Count Two: knowingly making a false statement in an application for a passport; and Count Three: aggravated identity theft. On November 7, 2017, a jury convicted Defendant of all three Counts. Defendant moved for a directed verdict of acquittal at the close of the government's case-in-chief and renewed that motion at the close of all evidence. Both motions were denied.

Pursuant to Fed. R. Crim. P. 29(c), Defendant seeks a judgment of acquittal notwithstanding the verdict, arguing that the government's evidence at trial was insufficient to support her conviction. In the alternative, Defendant moves for a new trial under Fed. R. Crim. P. 33(a) on the same basis. The government opposes both motions.

The government is represented by Assistant United States Attorneys Michael P. Drescher and Kevin Doyle. Defendant is represented by Paul A. Goldberger, Esq., Paul S. Volk, Esq., and Stacey Van Malden, Esq.¹

I. Factual and Procedural Background.

Over the course of six days of trial, the government called thirty witnesses and introduced 105 exhibits. In the light most favorable to the government, the evidence

¹ Lisa B. Shelkrot, Esq. represented Defendant at trial at the time of filing the pending motion.

established that Defendant committed bank fraud by submitting loan applications to financial institutions which contained materially false information, including the false identities of the loan applicants, false banking records, false appraisals, and false information regarding outstanding financial obligations, annual income, and a past bankruptcy petition, and the pendency of other loan applications. The following identities were employed as part of the scheme: Ally Koo, Ai J. Chen, Ai Jen Chen, Ai Chen, and Jing Shao. The purpose of the fraudulent scheme was to obtain financing for the purchase of certain real estate located at 7 Edith Place, Cheshire, Connecticut; 389 Read Farm Road, East Dorset, Vermont; 385 Cedar Avenue, Cocoa Beach, Florida; 184 South Sea Avenue, Unit 1, Yarmouth, Massachusetts; and 2406 Riverside Farms Road, Austin, Texas.

Numerous witnesses called by the government testified that financial institutions would not extend credit to a person whose identity they did not know. For example, Karen Malek from Emigrant Mortgage Company testified that knowledge of the identity of the loan applicant allows the lender to assess the applicant's ability to repay the loan. In her testimony, Defendant admitted that she had filed for bankruptcy protection under her real name, creating a credit risk of which financial institutions would be unaware if Defendant used a false identity in applying for loans.

In support of the passport fraud and aggravated identity theft Counts, the government called Manuel Pacheco, a passport officer employed by the United States passport office in St. Albans, Vermont on March 27, 2015. Mr. Pacheco testified that he had an approximately one-hour long interaction with an individual who submitted an application for a United States passport under the name of Ally Lynn Koo while also providing a false social security card, a false Johnson State College identification card, and a fraudulent New Hampshire driver's license with the name Ally Koo, but bearing Defendant's photograph. Each of these supporting items was later discovered in Defendant's Cheshire, Connecticut residence. Both the New Hampshire driver's license and social security card were obtained with forged Montgomery County Probate Court orders. Items related to these forgeries were also found in Defendant's house.

After reviewing the application and supporting documents, Mr. Pacheco asked the individual applicant to complete a supplemental questionnaire to further verify her identity. Upon completing and returning the supplemental questionnaire to Mr. Pacheco, the individual stated that she wanted to withdraw her application, and Mr. Pachego returned her supporting documents. The government presented video footage from the passport office's security camera which depicted this interaction. It further introduced the submitted passport application, which included Defendant's photograph, on behalf of applicant Ally Koo.

Defendant testified and called three witnesses. In the course of her testimony, she admitted that she and her partner, Matthew Abel, acquired four properties with their own money, but in someone else's name. Regarding the purchase of property in Cocoa Beach, Florida, for example, she testified:

Q So you admit that you purchased the house at 385 Cedar Avenue in Cocoa Beach, Florida? You admitted that earlier, right?

