No. 26-60344

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MAHMOUD KHALIL,

Petitioner,

v.

TODD BLANCHE, *U.S. ATTORNEY GENERAL*,

Respondent.

ON PETITION FOR REVIEW FROM AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS

CONSENTED TO BRIEF OF THE NATIONAL IMMIGRATION LITIGATION ALLIANCE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel for amicus curiae certify that the following listed persons and entities as described in the fourth sentence of 5th Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Petitioner:
Mahmoud Khalil, represented by

- Van Der Hout LLP: Marc Van Der Hout, Johnny Sinodis, and Oona Cahill
- American Civil Liberties Union Foundation: Omar Jadwat, Noor Zafar, Michael K.T. Tan, Sidra Mahfooz, Brian Hauss, Esha Bhandari, Brett Max Kaufman, Lauren Yu
- Center for Constitutional Rights: Baher Azmy, Samah Sisay
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- New York Civil Liberties Union Foundation: Veronica Salama, Robert Hodgson, Amy Belsher, Molly Biklen
- Washington Square Legal Services, Inc.: Alina Das

Respondent:
Respondent is a governmental party. Individuals are parties in their official capacities. The current officers in the relevant positions are:

Respondent, Attorney General Todd Blanche, represented by Alanna Thanh Duong, U.S. Department of Justice, Office of Immigration Litigation;
Chief Appellate Immigration Judge Garry D. Malphrus and Appellate Immigration Judges Keith E. Hunsucker and Marcos Gemoets, of the Board of Immigration Appeals; and
Former Immigration Judge Jamee Comans.

Amicus Curiae
National Immigration Litigation Alliance, represented by Trina Realmuto and Margaret Kopel, Attorneys, National Immigration Litigation Alliance, and Edward F. Ramos, Kurzban Kurzban Tetzeli & Pratt, P.A.

CORPORATE DISCLOSURE STATEMENT

I, Trina Realmuto, attorney for amicus curiae*,* certify that amicus is a nonprofit organization that does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10% or more of its stock.

s/ *Trina Realmuto*
Trina Realmuto
National Immigration Litigation Alliance

STATEMENT PURSUANT TO FED. R. APP. P. 29(a)(2), (4)(E)

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), amicus curiae states that both parties consent to the filing of this brief.

Pursuant to Fed. R. App. P. 29(a)(4)(E), amicus curiae further states that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

s/ *Trina Realmuto*
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I. INTRODUCTION

The National Immigration Litigation Alliance (NILA) proffers this brief to assist the Court in assessing the erroneous finding that Petitioner Mahmoud Khalil (Mr. Khalil) is removable under 8 U.S.C. § 1227(a)(1)(A). An omission supports removability only if the Department of Homeland Security (DHS) proves, by clear and convincing evidence, a willful misrepresentation of a material fact. 8 U.S.C. §§ 1182(a)(6)(C)(i), 1227(a)(1)(A), 1229a(c)(3)(A). DHS did not meet that burden here.

In 2024, Mr. Khalil did not separately list his June-through-November 2023 internship with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on his application to adjust his status to that of a lawful permanent resident (Form I-485). But the internship was a Columbia-approved, three-credit component of his graduate program: Columbia approved the placement, required reports, received a report from his UNRWA supervisor, awarded him academic credit and a passing grade, and paid him. Record on Appeal (ROA).5490–93, 9535. Mr. Khalil also disclosed Columbia as his employer elsewhere on the same form. ROA.9679.

The Board of Immigration Appeals (BIA) nevertheless treated the internship as a separate organizational association from his listed employment through Columbia and sustained the misrepresentation finding based on Mr. Khalil's failure to disclose it in response to a question asking whether he had "EVER been a member of, involved in, or in any way associated with any organization, association, fund, foundation, party, club, society, or similar group." ROA.9683.[1]

First, vacatur is warranted because this question is unconstitutionally vague on its face and as applied to Mr. Khalil. It provides no ascertainable standard for determining what relationships constitute being "involved in" or "in any way associated with" an organization, and it gives no fair notice that a temporary, Columbia-approved curricular placement must be separately reported as an association with the placement site. An undefined question on an immigration form cannot become a trapdoor to deportability. The agency cannot supply that meaning after the fact and impose removal based on an applicant's failure to anticipate it.

Second, even apart from the constitutional defect, vacatur is warranted because DHS failed to establish by clear and convincing evidence that Mr. Khalil knowingly answered the question falsely. The IJ found Mr. Khalil credible, ROA.6910, and the record contains no admission, adverse credibility finding, or contrary evidence addressing his contemporaneous, reasonable understanding that the question did not require disclosure of the internship.

