

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v

No. 13-cr-20772

7 RASMIEH ODEH,

8 Defendant.  
9 \_\_\_\_\_/

10 MOTION

11 BEFORE THE HONORABLE GERSHWIN A. DRAIN  
12 UNITED STATES DISTRICT JUDGE  
13 Theodore Levin United States Courthouse  
14 231 West Lafayette Boulevard  
15 Detroit, Michigan  
16 Thursday, October 2, 2014

17 APPEARANCES:

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APPEARANCES:

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For the Defendant: MR. WILLIAM H. GOODMAN  
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Also Present: Gloria Dehabey, Interpreter

Reported by: Merilyn J. Jones, RPR, CSR  
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1 Detroit, Michigan

2 Thursday, October 2, 2014 -10:05 a.m.

3 THE CLERK: All rise. The United States District  
4 Court for the Eastern District of Michigan is now in session.  
5 Honorable Gershwin A. Drain presiding.

6 You may be seated.

7 Calling Civil Action, United States versus Rasmieh  
8 Odeh. Number 13-20772.

9 Counsel, please put your appearance on the record.

10 MR. TUKEL: May it please the Court, Jonathan Tukel  
11 on behalf of the United States; with me is Mark Jebson, also on  
12 behalf of the United States, and the case agent, Stephen  
13 Webber.

14 THE COURT: All right.

15 MR. DEUTSCH: Good morning, Judge. Michael  
16 Deutsch, James Fennerty, and William Goodman for the defendant,  
17 Rasmieh Odeh, who is here in court.

18 THE COURT: Okay. All right. And did we need an  
19 interpreter for these proceedings?

20 MR. DEUTSCH: Yes, Judge.

21 THE COURT: All right. Then, I'm going to -- I  
22 kind of forgot that we needed an interpreter, so maybe I'll  
23 have my case manager --

24 Do you have it, Kelly?

25 Maybe I'll have my case manager come out and

1 administer an oath.

2 MR. DEUTSCH: Fine.

3 THE CLERK: Raise your right hand, please. Do you  
4 solemnly swear or affirm that you will correctly and truly  
5 translate from the Arabic language to the English language and  
6 from the English language to the Arabic language to this  
7 witness her answers from the Arabic language to the English  
8 language to the best of your ability so help you God?

9 THE INTERPRETER: I do.

10 THE COURT: Okay.

11 All right, then, gentlemen, we have three motions  
12 that I want to handle today and hear some argument on: The  
13 defendant's motion to dismiss the indictment; the defendant's  
14 intent to rely on expert evidence of mental condition, and  
15 then, lastly, the defendant's motion to produce all records of  
16 the U.S. Department of State.

17 All right. So I kind of have a specific order  
18 that I want to take these in. And, actually, I want to take  
19 the last one first, the defendant's motion to produce all  
20 records of the U.S. Department of State.

21 And what I'm going to do is allow no more than 10  
22 minutes per side, per motion, and if the moving party wants  
23 to -- and then this is the defendant in all these motions. If  
24 the moving party wants to reserve some rebuttal time, you need  
25 to take it away from the 10 minutes.

1           So, we'll start with the motion to produce all  
2 records.

3           MR. FENNERTY: Good morning, Judge. James  
4 Fennerty, that's, F-E-N-N-E-R-T-Y.

5           I just want to say to the Court, Judge, this has  
6 to do with production of records we tried to get from the  
7 Freedom of Information Act. I had a response since the last  
8 time we were in court from the archives from the United States  
9 Government. They wrote me back and said they found boxes  
10 concerning this, our client, or our client's family, and gave  
11 us a list of people to hire to be researchers.

12           So, we hired a researcher and that researcher went  
13 to look at the files, because these are all on paper, and he  
14 then got back to me and said that there were 50 to 75 boxes he  
15 had to go through and he did send me about 10 to 15 pages.

16           But, then he asked for an additional deposit  
17 because, when he saw the 50 to 75 boxes. So, I just sent him  
18 another check and he said probably at the end of this week or  
19 maybe next week hopefully he'll get through all those boxes and  
20 then I will turn over whatever documents I have to the  
21 government, and I'm assuming the government, being so generous,  
22 would probably like to pay for half of the researcher to do  
23 this.

