APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17-10228

[Filed June 27, 2018]

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)
v.	)
ROGER NEPAL, Defendant-Appellant.	)

Appeal from the United States District Court for the Northern District of Texas

Before WIENER, GRAVES, and HO, Circuit Judges.

JAMES E. GRAVES, JR., Circuit Judge:

Following a plea agreement, Defendant Roger Nepal, who was born in Nepal but later became a naturalized U.S. citizen, pleaded guilty to and was convicted of a single count of violating 18 U.S.C. § 1425(a), which prohibits knowingly procuring citizenship contrary to law. The factual resume accompanying the plea agreement details how in both his Application for Naturalization and his subsequent citizenship interview, Nepal falsely stated that he had no children when, in fact, he did. The factual resume

also states that had immigration officials known that Nepal had children, it would have led to the discovery that Nepal did not properly and completely provide financial support to his son. The district court accepted the plea agreement, convicted Nepal of violating Section 1425(a) and, as part of his sentence, revoked his citizenship. Nepal appeals.

While the appeal was pending, the Supreme Court announced its decision in *Maslenjak v. United States*, 582 U.S. —, 137 S. Ct. 1918 (2017), in which it (1) clarified the Government's burden of proof in a Section 1425(a) prosecution and (2) held that qualification for citizenship, notwithstanding any materially false statement, is a complete defense to prosecution. Nepal contends that *Maslenjak* effected a change in the law such that the district court plainly erred in accepting his guilty plea because, following *Maslenjak*, that plea is no longer supported by a sufficient factual basis. He also contends that he is entitled to invoke the newly announced defense.

Both contentions lack merit. We affirm.

I

In 2015, a grand jury issued a three-count indictment against Nepal.[1] He was charged with conspiracy to commit fraud in connection with immigration documents, in violation of 18 U.S.C. §§ 371 & 1546(a) (Count One); fraud and misuse of

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[1] Some charges were brought against two other defendants, as well, detailing a scheme to fraudulently obtain citizenship on behalf of others. Those defendants entered guilty pleas prior to trial and are irrelevant to this appeal.

visas, permits, and other documents, in violation of 18 U.S.C. § 1546(a) (Count Two); and unlawful procurement of naturalization, in violation of 18 U.S.C. § 1425(a) (Count Three). The statutory provision at issue in Count Three, Section 1425(a), prohibits "knowingly procur[ing] or attempt[ing] to procure, contrary to law, the naturalization of any person." 18 U.S.C. § 1425(a). For present purposes, the indictment advanced three relevant allegations. First, Nepal filed a Form N-400 Application for Naturalization with the then-extant Immigration and Naturalization Service in December 2001, falsely claiming, *inter alia*, that he did not have children, when in fact he had four children—contrary to 18 U.S.C. § 1015(a), which prohibits false statements "relating to . . . naturalization." Second, Nepal lied in his July 2005 naturalization interview with the Bureau of Citizenship and Immigration Services when he again denied having any children—again contrary to 18 U.S.C. § 1015(a). And third, the production of truthful information about Nepal's children "would have led to the discovery of facts relevant to the Application for Naturalization and his statutory ineligibility for naturalization."

The case went to trial in September 2016. After three days, Nepal agreed to plead guilty to Count Three, and the Government agreed to dismiss the other two counts. The parties prepared a plea agreement. In the factual resume accompanying that agreement, Nepal admitted that he lied by failing to list his son, Ashwin Dahal, on his N-400 application and that he lied during his naturalization interview by denying that he had any children. He further admitted that "the production of truthful information" about his son "would have led to the discovery of facts relevant to the

Application for Naturalization and his statutory ineligibility due to lacking the good moral character during the statutory time period for naturalization." Specifically on that point, Nepal admitted that "it would have led to the discovery of the fact that he had not been properly and completely providing financial support for Ashwin Dahal." He admitted that this course of conduct violated Section 1425(a).

At the change of plea hearing, Nepal acknowledged that he understood the factual resume's contents and that he signed the factual resume. He did not object to the factual basis of his plea. The district court found that Nepal was competent and capable of entering into an informed plea, and that his plea was knowing and voluntary. The court accepted the plea agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C); convicted him of violating Section 1425(a); sentenced him to the agreed-upon term of 366 days' imprisonment; ordered him to pay $200,000 restitution; and, pursuant to 8 U.S.C. § 1451,[2] declared that "as of today . . . [Nepal's] citizenship is revoked." Nepal timely appealed, and we have jurisdiction. *See* 28 U.S.C. § 1291; 18 U.S.C. § 3742(a).

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[2] "When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled." 8 U.S.C. § 1451(e).

II

"We review guilty pleas for compliance with Rule 11," *United States v. Garcia-Paulin*, 627 F.3d 127, 130 (5th Cir. 2010), a rule designed to "ensure that a guilty plea is knowing and voluntary, by laying out the steps a trial judge must take before accepting such a plea," *United States v. Vonn*, 535 U.S. 55, 58 (2002). "One such step is determining that a defendant's guilty plea is supported by an adequate factual basis."[3] *United States v. Alvarado-Casas*, 715 F.3d 945, 949 (5th Cir. 2013). The district court makes this determination by following Rule 11(b)(3), which instructs it to "make certain that the ***factual*** conduct admitted by the defendant is sufficient as a ***matter of law*** to establish a violation of the statute to which he entered his plea." *United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010) (emphases in original). "[N]otwithstanding an unconditional plea of guilty, we will reverse on direct appeal where the factual basis for the plea as shown of record fails to establish an element of the offense of conviction." *United States v. White*, 258 F.3d 374, 380 (5th Cir. 2001).