Third, the record does not establish materiality. The agency identified only

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[1] Note that DHS only alleged Mr. Khalil was a "member" of UNWRA, and the immigration judge (IJ) made no finding that he was a "member" of UNRWA.

the possibility that disclosure would have prompted additional questions; it identified no applicant-specific fact that such an inquiry would predictably have uncovered or explained how any such fact could have affected Mr. Khalil's eligibility. Because DHS failed to prove the required elements of removability, the BIA erred in sustaining the § 1227(a)(1)(A) charge.

For these reasons, amicus urge the Court to vacate the BIA's decision.

II. STATEMENT OF AMICUS CURIAE

The National Immigration Litigation Alliance (NILA) is a nonprofit membership organization that seeks to realize systemic change in the immigrants' rights arena by engaging in impact litigation and building the capacity of attorneys to litigate by co-counseling individual federal-court cases and providing strategic assistance. NILA and its members have a direct interest in ensuring that noncitizens are not subject to removability based on responses to questions on immigration forms that fail to provide constitutionally adequate notice, and that DHS satisfies its burden to prove by clear and convincing evidence each element of a willful, material misrepresentation. This case implicates those interests because the agency sustained a removability charge based on an ambiguous Form I-485 question, without adequate proof that Mr. Khalil knowingly answered falsely or that the omitted information was material.

III. ARGUMENT

A. The Form I-485 Question Underlying the Misrepresentation Is Unconstitutionally Vague on Its Face and As Applied.

The BIA sustained the IJ's misrepresentation finding under 8 U.S.C. § 1227(a)(1)(A) because Mr. Khalil did not disclose his Columbia internship placement in response to a question on his adjustment application (Form I-485) asking whether he had "EVER been a member of, involved in, or in any way associated with any organization, association, fund, foundation, party, club, society, or similar group." ROA.1808; ROA.9683. But that question is impermissibly vague both on its face and as applied to Mr. Khalil. On its face, its operative terms—particularly "involved in" and "in any way associated with"—provide no ascertainable standard for determining what relationships must be disclosed. The question does not define "associated with," distinguish formal affiliation from incidental contact, or identify the degree, duration, or nature of a relationship that triggers a "Yes" answer. Nor does it explain whether an individual must disclose every institution, employer, school, program, or other entity with which the person has had any professional or educational connection.

As applied, the question is vague because it gave Mr. Khalil no fair notice that his Columbia internship placement at UNRWA was a relationship that he was required to disclose, particularly where he had disclosed his employment with Columbia on page 5 of the same form. ROA.9679. Because the question is unconstitutionally vague on its face and as applied to Mr. Khalil, the BIA erred in sustaining the § 1227(a)(1)(A) removability charge.

1. The Fifth Amendment requires fair notice before imposition of immigration consequences.

The Fifth Amendment's Due Process Clause requires fair notice before imposition of legal consequences based on a standard whose application turns on the meaning of particular conduct. That requirement applies with full force in immigration proceedings. In *Jordan v. De George*, the Supreme Court recognized that the Due Process Clause's prohibition against vagueness applies to deportation proceedings. 341 U.S. 223, 230-32 (1951). Although the Court upheld the statutory phrase "crime involving moral turpitude" at issue, it expressly considered whether the provision provided constitutionally adequate notice. *Id.* at 231 (examining the void for vagueness doctrine's application "in view of the grave nature of deportation").

More recently, in *Sessions v. Dimaya*, the Court reaffirmed application of the vagueness doctrine to immigration statutes and held that an Immigration and Nationality Act (INA) provision was unconstitutionally vague. 584 U.S. 148, 156 (2018). The Court rejected the government's argument that a less demanding standard should apply because removal proceedings are civil rather than criminal. *Id*. As a plurality of the Court explained, "the most exacting vagueness standard should apply in removal cases." *Id*. (plurality opinion); *see also id*. at 188

(Gorsuch, J., concurring in part and in the judgment (agreeing that vagueness applies)); *see generally Marks v. United States*, 430 U.S. 188, 193 (1977) (in such fractured circumstances, the narrowest rationale should be applied by lower courts). The Court reiterated that deportation is a "particularly severe penalty," and therefore it may not be imposed pursuant to an indeterminate standard that fails to provide adequate notice. *Id*. at 156 (plurality opinion); *see also id*. at 188 (Gorsuch J., concurring in part and in the judgment (arguing for more expansive application of vagueness); *Mateo v. Att'y Gen.*, 870 F.3d 228, 232-33 (3d Cir. 2017) (recognizing that the vagueness doctrine serves two related purposes: ensuring fair notice of what the law requires and preventing arbitrary or discriminatory enforcement).