24           THE COURT: Well -- okay, so, it almost sounds  
25 like this motion is moot at this point.

1 MR. FENNERTY: That's correct, I think so.

2 THE COURT: Okay. All right. Then, let's see,  
3 Mr. Tukel, do you have anything you want to add?

4 MR. TUKEL: No, your Honor. I did not oppose the  
5 motion to the state department. I don't oppose production by  
6 the national archives.

7 THE COURT: Okay. So, should I just say --

8 MR. FENNERTY: He didn't say he was opposing paying  
9 half the fee, Judge.

10 THE COURT: Hold on.

11 Should I say that this is moot or should I just  
12 grant the motion?

13 MR. TUKEL: I think, it's moot, your Honor.

14 THE COURT: Okay. And I think so, too. I think,  
15 we're in agreement with that.

16 Okay. Let's move on to the second motion, and  
17 that's the motion to dismiss the indictment.

18 MR. DEUTSCH: My name for the record is Michael  
19 Deutsch, and I'm going to ask to reserve two minutes for  
20 rebuttal.

21 THE COURT: Okay.

22 MR. DEUTSCH: Judge, it is our position that the  
23 defendant was singled out and selectively investigated and  
24 ultimately indicted because of her protected first amendment  
25 activity. And I want to provide the Court briefly to a factual

1 context for our claim.

2 Essentially, Ms. Odeh is the Deputy Executive  
3 Director of the Arab-American Action Network. That is a  
4 community organization based in Chicago that does a lot of work  
5 with the Arab and Muslim community of Chicago.

6 They provide all kinds of services for immigrants,  
7 English as a second language, helping them file claims for  
8 Social Security benefits, language skills. They work with  
9 youth, keeping youth out of problems. They have after school  
10 programs. They have mentoring programs. And they also educate  
11 people about what's going on in the Middle East because many of  
12 their people who they work with are people who have come here  
13 from the Middle East, particularly, Palestinian people.

14 And one of the things that Ms. Odeh is involved  
15 with and has been involved with is working with Arab women,  
16 helping them adjust to living in the United States, helping  
17 them work with their children who have been born here so they  
18 can merge the cultural differences.

19 And Ms. Odeh is a very respected leader of her  
20 community. She's won national awards for her work, and she is  
21 one of the people that is very much admired by her community  
22 and throughout the city of Chicago.

23 In fact, she has organized over 600 women to help  
24 them. They meet regularly. She helps them with their  
25 problems; she talks to them, and she advises them.

1           And one of the other things she's been very active  
2 in, involved in is trying to educate people in the United  
3 States about the situation in the Middle East, particularly, as  
4 it applies to Palestinian people, about the fact that they're  
5 living under occupation, that their land has been taken, and  
6 that they're wanting to help support their struggle for human  
7 rights.

8           Because of this work, particularly in her work on  
9 behalf of the Palestinian community, she has been targeted by  
10 the FBI and her organization has been targeted by the FBI.

11           And beginning in 2010 the leadership of her  
12 organization, the executive director whose name is Hatem  
13 Abudayyeh, and I'll spell it for the court reporter later, and  
14 her and others have been surveilled by the FBI. The FBI has  
15 come to their homes. They've been investigating people who  
16 they work with. And as a result, there's been a lot of  
17 attention and tension on these people because of the work of  
18 the FBI.

19           We have learned now through discovery that in  
20 January of 2010 the U. S. Attorney from Chicago made a request  
21 to Washington to make, to look at some documents that may be in  
22 possession of Israeli government pertaining to Ms. Odeh. Okay.  
23 And this was a request to the International Affairs Criminal  
24 Division of the Department of Justice to contact the state of  
25 Israel to see if there were documents concerning Ms. Odeh.



1 Now, at that time Ms. Odeh had lived in this  
2 country for 16 years. She had a green card for 10 years and  
3 she had been a U. S. Citizen for six years. She had never been  
4 arrested in the United States. She had not even gotten a  
5 parking ticket. Basically, she had lived an exemplary life  
6 every since she came here in 1994, 1995. Yet, they, she was  
7 now under investigation.

8 And in September of 2010 the FBI carried out a  
9 series of raids of homes of people who were involved with  
10 Palestinian support work. And one of the houses that was  
11 raided was the house of the Executive Director of the Arab  
12 Action Network, and they took all his papers and all his  
13 documents and they did that similarly with five other, six  
14 other homes of people who were active within the community and  
15 involved in support for the Palestinian work.