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[3] Nepal originally raised as a threshold issue the question whether we should enforce the appeal waiver contained in his plea agreement to bar his appeal. But the Government concedes, correctly, that the waiver does not bar Nepal from challenging the factual basis of his plea. *See United States v. Baymon*, 312 F.3d 725, 727 (5th Cir. 2002) ("[E]ven if there is an unconditional plea of guilty or a waiver of appeal provision in a plea agreement, this Court has the power to review if the factual basis for the plea fails to establish an element of the offense which the defendant pled guilty to.").

To determine whether a factual basis for a plea exists, we must compare "(1) the conduct to which the defendant admits with (2) the elements of the offense charged in the indictment or information." *United States v. Marek*, 238 F.3d 310, 315 (5th Cir. 2001) (en banc). "If sufficiently specific, an indictment or information can be used as the sole source of the factual basis for a guilty plea." *United States v. Hildenbrand*, 527 F.3d 466, 475 (5th Cir. 2008) (quoting *United States v. Adams*, 961 F.2d 505, 509 (5th Cir. 1992)). Additionally, "[o]n plain error review, we [may] take a wide look, examining 'the ***entire*** record for facts supporting [the] guilty plea'" and drawing reasonable inferences from those facts. *United States v. Barton*, 879 F.3d 595, 599 (5th Cir. 2018) (quoting *Trejo*, 610 F.3d at 317).

When the defendant does not object to the sufficiency of the factual basis of his plea before the district court—instead raising for the first time on appeal the question whether the undisputed factual basis is sufficient as a matter of law to sustain his plea (as Nepal does here)—our review is restricted to plain error. *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012); *see also* Fed. R. Crim. P. 52(b).[4] Success on plain error review requires a showing by the defendant that a clear and obvious error affected his

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[4] Nepal contends that our review should be *de novo*. But the principal case he cites to support that contention, *United States v. Humphrey*, 287 F.3d 422, 443 (6th Cir. 2002), *overruled on other grounds by United States v. Leachman*, 309 F.3d 377, 383 (6th Cir. 2002), has never been relied on by any court for the proposition that *de novo* review, rather than plain error, should apply in these circumstances. We will not rely on it, either.

substantial rights. *United States v. Fairley*, 880 F.3d 198, 206 (5th Cir. 2018). If the defendant makes this showing, "it is well established that courts 'should' correct a forfeited plain error that affects substantial rights 'if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.'" *Rosales-Mireles v. United States*, 585 U.S. —, —, 138 S. Ct. 1897, 1906 (2018) (quoting *United States v. Olano*, 507 U.S. 725, 735 (1993)).

III

A

The Supreme Court decided *Maslenjak v. United States*, 582 U.S. —, 137 S. Ct. 1918 (2017), which interpreted Section 1425(a), while this appeal was pending; it is now the controlling law. *See Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). Thus, resolution of the question whether the district court committed error requires us to decide whether Nepal has established that *Maslenjak* altered the Section 1425(a) analysis in such a way that the indictment and factual resume no longer provide a sufficient factual basis for his plea.

Section 1425(a) provides that "[w]hoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person" commits an offense. 18 U.S.C. § 1425(a).[5] In *Maslenjak*, the Supreme Court

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[5] Our sole precedential Section 1425(a) decision, *United States v. Colwell*, 764 F.2d 1070 (5th Cir. 1985), involved review of the conviction of a U.S. citizen who made false statements to obtain citizenship for others, namely, by participating in preparing false birth documents for Mexican babies to facilitate their adoption in the United States by American families. We have never before

adopted the prevailing interpretation of Section 1425(a) that, in prosecutions arising from a defendant's making false statements to acquire citizenship, the Government must establish some sort of causal relationship between the false statements and the acquisition of citizenship.[6] 137 S. Ct. at 1922–23. So now, "the proper causal inquiry under § 1425(a) is framed in objective terms: To decide whether a defendant acquired citizenship by means of a lie, a jury must evaluate how knowledge of the real facts would have affected a reasonable government official properly applying naturalization law." *Id.* at 1928.

The Government can satisfy that causal inquiry using one of two theories. The first theory is fairly straightforward: "[i]f the facts the defendant misrepresented are themselves disqualifying"—for example, if the defendant misrepresented her travel history to circumvent the requirement that an applicant be physically present in the United States for

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reviewed the conviction of a non-citizen applicant who unlawfully procured ***his own*** citizenship.

[6] *See United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir. 2015); *United States v. Latchin*, 554 F.3d 709, 712–15 (7th Cir. 2009); *United States v. Alferahin*, 433 F.3d 1148, 1154–56 (9th Cir. 2006); *United States v. Aladekoba*, 61 F. App'x 27, 28 (4th Cir. 2003). The Sixth Circuit had interpreted the statute to mean that the Government need not prove that a defendant's false statements were material to, or influenced, the decision to approve her citizenship application. As long as a defendant made a false statement—on any subject—during the naturalization process and later procured naturalization, then she violated Section 1425(a). *See United States v. Maslenjak*, 821 F.3d 675, 682–93 (6th Cir. 2016), *vacated*, 137 S. Ct. 1918.

more than half of the five-year period preceding her application, or falsely denies being convicted of an aggravated felony to circumvent the good moral character requirement—then "there is an obvious causal link between the defendant's lie and her procurement of citizenship." *Id.* In these circumstances, the inquiry is satisfied because "her lie must have played a role in her naturalization." *Id.* at 1928–29.