Those principles apply because the language at issue appears on a DHS-created immigration form, not a statute. The agency cannot demand that applicants disclose information according to an undefined standard and then later impose harsh immigration consequences, i.e., removability, based on its undisclosed interpretation of that standard. At a minimum, due process requires that the Form I-485 question provide sufficient notice to determine what relationships the applicant is required to disclose.

2. "Involved in" and particularly "in any way associated with" are impermissibly vague and standardless.

The terms "involved in" and, especially, "in any way associated with" are impermissibly vague because they provide no objective boundary for determining what relationships an applicant must disclose. *See Cramp v. Bd. of Pub. Instruction of Orange Cty., Fla.*, 368 U.S. 278, 285–86 (1961) (invalidating a required oath asking whether an employee had lent "aid, support, advice, counsel or influence" to the Communist Party because the provision was "completely lacking in . . . terms susceptible of objective measurement."); *Baggett v. Bullitt*, 377 U.S. 360, 374 (1964) (invalidating statutes and oath forms because "[i]t is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all") (quoting *Champlin Refining Co. v. Corp. Comm'n of Okla.*, 286 U.S. 210, 243 (1932)). Here, the Form I-485 question provides no guidance concerning the nature or extent of the relationship required to constitute involvement or an association.

The Supreme Court has held that a provision is impermissibly vague where it fails to provide sufficient guidance concerning what conduct falls within its scope and thereby leaves the determination to the government's discretion. *See Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983) (holding unconstitutionally vague a law that "contains no standard for determining what a suspect has to do in order to satisfy the requirement to provide a 'credible and reliable' identification" and therefore "vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute"); *Papachristou v. City of*

Jacksonville, 405 U.S. 156, 162 (1972) (holding vagrancy ordinance "void for vagueness, both in the sense that it 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute' and because it encourages arbitrary and erratic arrests and convictions") (citation omitted); *see also Woodlands Pride, Inc. v. Paxton*, 168 F.4th 293, 308 (5th Cir. 2026) (remanding to district court to conduct vagueness analysis in the First Amendment context).

Here, the phrases "involved in" and "in any way associated with" fail to provide "fair notice" of the nature or extent of the relationship required to constitute involvement or an association. *Papachristou*, 405 U.S. at 162. For example, does volunteering once at a food bank constitute being "involved in" the organization? Does attending an organization's public event make an applicant "associated with" that organization? Does working for a company for two weeks? And relevant here, must a student report both a university and every host site of an internship practicum? The Form I-485 provides no instruction or guidance whatsoever.

In sum, the question provides no standard by which an applicant could distinguish among these relationships, leaving applicants to guess what must be disclosed. That is the arbitrary-enforcement danger the vagueness doctrine exists to prevent. *See Kolender*, 461 U.S. at 357-58; *Papachristou*, 405 U.S. at 168-70.

3. An internship does not fall within the categories identified by the question.

The question on which the agency sustained Mr. Khalil's § 1227(a)(1)(A) charge asks about being "a member of, involved in, or in any way associated with any organization, association, fund, foundation, party, club, society, or similar group." ROA.9683. Those terms describe collective organizations or affiliations, not temporary professional or educational placements. An internship is ordinarily a temporary position or professional experience, not membership in or affiliation with a group. The question's surrounding language reinforces that understanding. It is a principle of statutory interpretation that "where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001) (citation modified); *see also Yates v. United States*, 574 U.S. 528, 545-47 (2015) (plurality opinion) (limiting "tangible object" to objects similar to "record" and "document," rather than all physical objects, based on the specific terms preceding it and the statute's context).

Here, the question's use of the term "similar group" reasonably refers to groups similar to an organization, association, fund, foundation, party, club, or society—not to every entity with which an applicant has had a temporary professional or educational relationship. At minimum, therefore, the question's text does not provide fair notice that a temporary internship-placement falls within the question's scope.

The question's vagueness and lack of fair notice are evident here. Columbia approved Mr. Khalil's internship placement, required periodic and final reports, received a report from Mr. Khalil's UNRWA supervisor, awarded academic credit and a passing grade, and paid him. ROA.5490–93, 9535. Mr. Khalil listed Columbia as his current employer on page five of Form I-485. ROA.9679.[2] He publicly listed "UNRWA · Internship" on his LinkedIn page. ROA.9537. Mr. Khalil reasonably understood the placement as part of the Columbia relationship he disclosed—and the form itself and its language support that understanding. *See* ROA.2230–31 (Tolchin Declaration at ¶¶ 7, 15) (describing the question as "vague and ambiguous" and stating that she had never seen omission of a student internship used as the basis for a material-misrepresentation charge).

