Lord Reid stated that he had no reason to alter the view which he expressed in Warner, that knowledge is an element of the crime. 15/ Lord Pearce, Lord Wilberforce, and Lord Diplock all expressed the view that the term "possession" as used in Warner imported a mental element. 16/

One commentator has stated that prior to the enactment of the Misuse of Drugs Act of 1971, the mental element required for conviction for drug possession consisted of two stages:

> First, it had to be proved that an accused knew that he had actual or constructive possession of the article which contained the drugs. Secondly, although it could not be proved that the accused knew the exact nature of what he had, it had to be proved that there were facts from which it could be inferred that he knew he had a substance of an illicit nature, though not necessarily what kind of illicit substance it was. I. McClean & P. Morrish, Harris's Criminal Law 269 (22d ed. 1973). 17/

15/ [1969] 1 All E.R. at 349.

16/ Id., at 358, 360, 361.

17/ The Misuse of Drugs Act of 1971 attempted to clarify the law pertaining to possession of dangerous drugs. The Dangerous Drugs Act of 1965, under which the respondent was convicted, was repealed. Section 28(3)(b) of the new Act specifically provided that a defendant shall be acquitted of various drug offenses, including possession:

> (i) if he proves that he neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug; or

(cont'd)

We conclude that the statute under which the respondent was convicted contained a sufficient knowledge requirement to ensure that persons whose possession was

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> (ii) if he proves that he believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.

By the enactment of this section, Parliament appears to have been taking the course suggested by Lord Reid and Lord Pearce in Warner, and thereby placing the burden on the defendant who has been shown to be in the physical control to prove that his possession was innocent.

There are several statements in the legislative history of the Misuse of Drugs Act of 1971 which indicate that at least one member of Parliament believed that as a result of Warner the crime of possession under the Dangerous Drugs Act of 1965 was "absolute" and did not require any mens rea. 808 Parl. Deb., H.C. (5th ser.) 617-18 (1970). This view ignores the fact that there was a substantial knowledge requirement before one could even be said to be in "possession" of a drug. To say that possession is an "absolute" offense begs the question. The term "absolute" is very imprecise. As was pointed out by Lord Pearce in Sweet v. Parsley, [1969] 1 All E.R. 347, 358 (H.L.), the term "absolute" may describe "an offence to which the normal assumption of mens rea does not apply, but in which the actual words of the offence (without any additional implication of mens rea) may well import some degree of knowledge, e.g., the word

(cont'd)

entirely innocent would not be convicted. In this respect, cases such as Irving, Marriott, Smith, and Carpenter establish that persons asserting plausible defenses based on lack of knowledge were not convicted. On the other hand, in cases such as Warner, Lockyer, Fernandez, and Dalas, where the defenses advanced were quite incredible, the courts sustained the convictions.

It is true that some of the formulations of the knowledge requirement in the British cases seem obtuse. It has been suggested that this may be due, in part, to judicial overreaction to the fear that juries would abuse a liberal formulation of the knowledge requirement and be too eager to allow drug peddlers to escape for lack of proof of knowledge. D. Miers, The Mental Element In Drug Offences, 20 Nor. Ir.L.Q. 370, 376-77, 383 (1969). See the commentary on the Dalas case in [1967] Crim. L. Rev. 125. This fear may have been misplaced; however, we do not believe that the Dangerous Drugs Act of 1965 created an offense which permitted the conviction of persons whose possession was innocent and readily explainable.

Conviction for possession of cannabis resin under the Dangerous Drugs Act of 1965 required that the defendant have had knowledge that he possessed an illicit substance which proved to be cannabis resin. A person who was entirely unaware that he possessed any illicit substance would not have been convicted under the Dangerous Drugs Act of 1965. The respondent's plea of guilty to the charge of possession of cannabis resin under the Dangerous Drugs Act of 1965 is a conviction

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'possession' as in Warner's case." We believe that the cases, not the Parliamentary Debates, are the most accurate source of information as to the state of English law at the time of the respondent's conviction.

of a law relating to the illicit possession of marihuana within the meaning of section 212(a)(23) of the Immigration and Nationality Act.