The Supreme Court characterizes the second theory as an "investigation-based theory," reasoning that "even if the true facts lying behind a false statement would not 'in and of themselves justify denial of citizenship,' they could have 'led to the discovery of other facts which would' do so." *Id.* at 1929 (quoting *Chaunt v. United States*, 364 U.S. 350, 352–53 (1960)); *see also id.* ("[A] person whose lies throw investigators off a trail leading to disqualifying facts gets her citizenship by means of those lies—no less than if she had denied the damning facts at the very end of the trail."). This theory requires its own two-part showing. First, "the Government has to prove that the misrepresented fact was sufficiently relevant to one or another naturalization criterion that it would have prompted reasonable officials, 'seeking only evidence concerning citizenship qualifications,' to undertake further investigation." *Id.* (quoting *Kungys v. United States*, 485 U.S. 759, 774 n.9 (1988) (opinion of Scalia, J.)). Second, the Government must "establish that the investigation 'would predictably have disclosed' some legal disqualification." *Id.* (quoting *Kungys*, 485 U.S. at 774). If it does, a conviction can obtain.

But whichever the theory, if the available evidence indicates that the defendant actually was qualified for

the citizenship he obtained, that "qualification for citizenship is a complete defense to a prosecution brought under § 1425(a)." *Id.* at 1929–30. In other words, despite the Government's success under either the first or second causal theories, if the applicant shows that he was qualified to become a U.S. citizen, notwithstanding the false statement, no conviction can obtain. *Id.* at 1931.

The false statement we concern ourselves with here is Nepal's statement that he had no children. Having children does not facially disqualify Nepal from citizenship, *see United States v. Haroon*, 874 F.3d 479, 484 (6th Cir. 2017) ("Divorcees and parents may apply for citizenship."), *cert. denied*, 584 U.S. —, 138 S. Ct. 1576 (2018), so the Government must rely on the investigation-based theory. We conclude that the indictment and factual resume together satisfy the Government's *Maslenjak* burden on both prongs of this theory.[7]

We look initially at whether Nepal's misrepresentations concealing his fatherhood are "sufficiently relevant to one or another naturalization criterion." *Id.* at 1929. They are. The Immigration and

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[7] We are cognizant that we are looking backward at a forward-looking analysis. We must obscure the hindsight granted to us by Nepal's plea in order to put ourselves in the position of a reasonable immigration official learning of this information for the first time. This exercise prevents us from reaching the results-based conclusion that because officials ***did*** discover a disqualification then the Government has necessarily ***proven*** that a truthful disclosure (1) was relevant to a naturalization criterion, (2) would have prompted a reasonable official to investigate, and (3) would predictably have led to disclosure of a disqualification.

Nationality Act provides that "[n]o person . . . shall be naturalized unless such applicant . . . has been and still is a person of good moral character" during the statutorily prescribed period. 8 U.S.C. § 1427(a)(3).[8] The applicant bears the burden of demonstrating his good moral character. *Id.* § 1427(e). Section 101 of the INA provides a nonexhaustive list of conditions that, standing alone, foreclose an applicant's demonstration of good moral character. *See id.* § 1101(f). Department of Homeland Security regulations offer a more exhaustive list of conditions, and an applicant "***shall*** be found to lack good moral character" if he meets any of them. 8 C.F.R. § 316.10(b) (emphasis added). Though neither Nepal's indictment nor the factual resume cites a specific provision or regulation, their texts suggest reliance on (and the Government confirms as much in its brief) the regulation providing that an applicant "shall be found to lack good moral character, if, during the statutory period, the applicant [w]illfully failed or refused to support dependents." *Id.* § 316.10(b)(3)(i).

Having identified the relevant criterion, we proceed. To determine whether the Government would satisfy its burden under the investigatory theory's first prong,

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[8] When an applicant's good moral character is in question, the statutorily prescribed period is practically boundless. *See* 8 C.F.R. § 316.10(a)(2) ("[USCIS] is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.").

Maslenjak instructs us to ask whether a reasonable official, seeking only evidence concerning citizenship qualifications, would undertake further investigation were she to learn that an applicant had children. Considering 8 C.F.R. § 316.10(b)(3)(i), and how violating that regulation affects an applicant's qualification, we think the answer to that question is undoubtedly ***yes***.

Turning to the second prong, though *Maslenjak* rejected application of a strict causal requirement that would "demand[] proof positive that a disqualifying fact would have been found," the Court nonetheless adopted a "demanding but still practical causal standard" under which the Government must offer sufficient proof to "establish that the investigation 'would predictably have disclosed' some legal disqualification." 137 S. Ct. at 1929 (quoting *Kungys*, 485 U.S. at 774). There is sufficient proof here that an investigation would predictably disclose a legal disqualification if it exists. This is common sense. If an applicant discloses that he has children, the investigatory questions that would follow that disclosure—bearing in mind that a willful failure or refusal to financially support any dependent child is a legal disqualification on good moral character grounds—practically write themselves: *What are their names? How old are they? Where do they live? Are you responsible for supporting them? In what amounts? Do you consistently meet your support obligations?* Any investigation seeking answers to these questions would predictably reveal if an applicant who had children had willfully failed or refused to provide financial support to those children— a legal disqualification.

