CASE NO. 15-1331

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RASMIEH YUSEF ODEH

Defendant-Appellant.

On Appeal from the United States District Court
For the Eastern District of Michigan
Southern Division

DEFENDANT-APPELLANT'S REPLY BRIEF ON APPEAL

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ORAL ARGUMENT REQUESTED

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The gravamen of Rasmea's Odeh's appeal is based on her claim that her Fifth and Sixth Amendment rights were denied by rulings of the lower court which prevented her from presenting her complete defense at trial. At bottom, this claim is based on her fundamental constitutional right to a fair trial, the most basic right of any criminal defendant. While the government's brief responds to the legal claims raised by Ms. Odeh, and raises some procedural impediments to full review, it never really addresses the basic constitutional deprivations asserted in Ms. Odeh's opening brief. Regardless of whether this Court interprets 18 U.S.C. § 1425, as involving specific or general intent, under the particular facts of the case, when the issue presented to the jury was her state of mind at the time she alleged to have knowingly lied, Ms. Odeh asserts that she was prevented from presenting her complete defense and is entitled to have the verdict against her set aside

I. THE WILLFULNESS ELEMENT IN THE CIVIL DENATURALIZATION STATUTE, 8 U.S.C. §1451, EQUALLY APPLIES TO ITS CRIMINAL COUNTERPART, 18 U.S.C. §1425.

In an effort to distinguish the Supreme Court's holding in *Kungys v. United States*, 485 U.S. 759 (1988), that under the civil denaturalization statute, the concealment or misrepresentation in obtaining citizenship must be "willful," the government's brief seeks to create a new legal principle. The government argues

that importing the "willfulness" *mens rea* from the civil denaturalization statue, as established in *Kungys*, to the criminal realm "results in a general intent requirement, because knowledge of the falsity of the representation will suffice" G. Br. at 16, 19.

In making this argument, the government relies on this Court's opinion in *Parlak v. Holder*, 578 F. 3d 457, 463 (6th Cir. 2009). This reliance is seriously misplaced, however, and in fact reinforces Ms. Odeh's argument that in civil or criminal charges leading to denaturalization, a "willful" *mens rea* must be shown.

Parlak did not involve an action to denaturalize a U.S. citizen. Rather the case concerned the removal of a non-citizen for "willful" material misrepresentations in his applications for adjustment of status and naturalization. Under this statute, 8 U.S.C. §1182 (a)(6)(C)(1), this Court found that a showing of intent to deceive was not required. In contrast, the Supreme Court has consistently held that, once citizenship has been acquired, its loss can have severe and unsettling consequences and so the government has a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship. See e.g. *Costello v. United States*, 365 U.S. 265, 269 (1961); *Baumgartner v. United States*, 322 U.S. 665, 675-676 (1944); *Schneiderman v. United States*, 320 U.S. 118, 122 (1943); see also, *Federorenko v. United States*, 449 U.S. 490, 505-6 (1981).

> Unlike a naturalization proceeding in which the petitioner has the burden of demonstrating his 'good moral character,' once the order and certificate of naturalization are granted the Government must prove its allegations of concealment of a material fact or *willful* misrepresentation by 'clear, unequivocal, and convincing evidence' which fails to leave the issue in doubt,' and the facts and law should be construed as far as reasonably possible in favor of the citizen.

Schneiderman, 320 U.S. at 122 (emphasis added)

The INS statute which applies to the removal of non-citizens clearly does not apply to an action under 8 U.S.C. §1451, to denaturalize a citizen. The sacred right of citizenship, and the heightened protections required by the Supreme Court before it can be taken away, strongly argue against any newly created general theory that the element of "willfulness" required under the civil denaturalization is reduced down to "knowledge of the falsity" under its criminal counterpart - a conviction under which automatically results in denaturalization. See 8 U.S.C. §1451 (e).