16 Following that, 25 people were subpoenaed to a  
17 Federal Grand Jury in Chicago and each one of those people  
18 refused to cooperate. They said this was a  
19 politically-motivated witch-hunt, and as a result of that, no  
20 one testified, and the grand jury also subpoenaed all the  
21 records of the Arab Action Network, Arab-American Action  
22 Network.

23 So, it was clear that they were under  
24 investigation and the grand jury was looking at them and four  
25 years later no one has been charged with any criminal activity,

1 and, in fact, within the last year or so everybody's personal  
2 property, their videos, their pictures of their family, were  
3 returned to them.

4 So, as far as we know, there's no investigation  
5 pending against AAAN, but they did suffer this type of raid and  
6 attack and, of course, all their documents were seized, but  
7 returned.

8 Now, 2013, nine years after she had gotten her  
9 citizenship, 20 years after she'd been living in this country,  
10 again, with no criminal background, never got arrested for  
11 anything, not even a parking ticket, now all of a sudden the  
12 Eastern District of Michigan U.S. Attorney's Office has brought  
13 this indictment against her, and, apparently, they received,  
14 obviously, documents from the government of Israel purporting  
15 to show that she had been arrested and convicted and put in  
16 prison by a military tribunal of occupation by the Israeli  
17 government, because in 1967 the Israeli military invaded the  
18 West Bank in Gaza and they took over and they set up a military  
19 tribunal there run by the military, and, basically, we'll get  
20 into that at another motion, but basically systemically  
21 arresting people, in our view, torturing people and getting  
22 confessions against them.

23 THE COURT: Okay, Mr. Deutsch, you've got about  
24 two minutes left if you want to reserve two minutes.

25 MR. DEUTSCH: Okay. I got you.

1           So, basically, it's our position that the reason  
2 she was singled out and investigated was because of her first  
3 amendment work with the AAAN and with, around Palestine and her  
4 support for the Palestinian people.

5           I would submit to the Court that nowhere can the  
6 government show as a matter of course that the government  
7 retroactively investigates people who have gotten their  
8 citizenship, six, seven years after they got their citizenship,  
9 go ahead and look at their application to see if they testified  
10 untruthfully.

11           They singled her out, as oppose to normally  
12 looking at, going back and looking at people's applications,  
13 because of her political work in Chicago and because of her  
14 support for the Palestinian people.

15           So what we have here is a discriminatory  
16 investigation which resulted in an indictment which is  
17 discriminatory, because of the investigation which has a  
18 discriminatory effect, and as a result of that, it is our  
19 claim, which is a little different than your usual selective  
20 enforcement claim, which is usually based on race and based on  
21 a showing that certain people are not convicted or not indicted  
22 because, differently because of theirs race. This is --

23           THE COURT: Mr. Deutsch, you're getting into your  
24 rebuttal time now.

25           MR. DEUTSCH: Okay. All right. I'm going to stop

1 now.

2 THE COURT: Okay.

3 MR. TUKEL: May it please the Court. Your Honor,  
4 the defendant filed a one-page brief in support of this motion,  
5 which didn't really say very much, and Mr. Deutsch has not  
6 added anything to that today.

7 The standard for a selective prosecution motion is  
8 that the defendant has to come forward at a minimum for  
9 discovery with some evidence of discriminatory intent and  
10 discriminatory effect. That's the Armstrong case in the  
11 Supreme Court.

12 And all that we have here are allegations, which  
13 is the defendant has alleged it, it was discriminatory. The  
14 defendant asserts that it's discriminatory, and there's simply  
15 no evidence to support that, and it's the defendant's burden to  
16 satisfy what the supreme court has characterized as a  
17 significant threshold to weed those types of cases out.

18 I will say that, in response to what Mr. Deutsch  
19 just raised, which was not in the brief, that the government  
20 never retroactively looks back at immigration applications.  
21 That's simply not correct. There was a plea yesterday before  
22 Judge Cox in a case brought under Section 1425 where precisely  
23 that happened. There was a trial over the summer before Judge  
24 Edmunds in a case involving Section 1425 where that was done.  
25 That's not at all unusual.

1           So the standard that the courts have articulated,  
2 both the Sixth Circuit and the Supreme Court, is that in order  
3 to proceed, even in order to get discovery, which is a lesser  
4 standard than to prevail on the merits, the defendant needs to  
5 show at a minimum one similarly situated person who was not  
6 prosecuted.