We therefore conclude that, even post-*Maslenjak*, the indictment and factual resume provide a sufficient factual basis for Nepal's plea and for all statutory elements of Section 1425(a), the offense of conviction.

B

Alternatively, Nepal argues that he should be entitled to invoke the defense to a Section 1425(a) prosecution announced in *Maslenjak*.[9] The Supreme Court explained that because it has "never read a statute to strip citizenship from someone who met the legal criteria for acquiring it," the statute should not be used as "a tool for denaturalizing people who, the available evidence indicates, were actually qualified for the citizenship they obtained." *Maslenjak*, 137 S. Ct. at 1930. On this basis, it crafted the defense: "Whatever the Government shows with respect to a thwarted investigation, qualification for citizenship is a complete defense to a prosecution brought under § 1425(a)." *Id.* Put differently, the defense is available only to a defendant who shows, despite the Government's satisfying its Section 1425(a) burden, that no fact has been found that disqualifies him from citizenship.

Even if we assume that the district court's acceptance of the plea—without permitting Nepal the

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[9] The Government contends that, despite its concession that Nepal's appeal waiver did not bar him from challenging the factual basis of his plea, *see supra* note 3, it should still be able to enforce the waiver against Nepal's assertion of entitlement to the affirmative defense. We decline to address the issue whether a waiver bars our consideration of an appeal brought under these circumstances. Instead, we assume, without deciding, that it does not.

opportunity to assert the affirmative defense—was error, and that the error was plain, Nepal has not shown that error affected his substantial rights. To satisfy this third prong, a defendant "must 'show a reasonable probability that, but for the error,' the outcome of the proceeding would have been different." *Molina-Martinez v. United States*, 578 U.S. —, —, 136 S. Ct. 1338, 1343 (2016) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 76 (2004)), *i.e.*, that "he would not have entered the plea," *United States v. London*, 568 F.3d 553, 558 (5th Cir. 2009) (quoting *United States v. Castro-Trevino*, 464 F.3d 536, 541 (5th Cir. 2006)). We "may consult the whole record when considering the effect of any error on substantial rights." *Vonn*, 535 U.S. at 59.

Nepal argues that his substantial rights were affected because *Maslenjak*'s establishment of the new defense made the acceptance of his guilty plea a structural error. "The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial." *Weaver v. Massachusetts*, 582 U.S. —, —, 137 S. Ct. 1899, 1907 (2017). "Thus, the defining feature of a structural error is that it 'affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.'" *Id.* (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). In *Weaver*, the Supreme Court laid out three broad categories of structural error: first, "if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest," *id.* at 1908 (citing *McKaskie v. Wiggins*, 465 U.S. 168 (1984) (deprivation of the right to self-representation at

trial)); second, "if the effects of the error are simply too hard to measure," *id.* (citing *Vasquez v. Hillery*, 474 U.S. 254 (1986) (unlawful exclusion of grand jurors of defendant's race)); and third, "if the error always results in fundamental unfairness," *id.* (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963) (total deprivation of counsel), and *Sullivan v. Louisiana*, 508 U.S. 275 (1993) (erroneous reasonable doubt instruction)). However, "[a]n error can count as structural even if the error does not lead to fundamental unfairness in every case." *Id.*

The announcement of a new defense, though, does not fall into any of these categories, nor is the error in Nepal's case on the same level as the errors targeted in the Court's structural error jurisprudence. Indeed, announcement of a new defense is a far cry from deprivation of counsel, deprivation of the right to self-representation, or unlawful exclusion of grand jurors of the defendant's race. Furthermore, and perhaps more importantly, none of the Supreme Court's structural error cases are direct appeals from judgments of conviction within the federal system like this case; they are either appeals from state courts which had considered the error under their own rules or federal habeas challenges to state convictions. *See Johnson v. United States*, 520 U.S. 461, 466 (1997) (rejecting federal defendant's argument that the error in her trial was structural: "the seriousness of the error claimed does not remove consideration of it from the ambit of" Rule 52(b), "which by its terms governs direct appeals from judgments of conviction in the federal system"; creating an exception to Rule 52(b) to accommodate the error of which defendant complained would be "[e]ven

less appropriate than an unwarranted expansion of the Rule"). The error in this case is not structural error.

Unfortunately for Nepal, he puts nearly all his substantial-rights eggs in the structural-error basket. The only other possible argument we could generously glean from his briefing—a passing analogy to our decision in *United States v. Knowles*, 29 F.3d 947 (5th Cir. 1994)—is unavailing. There, the defendant was convicted of possession of a firearm in a school zone in violation of the Gun Free School Zones Act. While the case was pending on direct appeal, we decided *United States v. Lopez*, 2 F.3d 1342 (5th Cir. 1993), in which we held that the Gun Free School Zones Act was an unconstitutional exercise of Congress's power under the Commerce Clause.[10] Because Knowles did not raise any challenge to the constitutionality of the Gun Free School Zones Act in the district court, we reviewed his conviction for plain error. When we reached the substantial rights prong of the analysis, we explained, "It is . . . evident that this error affected the outcome of the proceedings below. Had the *Lopez* argument been raised in the district court, it should have resulted in the dismissal of the Gun Free School Zones Act count from Knowles's indictment." *Knowles*, 29 F.3d at 951. We did not fault Knowles for not raising the argument prior to pleading guilty, because during the nearly sixty years before *Lopez* was decided, the Supreme Court