The government's argument that the requirement of a "willful misrepresentation" for civil denaturalization imports something other than the plain meaning of the term is wholly without jurisprudential support, and in direct conflict with the Supreme Court's holding in *Kungys*. The government's brief cites no case in which a court has held that the civil denaturalization statute, 8 U.S.C. §1451, does not require a showing of willful misrepresentation or an intent to deceive before citizenship can be cancelled. Certainly, the government cannot

argue that the term "willful" or "willfully" in a criminal statute does not require a showing of intent or bad purpose; so it attempts to extrapolate from *Parlak* a special meaning for "willful" in the civil denaturalization statute. The government must make this convoluted argument, because if Congress intended "willful" in the statute to actually mean" willful", it would be quite odd that in the criminal realm---when not only is citizenship is at risk, but federal prison as well---Congress would have required a lesser *mens rea.*

II. THE § 1425 MUST BE READ AS A WHOLE, AND THE USE OF THE WORD "KNOWINGLY" IS NOT DETERMINATIVE OF THE CONGRESSIONAL INTENT.

As Ms. Odeh noted in her opening brief, this Court held, in *United States v. Honaker*, 5 F.3d 160, 161 (6th Cir. 1993), that "[i]n determining the meaning of [a] statute, we look not only to the particular statutory language, but the design of the statute as a whole and to its object and policy." While the statute here does not use the words "specific intent," its purpose and policy is to criminalize one who "knowingly" procures naturalization "contrary to law," and specifically in this case, one who provided false information *for the purpose of* procuring naturalization.

It is clear that the purpose and policy of this statute is to prevent concealment and misrepresentation from being used in an applicant for naturalization. The legislative history cited in the government's brief, G. Br. at 20-21, really sheds no

light on the intent of Congress, and it certainly does not contradict the plain intent to criminalize those who lie for the purpose of obtaining citizenship. While the statute does not use the words "specific intent" or specifically spell out a heightened *mens rea*, a common sense reading of the statute demonstrates that the "knowing" acts---in this case the false representations--- must be done for the purpose of procuring naturalization.

This bad purpose was the gravamen of Ms. Odeh's indictment and the entire theory and proof of the government's case at trial. Certainly the mere fact that the statute uses the word "knowingly" does not show that Congress intended §1425 to be a general intent crime. This is confirmed in this Court's decision in *United States v. Chowdhury*, 169 F.3d 402 (6th Cir 1999). In *Chowdbury*, also an immigration-related criminal prosecution, which, surprisingly, is ignored in the government's brief, the statute in question made it a crime for someone to "knowingly" enter into a marriage in order to evade any provision of the immigration laws. Despite the presence of the term "knowingly," this Court read a willfulness element into the statute. "[I]n knowingly entering a marriage the defendant willfully violated the immigration laws" *Id.* at 408. Equally, by the charge of "knowingly" lying to procure her naturalization, Ms. Odeh was accused of willfully violating the immigration laws.

III. THE CASES RELIED ON BY THE GOVERNMENT ARE NOT DEFINITIVE SUPPORT FOR THE PROPOSITION THAT §1425 POSES A GENERAL INTENT CRIME.

The government's brief dismisses the two Circuit Court cases which specifically accept the Supreme Court's ruling in *Kungys,* and hold that the *mens rea* in §1425 statute is willfulness[1] They argue that that those courts in in each specific case did not require a willfulness standard instructing the jury. However, the government ignores the fact the question of *mens rea*, or general vs specific intent, was not an issue raised by the parties in either case Nonetheless, it cannot be disputed that these two Appeals Courts' opinions accept that willful misrepresentation is one of the four elements of the criminal statute, according to their "judicial superiors" as mandated by the Supreme Court in *Kungys*.

The cases under §1425 relied upon in the government's brief ignore the Supreme Court's opinion in *Kungys*, not even bothering to cite or distinguish it. The two cases mainly relied on by the government, *United States v. Pasillas-Gaytan,* 192 F.3d 864 (9th Cir. 1999) and *United States v. Alameh*, 341 F.3d 167 (2d Cir. 2003), both arose on appeals involving the government's claim that, to sustain a conviction where false answers were given, it only needed to show that the defendant "knowingly" applied for naturalization --a standard very much akin

[1] See *United States v. Lachten*, 554 F.3d 709, 713-14 (7th Cir. 2009) and *United States v Munyenyez*, 781 F.3d 532, 536 (1st Cir. 2015).

to strict liability. In denying such a radical interpretation, the court in *Pasillas-Gaytan*, without referring to the law of *Kungys*, does reject a willfulness *mens rea* standard, but found that, at the very least, the Government still must show that the defendant knowingly misstated his criminal record.