Accordingly, the question is unconstitutionally vague on its face because it

[2] Other parts of the Form I-485 and the instructions specify when the form seeks repetitive information that may have already been disclosed, or provide guidance for answering some questions. *See, e.g.*, ROA.9679 (specifying that an address outside the U.S. need only be included "if not already listed above"); ROA.9681 (asking how many times an applicant has been married "including annulled marriages and marriages to the same person" and asking about present marriage "including if you are legally separated"); *see also* USCIS, Form I-485 Instructions at 13, https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf (providing instructions about how to interpret criminal history questions and documentation to provide).

provides no ascertainable standard for determining what relationships must be disclosed, and it is unconstitutionally vague as applied because it provided Mr. Khalil no fair notice that his internship placement was within its scope. Due process forbids removal through such an unforeseeable, *post hoc* construction. The BIA therefore erred in sustaining the § 1227(a)(1)(A) charge based on his response to that question.

B. DHS Failed to Prove, and the Agency Failed to Sustain, Willfulness.

Even if Mr. Khalil's answer (or omission) on the I-485 was a misrepresentation, DHS did not show by clear and convincing evidence that any misrepresentation was willful. Clear and convincing evidence is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts." *Galaviz v. Reyes*, 95 F.4th 246, 256 (5th Cir. 2024) (quotations omitted). "Mere speculation does not meet the clear and convincing burden." *Id.*

A "willful" misrepresentation requires deliberateness and knowledge. *See, e.g.*, *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997) ("The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary"); *Emokah v. Mukasey*, 523 F.3d 110, 116-17 (2d Cir. 2008) ("An act is done willfully if it is done intentionally and deliberately and if it is not the result of an innocent mistake, negligence, or inadvertence."); *Garcia v. INS*, 31 F.3d 441, 443

(7th Cir. 1994) ("The language of the statute is phrased in terms of subjective intent . . . ."); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (willfulness requires "a finding that the misrepresentation was deliberate and voluntary" which is satisfied by "knowledge of the falsity of a representation"); s*ee also* USCIS Policy Manual Vol. 8 Pt. J Ch. 3 ("The term 'willfully' should be interpreted as 'knowingly. . ..'"), https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-3.

1. Ambiguity defeats any finding of willfulness.

Where the question does not provide clear notice that a particular relationship must be disclosed, neither the IJ nor the BIA could reasonably infer knowing deception from Mr. Khalil's failure to disclose his Columbia internship placement at UNRWA.

This Court treats ambiguity in a government question as a falsity-and-knowledge issue. In *United States v. Posada Carriles*, the Court explained that a "fundamentally ambiguous" question is incapable of supporting falsity as a matter of law, and ambiguity short of that demanding threshold remains relevant to whether the factfinder can find a knowingly false answer. 541 F.3d 344, 362-64 (5th Cir. 2008).

If reasonable applicants could differ about whether an internship constitutes being "involved in" or "in any way associated with" an organization, Mr. Khalil's answer cannot establish that he knowingly answered the question falsely. *See Nowak v. United States*, 356 U.S. 660, 665 (1958) (holding that an applicant for naturalization could reasonably have read a compound question narrowly, and that the question was "too ambiguous to sustain" a fraud charge); *Maisenberg v. United States*, 356 U.S. 670, 672 (1958) (holding that "a finding of misrepresentation cannot be predicated" on an answer to an ambiguous naturalization question); *Abusamhadaneh v. Taylor*, 873 F. Supp. 2d 682, 695–98, 704–05 (E.D. Va. 2012) (concluding, after a de novo review of a naturalization application, that the applicant's interpretation of questions concerning "membership" and "association" was reasonable and that the evidence did not establish an intent to evade the questions).

Mr. Khalil answered "yes" to the question, and listed a nonprofit he had previously volunteered with. ROA.9683. The fact that he answered yes and disclosed a non-professional organization, and that he disclosed his employment with Columbia elsewhere on the same form, further supports that his omission was not the product of an intent to conceal his professional history. ROA.9679. The IJ and BIA's subsequent findings based on their interpretation of an ambiguous question cannot supply the knowledge and intent necessary for a willful-misrepresentation finding.

2. The IJ's favorable credibility finding cannot be reconciled with a knowing state of mind.

Even if the question were not ambiguous, Mr. Khalil testified that he did not knowingly falsely answer that question, and the IJ found Mr. Khalil to be credible. The IJ's conclusory statements that Mr. Khalil made a willful misrepresentation cannot be supported by the record and certainly are not supported by clear and convincing evidence.