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[10] That decision would later be affirmed by the Supreme Court after *Knowles* was decided. *See United States v. Lopez*, 514 U.S. 549 (1995).

had declined to declare unconstitutional any federal statute promulgated under the Commerce Clause.[11]

There was a direct correlation between the decision in *Lopez* and the potential change in outcome in *Knowles*: the statute under which Knowles was convicted was later declared unconstitutional. But there is no similar correlation between the decision in *Maslenjak* and the potential change in outcome here. The mere creation of a defense that a defendant may or may not be able to satisfy under certain circumstances is not comparable to a declaration that a statute of conviction is unconstitutional. Beyond that, we are unconvinced that the outcome in Nepal's case would have been any different because, though the affirmative defense did not exist in this Circuit prior to *Maslenjak*, the critical disqualifying regulation, 8 C.F.R. § 316.10(b)(3)(i), did. And *Maslenjak* did not alter it. By agreeing to the factual basis of his plea, Nepal essentially conceded that the Government could prove that he violated this regulation because he willfully failed or refused to support his son.

We conclude that Nepal has not shown a reasonable probability, based on the evidence and testimony in the record, that had he known of the defense, he would not have pleaded guilty. *See London*, 568 F.3d at 558; *Castro-Trevino*, 464 F.3d at 541. Failure to show an

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[11] *See, e.g.*, *Hodel v. Va. Surface Min. & Reclamation Ass'n*, 452 U.S. 264 (1981); *Perez v. United States*, 402 U.S. 146 (1971); *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); *Wickard v. Filburn*, 317 U.S. 111 (1942); *United States v. Darby*, 312 U.S. 100 (1941); *United States v. Carolene Prods. Co.*, 304 U.S. 144 (1938); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

effect on his substantial rights is fatal to his claim of plain error.

* * *

The Defendant's conviction and sentence are **AFFIRMED**.

APPENDIX B

United States District Court
Northern District of Texas Dallas Division

Case Number: 3:15-CR-00112-K (01)
USM Number: 49376-177

[Filed February 14, 2017]

UNITED STATES OF AMERICA)
)
v.)
)
ROGER NEPAL)
)

JUDGMENT IN A CRIMINAL CASE

J Craig Jett and Paul Lund
Defendant's Attorney

THE DEFENDANT:

☒	pleaded guilty to count(s)	**To Count 3 of the 3 Count Indictment, filed on March 24, 2015.**
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	

□	pleaded nolo contendere to count(s) which was accepted by the court	
□	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18 USC § 1425(a) - Procurement of Citizenship or Naturalization Unlawfully	03/30/2006	3

The defendant is sentenced as provided in pages 2 through 4 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 1 of the Indictment, filed on March 24, 2015, is 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.

February 8, 2017
Date of Imposition of Judgment

/s/ Ed Kinkeade
Signature of Judge

Ed Kinkeade, United States District Judge
Name and Title of Judge

February 14, 2017
Date

IMPRISONMENT

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

THREE HUNDRED AND SIXTY-SIX (366) days. The defendant shall pay restitution in the amount of $200,000, as set out in this Judgment.

Defendant's Certificate of Citizenship is hereby REVOKED. The Court recommends that upon the completion of his sentence, that the defendant be deported.

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be allowed to serve his sentence at FCI Seagoville, Seagoville, Texas.

☐ 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 March 8, 2017.**
☐ 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

CRIMINAL MONETARY PENALTIES

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

	Assessment	**JVTA Assessment***	**Fine**	**Restitution**
TOTALS	$100.00	$.00	$.00	$200,000.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Ashwin Dahal c/o Trustee Brad Freeman
$200,000.00

☐ 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

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* 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.

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:

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 payments of $ 200,000 due immediately.**
☐ not later than , or ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ 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; or

D ☐ Payment in equal 20 *(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; or

E ☐ 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; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 3 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who

contributed to the same loss that gave rise to defendant's restitution obligation.

- ☐ 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:

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 C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10228

[Filed August 10, 2018]

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

ROGER NEPAL,
Defendant - Appellant

ON PETITION FOR REHEARING
AND REHEARING EN BANC

(Opinion 06/27/2018, 5 Cir., ____, ____ F.3d ____)

Before WIENER, GRAVES, and HO, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/_____
UNITED STATES CIRCUIT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CRIMINAL NO. 3-15CR0112-K

[Filed March 24, 2015]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
ROGER NEPAL (01)	)
DIBYA BHATTARAI (02)	)
JESSIE ESPARZA (03)	)
	)

INDICTMENT

The Grand Jury Charges:

Introduction

At all times material to this indictment:

1. The United States Citizenship and Immigration Services ("USCIS") is an agency of the United States, located within the Department of Homeland Security, a department within the executive branch of the United States. USCIS is responsible for processing and reviewing applications for aliens, that is, non-citizens of the United States, to adjust their immigration status.

2. Qualified aliens who enter into a bona fide marriage with a United States citizen may apply for permanent resident status. A bona fide marriage is one that is not entered into for the purpose of receiving an immigration benefit. The process for becoming a permanent resident requires the United States citizen ("USC") spouse to file, among other forms, a Form I-130, Petition for Alien Relative, ("I-130"). The I-130 is filed by the USC spouse (who is the petitioner) on behalf of the alien spouse (who is the beneficiary) with USCIS.