7           So, in this case that would mean someone who  
8 naturalized as a U.S. Citizen, who previously had been  
9 convicted overseas of a terrorism offense, who failed to  
10 disclose that conviction on the immigration application, or the  
11 naturalization application, and who doesn't or didn't have that  
12 sort of political affiliation that the defendant claims is the  
13 motivating factor here. They simply haven't demonstrated  
14 that, your Honor, and for that reason the motion should be  
15 denied.

16           MR. DEUTSCH: The government is fond of using the  
17 word "terrorism". She's never even been convicted of what they  
18 call a terrorism offense. She was never charged with terrorism  
19 and I point out to the Court, which we will get in at a later  
20 time, that this conviction is from a military occupation court  
21 which systematically tortures Palestinians.

22           But the point is, judge, that there are thousands  
23 of people who applied for citizenship and have been given  
24 citizenship. Yet, and six, seven, eight years after she got  
25 citizenship, they investigated her case. And the reason they

1 pulled her case and sought information from Israel was because  
2 of her activity in the community and support of Palestinian  
3 rights.

4 This is some evidence where we're entitled to at  
5 least find out from the government what communication was had  
6 between the Chicago U.S. Attorney who initially made the  
7 request for her files from Israel and the Detroit, the Eastern  
8 District of Michigan U.S. Attorney who went ahead and carried  
9 the water and using the fruit of this illegal selective  
10 investigation to bring this indictment.

11 They're part of the department of justice. They  
12 work together, and, in fact, they are profiting from an illegal  
13 selective investigation.

14 THE COURT: Okay.

15 All right. The Court has reviewed the pleadings  
16 and listened to the arguments and actually the arguments really  
17 haven't changed the Court's mind on this.

18 But, in this case really the threshold to not only  
19 seek discovery with regard to this matter, but also the defense  
20 of, I mean, not the defense, but the claim of selective  
21 prosecution is not supported here.

22 So, the Court, accordingly, is going to deny the  
23 defendant's motion to dismiss the indictment claiming selective  
24 prosecution, and I'm going to deny the request for further  
25 discovery in this matter.

1 All right. So, let's move to the next motion here  
2 and that's the defendant's motion to rely on expert, expert  
3 evidence of a mental condition.

4 And let me just say that at the heart of this is  
5 the issue of whether this is a general intent or specific  
6 intent crime, and it's a more interesting and more detailed  
7 decision than I had originally anticipated.

8 But, anyway, I'm going to stick with the 10-minute  
9 limitation that I've already imposed.

10 So, Mr. Deutsch, this is your motion.

11 MR. DEUTSCH: Okay. I'll reserve again two minutes  
12 for rebuttal.

13 THE COURT: Okay.

14 MR. DEUTSCH: The Court is correct, essential at  
15 the heart of this is whether it's a specific intent crime, and  
16 in United States versus Latchin, 554 Fed3rd, I made a typo in  
17 my memorandum, it's at 709. The Seventh Circuit interpreting  
18 the United States Supreme Court in Kungys versus the United  
19 States, 485 U.S., said there are, there are four independent  
20 requirements to prove, four independent elements of this 1425  
21 charge.

22 1. Has the defendant misrepresented or concealed  
23 some fact.

24 2. The misrepresentation, misrepresentation or  
25 concealment must have been willful.

1                   3.     The fact must have been material, and

2                   4.     The natural citizen must have procured  
3 citizenship as a result of the misrepresentation or  
4 concealment.

5                   So, basically what they're saying is that the  
6 defendant must have willfully misrepresented some material fact  
7 in order to procure her citizenship. That's the elements as  
8 set out in the Seventh Circuit interpreting the supreme court  
9 decision.

10                  Clearly these elements combine to require that the  
11 defendant willfully concealed the material fact in order, or  
12 for the purpose of obtaining her citizenship.

13                  Now, the supreme court has defined willfulness in  
14 Bryan versus United States, 524 U.S., when it said a person  
15 acts willfully if he acts intentionally and purposely and with  
16 the intent to do something the law forbids; that is, with the  
17 bad purpose to disobey or disregard the law.

18                  Now, the person need not be aware of the specific  
19 law or rule that his conduct may be violating, but he must act  
20 with the intent to do something the law forbids. He must act  
21 with a purpose. That's specific intent. That is the essence  
22 of specific intent, United States versus Bailey, 444 U.S.,  
23 purpose corresponds loosely with the common law concept of  
24 specific intent.