The IJ correctly stated that the willfulness of a misrepresentation requires "knowledge of its falsity." ROA.6898 (citing *Matter of Kai Hing Hui*, 15 I. & N. Dec. 288, 290 (BIA 1975)). Mr. Khalil testified that he did not knowingly omit his internship with UNRWA from Form I-485; rather "he included this in his employment at Columbia because it was through the school, and they paid him." ROA.6906. The IJ found Mr. Khalil credible. ROA.6910. The IJ "carefully observed [Mr. Khalil's] demeanor and analyzed his testimony, his declaration, and the evidence for consistence, detail, specificity, and persuasiveness" and found "that [Mr. Khalil] was a credible witness." *Id.*[3]

At one point in the June 2025 decision, the IJ states that Mr. Khalil "knew of the potential immigration consequences" to protesting on campus, "is well

[3] The IJ's credibility finding may be overturned "only if any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B).

educated on matters of international administration and policy" and was quoted as saying he did not participate in protests due to consequences for his student visa. ROA.6901. At best, those statements potentially go to a willfulness finding regarding Mr. Khalil's alleged association with Columbia University Apartheid Divest (CUAD), which is not at issue here. *See* ROA.1809. At another point, the IJ confusingly begins a sentence by speaking about willfulness, but then ends it by speaking about materiality. ROA.6899 ("The Respondent argues that this failure to disclose was not willful, however, the intent to deceive is not a required element . . . Respondent shut off a line of inquiry that would predicably have disclosed other relevant facts. . . ."). Nowhere in that decision does the IJ make a factual finding about Mr. Khalil's knowing mens rea regarding the UNRWA internship. Several months later, in September 2025, the IJ stated that Mr. Khalil *had* knowingly misrepresented his answer to this question, ROA.5155, but the IJ did not revisit the credibility finding and in fact "incorporated by reference" "[t]he Court's June 20th decision and its findings, in its entirety." ROA.5149. Moreover, the IJ's September 2025 decision was about a distinct waiver issue, not removability, which had already been decided, and should therefore not be permitted to supplement the IJ's June 2025 reasons. [4]

[4] As in the June decision, the IJ again conflates the alleged misrepresentation regarding CUAD and the alleged misrepresentation regarding UNRWA when discussing what Mr. Khalil "knew." ROA.5155.

The IJ's favorable credibility finding cannot be reconciled with her conclusion that Mr. Khalil willfully misrepresented the internship. Willfulness findings have been upheld where the noncitizen admitted that their misrepresentation had been knowing. *See, e.g.*, *Matter of D-R-*, 25 I. & N. Dec. 445, 451 n.3 (BIA 2011) ("The respondent does not dispute that his failure to disclose the information was intentional. We therefore conclude that the willfulness element has been met."); *Matter of Kai Hing Hui*, 15 I. & N. Dec. at 290 (respondent, a Chinese citizen, "knew that he was not Fernando Chee Acevedo" when he used a Mexican identity card); *Azim v. U.S. Att'y Gen.*, 314 F. App'x 193, 195 (11th Cir. 2008) (noncitizen "does not contest that he made misrepresentations on his visa application").

Willfulness findings have also been upheld where a noncitizen denies knowledge of the misrepresentation, but the fact-finder determined that the noncitizen is not credible. *See, e.g.*, *Matter of Valdez*, 27 I. & N. Dec. 496, 500 (BIA 2018) ("In assessing whether the respondents knew of or authorized the false statements in their applications, the [IJ] found that they lacked credibility."); *Toribio-Chavez v. Holder*, 611 F.3d 57, 63 (1st Cir. 2010) (upholding "the IJ's adverse credibility determination" and then rejecting the petitioner's claim that misrepresentation was not willful); *Garcia*, 31 F.3d at 444 (affirming the IJ's finding the noncitizen not credible); *United States v. Almallah*, 244 F. App'x 584, 587 (5th Cir. 2007) (affirming denaturalization based on willful misrepresentation of a material fact and noting that the district court "found his testimony 'not credible'"); *Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999) (noting the agency's finding that "explanations for the discrepancy [were] 'contradictory, self-serving, and unconvincing'"); *Falaja v. Gonzales*, 418 F.3d 889, 898 (8th Cir. 2005) (affirming "the IJ's adverse credibility finding").

Critically, where, as here, the noncitizen's uncontradicted testimony is that he did not knowingly make a misrepresentation, and the IJ finds the noncitizen credible, there is no factual basis for a later legal conclusion of willfulness. This record contains no admission, adverse credibility finding, or contrary evidence directly addressing Khalil's contemporaneous understanding. Indeed, in the thirty-nine pages of cross-examination of Mr. Khalil by DHS, DHS never addressed the internship, Part 8 of the Form I-485, or Mr. Khalil's understanding. ROA.5537-75. The IJ's conclusion does not contain any underlying factual basis for a simple reason: the record contains none.