3. The purpose of the I-130 is to verify the existence of the claimed relationship between the USC spouse and the alien spouse. In the context of an I-130 based on marriage, approval of the petition is based on whether the marriage is bona fide. The I-130 requires the USC spouse to provide accurate identifying information for both the USC spouse and the alien spouse. Among the information that must be provided, the I-130 requires the USC spouse to provide the names of any prior spouses of both the USC spouse and the alien spouse as well as the dates the marriages to those prior spouses ended. Listing prior marriages enables USCIS to determine whether the prior marriages of both the USC spouse and the alien spouse were legally terminated. Failing to truthfully answer the question about previous marriages increases the chances of the I-130 being fraudulently approved.

4. The I-130 also requires the USC spouse to provide supporting documentation to prove that the marriage is bona fide and was not entered into for the purpose of evading the immigration laws of the United States. Examples of the necessary documentation are divorce

decrees for any prior marriages, documentation showing joint ownership of property, leases showing joint tenancy of a common residence, documentation showing co-mingling of financial resources, and affidavits from third parties having personal knowledge of the bona fides of the marital relationship.

5. After an application and supporting documents are submitted to USCIS, an initial review of the materials is made. Following an initial review of the petition and supporting documents, an interview by USCIS with both the USC spouse and the alien spouse is scheduled. On the scheduled interview date, an USCIS adjudications officer will typically interview the USC spouse and the alien alien spouse separately. During these separate interviews, the officer asks numerous questions designed to determine whether the marriage is bona fide. If, based on the evidence submitted and the responses to interview questions, the officer believes the marriage is bona fide the I-130 will be approved. The approval of an I-130, (in this context), signifies a finding that a bona fide marriage exists between the USC spouse and alien spouse.

6. An alien who is the beneficiary of an approved I-130 may apply for permanent resident status by filing a Form I-485, Application to Register Permanent Residence or Adjust Status ("I-485"). The I-485 is focused on the alien's eligibility to become a permanent resident under the immigration laws of the United States. In some cases, the alien may be required to have another person submit a Form I-864, Affidavit of Support Under Section 213 ("1-864"). The purpose of this petition is to ensure that, if the alien becomes a

permanent resident, the alien will not be a financial burden on the United States.

7. Once USCIS has been provided with all the required documents and background checks have been completed, a decision to either deny or approve the alien's I-485 is made. An approved I-485 results in the alien being given legal permanent resident status ("LPR") or Conditional Resident ("CR") status. In cases where the alien has been married to their USC spouse for less than two years at the time the I-485 is approved, the alien will be given CR status. Aliens given CR status must then file an I-751, Petition to Remove Conditions ("I-751") two years after the I-485 was approved. An approved I-751 removes the conditions and the alien becomes a LPR.

8. An alien who is the spouse of a USC may apply to become a naturalized USC if the alien has continuously resided in the United States for at least three years after becoming a LPR and has lived in marital union with his or her USC spouse for at least those three years. Only aliens who lawfully obtained LPR status qualify to become a naturalized USC. In addition to other requirements, to become a naturalized USC based on marriage to a USC, alien must establish the following:

(a) LPR at the time of filing the naturalization application;

(b) Living in marital union with the USC spouse for at least three years preceding the time of filing the naturalization application;

(c) Continue to be the spouse of the USC up until the time the alien takes the Oath of Allegiance;

(d) Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization.

9. An alien who wishes to apply for naturalization must file an N-400, Application for Naturalization ("N-400") with USCIS. The N-400 requires the alien to provide accurate information and truthful responses to numerous questions on the application. The N-400 requires the applicant to provide information about current and former spouses including the dates on which those marriages began and ended. The N-400 also requires the applicant to provide information about all of their children. Additionally, the N-400 requires applicants to answer a number of questions relating to "Good Moral Character." Once USCIS determines that a LPR alien has met all of the requirements for becoming a naturalized USC the N-400 is approved and the alien will become a USC upon taking the Oath of Allegiance at a public ceremony.

10. On or about April 14, 1993, the defendant **Roger Nepal** married L.D. in Nepal. On or about the time of their marriage, both the defendant **Roger Nepal** and L.D. were natives and citizens of Nepal. The defendant **Roger Nepal** and L.D. had three children together between 1995 and 1998. The marriage between **Roger Nepal** and L.D. has never been officially terminated.

11. The defendant **Roger Nepal** obtained permanent resident status through a fraudulent marriage to D.D. on or about March 16, 1999.

12. On or about March 30, 2006, the defendant **Roger Nepal** became a naturalized USC based on his fraudulent marriage to D.D.

13. The defendants **Roger Nepal** and **Dibya Bhattarai** have had two children together. Their first child was born in 2004 and the second child was born in 2007.

Count One
Conspiracy to Commit Fraud in Connection with Immigration Documents
[Violation of 18 U.S.C. §§ 371 and 1546]

14. The Grand Jury hereby realleges and incorporates by reference the allegations set forth in the Introduction of this Indictment.

15. Beginning on or about June 2007 and continuing until on or about January 2014, in the Dallas Division of the Northern District of Texas and elsewhere, the defendants, **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza,** and others known and unknown to the Grand Jury, did intentionally and willfully combine, conspire, confederate, and agree together and with each other to obtain a nonimmigrant visa, border crossing card, alien registration receipt or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained, in violation of 18 U.S.C. § 1546(a).

Manner and Means of the Conspiracy

It was part of the conspiracy that:

16. One or more of the defendants and co-conspirators arranged and entered into fraudulent marriages to certain aliens from Nepal and other countries.