25                  Now, here -- so that's -- they have to show that



1 she acted willfully in order to get her citizenship. She lied.  
2 She created a material lie for the purpose of getting her  
3 citizenship, procuring her citizenship.

4 They charged that in their indictment. Their  
5 indictment says that she, she specifically charged the  
6 defendant with false statements: "For the purpose of receiving  
7 immigration benefit".

8 And if you look at similar statutes, you look at  
9 1001, which is lying to a federal officer, or you look at 18  
10 U.S.C. 1920, false statement to obtain federal employees  
11 compensation.

12 In other words, telling a lie for a purpose of  
13 getting employment compensation, or lying to a federal officer.  
14 Both of those statutes say they're specific intent crimes.

15 And, in fact, the Sixth Circuit has said that  
16 specifically in U.S. versus Ahmed, 472 Federal Third, False  
17 statement charge under 1001, effectively demands an inquiry  
18 into the defendant's state of mind and his intent to deceive.

19 So, basically they have, are going to prove, this  
20 is what they want to prove, that she lied in order to get her  
21 citizenship because if she told the truth she would not have  
22 gotten it.

23 So they have to show that she had the specific  
24 intent to lie in order to get her citizenship. That's the  
25 essence of their case. That's what they're going to prove to

1 the jury in court. That's what they charged in the indictment.

2 Now they're saying, oh, it's a general intent  
3 crime. What do they have to prove, that, that she went in  
4 there and knowingly procured her citizenship; she knew she was  
5 writing an application for her citizenship. That's not what  
6 the statute requires. The statute requires an intent to lie, a  
7 material lie in order to procure your citizenship. That is the  
8 essence of specific intent. Similar statutes say that and  
9 that's specifically what the challenge is.

10 Next thing the government says, and we may not get  
11 into this, but even if it is a specific intent crime, the  
12 expert can't testify because they can't testify that she did or  
13 didn't have the intent. We're not putting the expert on to  
14 show she did or did not have intent. The expert is going to  
15 testify that she's been diagnosed with PTSD and how that could  
16 have affected her when she read the questions and answered the  
17 questions.

18 It's up to the jury to decide whether she had the  
19 intent or not to deceive, to get her citizenship for the  
20 purpose of lying, for the purpose of getting her citizenship.

21 So, I would submit to the Court there's nothing  
22 unusual about putting an expert on. This is one of the most  
23 renowned experts in the country about the effect of torture in  
24 terms of post-traumatic stress. And if, in fact, the jury  
25 believes she suffered some post-traumatic stress, they can put

1 that into their equation in deciding whether she intended to  
2 lie in order to get her citizenship.

3 Thank you, judge.

4 THE COURT: All right.

5 MR. TUKEL: Your Honor, just going straight to the  
6 heart of the issue, obviously, this sort of testimony is only  
7 admissible, the threshold for it to become admissible is that  
8 it has to be a specific intent crime.

9 And the Sixth Circuit says that criminal statutes  
10 are presumed to only require a knowing state of mind, that the  
11 specific intent is the unusual circumstance.

12 And I'm glad Mr. Deutsch brought up to supreme  
13 court case of Bailey, because Bailey says it's the statute that  
14 controls as to determining whether it's specific intent or  
15 general intent. It's congress's intent in creating that  
16 statute, and just a short quote from Bailey. The supreme court  
17 said, and I'm quoting here:

18 "...courts obviously must follow congress'  
19 intent...for any particular offense. Principles  
20 derived from common law as well as precepts suggested  
21 by the American Law Institute most bow to legislative  
22 mandates."

23 So, the argument about what the indictment alleges  
24 or what the government's theory of the case is, that doesn't  
25 have any affect on the legal analysis. It's what congress's

1 intent was, and what state of mind is the culpable state of  
2 mind for purposes of the statute.

3 And so, when we follow that analysis of construing  
4 congress's intent, the first thing that jumps out is that the  
5 statute itself only uses the word "knowingly". And so the --

6 THE COURT: What does that mean?

7 MR. TUKEL: Pardon?

8 THE COURT: What does that mean?

9 MR. TUKEL: As applied to this case?

10 THE COURT: Yes.

11 MR. TUKEL: It means that the defendant has to have  
12 intended to make a false statement on the application, but it  
13 doesn't matter what her purpose is.