The holding of the Second Circuit in *United States v. Alameh* is still less clear. Although the court cites the holding in *Pasillas-Gaytan* ---that the statute cannot be read to permit conviction solely on the knowing attempt to acquire citizenship--- the *Alameh* court goes on to uphold the conviction, on a finding that there was sufficient evidence that the defendant knew "that he was not entitled to citizenship at the time he applied." 341 F. 2d at 175. Similarly, in *U.S. v. Moses*, 94 F.3d 182, 184 (5th Cir. 1996), cited by the court in *Pasillas-Gaytan* and *Alameh*, the Fifth Circuit held that the defendant "must know he is not entitled to citizenship to be convicted under § 1425."

This requirement, that a defendant know he was not entitled to citizenship, goes well beyond "knowing" that one's statements were false. If a defendant knew he was not entitled to citizenship, then by definition he would have known that procuring citizenship by providing false information was a criminal act---i.e., done for a specific (illegal) purpose---and that indeed would constitute an act with a specific intent. This all goes to say that the courts which have ignored the clear

mandate of *Kungys* are not consistent or clear on the *mens rea* requirements under the statute. [2]

Finally, the government's brief at several points relies on this Court's opinion in *United States v. S & Vee Cartage Company*, 704 F.2d 914 (6th Cir. 1993), a prosecution under 19 U.S.C. §1027, which charges knowingly making false statement in documents required to be kept by employee welfare and pension funds. See G. Br. at 13 and 16. Under this statute a knowing false statements for any reason or purpose, or no purpose at all, is a crime. See also, 18 U.S.C §1015 (Making a false statement under oath in any matter relating to naturalization). Such a statute, stating that ta knowing false statement alone is a crime, indeed appears to implicate only general intent. In the case at bar however, under §1425, the statements are to be made for the purpose of procuring citizenship, and this is clearly distinguishable from the statute in *S & Vee* and other similar statutes.

[2] Certainly, the unpublished *per curiam* opinion by the Fourth Circuit in *U.S. v. Nicaragua-Rodriquez*, 1998 WL 738548 (4th Cir. 1998), without reference to *Kungys* or analysis of the purpose, policy or procurement provisions, is hardly helpful precedent.

IV. THE EXPERT TESTIMONY WOULD NOT HAVE CONTRADICTED MS. ODEH'S TESTIMONY, AND WAS ABSOLUTELY CRUCIAL TO A FAIR EVALUATION OF HER DEFENSE BY THE JURY.

The government makes much of the notion that the expert testimony about PTSD, which the defendant sought to introduce to help explain and corroborate her own testimony, would supposedly have contradicted her testimony in the trial, and that its exclusion was therefore inconsequential. G. Br.at 29. The argument is spurious.

The expert's opinion was that Ms. Odeh suffered from chronic PTSD, resulting from her torture at the hands of the Israeli security forces in 1969 and 1970. She was of the further opinion that, that in 2004, when Ms. Odeh applied for her naturalization, her stress disorder could well have operated as a 'filter', blocking any association of the criminal history questions on the form with her traumatic memories of torture and imprisonment 35 years before, in order to protect her from the excruciating "flashback" physical memory of the torture which she had often experienced in the intervening years.

The expert, Dr. Mary Fabri, would have testified that the PTSD caused an unconscious process to occur by which an automatic 'filter' altered the meaning of the criminal history questions, as her conscious mind perceived them, so as to

avoid triggering her traumatic memories. Dr. Fabri would have testified that such a displacement of meaning or narrowing of interpretation is a typical protective mechanism in the mentality of PTSD patients, and a plausible explanation of what had occurred. Her testimony was crucial for the defense, since, without it the jury was likely toand did indeed disbelieve that someone could have forgotten such an enormous and overwhelming experience as her arrest, conviction and imprisonment.

Ms. Odeh testified that there were several questions on the form which dealt specifically with her time in the United States---such as "Have you EVER (in the same bold version) voted (or registered) in any Federal, state, or local election in the United States?" (Ex. IA Pg. ID 2620) --- which came before the criminal history questions. She said that those references, especially since she had been living in the U.S. for almost ten years, helped set the conscious framework for the false impression, generated by the PTSD "filter", that the later questions also referred only to her time in the United States.