17. In exchange for various sums of money, the defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza,** offered to help certain aliens obtain permanent resident status in the United States through fraudulent marriages. Once an alien paid for their help, the defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza** recruited USCs to marry the aliens. When recruiting these USCs the defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza** provided an explanation of what would be required, including the fraudulent marriage, the I-130 process, and ways to conceal the fraud from USCIS. In exchange for entering into a fraudulent marriage and going through the I-130 process, the USC would receive various monetary benefits.

18. The defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza** staged, photographed, and attended wedding/receptions between the aliens and the USCs to make the marriages appear genuine.

19. After the alien and USC had been fraudulently married, the defendant **Roger Nepal** arranged for an attorney to represent the alien and USC before USCIS during the I-130 process. The defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza** would then help the alien and USC make the marriage appear legitimate by providing them with certain documents. Prior to the USC and alien being

interviewed about their marriage at USCIS, the defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza** coached them on the questions that would be asked as well as the answers they should provide to make the marriage seem bona fide.

20. In addition to arranging fraudulent marriages, the defendants **Roger Nepal** and **Jessie Esparza,** entered into fraudulent marriages with certain aliens for the purpose of the alien obtaining status as a permanent resident.

Overt Acts

21. On or about June 26, 2007, the defendant **Jessie Esparza,** (an USC), married N.S., (an alien), at the Dallas County Courthouse in Dallas, Texas in exchange for $2,000 paid to him by the defendant **Roger Nepal.** The defendant **Jessie Esparza** filed an I-130 of which N.S. was the beneficiary with USCIS on or about September 11, 2007. On or about September 11, 2007, the defendant **Dibya Bhattarai** filed an I-864 Affidavit of Support for N.S.

22. In or about October 2007, the defendant **Jessie Esparza** introduced A.R., (an USC), to N.T., (an alien), On January 22, 2008, the defendants **Roger Nepal** and **Jessie Esparza** attended A.R. and N.T.'s wedding at the Dallas County Courthouse in Dallas, Texas. On or about January 30, 2008, the defendant **Dibya Bhattarai** created a "Residential Lease" that listed A.R. and N.T. as the lessees of a room in the home where the defendants **Roger Nepal** and **Dibya Bhattarai** resided.

23. In or about July 2009, the defendant **Jessie Esparza** told R.G., (an USC), that he would pay him

$500.00 to marry M.T., (an alien). On or about August 10, 2009, the defendants **Roger Nepal** and **Jessie Esparza** attended the wedding reception for R.G. and M.T.

24. In or about October 2009, the defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza,** met C.R., (an USC), at an IHOP restaurant to discuss paying her to enter into a fraudulent marriage with an alien, M.S. The defendants **Roger Nepal** and **Jessie Esparza** attended the wedding for C.R. and M.S. on June 4, 2010.

25. On or about January 18, 2011, the defendant **Roger Nepal** attended the wedding for A.C., (an USC), and K.S., (an alien). The defendants **Roger Nepal** and **Dibya Bhattarai** coached A.C. and K.S. for their interview with USCIS.

26. On or about July 7, 2011, the defendant **Roger Nepal** married P.B., (an alien) on or about July 19, 2011, the defendant **Roger Nepal** filed an I-130 of which P.B. was the beneficiary with USCIS.

In violation of 18 U.S.C. §§ 371 and l 546(a).

Count Two
Fraud and Misuse of Visas, Permits,
and Other Documents
(Violation of 18 U.S.C. § 1546(a))

On or about July 19, 2011, in the Dallas Division of the Northern District of Texas, the defendant, **Roger Nepal,** did knowingly make under oath and subscribe under penalty of perjury pursuant to 28 U.S.C. § 1746, a false statement with respect to a material fact in an application, affidavit, and document required by the

immigration laws and regulations prescribed thereunder, to wit, on a Form I-130, Petition for Alien Relative, filed on behalf of P.B., the defendant falsely stated he had been previously married only one time which he knew to be false.

In violation of 18 U.S.C. § 1546(a).

Count Three
Procurement of Citizenship
or Naturalization Unlawfully
(Violation of 18 U.S.C. § 1425(a))

On or about March 30, 2006, in the Dallas Division of the Northern District of Texas, the defendant, **Roger Nepal,** knowingly procured and obtained for himself naturalization as a United States citizen which was contrary to law, specifically, in violation of Title 18, United States Code, Section 1015(a), in that in or about December 2001, he knowingly subscribed and filed as true under penalty of perjury on his written Form N-400, Application for Naturalization ("N-400"), and then on or about July 14, 2005, he knowingly made under oath during his naturalization interview with, among others, an adjudications officer of the Department of Homeland Security, Bureau of Citizenship and Immigration Services certain false statements, to wit:

(a) During his naturalization interview, he stated that he resided with D.S.N. at 101 N. Forest Hill Dr., Everman, Texas 76140, and made written changes to reflect this at Part 3 (Address and Telephone Number) and Part 8 (Information About your Marital History) of

the N-400, when, in fact, he resided with Dibya Bhattarai at a different address;

(b) At Part 8 (Information About Your Marital History) of the N-400, he stated he only had only been married one time to D.S.N., when, in fact, he married L.D. on April 14, 1993;

(c) At Part 9 (Information About Your Children) of the N-400, he stated that he had no sons or daughters, when, in fact, at the time of the interview he had a total of four children which should have been included;

(d) During his N-400 interview he was specifically asked about the existence of any children and he again denied having any children, when in fact, he had four children;