Confronted with a record and decision devoid of necessary factual findings, the BIA then tried to fill that evidentiary gap. The BIA cited Mr. Khalil's knowledge of immigration consequences for protesting which, as discussed above, are irrelevant to the internship at issue. ROA.1808-09. And the BIA likewise held, based on Mr. Khalil's education, that he should have known how to answer the question. *Id.* For all the same reasons discussed above, this does not satisfy the willfulness finding required to sustain this charge. *See Garcia*, 31 F.3d at 443 (holding that willfulness turns on "subjective intent"). Indeed, *Nowak* rejects the same kind of education-based inference from an ambiguous government question. The government there likewise urged the Court to impute knowledge because Nowak was "an important functionary" and "an intelligent man." 356 U.S. at 665 n.3. The Court refused: the "gap in the Government's proof cannot be filled in such tenuous fashion." *Id.* DHS had to prove that Mr. Khalil actually understood—not what it thought a well-educated applicant should have understood.

C. DHS Failed to Prove, and the Agency Failed to Sustain, Materiality.

Materiality is an independent statutory element. The INA does not make every inaccurate or incomplete answer on an immigration application form a ground of inadmissibility. Instead, it reaches a person who, "by fraud or willfully misrepresenting a *material* fact," seeks to procure a visa, admission, or another benefit under the INA. 8 U.S.C. § 1182(a)(6)(C)(i) (emphasis added). A misrepresentation is material if the applicant (1) would be inadmissible on the true facts or (2) if the misrepresentation forecloses a relevant inquiry and that "might well have resulted in a proper determination" of inadmissibility. *Matter of S- and B-C-*, 9 I. & N. Dec. 436, 447 (A.G. 1961).

The agency did not conclude that the fact of Mr. Khalil's internship itself made him inadmissible. ROA.1809. It instead relied on the second, foreclosed-inquiry route to materiality. *Id.* Neither the IJ nor the BIA ever completed that step, however. The "mere shutting off of an investigation" does not answer the second question. *Matter of S- and B-C-*, 9 I. & N. Dec. at 448. A "remote, tenuous, or fanciful connection" to a possible ground for denial is insufficient. *Id.* at 449-49. And when officials later have an adequate opportunity to investigate but uncover no proper basis for exclusion, theoretical lost-investigation possibilities cannot carry the government's burden. *Id.* at 449–50. A legally adequate materiality analysis must identify what facts the inquiry predictably would have revealed and why those facts could affect a proper immigration determination. *Id.* at 448-49. The BIA did not complete this analysis, and so its decision on materiality must be vacated.

1. A foreclosed inquiry needs a factual destination.

Investigation-based materiality requires a connected evidentiary chain: the truth must (1) bear on a legal criterion, (2) predictably prompt a particular inquiry, (3) predictably disclose applicant-specific facts, and (4) connect those facts to a possible legal disqualification. *Maslenjak v. United States*, 582 U.S. 335, 349–50 (2017); *Matter of D-R-*, 27 I. & N. Dec. 105, 110, 113 & n.9 (BIA 2017). It is not enough that truthful disclosure might have prompted more questions. *Matter of S- and B-C-*, 9 I. & N. Dec. at 448. DHS must identify what those questions would predictably have revealed and why the answer could matter under the governing law.

DHS bears the initial burden of establishing that factual and legal destination. It must show that facts possibly supporting denial "would have likely been uncovered and considered but for the misrepresentation." *Matter of Bosuego*, 17 I. & N. Dec. 125, 131 (BIA 1979; 1980). At that point, the burden shifts to the noncitizen to establish that those facts could not support a proper inadmissibility determination. *Id.*; *D-R-*, 27 I. & N. Dec. at 112. If the proposed inquiry's destination remains "purely speculative," because DHS never established the necessary facts, then the burden never shifts. *Bosuego*, 17 I. & N. Dec. at 130-31.

Decades of caselaw illustrate the distinction. In *D-R-* and *Matter of M-C-C-*, evidence from knowledgeable officials established both the inquiry that disclosure of the applicants' Bosnian police or military service would have triggered and the applicant-specific wartime conduct that inquiry could have uncovered. *D-R-*, 27 I. & N. Dec. at 114-15; *Matter of M-C-C-*, 29 I. & N. Dec. 401, 404-05 (BIA 2026). That conduct, in turn, implicated identified statutory bars. *Id.* By contrast, *Matter of Martinez-Lopez* held a false job offer immaterial even though it curtailed further inquiry: the facts the inquiry actually revealed supplied no proper basis for exclusion. 10 I. & N. Dec. 409, 417-23 (BIA 1962; A.G. 1964). Materiality therefore requires more than a showing that the truth could have led to further inquiry.