The government's brief argues that Ms. Odeh "consciously and in good faith" (G Br, at 33), concluded that the criminal history questions applied only to the United States, and that, since she supposedly admitted at trial that she "knew" she had been 'arrested, charged, convicted, and imprisoned' in Israel, the expert's testimony that her condition caused her to unconsciously filter out her traumatic

past by narrowing the scope of the questions would have contradicted the defendant's testimony. G. Br. 32-33[3]

The government's reasoning is faulty. Quite naturally, Ms. Odeh "knew" those things had happened to her in Israel, but the Disorder operated subconsciously to block what she "knew" at that critical moment, and substitute an anodyne mis-interpretation of the question, in order to block out the traumatic memories. Thus the government's brief wrongly conflates the fact that she agreed that she "knew" what had happened to her in Israel in a general sense, with its own unsupported supposition that she had a present-time awareness of that experience---and the memory of it---at the time she was confronted with the questions on the form.

This obviously begs the question entirely. If she had been aware, with active knowledge of the arrest, etc. (and torture!) alive in her conscious mind at the moment she answered the questions, certainly she would have been knowingly, willfully, lying when she marked the "No" boxes on the questions. That's the whole point of the expert testimony: to explain to the jury how the protective mechanism of the PTSD worked, sub-consciously, to block conscious awareness in

[3] At another point the government argues that Ms. Odeh "consciously and rationally concluded" the questions were about her time in the U.S. G. Br. at 31. The case is exactly the reverse. Her "conclusion" was conscious but plainly not rational in the circumstances. It was dictated, however delicately, by the filter mechanism.

interpreting the questions, by narrowing the scope of the questions to avoid recalling what she certainly "knew", all too well, about what had happened to her.

This was obviously a subtle and precarious process, part of it conscious and rational, and part of it altogether unconscious, due to the disorder. Ms. Odeh readily admitted that if her history in Israel had specifically come up in the interview, she would have acknowledged these facts, which, she pointed out, "everyone knows." The specific references to her Israeli history would likely have broken through the unconscious protective filter, The protective mechanism however was not breached by the general inquiry, and the adjusted mental state the 'filter' had engineered to protect her from a hideous flashback was not disturbed.

Thus it was essential to Ms. Odeh's defense that the expert be permitted to explain to the jury how the PTSD condition would have operated to block the memory at the crucial time. This would not have been obvious, or even comprehensible to a lay person, who, without it, would have no basis at all to understand that that Ms. Odeh was not intentionally lying in order to conceal her history. The expert's testimony would not have contradicted Ms. Odeh's testimony but would have explained and corroborated her defense, that she did not intentionally misrepresent her criminal history in order to obtain citizenship.

V. THE FACTUAL CLAIMS MADE BY MS. ODEH'S DID NOT REQUIRE THAT SHE ASSERT AN INSANITY DEFENSE.

The government next argues that Ms. Odeh's defense amounts to an assertion of insanity, under the law: that, by her testimony, she was "'unable to understand the nature and quality of her acts' in falsely answering." (G. Br. at 34) The government's brief asserts that, since she failed to invoke the defense under the statute, she was barred from introducing expert evidence on any terms.

But the defendant is not insane, and was not insane; nor would she brook any suggestion of it. Rather, she is a torture victim, under no delusions about that experience in the operation of her mind at all levels of consciousness. Her conduct in the world, coping with the after-effects of unendurable assault on body and spirit---of a type and to such a degree of brutality and pain that it shatters the sense of your very existence, and establishes the unbearable flashback memories that are the essence of PTSD---while still building a life of usefulness to others, has been wholly sane for 45 years. Indeed, her record of service and organizing success provides conclusive evidence that she deeply understands "the nature and quality" of people's actions, including her own.

The difference is absolute. As reflected in the very learned and supremely relevant discussion of the subject by leading scholars and experts submitted in the

brief of *amici curiae*, "A primary purpose of torture is, in fact, to destroy the psychological functioning and social integrity of its victims."

