

547 F.3d 1090 (2008)

UNITED STATES of America, Plaintiff-Appellee,
v.
Magdi Abdelazim Abdal YOUSSEF, Defendant-Appellant.

No. 07-10335.

United States Court of Appeals, Ninth Circuit.

Submitted July 14, 2008.^[*]

Filed November 5, 2008.

1091 *1091 James Sun Park, Park Law Office, PLC, Phoenix, AZ, for the plaintiff-appellant.

Diane J. Humetewa, United States Attorney John R. Lopez IV, Deputy Appellate Chief Sarah L. Hartnett,
Special Assistant United States Attorney, Phoenix, AZ, for the defendant-appellee.

Before: JEROME FARRIS, EUGENE E. SILER, Jr.^[**] and CARLOS T. BEA, Circuit Judges.

PER CURIAM:

Magdi Youssef appeals his conviction for ma

the immigration document to be material^[4] as an element of the offense (hereinafter "materiality requirement").

The district court held there was no materiality requirement in 18 U.S.C. § 1015(a). The district court reasoned the language at issue in § 1015(a) ("any false statement") had a plain and unambiguous meaning that did not include a materiality requirement, because the statute does not include the word "material." Further, the district court held none of the terms used in § 1015(a) had an established meaning at common law that included a materiality requirement. See Neder v. United States, 527 U.S. 1, 21, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) ("[W]here Congress uses terms that have accumulated settled meaning under... the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms."). Thus, the district court refused to infer a materiality requirement into the statute.

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After a bench trial, the district court found Youssef had knowingly made a false statement on his Form I-485, in violation of 18 U.S.C. § 1015(a). Because the 1st bench trial at a 10M o"tr ion

In United States v. Wells, 519 U.S. 482, 117 S.Ct. 921, 137 L.Ed.2d 107 (1997), the Supreme Court analyzed whether 18 U.S.C. § 1014, which criminalizes "knowingly mak[ing] any false statement or report... for the purpose of influencing in any way the action of a Federal Deposit Insurance Corporation insured bank," required the false statement or report to be material as an element of the offense. *Id.* at 490, 117 S.Ct. 921 (internal citations omitted). The Court held there was no materiality requirement in § 1014 because the plain language of the statute did not expressly include the word "material." *Id.* To the contrary, § 1014 covered "any false statement or report" and nowhere in the statute did it say "a material fact must be the subject of the false statement or so much as mention materiality." *Id.*^[5]

The text of § 1015(a) is practically identical to § 1014. As in *Wells*, § 1015(a) does not include an express materiality requirement:

[W]hoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens ... shall be fined under this title or imprisoned not more than five years, or both.

Rather, as in *Wells*, § 1015(a) criminalizes the making of "any false statement" — whether the false statement is material or immaterial. Thus, under the plain text of § 1015(a), materiality of the false statement is not an element of § 1015(a).^[6]

2. None of the words used in § 1015(a) have an established meaning at common law that includes a materiality requirement.

Next, we must determine whether § 1015 uses a term that includes a materiality requirement at common law. Neder, 527 U.S. at 21-22, 119 S.Ct. 1827. Section 1015(a) uses the term "false statement," which the Supreme Court in *Wells* held did not include a materiality requirement at common law. See Wells, 519 U.S. at 491, 117 S.Ct. 921 ("[A]t common law the term 'false statement' [did not] acquire[] any implication of materiality.") see also Neder, 527 U.S. at 23, n. 7, 119 S.Ct. 1827 (reiterating the Court's holding in *Wells* that "the term 'false statement' does not imply a materiality requirement"). Likewise, in United States v. Hart, 291 F.3d 1084, 1085 (9th Cir.2002), where this court held there was no materiality requirement in 18 U.S.C. § 1542, which makes it a crime willfully and knowingly to make "any false statement in an application for [a] passport." This court held there was no materiality requirement in § 1542 because there was no mention of materiality in the statute, and the phrase "false statement" did not have a settled meaning at common law requiring proof of materiality. *Id.*

Thus, the terms in § 1015 do not have a settled meaning at common law requiring proof of materiality and we will not read a materiality requirement into the statute.

3. Where Congress has intended to criminalize the making of material false statements, it has expressly done so.

Congress has expressly used the word "material" in other provisions that criminalize the making of false statements, such as 18 U.S.C. § 1001(a).^[7] Congress's omission of "material" from § 1015(a), combined with its inclusion of "material" in a similar statutory provision (§ 1001(a)), is ex

(emphasis added).

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