A I did not use my name to purchase the house, but I used the money that's mine to purchase the house, so --

(Doc. 202-1 at 92.)

Defendant further admitted purchasing the East Dorset, Vermont; Yarmouth, Massachusetts; and Austin, Texas properties that were the subject of the loan applications at issue in the case:

Q Did you purchase 385 Cedar Avenue, Cocoa Beach, Florida?

A Yes, that's one of the properties.

Q So you did purchase that?

A Yes. That's one of the properties.

Q Okay. Did you purchase 389 Read Farm Lane in East Dorset?

A That's also one of the properties that we investigated.

Q So the answer is yes?

A Yes.

Q Did you purchase the house in Yarmouth as well?

A Yes.

Q And in Austin?

A Correct.

Q So you admit that all of those properties were purchased by you, or you and Matt, or Matt; is that fair?

A Using the money, yes, we purchased those to make investment.

Id. at 72-73; *see also id.* at 49-50.

The loan applications submitted to lenders for the Cocoa Beach and East Dorset properties included a copy of a New Hampshire driver's license under the name of Ai Chen. Defendant admitted that the license bore her photograph. During the closing for the Cocoa Beach property, closing agent Gail Gilbert testified that she compared the image on the driver's license to the individual present to sign the closing paperwork and concluded they were the same person.

The loan application submitted to the Bank of Bennington to purchase the East Dorset property under the name Ai Jen Chen was the same name of the individual obligated to pay the mortgage to Emigrant Mortgage Co. secured by Defendant's Cheshire, Connecticut property. Defendant attended the foreclosure action for the East Dorset property and, on October 26, 2017, agreed to purchase the property.

Defendant admitted that she used the e-mail address "rampsfive@gmail[.com][,]" *id.* at 74, which was used to instruct the realtor for the East Dorset property to send future communications to "alyramps@gmail.com." The "alyramps" e-mail address was used to communicate with Craig Thibeau, a mortgage broker from Northeast Financial, and to send him a copy of a social security card in the name of Ai Chen.² The same social security card was used as supporting documentation to obtain the New Hampshire Driver's license bearing Defendant's photograph. Additionally, the government introduced an e-mail from the "alyramps" e-mail address ordering fraudulent Johnson State College identification cards, which were used to obtain some of the false

² The loan file held by Northeast Financial contained a Power of Attorney form purportedly notarized by Luz Simmons. A Luz Simmons notary stamp was discovered in Defendant's kitchen. The government's evidence established that this notary stamp was not legitimate.

identification at issue, and which were found in Defendant's bathroom. Defendant is thus mistaken in asserting that "the government did not connect the 'alyramps' [e-mail] address to Alison Gu." (Doc. 193 at 3.)

II. Conclusions of Law and Analysis.

A. Whether Acquittal is Warranted.

Defendant argues that the government's evidence at trial was insufficient for the jury to convict her of any of the Counts in the Superseding Indictment and that she is therefore entitled to a directed verdict of acquittal. "A defendant challenging the sufficiency of the evidence supporting a conviction faces a 'heavy burden.'" *United States v. Glenn*, 312 F.3d 58, 63 (2d Cir. 2002) (quoting *United States v. Matthews*, 20 F.3d 538, 548 (2d Cir. 1994)). The test for sufficiency of the evidence is "whether a rational jury could conclude beyond a reasonable doubt that a defendant is guilty of the crime charged." *United States v. Eppolito*, 543 F.3d 25, 45 (2d Cir. 2008), *cert. denied* 555 U.S. 1148 (2009) (internal quotation marks omitted). It is permissible for the jury to have "base[d] its verdict entirely on inferences from circumstantial evidence, and the evidence need not have excluded every possible hypothesis of innocence." *United States v. Oguns*, 921 F.2d 442, 449 (2d Cir. 1990) (citation and internal quotation marks omitted).