(e) At Part 10 (Additional Questions) Section D (Good Moral Character) of the N-400, he answered "no" to question 22d which asked "have you ever been married to more than one person at the same time?", when, in fact, he was married to D.S.N. and L.D. at the same time;

(f) At Part 10 (Additional Questions) Section D (Good Moral Character) of the N-400, he answered "no" to question 23 which asked "have you ever given false or misleading information to any U.S. government official while applying for an immigration benefit or to prevent deportation, exclusion, or removal?", when in fact, he stated that he had no children in Part 3B of his Form I-485 Application to Register Permanent Residence

> or Adjust Status ("I485") which was filed with USCIS on April 23, 1997 and which he appeared at USCIS for an interview about on October 5, 1998, and he failed to list L.D. as a former spouse on the Form G-325A, Biographic Information submitted with the I-485;

which suggested he was qualified for naturalization, when the production of truthful information would have led to the discovery of facts relevant to the Application for Naturalization and his statutory ineligibility for naturalization.

In violation of 18 U.S.C. § 1425(a).

Forfeiture Notice
[18 U.S.C. § 982(a)(2)(B);
18 U.S.C. § 1028(b)(5); 21 U.S.C. § 853(p)]

Upon conviction of any of the offense alleged in Count One, and pursuant to 18 U.S.C. § 982(a)(2)(B) and 18 U.S.C. § 1028(b)(5), the defendants **Roger Nepal, Dibya Bhattarai,** and **Jessie Esparza,** shall forfeit to the United States any property constituting, or derived from, proceeds the defendants obtained directly or indirectly, as the result of the offense and any personal property used or intended to be used to commit the offense.

If any of the property described above, as a result of any act or omission of the defendants cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be

divided without difficulty, it is the intent of the United States pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(a)(2)(B), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

A TRUE BILL
/s/ Angela Brand
FOREPERSON

JOHN R. PARKER
ACTING UNITED STATES ATTORNEY

/s/ Dan Givіden
DAN GIVIDEN
Special Assistant United States Attorney
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA	)
	)
v.	)
	)
ROGER NEPAL (1)	)
DIBYA BHATTARAI (2)	)
JESSIE ESPARZA (3)	)
	)

SEALED INDICTMENT

18 U.S.C. § 371 and 1546
Conspiracy to Commit Fraud in Connection with Immigration Documents

18 U.S.C. § 1546(a)
Fraud and Misuse of Visas, Permits, and Other Documents

18 U.S.C. § 1425(a)
Procurement of Citizenship or Naturalization Unlawfully

18 U.S.C. § 9825(a)(2)(B); 18 U.S.C. § 1028(b)(5); 21 U.S.C. § 853(p)
Forfeiture Notice

3 Counts

A true bill rendered

DALLAS Angela Brand FOREPERSON

Filed in open court this __ day of March, 2015

Clerk

WARRANT TO ISSUE: Roger Nepal, Dibya Bhattarai, Jessie Esparza

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/s/ 3/24/15
UNITED STATES MAGISTRATE JUDGE
No Magistrate Case Pending

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NO. 3:15-CR-112-K-01

[Filed September 10, 2016]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
ROGER NEPAL (01)	)
	)

FACTUAL RESUME

Defendant, Roger Nepal, his attorney, Craig Jett, and the United States of America agree to the law and facts as follows:

ELEMENTS OF THE OFFENSES

Count Three
Unlawful Procurement of Citizenship or Naturalization
[Violation of 18 U.S.C. § 1425(a)]

In order to prove the offense of Unlawful Procurement of Citizenship or Naturalization in violation of 18 U.S.C. § 1425(a) as alleged in Count Three of the Indictment the United States must prove that the defendant:

1) Knowingly;

2) Contrary to the law;

3) Procured U.S. citizenship through naturalization.

STIPULATED FACTS

On or about March 30, 2006, in the Dallas Division of the Northern District of Texas, the defendant, **Roger Nepal,** knowingly procured and obtained for himself naturalization as a United States citizen which was contrary to law, specifically, in violation of Title 18, United States Code, Section 1015(a), in that in or about December 2001, he knowingly subscribed and filed as true under penalty of perjury on his written Form N-400, Application for Naturalization ("N-400"), and then on or about July 14, 2005, he knowingly made under oath during his naturalization interview with, among others, an adjudications officer of the Department of Homeland Security, Bureau of Citizenship and Immigration Services certain false statements, to wit:

> At Part 9 (Information About Your Children) of the N-400 he failed to list his oldest son, Ashwin Dahal (also known as Ashwin Dahal) in that section when in fact Ashwin Dahal should have been included and when specifically asked during his N-400 about the existence of any children he denied having any children, when in fact, he did.

which suggested he was qualified for naturalization, when the production of truthful information would have led to the discovery of facts relevant to the

Application for Naturalization and his statutory ineligibility due to lacking the good moral character during the statutory time period for naturalization. Specifically, it would have led to the discovery of the fact that he had not been properly and completely providing financial support for Ashwin Dahal.

[Nothing further on this page.]

Defendant's conduct was in violation of 18 U.S.C. § 1425(a)

AGREED TO AND SIGNED on SEPTEMBER 9, 2016.

JOHN R. PARKER
UNITED STATES ATTORNEY

/s/ Roger Nepal
ROGER NEPAL
Defendant

/s/ Dan Gividen
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/s/ J. Craig Jett
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Defendant's Attorney