The BIA stopped midway through that chain here; it reasoned that disclosure of Khalil's UNRWA internship would have prompted additional questioning and security review. ROA.1809. But it identified neither the applicant-specific facts that such an inquiry predictably would have uncovered nor a legal ground those facts could have implicated. *Id.* Notably, the originally-issued BIA decision attributed its security rationale to page eight of the IJ's decision, ROA.1933, but that page contains no such security finding, ROA.6901. The published opinion removed the record citation but inexplicably retained the rationale. ROA.1809. The possibility of more questions established, at most, a reason to investigate. It did not establish the predictable result that *Maslenjak*, *D-R-*, and *Bosuego* require.

2. The agency identified questions, not facts.

As discussed above, materiality requires that the truth must (1) bear on a legal criterion, (2) predictably prompt a particular inquiry, (3) predictably disclose applicant-specific facts, and (4) connect those facts to a possible legal disqualification. *Maslenjak*, 582 U.S. at 349-50; *Matter of D-R-*, 27 I. & N. Dec. at 110, 113 & n.9.

a. DHS did not prove, and the agency never identified, any facts that would have been established by further inquiry.

The IJ established, at most, the first two links. She recited the traditional foreclosed-inquiry standard. ROA.6898. Her UNRWA-specific analysis then stated that Mr. Khalil's omission "shut off a line of inquiry that would predictably have disclosed other relevant facts regarding his activities with UNRWA." ROA.6899. That identified the omitted disclosure and a general subject for follow-up. It did not identify any fact the inquiry would have revealed or explain how such a fact could affect Mr. Khalil's adjustment. The IJ later referred to "additional information and further processing, involving some degree of discretionary decision-making." ROA.6901. More information, more processing, and more decision-making *still* do not identify what the information would be.

The BIA repeated the same omission. It first echoed the conclusion that the internship would have led to "other relevant facts" and "additional discretionary decision-making." ROA.1809. But when the BIA explained its prediction, it said only that disclosure "predictably could have led" an officer "to inquire regarding related matters of discretion or security-related grounds of inadmissibility." *Id.* The governing test asks what an inquiry *would predictably disclose*; the BIA found only that disclosure *could prompt an inquiry*. And the BIA's categorical labels do not close the gap. It named no additional fact about Mr. Khalil's work, conduct, or associations and drew no supported connection from any such fact to the adjustment determination.

DHS had every opportunity to supply that predicate while presenting its affirmative case before the IJ. The evidence before the IJ described the placement in detail. UNRWA's offer letter characterized it as unpaid, full-time from June through August 2023 and part-time from September through November 2023. ROA.9533. It listed anticipated duties that included attending meetings and briefings; preparing reports, talking points, and newsletters; monitoring media; and assisting with events and administrative work. *Id.* Columbia certified that the placement was a three-credit, twelve-week component of the MPA-DP core curriculum. ROA.9535. Mr. Khalil's public LinkedIn profile listed "UNRWA · Internship." ROA.9537. And Mr. Khalil testified that Columbia approved the placement, required periodic and final reports, received a report from his UNRWA supervisor, awarded a passing grade, and paid him. ROA.5490-93. He described preparing reports and advocacy papers on Palestinian rights before October 7, 2023, and later monitoring news and advocating a ceasefire. ROA.5492–93.

DHS controlled the presentation of its affirmative misrepresentation case and had every opportunity to establish what a timely UNRWA inquiry would have revealed. Its brief to the BIA recited Columbia's role, Mr. Khalil's explanation that Columbia had "lent" him to UNRWA, and his reports, advocacy work, media monitoring, and ceasefire advocacy. ROA.2007-08. It then asserted that an earlier inquiry would have uncovered "other relevant facts" but did not identify what additional fact—beyond the activities it had just recited—the inquiry would have produced or how that fact bore on Mr. Khalil's eligibility. ROA.2008. And although DHS cross-examined Mr. Khalil for nearly forty transcript pages, it asked no questions about the internship and elicited no different account of his work. *See* ROA.5537-75. DHS cannot satisfy its burden by insisting that an inquiry would matter, while simultaneously declining to explain why.

b. The BIA's standard renders any omission material.

As discussed above, the BIA repeated the same errors as the IJ by citing to the need further inquiry without any factual basis or investigation. The BIA's appeal to truthful and complete applications fares no better. ROA.1809. Every application question seeks information the agency considers useful, and almost any affirmative answer to this sweeping organizational-association question could generate follow-up questions. But usefulness is not materiality. *Martinez-Lopez* warned that treating "any failure to furnish full or correct information regardless of the nature of the information" as enough "would in effect make every misrepresentation a material one." 10 I. & N. Dec. at 414. That is precisely what a materiality standard is supposed to prevent. *Id.*

Maslenjak makes clear why this error is consequential. Construing an adjacent naturalization statute, the Court considered a comparably sweeping form question asking whether an applicant had ever been "in any way associated with[] any organization." 582 U.S. at 346. It warned that, without a meaningful connection between the falsehood and its legal consequence, a prosecutor could "scour" an application and obtain "nearly limitless leverage" from an omission. *Id.*