14 Now, most likely when someone makes a false  
15 statement on a naturalization application, it is, in fact, to  
16 procure naturalization that they think they otherwise wouldn't  
17 get. But it could some other reason. For instance, someone  
18 has something in their background they've never told their  
19 children about and it's embarrassing to them and they think it  
20 will have no affect whatsoever on the immigration decision.  
21 They may choose not to put that down simply because they don't  
22 want to be confronted with it. They don't want to think about  
23 it. But, that's not for the purpose, it's not for subjective  
24 purpose of influencing that and that would be sufficient  
25 because it is a false statement that could ultimately affect

1 the way the immigration authorities view that application.

2 So, when we look at the analysis of simply  
3 construing congress's intent of what it meant when it drafted  
4 this statute, the Ninth Circuit very straight forwardly says  
5 what I just said, which is, the defendant doesn't have to know  
6 that procuring naturalization is criminal. The defendant  
7 simply has to know that the answer is false. That's in the, I  
8 think it's pronounced Pasillas-Gaytan case. It's on Pages 5  
9 and 6 of my brief.

10 And the Fourth Circuit said that the plain  
11 language of the statute, which only uses the word "knowingly"  
12 requires no intent to defraud. If there's an intent to defraud  
13 requirement, that is specific intent, and that would be a  
14 specific intent crime. The Fourth Circuit rejects that.

15 So the defendant cites to Latchin, that Seventh  
16 Circuit case, which does use the word "willful", but, you know,  
17 it's not really clear where that appears in Latchin, why the  
18 court came up with that because it's not in the statute. And  
19 what you have in Latchin is that the Seventh Circuit cites back  
20 to Kungys, a supreme court case, which was a civil case.

21 So it's not citing ultimately back to the criminal  
22 statute that we're dealing with here, and I would suggest to  
23 the Court the Seventh Circuit just got that wrong, because it's  
24 not in the plain language of the statute.

25 The Sixth Circuit says when dealing with this

1 situation, and the Sixth Circuit hasn't specifically addressed  
2 Section 1425, that courts should look at the surrounding  
3 statutes to see what congress's intent was and to help discern  
4 that because congress is well aware of the general intent,  
5 specific intent dichotomy, and so courts should look at  
6 surrounding statutes that address the same subject matter.

7 And, so, when we look at the next statute over,  
8 Section 1426, congress specifically imposed "an intent to use  
9 the same" meaning a forged or fraudulent immigration paper.

10 So congress was quite aware of how to do that in  
11 the immigration context if it wanted to and it chose not to in  
12 this specific instance.

13 THE COURT: You know, I didn't actually look at  
14 the form that she filled out, but does it have anywhere on it  
15 that a false statement here would be a violation of the law?

16 MR. TUKEL: Yes.

17 And I can show it to the Court if you would like  
18 to see it.

19 THE COURT: I just wanted to know if it was on the  
20 form somewhere so that when she filled it out she knew she was  
21 breaking the law.

22 MR. TUKEL: It's Section 13, or it's actually  
23 labelled Part 13, and it says:

24 "I swear or affirm and certify under penalty of  
25 perjury under the laws of the United States of America



1 authorities, your Honor, and simply construe what congress's  
2 intent was, you have Latchin sitting out there, which just  
3 seems to be wrongly decided, and it ultimately cites back to a  
4 civil case.

5 And the statute itself, the naturalization  
6 application, and all the, the Ninth Circuit case and the Fourth  
7 Circuit case simply say it is a requirement that the defendant  
8 act "knowingly". It is a generally intent statute.

9 I will say, and I don't think it's the Court's  
10 intention to address it at this hearing, if the Court were to  
11 find that this was a specific intent offense, I don't think  
12 that the evidence is necessarily simply admissible on that  
13 basis. The courts have said that it is a very narrow, very  
14 narrow sort of psychological evidence that is admissible in  
15 this situation and that courts should carefully scrutinize  
16 proposed expert testimony to make sure it is admissible and  
17 that the way to do that is with an evidentiary hearing outside  
18 the presence of the jury.

19 And, so, I don't want to get into that, but I  
20 think it is one fair reading, there is scant material that's  
21 been provided, but there is an affidavit by the expert which  
22 says that it is her conclusion that a person with PTSD would  
23 cognitively process questions about the past to avoid recalling  
24 traumatic experiences; such as, torture, that are at the root  
25 of one's disorder.