> *One of the central aims of torture is to reduce an individual to a position of extreme helplessness and distress that can lead to a deterioration of cognitive, emotional and behavioural functions. Thus, torture is a means of attacking the individual's fundamental modes of psychological and social functioning.* (Brief of Amici, at 6; emphasis in original) * * * *
>
> Studies have found that, in light of the intimate nature of the sexual attack and pronounced feelings of humiliation and shame, victims of sexual torture may be particularly likely to experience symptoms of avoidance and dissociation. (*Id.* at 6) . . . .
>
> *It is well-established that torture survivors develop coping mechanisms to avoid the acute trauma that accompanies recollection of the circumstances of their torture. See Istanbul Protocol §142. These coping mechanisms, including avoidance and dissociation, can result in a torture survivor acting instinctually from a place of self-preservation – not consciously from a place of awareness or volition.* (*Id.* at 10, Emphasis added.); See generally, Brief of *Amici Curiae*, Point I-B.

The friend of the Court brief reads as if the learning it contains was developed to explain Ms. Odeh's case, and validate her defense; but of course the reverse is the case: her defense, based on the operation of a "coping mechanism," developed to protect the person from the assaults of unbearable memory, fits the classic characteristics of a torture victim.

As she testified, Ms. Odeh would never have denied the record of her arrest and imprisonment in Israel if it had been directly raised to her; she couldn't have, obviously. She certainly knows and has always known the difference between right and wrong, What the defendant *knew* in her conscious mind, as noted above, and what her PTSD condition unconsciously caused her to filter out, and thus, precisely, to not know when she answered the questions, was and remains the substance of her non-insanity defense to the charge she lied with the intent to procure her naturalization. Only she was barred, unjustly, from presenting it.

VI. THIS COURT SHOULD NOT BE BOUND BY ITS PRIOR RULINGS IN *KIMES AND GONYEA*, BECAUSE THE FACTS OF THOSE CASES ARE CLEARLY DISTINGUISHABLE FROM THIS CASE, WHERE THE EXPERT TESTIMONY WAS PARTICULARLY RELEVANT AND INDISPENSIBLE TO MS. ODEH'S COMPLETE DEFENSE.

A. The Defense Repeatedly Raised Below the Right of Ms. Odeh and her Expert to Put Forth her PTSD Evidence as Relevant and Critical to Explain and Corroborate her Defense, and the Plain Error Rule Does Not Apply.

The government argues that Ms. Odeh's claim that, even if the statute is not a specific intent crime, her PTSD evidence was relevant and admissible to show

her state of mine, was never raised below and thus, should be reviewed under a plain error standard. This claim is devoid of any merit.

The defense was aware of the decisions from this Court which held that psychological expert testimony, not involving an insanity defense, are admissible only where a specific intent crime is involved. Believing that § 1425 clearly charged a crime involving specific intent, the defense initially focused on showing that to the trial court. As related in Ms. Odeh's opening brief, the trial court agreed with the defense, at first, and even held a Rule104 hearing to determine the scope of relevance of the expert's testimony. When the lower court abruptly changed its position, and ruled not only that the statute posed a general intent crime, but that, , the expert could not testify, the defense did not abandon its contention that Ms. Odeh and her expert should still be allowed to testify about her PTSD, as relevant to her state of mind. At one point the defense was told to not continue to argue about the admissibility of this evidence.

Despite the trial court's rulings, the defense filed a motion requesting that Ms. Odeh be allowed to testify about her torture and its effects, as relevant to her state of mind, pursuant to her constitutional right to testify in her own defense. R.E. 124, Pg. ID 1272. The court denied this motion, R.E. 125, Pg. ID 1280, and, prior to her taking the witness stand, admonished Ms. Odeh that she could not

mention her torture or her PTSD condition in her testimony. R.E. 182, Pg. ID 2340-41.

For the government to argue before this Court that the issue of the relevance of the PTSD evidence and the expert testimony, regardless of the ruling on specific intent, was never raised below and should be reviewed only under a plain error standard is therefore specious. This Court's should review the trial court's refusal to allow this evidence, the denial of expert testimony and the limitations on Ms. Odeh's testimony as it would any other issue properly raised and preserved.

B. This Court's Rulings in *Gonyea* and *Kimes* are Distinguishable from Case at Bar and this Court is Not Precluded from Considering Her Claim.

As Ms. Odeh argued in her opening brief, even if this Court were to find that §1425 is not a specific intent crime, the expert testimony and the defendant's own testimony about her torture and the PTSD and its effects were still highly relevant---as argued with great knowledge and insight in the brief of *amici curiae*---and were admissible under the particular facts of this case.

