

JANICE ROGERS BROWN SINGS “FOLLOW THE YELLOW BRICK ROAD” AS SHE GUTS HABEAS

The government has released a new version of the DC Circuit opinion in the Latif case. (Via DC Circuit Review h/t scribe)



I suppose it should comfort us that the government no longer considers this passage from Janice Rogers Brown’s opinion to be classified. [I’ve underlined the bits the government previously claimed were classified; see PDF 39-40 to compare.]

What makes Latif’s current story so hard to swallow is not its intrinsic implausibility but its correspondence in so many respects with the Report he now repudiates. Like Dorothy Gale upon awakening at home in Kansas after her fantastic journey to the Land of Oz, Latif’s current account of what transpired bears a striking resemblance to the familiar faces of his former narrative. See THE WIZARD OF Oz (MGM 1939). Just as the Gales’ farmhands were transformed by Dorothy’s imagination into the Scarecrow, Tin Man, and Cowardly Lion, it is at least plausible that Latif, when his liberty was at

stake, transformed his jihadi recruiter into a charity worker, his Taliban commander into an imam, his comrades-in-arms into roommates, and his military training camp into a center for religious study.

Though it raises real questions why it was classified in the first place. Really? Our government classified a Wizard of Oz analogy! And it wonders why we doubt the men behind the curtain.

And a good thing they released it, too. It makes Rogers Brown's comment earlier in the opinion analogizing Dorothy's Uncle Henry to Judge Henry Kennedy look every bit as disrespectful as it did in the first draft...

Even dotting Uncle Henry managed to evaluate Dorothy's credibility when she professed that the family and friends gathered around her bed had been with her in Oz. See THE WIZARD OF Oz (MGM 1939) ("Of course we believe you, Dorothy."). The district court, by contrast, mustered only a guarded finding of plausibility.

But at least we know that Rogers Brown—and not Kennedy—is the one who has gotten lost in Oz.

But a look at numbered page 21 shows all you need to know about the government's good faith in this reconsidered redaction. The government admits details that all-but prove it is what I speculated it was—TD-314/00684-02, an interrogation report based on a Pakistani intake interview and therefore subject to Pakistani's desire for bounty. On page 14, for example, it admits this report came from Latif's first interrogation (and therefore before he was in US custody). On page 19, it admits the report is a screening interview (an admission left unredacted in at least one other document in this case). On page 4 of Henderson's concurrence

(PDF 54), she reveals the report was “written” in late December 2001—which therefore dates it to the period when Latif was still in Pakistan. But page 21, where it presumably describes the circumstances of the report—in which Pakistanis presumably had every incentive to spin tall tales as Arab prisoners did—remains largely redacted.

Nowhere in the newly revealed passages does the government explain the circumstances of the interrogation and, if relevant, the involvement of the Pakistanis, and therefore not just additional opportunities for miscommunication, but also the profit motive driven by our bounty system. And also the fact that a slew of reports—including some of the interrogations purportedly also reported in TD-314/00684-02—seem to build a generic narrative around certain details. Admit you were in Kabul? Then the Pakistanis will supply a story about being at the rear lines for the Taliban.

Just like Frank Baum did.

Ultimately, though, this is the most important newly released passage.

True, the court cited problems with the Report itself, including its substantial redactions, [redacted] its reference to Latif’s “hand” instead of his head injury, [two lines redacted] and the perceived lack of corroboration. But the Report was not so inherently unreliable that it could be discarded in the absence of countervailing evidence offering a more likely explanation for Latif’s travels. See *supra* pp. 20-31. And Latif offers no evidence to rebut the Government’s presumptively reliable record aside from his own statements and the Report itself. A merely “plausible” explanation cannot rebut the presumption of regularity. See *Riggs Nat’J*, 295 F.3d at 21. The other two grounds for the court’s decision—minor transcription

errors in the Report and a lack of corroboration for its incriminating statements-do not satisfy that standard. As we have already discussed, see supra pp. 21-27, the mistakes in the Report provide no support for the much more extensive fabrication Latif alleges. And to the extent the district court relied on a lack of corroborative evidence to discredit the Report, it highlighted its failure to afford the document a presumption of regularity. By definition, a presumptively reliable record needs no additional corroboration unless the presumption is rebutted.

It reveals that whoever wrote the report in question didn't know his ass—or rather, a hand—from the hole in Latif's head. And it reveals that Janice Rogers Brown is prepared to let the government present any document, no matter how obviously flawed, and based on whatever fiction that document presents, build an entire new world.

If this Report were true someone—one of the eight people who admitted to being recruited by Latif's alleged recruiter, any of the many people who did fight out of Kabul, or the people alleged to have trained with him—would have been able to ID Latif. The government has had 10 years to find someone to do that. And no one—not a single one—corroborates the fantasy that Janice Rogers Brown is so sure deserves treatment as presumptively reliable.

If only we had ruby slippers to click together to get out of Rogers Brown's fantasy world.