1           And, so, I think one interpretation of that is  
2           that it is the expert's opinion that the defendant could not  
3           form specific intent. And the cases say, and I've cited those  
4           in my brief, that that sort of testimony, that sort of expert  
5           testimony is not permitted as a psychological defense and I  
6           think the only way the Court could rule that admissible, if it  
7           is, in fact, a specific intent crime, would be to have the  
8           expert testify and explain precisely what the basis of that  
9           diagnosis is.

10           THE COURT: Okay.

11           MR. TUCEL: Thank you.

12           MR. DEUTSCH: Just to be clear, judge, the expert  
13           is not going to testify that she couldn't possibly form  
14           specific intent. She's going to testify that she suffers from  
15           this condition, that she's been diagnosed, she's been  
16           interviewed extensively, and that as a result of that, that  
17           could have affected her understanding the questions and giving  
18           the answers. She's not going to say she couldn't have known.  
19           She's just going to -- the jury is entitled to know that  
20           information as part of the evidence to decide whether she had  
21           the specific intent.

22           I think it's important --

23           THE COURT: I'm a little confused on that.

24           MR. DEUTSCH: Okay.

25           THE COURT: I thought the expert's testimony would

1 be to support the absence of specific intent.

2 MR. DEUTSCH: Yes, it could be interpreted that  
3 way, but she's not going give -- she doesn't know what the  
4 person's intent was when she answered the questions. She  
5 wasn't in her mind. She wasn't there. She's going to tell the  
6 jury that she suffers from this condition and that as a result  
7 of that, people block out their past and they don't recall  
8 that. There's a kind of a psychological block. Whether Ms.  
9 Odeh did that or not is up to the jury to decide based on what  
10 other evidence is presented to them.

11 She's not going to make an unequivocal  
12 determination that she couldn't possibly --

13 THE COURT: I know the jury is going to make the  
14 ultimate decision, but --

15 MR. DEUTSCH: And she's not going to give an  
16 ultimate conclusion to the jury, because you can't do that, and  
17 we're not going to submit that to the jury that, oh, there was  
18 no possible way she could have the specific indent to, to lie  
19 when she answered those questions.

20 THE COURT: Well, what issue is it coming into  
21 evidence --

22 MR. DEUTSCH: It goes to --

23 THE COURT: -- what theory is it coming into  
24 evidence --

25 MR. DEUTSCH: It goes to --

1 THE COURT: -- under if it's not to show a lack  
2 of specific intent?

3 MR. DEUTSCH: It goes to whether or not she may  
4 have not had the specific intent to lie, but it doesn't  
5 necessarily answer the question that she did in fact have the  
6 specific intent or didn't. That's one issue that the jury  
7 could consider. Oh, this woman suffered some post-traumatic  
8 stress as a result of the torture she endured 45 years ago, and  
9 as a result of that when she was asked these questions, maybe  
10 she didn't think about what they were asking back then and just  
11 answered them based on what she believed what they were asking.

12 So it's a way for the jury to understand her  
13 testimony or her state of mind.

14 It happens all the time in terms of an expert  
15 testifying that this is the condition of the defendant at the  
16 time she answered those questions.

17 And I want to point out to the Court that Kungys,  
18 which is the supreme court case that the Seventh Circuit relies  
19 on, and, of course, the Seventh Circuit is my circuit from  
20 Chicago, so I, you know, take it very seriously.

21 THE COURT: But you're in the Sixth Circuit now.

22 MR. DEUTSCH: Yeah, I know we're in the Sixth  
23 Circuit now, and we have to follow the Sixth Circuit.

24 THE COURT: You're working in the Sixth Circuit.

25 MR. DEUTSCH: But it's your sister circuit. So,

1 it's close and a very well-respected circuit. At one point I  
2 actually was a law clerk in the Seventh Circuit.

3 But, they say in Footnote 3 in Latchin, they say  
4 there is no difference between the criminal statute, 1425(a),  
5 which is here, and the civil statute 8 U.S.C. Section 1451(a).  
6 They're equivalent. So that's where they get the elements that  
7 they put out in Latchin, and they don't differentiate. And it  
8 would be strange to differentiate and make a criminal statute  
9 much easier to prove than a civil statute, and that's why they  
10 say you have to show willful, and willful is, in fact, "for the  
11 purpose of", and the indictment charges "for the purpose of".  
12 The government is going to prove "for the purpose of". And  
13 there is nothing in the history, the legislative history of  
14 this statute which says that it's knowledge only.