The court may not grant a motion for acquittal if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Facen*, 812 F.3d 280, 286 (2d Cir. 2016) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under this demanding standard, "[a] court may enter a judgment of acquittal only if the evidence that the defendant committed the crime alleged is nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt." *Id.* (internal quotation marks omitted).

In considering the sufficiency of the evidence presented at trial, "the court must be careful to avoid usurping the role of the jury. . . . Rule 29(c) does not provide the trial court with an opportunity to substitute its own determination of . . . the weight of the

evidence and the reasonable inferences to be drawn for that of the jury.” *United States v. Guadagna*, 183 F.3d 122, 129 (2d Cir. 1999) (internal citations and quotation marks omitted). The court must “resolve all inferences from the evidence and issues of credibility in favor of the verdict.” *United States v. Howard*, 214 F.3d 361, 363 (2d Cir. 2000), *cert. denied sub nom Henderson v. United States*, 531 U.S. 909 (2000).

In order to prove Defendant guilty of bank fraud, the government needed to establish beyond a reasonable doubt “that defendant ‘(1) engaged in a course of conduct designed to deceive a federally chartered or insured financial institution into releasing property; and (2) possessed an intent to victimize the institution by exposing it to actual or potential loss.’” *United States v. Crisci*, 273 F.3d 235, 239-40 (2d Cir. 2001) (quoting *United States v. Barrett*, 178 F.3d 643, 647-48 (2d Cir. 1999)). Defendant contends that the evidence was insufficient to establish that she was the person responsible for submitting false information to financial institutions and was insufficient to prove that she had the requisite criminal intent.

Regarding the challenged element of identity, Defendant admitted that she and her partner Matthew Abel acquired the properties at issue in someone else’s name. Additional evidence established that the Ai Chen driver’s license bearing Defendant’s photograph was obtained with forged documentation from the Montgomery County Probate Court and that materials capable of fabricating these documents were discovered in Defendant’s home. The Ai Chen driver’s license was submitted as part of the loan applications for both the Cocoa Beach, Florida and East Dorset, Vermont properties. In the light most favorable to the government, a rational jury could conclude beyond a reasonable doubt that Defendant engaged in a fraudulent course of conduct designed to deceive a federally chartered or insured financial institution into extending certain loans.

As for the second challenged element of intent, Defendant argues that the government produced insufficient evidence that she intended to defraud the financial institutions because there was no evidence of actual loss by these entities. However, “[a]ctual or potential loss to the bank is not an element of the crime of bank fraud but merely a description of the required criminal intent.” *United States v. Rigas*, 490 F.3d

208, 231 (2d Cir. 2007) (internal quotation marks omitted). The government produced evidence which demonstrated beyond a reasonable doubt that Defendant “intended to victimize the bank[s] by exposing [them] to loss[,]” *id.*, through numerous false statements in the loan applications which masked her identity and the credit risks she presented as a result of her prior bankruptcy, her assets, her sources of income, and her outstanding obligations. A jury could reasonably conclude that this constituted evidence beyond a reasonable doubt that she possessed the requisite criminal intent.

In moving for an acquittal on Counts Two and Three, Defendant asserts that the evidence did not show that she submitted an application for a United States passport as she “withdrew [the application] without seeking action on it[.]” (Doc. 193 at 6.) To convict Defendant of passport fraud, the government must establish that she made “any false statement in an application for [a] passport with [the] intent to induce or secure the issuance of a passport under the authority of the United States, either for [her] own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws[.]” 18 U.S.C. § 1542. In this case, Defendant concedes that the application, which contained false statements, “was initially submitted” when it was provided to the passport officer. (Doc. 193 at 7.) Defendant sought to withdraw her application only when the passport officer processing her application requested additional information. She demonstrated no intent in withdrawing her application prior to that request. The jury could reasonably conclude that the act of submitting the application manifested an intent to induce or secure the issuance of a passport under the authority of the United States.