The government argues rather that this Court's rulings that psychological testimony is only admissible in specific intent crimes, precludes a panel of this Court from entertaining Ms. Odeh's claim. It asserts that a panel of this Court is

absolutely bound by the prior published opinions of this circuit, unless an inconsistent opinion of the Supreme Court requires modification, or this Court sitting *en banc* overrules the prior decision. G. Br. at 26. Ms. Odeh argues that the facts of this Court's prior opinions are so distinguishable from the case at bar, that this rule does not apply.[4]

The two leading cases in which this Court has ruled that psychological testimony was limited to specific intent crimes are *United States v. Gonyea*, 140 F.3d 649 (6th Cir 1999) and *United States v. Kimes,* 246 F.3d 800 (6th Cir. 2001). The charges in these two cases, the defenses proffered, and the proposed psychological testimony, are so remarkably different from Ms. Odeh's case that the exclusionary rule imposed in those cases should bind the Court in this case.

In *Gonyea*, the defendant was charged with bank robbery under 18 U.S.C. §2113(a). His defense was that he suffered from an obsessive desire to rob banks, and had an irresistible impulse that he could not control.[5] In *United States v. Kimes*, the defendant was charged with assault on officers of the VA and possession of a knife on VA property. A Vietnam Vet, the defendant claimed he suffered from PTSD and the proffered psychological testimony was to show that

[4] If this panel nonetheless believes that it is estopped from considering this issue in this case because of prior rulings by the Court, Ms. Odeh, if necessary, will undoubtedly seek a rehearing *en banc*.

[5] In a third case, *U.S. v. Willis*, 187 F.3d 639 (6th Cir. 1999), an unpublished opinion, the defendant was charged with being a felon in possession of a handgun, and his defense was that he had "a paranoid personality disorder" and did not knowingly possess a firearm.

the defendant lacked control over his actions, i.e. that he had an irresistible impulse to carry a knife and attack an officer. In each of these cases, the *actus reus* was a physical act, and the defense was that the accused suffered from an "irresistible impulse" and could not control his actions. In neither case was the defendant's state of mind an issue for the jury, the issues were did the defendant rob a bank, assault an officer or possess a knife.

In Ms. Odeh's case, the *actus reus* is alleged knowing lying, and thus, in contrast to robbing a bank, or assaulting an officer, her case is based entirely on her state of mind---her 'knowing'---in answering the questions. Also, most importantly, she is not claiming any irresistible impulse, which caused her to provide false information, or a compulsive disorder which caused her to lie. Rather, her psychological testimony had to do with how she cognitively blocked the correct information from her consciousness, as a result of her PTSD. See, *United States v. Santos*, 2006 WL 240060 (D. Mass., 2006) (Psychological expert evidence is relevant and admissible to show that defendant's reasoning ability is impaired and not offered to show an inability to control his impulses or to make reactive decisions).

It seems easy to see the substantive differences in Ms. Odeh's case from the defense in *Gonyea* and *Kimes*. Ms. Odeh's expert clearly had relevant testimony to offer, which would have assisted the jury in determining whether Ms. Odeh

knowingly lied in not revealing her past traumatic history in Israel. The expert's testimony was not an absolute defense to her charges, but rather would have corroborated and explained Ms. Odeh's own testimony that she never considered her past in Israel when applying for naturalization. The jury would have been free to reject her defense, but without a solid explanation of why and how she could have or would have literally blocked out something seemingly so memorable, Ms. Odeh's testimony was left without its indispensable psychological interpretation, and, by itself, was unbelievable.[6]

Thus the defendant urges the Court to see that the rule set out in *Gonyea* and *Kimes*, cannot and should not be unthinkingly or rigidly applied in all cases, but, rather, must conditioned on the specific facts and the need for the expert testimony to understand them. Relevant and critical evidence to one's defense must be allowed before the jury, and a blanket rule would violate the constitutional rights of an accused.

VII. THE TRIAL COURT FAILED TO PROPERLY CONSIDER THE EVALUATION FACTORS UNDER § 3553(a) IN DECIDING ON AN 18 MONTH SENTENCE.

[6] In an effort to discredit Ms. Odeh's testimony that she interpreted the questions to apply to only the United States, the government's brief points out that Ms. Odeh gave the same denials as to past criminal history on her visa application even before she ever came to the U.S. G. Br. at 30 f.n. 2. However, the government ignores her testimony at trial that her brother filled out her visa application, because of her inability to understand English.

