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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Jamal Atalla,

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CV 09-1610-PHX-NVW

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Petitioner,

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ORDER

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vs.

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John Kramer, District Director of United States Citizenship and Immigration Services, United States Citizenship and Immigration Services

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Services, United States Citizenship and Immigration Services

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Respondents.

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Pending before the Court is Respondents' Motion for Summary Judgment. (Doc.

17

#17).

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Respondents initially moved for summary judgment on two issues: (1) whether

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Atalla testified falsely when he applied for naturalization; and (2) whether, in doing so,

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Atalla intended to deceive United States Citizenship and Immigration Services (USCIS).

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In their Reply, however, Respondents conceded that there was a genuine issue of material

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fact as to whether Atalla intended to deceive USCIS, but contended that they were still

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entitled to summary judgment as to whether Atalla testified falsely.

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The Court is not required to grant summary judgment even when it appears that

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there is no genuine issue of material fact. *See* Fed. R. Civ. P. 56 advisory committee's

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note on 2007 amendments (citing *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256-57

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(1948)) ("It is established that although there is no discretion to enter summary judgment

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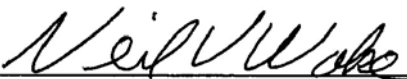
when there is a genuine issue of material fact, there is discretion to deny summary

1 judgment when it appears that there is no genuine issue as to any material fact.”). Nor
2 would it be wise to do so in this case. It would not conserve judicial resources for the
3 Court to grant summary judgment solely on the issue of whether Atalla provided false
4 testimony. A hearing pursuant to 8 U.S.C. § 1421(c) would still be required on the
5 separate issue of Atalla’s intent, and most, if not all, of the evidence relevant to that issue
6 would also be relevant to the issue of whether Atalla testified falsely. Because the two
7 issues are intertwined, it would be more efficient for the Court to consider both issues
8 during the 8 U.S.C. § 1421(c) hearing.

9 IT IS THEREFORE ORDERED that Respondents’ Motion for Summary
10 Judgment (doc. #17) is denied.

11 IT IS FURTHER ORDERED that the Stay of Discovery issued December 2, 2009
12 (doc. #19) is lifted and discovery may proceed. By separate order, the Court will set a
13 Scheduling Conference.

14 DATED this 12th day of March, 2010.

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19 Neil V. Wake
20 United States District Judge
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