15 What is the knowledge? The knowledge of what?  
16 The knowledge that she procured her citizenship? They, they're  
17 saying they can just prove that what she said was not true  
18 but --

19 THE COURT: You've got about a minute left.

20 MR. DEUTSCH: Okay, well, judge, I think this is  
21 the heart of our defense. If you don't let our expert testify,  
22 you're cutting out the essence of our ability to show the jury  
23 evidence which is relevant to her state of mind when she  
24 answered those questions. And it's very important to us and  
25 that's why we brought it.

1           There's no question that Ms. Odeh, and the  
2 government has not challenged it, was horrifically tortured and  
3 suffers from post-traumatic stress, and if she does suffer from  
4 post-traumatic stress, that is relevant to show how she  
5 interpreted and answered those questions at the time she filled  
6 out her citizenship claim.

7           Thank you, judge.

8           THE COURT: Thank you, Mr. Deutsch.

9           Okay. Like I mentioned before, I really haven't  
10 made a final decision on this matter because it's a little more  
11 complicated than I thought.

12           And so I'm going to issue an opinion on this and I  
13 intend to do it in less than a week. So we're going to be in  
14 recess on this matter at least as far as these motions go, and,  
15 like I said, I'll issue an opinion.

16           Now, let me say just one other thing. I think  
17 there's been a request for a jury questionnaire, was it?

18           Mr. Tukel, how do you feel about that; what's your  
19 thoughts on that?

20           MR. TUKEL: I filed a written response, I think,  
21 two days ago, your Honor, I'm opposing that.

22           THE COURT: Okay. And I haven't seen it.

23           I really, I guess, because actually that thought  
24 occurred to me before and, I guess, if Ms. Odeh was a local  
25 person and resident of this community and knew this community's

1 Arab-American population and so forth and was connected with  
2 the organizations here, I would do it. But I need to think a  
3 little bit more about that, number one, and, secondly, if I  
4 ultimately decide to do it, that's going to create at least a  
5 10-week delay because our jury commission has indicated that  
6 they need at least 10 weeks to pull something like that  
7 together. So that's another consideration.

8 Is there anything else as far as housekeeping goes  
9 with regard of this matter?

10 I know we'll be back here on the 22nd of October  
11 for more argument on motions, but if there's nothing else,  
12 we're going to be in recess.

13 MR. DEUTSCH: Okay, judge, just two very quick  
14 matters.

15 THE COURT: Okay.

16 MR. DEUTSCH: One, is Ms. Odeh is very well-known  
17 and has worked in the Detroit community. She actually lived in  
18 this community prior to moving to Chicago, so that would be  
19 some consideration.

20 The other thing is just a housekeeping thing. Is  
21 it possible that the next time we come, which is the 21st, we  
22 could start at 11 because otherwise we have to fly from Chicago  
23 the night before. But, if we start at 11, we could fly in  
24 first thing in the morning and be here by 11.

25 I know it's your schedule and you have to do it,

1 but that would be something to accommodate us for not having to  
2 stay overnight.

3 THE COURT: What do you think about that, Mr.  
4 Tukul?

5 MR. TUKEL: Whatever the Court's preference, your  
6 Honor.

7 THE COURT: Okay. I'll try to remember that for  
8 the future.

9 Let's see, what time are the motions scheduled for  
10 on the 21st?

11 MR. TUKEL: Ten o'clock.

12 THE COURT: Ten o'clock. Okay. I can move that  
13 back to 11.

14 MR. DEUTSCH: Thank you.

15 MR. TUKEL: And, your Honor, that will also be  
16 legal argument only.

17 THE COURT: Yes. Purely legal argument, yes.  
18 Yes.

19 MR. TUKEL: Thank you.

20 THE COURT: And if that changes, I'll let you all  
21 know.

22 MR. TUKEL: Okay.

23 THE COURT: All right. Then, we'll be in recess.

24 (At 10:47 a.m. proceedings concluded)

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C E R T I F I C A T E

I, Merilyn J. Jones, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1-32, inclusive, comprise a full, true and correct transcript taken in the matter of the United States of American versus Rasmieh Odeh, 13-cr-20772 on Thursday, October 2, 2014.

/s/Merilyn J. Jones  
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Date: October 9, 2014