A. Ms. Odeh's Banishment from her Community and the Adopted Country in Which She Made Such Extraordinary Contributions Was Not Collateral to Her Conviction, But a Direct Result.

The government argues that it was proper for the lower court not to consider the impact Ms. Odeh's denaturalization and removal from the United States, when deciding on her sentence, since it was a "collateral consequence" of Ms. Odeh's conviction, and thus an impermissible factor. Ms. Odeh's loss of citizenship and removal is not a collateral consequence of her conviction, but a direct result, under § 1425, as specifically mandated by the civil denaturalization statute. See 8 U.S.C. § 1451 (e).

Nor is the government's argument that that loss of citizenship and removal cannot be considered, in determining a fair and just sentence, supported in the case law. In *United States v. Samoya-Baltazar*, 436 Fed. App'x 620 (6th Cir. 2011), the case relied upon in the government's brief, the defendant, who had twenty-two prior convictions, simply mentioned and failed to support his claim that his eventual deportation should be taken into account. Given the defendant's extensive criminal history, the district court did not rely on the deportation in determining the sentence. In upholding the sentence on appeal, this Court in *Samoya-Baltaczar*, did not reach the specific question whether the defendant's eventual deportation represented an appropriate sentencing consideration or not,; it

found that the defendant's lengthy criminal history by itself justified his sentence. *Id.* at 626. See also, *United States v. Molina*, 563 F.3d 676, 679 n. 3 (8th Cir. 2009) (holding that a sentencing court would not necessarily be precluded from considering deportation in conjunction with the statutory sentencing factors.)

Here, the taking of Ms. Odeh's citizenship and her removal from her community, and her adopted countrywhere she has lived peacefully for 20 years, is quite different from the cases from other circuits cited by the government. To consider her banishment a "collateral consequence," which may not be taken into account under the statute, would be to undercut one of the main purposes of the statute – to fix a sentence based on the history and characteristics of the defendant.

As argued in Ms. Odeh's opening brief, she has made extraordinary contributions to her community and has created model programs for the integration of immigrants and their families into their new lives in the United States. Ms. Odeh argues that the trial court failed to take these contributions fairly into consideration in determining its sentence. Certainly the devastating effect of permanent removal from her work, and from the broad community and countless relationships of trust and confidence that have grown up over many years, must be seen as the primary result and effect of her conviction, both for her and for the intimate community

from which she will be torn. In failing to take into account what she would be losing by her banishment, in determining Ms. Odeh's 'history and characteristics' the trial court failed to fairly consider the factors prescribed in 18 U.S.C. § 3353(a) and thereby abused his discretion. See e.g., *Gall v. United States*, 552 U.S. 38 (2007); *United States v. Peebles*, 624 F.3d 344, 347 (6th Cir. 2010).

The trial court also clearly failed to give any consideration to the unspeakable torture that Ms. Odeh was subjected to following her arrest by the Israeli occupying soldiers, even though it had found earlier in the proceedings that her torture claims were credible. The Court focused entirely on the nature of the offense, and his stated belief that she lied, period; and in doing so, failed to properly consider the statutory evaluation factors.

CONCLUSION

Rasmea Odeh was entitled to present her complete defense to the jury. She was unconstitutionally denied this right, and this Court should remand her case for a new trial in which her PTSD expert can testify, and Ms. Odeh can testify fully about her state of mind, including her history of torture and its effects on her at the time she applied for naturalization.

Respectfully submitted,

s/Michael E. Deutsch

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) (7) (C), Federal Rules of Appellate Procedure, the undersigned certifies that this brief complies with the type-volume limitations of Rule 32(a)(7)(B), Federal Rules of Appellate Procedure.

The brief contains a total of 5521 words, exclusive of the Table of Contents, Table of Authorities, Statement in Support of Oral Argument, and Certificate of Compliance. It has been prepared using Microsoft Word 2013. The typeface is14pt Times Roman.

s/Michael E. Deutsch

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2015, I electronically filed the foregoing brief with the Clerk of the United States Court of Appeals for the Sixth Circuit using the ECF system, which will send notification of such filing to the representatives of all parties.

s/ Michael E. Deutsch