**15.45 Immigration Fraud—False Statement on**

**Immigration Document (18 U.S.C. § 1546(a))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with a false statement on an immigration document in violation of Section 1546(a) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant [made] [subscribed as true] a false statement;

 Second, the defendant acted with knowledge that the statement was untrue;

 Third, the statement was material to the activities or decisions of the [*specify immigration agency*]; that is, it had a natural tendency to influence, or was capable of influencing, the agency’s decisions or activities;

 Fourth, the statement was made under [oath] [penalty of perjury]; and

 Fifth, the statement was made on an [application] [affidavit] [other document] required by immigration laws or regulations.

**Comment**

 Use this instruction in connection with crimes charged under 18 U.S.C. § 1546(a), fourth paragraph.

 The term “oath” as used in § 1546 should be construed the same as “oath” as used in the perjury statute, 18 U.S.C. § 1621. *United States v. Chu*, 5 F.3d 1244, 1247 (9th Cir. 1993).

 Materiality is a requirement of visa fraud under subsection (a) and presents a mixed question of fact and law to be decided by the jury. *United States v. Matsumaru*, 244 F.3d 1092, 1101 (9th Cir. 2001). The common law test for materiality in the false statement statutes, as reflected in the third element of this instruction, is the preferred formulation. *United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008); *see, e.g.*, *United States v. Amintobia*, 57 F.4th 687, 703 (9th Cir. 2023) (“We have described § 1546(a)’s materiality requirement as requiring only proof that the statement in question was ‘capable of affecting or influencing a governmental decision.’” (quoting *Matsumaru*, 244 F.3d at 1101)). Nevertheless, it is an open question whether this definition of § 1546(a)’s materiality requirement must be revised in light of the Supreme Court’s analysis of the requirements of § 1425(a) in *Maslenjak v. United States*, 137 S. Ct. 1918 (2017). *See* *Amintobia*, F.4th at 703. A statement need not have actually influenced the agency decision to meet the materiality requirement. *Amintobia*, 57 F.4th at 703 (citing *Matsumaru*,244 F.3dat1101).

*Revised March 2023*