In arguing that her initial submission but subsequent withdrawal of the passport application materials does not constitute an “application[.]” Defendant cites two cases that do not support her position. *Id.* (internal quotation marks omitted). In *Vana v. Attorney Gen. of U.S.*, 341 F. App’x 836 (3d Cir. 2009), the Third Circuit reviewed the denial of the defendant’s request for adjustment of status pursuant to 8 U.S.C. § 1182(a)(6)(C)(ii) after the defendant pled guilty to a charge of making false statements on his passport application. The court did not decide whether “a timely retraction of a

false statement . . . was sufficient to constitute a retraction.” *Id.* at 839. In *United States v. Luke*, 628 F.3d 114 (4th Cir. 2010), the Fourth Circuit affirmed a conviction for aggravated identity theft. Although the defendant claimed that he attempted to withdraw a fraudulent passport application, the evidence demonstrated that he “agitat[ed] to get the passport [approved] and le[ft] the passport office only when it was clear he would not obtain it.” *Id.* at 116. Neither case supports Defendant’s position that she did not provide an “application” with false statements to the passport office and consequently does not undermine the jury’s verdict as to Counts Two and Three.

Defendant further contends that “the evidence was insufficient to establish that it was [Defendant] who presented the material at the passport office” because the video “does not clearly establish the identity of the applicant” and the passport officer who testified did not identify Defendant in court. (Doc. 193 at 7.) Arguments that the jury should have discredited evidence ask the court to consider modifying evidence, which is not permissible under Fed. R. Crim. P. 29. *See United States v. Payne*, 591 F.3d 46, 60 (2d Cir. 2010), *cert. denied* 562 U.S. 950 (2010) (“[C]hoices between competing inferences lie solely within the province of the jury” and the court must “defer to the jury’s resolution of the weight of the evidence[.]”) (citing *United States v. Miller*, 116 F.3d 641, 676 (2d Cir. 1997)). The government offered ample evidence that Defendant possessed the same false identification that was presented to the passport office, rendering it a reasonable inference that she was the applicant. Although of poor quality, the surveillance video was sufficient to support a conclusion that it depicts Defendant. The passport application was moreover closely tied to Defendant’s fraudulent scheme and to a document retrieved from Defendant’s computer advising as to how to obtain a false identity. A jury was free to draw reasonable inferences from this evidence and conclude that Defendant’s identity for Count Three had been established beyond a reasonable doubt. *See Oguns*, 921 F.2d at 449 (“The jury may base its verdict entirely on inferences from circumstantial evidence, and the evidence need not have excluded every possible hypothesis of innocence.”) (internal quotation marks and citation omitted).

For all three Counts, Defendant has not met her “heavy burden” to show that the evidence at trial was insufficient, *Matthews*, 20 F.3d at 548. Her motion for judgment of acquittal therefore must be DENIED.

B. Whether Defendant is Entitled to a New Trial.

Alternatively, Defendant moves for a new trial. Fed. R. Crim. P. 33(a) provides that, “[u]pon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.” In deciding a Rule 33 motion, the court “must examine the entire case, take into account all facts and circumstances, and make an objective evaluation.” *United States v. Ferguson*, 246 F.3d 129, 134 (2d Cir. 2001). “The trial court must be satisfied that ‘competent, satisfactory and sufficient evidence’ in the record supports the jury verdict.” *Id.* (quoting *United States v. Sanchez*, 969 F.2d 1409, 1414 (2d Cir. 1992)). The court must also “strike a balance between weighing the evidence and credibility of witnesses and not wholly usurp[ing] the role of the jury.” *Id.* at 133 (internal quotation marks omitted). The court “generally must defer to the jury’s resolution of conflicting evidence and assessment of witness credibility[.]” *Id.* “It is only where exceptional circumstances can be demonstrated that the trial judge may intrude upon the jury function of credibility assessment.” *Sanchez*, 969 F.2d at 1414.

