

PRECEDENTIAL  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 20-1778

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BALJINDER SINGH,  
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES OF  
AMERICA,  
Respondent

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On Petition for Review of an Order of the  
United States Department of Justice  
Board of Immigration Appeals  
(BIA A072-435-798)  
Immigration Judge: Mirlande Tadal

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Argued  
January 26, 2021

Before: JORDAN, MATEY, *Circuit Judges*

and HORAN,\* *District Judge.*

(Filed: August 31, 2021)

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Gintare Grigaite  
363 Broadway  
Bayonne, NJ 07002

John P. Leschak [ARGUED]  
Leschak & Associates  
180 South Street  
Freehold, NJ 07728  
*Counsel for Petitioner*

Virginia L. Gordon [ARGUED]  
Aaron D. Nelson  
United States Department of Justice  
Office of Immigration Litigation  
P.O. Box 878  
Ben Franklin Station  
Washington, DC 20044  
*Counsel for Respondent*

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OPINION OF THE COURT

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\* The Honorable Marilyn Horan, United States District Judge for the Western District of Pennsylvania, sitting by designation.

JORDAN, *Circuit Judge*.

Baljinder Singh achieved what many immigrants to our country seek: he became a naturalized citizen. Unfortunately, he did so through willful misrepresentation, and, as a consequence, his citizenship was revoked. Before that revocation and while he was still a citizen, he was convicted of conspiracy to distribute and possess with intent to distribute illegal drugs. That led the government to initiate removal proceedings against him, and he was in fact ordered to be removed. Singh now petitions for review of that final order of removal, arguing that the pertinent statutory provisions, by their terms, permit removal only of individuals who were “aliens” at the time of their criminal convictions, whereas he was a naturalized citizen when convicted. The government responds that we must defer to the interpretation given by the Board of Immigration Appeals (“BIA”) to those statutes and therefore must deny the petition for review. In the alternative, the government contends that Singh should be treated as if he had never been naturalized and was actually an “alien” at the time he was convicted. We disagree with both of the government’s arguments and will grant Singh’s petition for review.

## **I. BACKGROUND**

Singh is a native of India who arrived in the United States in 1991. Upon arriving without travel documents or proof of identity, he falsely claimed that his name was Davinder Singh. The agency then responsible for administering our nation’s immigration laws, the Immigration and Naturalization Service (“INS”), initiated exclusion

proceedings against him. Singh failed to appear at his scheduled immigration hearing in January 1992, and an Immigration Judge (“IJ”) ordered him deported *in absentia*.

Despite that deportation order, in February 1992, Singh filed an asylum application under the name Baljinder Singh. While the application was pending, he married a U.S. citizen. Singh also petitioned to adjust his status from alien to lawful permanent resident but did not disclose his prior immigration history and deportation order in his application. In 1998, the INS approved his petition, and he received lawful permanent resident status.

When Singh later sought naturalization, he again failed to disclose his prior immigration history, despite being directly asked whether he had ever used other names or lied to gain entry to the United States. He falsely answered those questions in the negative, and did so under penalty of perjury. Singh’s citizenship application was approved, and on July 28, 2006, he became a citizen of the United States.

Soon, however, he was in serious trouble with the law. In 2011, he pled guilty to conspiracy to distribute and possess with intent to distribute heroin, MDMA,<sup>1</sup> and marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A)(I), and

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<sup>1</sup> MDMA, short for 3,4-methylenedioxymethamphetamine, is also sometimes called “ecstasy” and is a psychoactive drug listed as a schedule I controlled substance. *Drug Scheduling*, U.S. DRUG ENFORCEMENT ADMIN., <https://www.dea.gov/drug-scheduling> (last visited March 29, 2021).

841(b)(1)(C). His drug dealing lasted from at least September 2007 to November 2008.

Several years later, the government filed a complaint to revoke Singh's citizenship in the United States District Court for the District of New Jersey, invoking 8 U.S.C. § 1451(a) and stating two independent reasons why his citizenship should be revoked: first, he illegally procured naturalization because he was never lawfully admitted for permanent residence, and second, he procured naturalization by concealment of a material fact or willful misrepresentation. The government subsequently filed a motion for summary judgment. The court granted that motion on January 5, 2018, and revoked Singh's citizenship, "order[ing] that the Certificate of Naturalization ... issued to Defendant on July 28, 2006 is hereby cancelled." (A.R. at 276.)

The Department of Homeland Security ("DHS") served Singh with a notice to appear in immigration court, charging him with removability under 8 U.S.C § 1227(a)(2)(A)(iii) (the "aggravated felony provision" of the Immigration and Nationality Act ("INA")) for having been convicted of an offense relating to illicit trafficking in controlled substances, and under 8 U.S.C § 1227(a)(2)(B)(i) (the "controlled substances provision" of the INA) for having been convicted of a controlled substances crime. DHS later filed an additional charge of removability, saying Singh was removable under the aggravated felony provision for having been convicted of a felony relating to conspiracy to illicitly traffic controlled substances.

Singh responded with a motion to terminate the removal proceedings. He argued that he could not be removed under

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