The BIA's reasoning here recreates that problem. Under its approach, an omitted organizational association becomes material simply because it could prompt follow-up questions; those questions need only be characterized as involving security (even though the IJ made no such finding) or discretion; and that characterization then substitutes for evidence of what the inquiry would predictably reveal. Given Form I-485's coverage of associations with any organization anywhere in the world, that logic would allow almost any omission to validate its own materiality. The required individualized connection among the applicant, the facts an inquiry would disclose, and the immigration determination would disappear, leaving materiality to follow from the incomplete answer itself—the very result the statutory limitation exists to prevent.

DHS established neither what additional applicant-specific fact a timely inquiry would have uncovered nor how any such fact could properly affect the immigration determination. It did not satisfy *Bosuego*'s threshold, so no burden shifted to Mr. Khalil. 17 I. & N. Dec. at 130-31. Because DHS bore the clear-and-convincing burden, 8 U.S.C. § 1229a(c)(3)(A), the UNRWA omission cannot sustain the BIA's materiality holding.

3. Administrative-law principles forbid affirming based on reasoning not supplied by the agency.

Even if this record *could* sustain willfulness and materiality, the agency's decisions may not be upheld absent reasoned decisionmaking. This Court has consistently exhorted that "BIA regulations prohibit the BIA from engaging in *de novo* review of the facts." *Morales-Morales v. Barr*, 933 F.3d 456, 463 (5th Cir. 2019) (citing 8 C.F.R. § 1003.1(d)(3)(i)). With respect to the UNRWA omission at issue, the IJ concluded that: "[T]he intent to deceive is not a required element for a willful misrepresentation of a material fact, but by omitting this information, regarding his internship with UNRWA, the Court finds the Respondent shut off a line of inquiry that would predictably have disclosed other relevant facts regarding his activities with UNRWA," ROA.6899, later adding: "[T]he disclosure would have triggered the need for additional information and further processing, involving some degree of discretionary decision-making on the part of the USCIS adjudicator." ROA.6901.

The BIA's decision appears to have converted legal questions, adequacy of notice and scope of eligibility, into factual ones to conclude that "the Immigration Judge *permissibly* found that DHS provided sufficient notice that the respondent was being charged with removability based on a misrepresentation regarding his involvement with UNRWA, regardless of whether he was a 'member' of that organization" and that "[t]he Immigration Judge *permissibly* found that by omitting his internship with UNRWA, the respondent shut off a line of inquiry that would predictably have disclosed other relevant facts and triggered the need for additional discretionary decision-making by the USCIS officer adjudicating the respondent's Form I-485." ROA.1808-09 (emphases added). In addition to the fact that the IJ made no "notice" finding, what constitutes "sufficient notice" of removability charges or the legal standard of "shutting off a line of inquiry" are not purely factual determinations deferentially reviewed for clear error. *See, e.g.*, *Martinez-Martinez v. Bondi*, 157 F.4th 605, 610 (4th Cir. 2025) ("[W]hile intent is a factual finding properly reviewed for clear error, the application of the false testimony bar is a legal determination necessitating de novo review."). For these standard-of-review violations as well, the BIA's decision is erroneous.

IV. CONCLUSION

For these reasons, the Court should find that Mr. Khalil is not removable under 8 U.S.C. § 1227(a)(1)(A) and vacate the BIA's decision.[5]

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[5] The Court should not remand to give DHS another opportunity to prove the charge; it had a full opportunity to do so and failed to carry its clear-and-convincing burden of proving removability under 8 U.S.C. § 1229a(c)(3)(A) and *Woodby v. INS*, 385 U.S. 276, 285-86 (1966). *See also Matter of Guevara*, 20 I. & N. Dec. 238, 246, 248 (BIA 1991) (stating that the government had "every reasonable opportunity to present all the evidence it wished," and refusing "a second effort at proving the same allegations and charge."); *Matter of Kasinga*, 21 I. & N. Dec. 357, 363 (BIA 1996) ("The INS is not entitled to another opportunity to try this issue."); *Singh v. Sessions*, 898 F.3d 518, 521-23 (5th Cir. 2018) (holding that DHS failed to meet its burden because it "produced no evidence" on relocation and remanded only for the agency to exercise asylum discretion).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(5) and 32(g), and Local Rule 29.3, I certify that this brief contains 6,178 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS

I hereby certify that I caused the foregoing Consented to Brief of Amicus Curiae to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on August 21, 2026. I certify that Petitioner and Respondent's counsel are registered CM/ECF users and will be served via the Notice of Docket Activity through this Court's CM/ECF system.

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