Ultimately, the court must determine “whether letting a guilty verdict stand would be a manifest injustice[.]” *United States v. Aguiar*, 737 F.3d 251, 264 (2d Cir. 2013), *cert. denied*, 135 S. Ct. 400 (2014) (internal quotation marks omitted). While the court “has broader discretion to grant a new trial under Rule 33 than to grant a motion for acquittal under Rule 29,” the court “must exercise the Rule 33 authority ‘sparingly’ and in ‘the most extraordinary circumstances.’” *Ferguson*, 246 F.3d at 134 (quoting *Sanchez*, 969 F.2d at 1414).

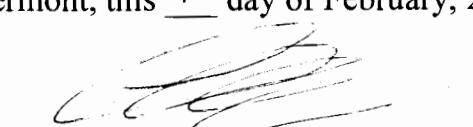
A new trial is reserved for those instances in which there is “a real concern that an innocent person may have been convicted.” *Aguiar*, 737 F.3d at 264. Here, the government introduced ample evidence to support the jury’s verdict on all three Counts and to dispel any concern that the jury’s verdict was the product of manifest injustice. This case thus lacks the “extraordinary circumstances” that would support the court

usurping the jury's function. Because "competent, satisfactory and sufficient evidence" in the record supports the jury verdict[,]” *Ferguson*, 246 F.3d at 134 (quoting *Sanchez*, 969 F.2d at 1414), Defendant's motion for a new trial must be DENIED.

CONCLUSION

For the foregoing reasons, the court DENIES Defendant's motion for judgment of acquittal and further DENIES Defendant's motion for a new trial. (Doc. 193.)
SO ORDERED.

Dated at Burlington, in the District of Vermont, this 1st day of February, 2018.



Christina Reiss, District Judge
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

District of Vermont

2018 DEC 28 PM 12:01

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

BY

ALISON GU

CLERK
DEPUTY CLERK

Case Number: 2:16-cr-084-1

USM Number: 24873-014

Natasha Sen, Esq.

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) 1s, 2s, 3s after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:1344(l)	Bank Fraud	9/30/2015	1s
18:1542	Making False Statement in Support of a Passport Application	9/30/2015	2s
18:1028(a)(1)	Aggravated Identity Theft	9/30/2015	3s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

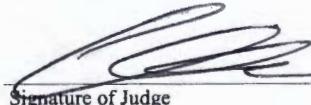
The defendant has been found not guilty on count(s) _____

Count(s) 1, 2, 3 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/27/2018

Date of Imposition of Judgment



Signature of Judge

JUDGMENT ENTERED ON DOCKET
DATE: 12/28/2018

Christina Reiss, U.S. District Judge

Name and Title of Judge

12/28/2018

Date

DEFENDANT: ALISON GU
CASE NUMBER: 2:16-cr-084-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

12 months on Counts 1 and 2, concurrent, to be followed by consecutive 24 month sentence on Count 3, for a total sentence of 36 months with credit for time served.

The court makes the following recommendations to the Bureau of Prisons:

that the defendant be incarcerated at FCI Danbury, in the lowest security setting available to her, to facilitate contact with her minor children and facilitate reentry back into her community. See next page.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALISON GU

CASE NUMBER: 2:16-cr-084-1

ADDITIONAL IMPRISONMENT TERMS

The court recommends to the Federal Bureau of Prisons that the defendant be allowed to participate in the Bureau of Prison's 500-hour residential drug and alcohol rehabilitation program. If this program is not available for any reason, the defendant should be allowed to participate in the non-residential substance abuse treatment program offered. The court finds that the RDAP program is necessary to address the defendant's alcoholism and criminal thinking.

The court recommends to the Bureau of Prisons that the defendant receive educational and vocational opportunities while incarcerated so she may regain employment skills which will facilitate the repayment of her restitution and forfeiture.

DEFENDANT: ALISON GU
CASE NUMBER: 2:16-cr-084-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ALISON GU
CASE NUMBER: 2:16-cr-084-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines, based on your criminal record, personal history or characteristics, that you pose a risk to another person (including an organization), the probation officer, with the prior approval of the Court, may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ALISON GU

CASE NUMBER: 2:16-cr-084-1

ADDITIONAL SUPERVISED RELEASE TERMS

You must make restitution payments in an amount of at least 10% of your gross monthly income until the financial obligation is paid in full.

You must notify the Court immediately of any material change in your economic circumstances that might affect your ability to pay financial penalties.

You must not incur new credit charges or open any additional lines of credit without approval of the probation officer until the financial obligation is paid in full.

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office for the purpose of collecting outstanding financial penalties.

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. Section 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: ALISON GU
CASE NUMBER: 2:16-cr-084-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS \$ 300.00	\$	\$	\$ 107,117.55

The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Bank of Bennington		\$107,117.55	
TOTALS	\$ 0.00	\$ 107,117.55	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ALISON GU

CASE NUMBER: 2:16-cr-084-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 107,417.55 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); orC Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; orD Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; orE Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; orF Special instructions regarding the payment of criminal monetary penalties:

You must make restitution payments in an amount of at least 10% of your gross monthly income until the financial obligation is paid in full.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

 Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Restitution to the Bank of Bennington in the amount of \$107,117.55 is imposed, due immediately. Restitution is imposed joint and several with Matthew Abel, Dkt. 2:16-cr-084-2. Restitution payments are to be made to the Clerk of Court.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
A forfeiture money judgment in the amount of \$109,104.00 is awarded to the government against defendant, due immediately. Interest on the forfeiture judgment is waived due to the defendant's inability to pay.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of October, two thousand twenty-one.

United States of America,

Appellee,

v.

ORDER

Docket Nos: 19-86 (Lead)
19-136 (Con)

Alison Gu, AKA Alison Ling, AKA Ally Koo, AKA Ai J. Chen, AKA Jing Shao, AKA Yijing Gu, AKA Yijing Lin, AKA Alison Yi Gu, AKA Ai Jen Chen, Matthew Abel,

Defendants- Appellants.

Appellant, Alison Gu, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

APPENDIX E

STATUTORY AND REGULATION PROVISIONS

18 U.S.C. § 1542 (pertinent part):

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws

* * * *

Shall be fined under this title, imprisoned not more than . . .
10 years . . .

22 U.S.C. § 213:

Before a passport is issued to any person by or under authority of the United States such person shall subscribe to and submit a written application which shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. If the applicant has not previously been issued a United States passport, the application shall be duly verified by his oath before a person authorized and empowered by the Secretary of State to administer oaths.

22 C.F.R. § 51.1 (pertinent part):

Passport application means the application form for a United States passport, as prescribed by the Department pursuant to 22 U.S.C. 213 and all documents, photographs, and statements submitted with the form or thereafter in support of the application.

22 C.F.R. § 51.5(b):

A passport authorizing officer will examine the passport application and all documents, photographs and statements

submitted in support of the application in accordance with guidance issued by the Department.

22 C.F.R. § 51.20(b):

The passport applicant must truthfully answer all questions and must state every material matter of fact pertaining to his or her eligibility for a passport. All information and evidence submitted in connection with an application is considered part of the application. A person providing false information as part of a passport application, whether contemporaneously with the form or at any other time, is subject to prosecution under applicable Federal criminal statutes.

22 C.F.R. § 51.21(a):

Except as provided in § 51.28, to assist in establishing identity, a minor, a person who has never been issued a passport in his or her own name, a person who has not been issued a passport for the full validity period of 10 years in his or her own name within 15 years of the date of a new application, or a person who is otherwise not eligible to apply for a passport by mail under paragraphs (b) and (c) of this section, must apply for a passport by appearing in person before a passport agent or passport acceptance agent (see § 51.22). The applicant must verify the application by oath or affirmation before the passport agent or passport acceptance agent, sign the completed application, provide photographs as prescribed by the Department, provide any other information or documents requested and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (see 22 CFR 22.1).