Furthermore, counsel's intimation that the respondent pleaded guilty on the advice of British counsel that British law did not permit a defense of lack of knowledge is not reflected in the record. In a letter dated March 14, 1972, British counsel retained by the respondent at the time of his conviction stated that he believed the respondent had a good defense on the facts of the case. 18/ However, the respondent allegedly expressed a concern for the welfare of his wife, who was then pregnant and suffering physical and emotional difficulties, if she were called upon to testify. British counsel stated that he "was obliged to explain to him [the respondent] that the only course open that would obviate the need for her [his wife's] appearance would be for him to plead guilty." The letter implies that the respondent pleaded guilty to obviate the necessity for his wife's appearance as a witness. British counsel does not state that his advice to the respondent, or the respondent's decision to plead guilty, had anything to do with the unavailability of a defense based on lack of knowledge under the British statute.

The respondent had an opportunity to obtain advice of competent counsel and to fully litigate all possible defenses. He chose instead to take a calculated risk by pleading guilty to the charge. Deportation proceedings are not a forum for redetermining the question of guilt, which has already been established by the respondent's plea. See Rassano v. INS, 377 F.2d 971, 974 (7 Cir. 1966), vacated and remanded on other grounds 377 F.2d 975

18/ A copy of this letter is appended to the respondent's motion to terminate dated March 24, 1972.

(7 Cir. 1967); Giammario v. Hurney, 311 F.2d 285, 287 (3 Cir. 1962); Matter of Gutierrez, Interim Decision 2234 (BIA 1973). Although counsel indicated at oral argument that a challenge to the British conviction was being contemplated, we have received no information that such a challenge has actually been undertaken (Transcript of oral argument, pp. 45-6).

B. Is Cannabis Resin Marihuana Within the Meaning of Section 212(a)(23)?

The respondent asserts that the term "marihuana" as used in section 212(a)(23) does not include cannabis resin. Counsel introduced expert testimony by Lester Grinspoon, M.D., and a book written by Dr. Grinspoon, to show that cannabis resin is not marihuana (Transcript of hearing, pp. 35-43; Ex. 13).

According to Dr. Grinspoon, there are three grades of intoxicating drug which are prepared in India from the plant Cannabis sativa (L.), and which serve as standards against which preparations produced in other parts of the world are compared for potency. Bhang consists of Cannabis sativa leaves dried and then crushed into a coarse powder and perhaps mixed with seeds and chopped up stems of the plant. Ganja, the second strongest preparation, is made from the tops of cultivated female plants and is estimated as being two or three times as strong as bhang. Pure resin of the pistillate flowers is called charras and is the most potent of the intoxicants, being five to eight times more potent than bhang. Charras, or cannabis resin, is called hashish in some places.

Dr. Grinspoon has stated that the chemical compounds responsible for the intoxicating effect of cannabis are commonly found in the resin. Although it is generally believed that the plant's active agents are found solely

in the resin, there is insufficient evidence to support this hypothesis. It is possible that other parts of the female and male plants may contain active substances.

The gist of Dr. Grinspoon's testimony is that, as used in the United States, the term "marihuana" refers only to a preparation comparable to Indian bhang, and should be distinguished from cannabis resin which is comparable to Indian charras (or hashish) (Transcript of hearing, p. 37). While this argument has some technical appeal, we are not persuaded by it.

The term "marihuana" is not defined in the Act, nor is the legislative history explicit as to the meaning to be given to the term. In the absence of explicit legislative guidance, we must strive to interpret the Act in a manner consistent with the congressional purpose.

The provisions for the exclusion and deportation of persons convicted of possession of marihuana were part of a congressional scheme to deal with the evils of drug abuse. S. Rep. No. 1651, 86th Cong., 2d Sess., U.S. Code Cong. & Ad. News 3134-35 (1960). In other statutes having the same objective, Congress has treated the term "marihuana" as including cannabis resin. 21 U.S.C. 802(15); Act of August 16, 1954, ch. 736, 68A Stat. 565; Act of July 18, 1956, ch. 629, §106, 70 Stat. 570; see United States v. Piercefield, 437 F.2d 1188 (5 Cir. 1971), cert. denied, 403 U.S. 933 (1971); United States v. Cepelis, 426 F.2d 134 (9 Cir. 1970), cert. denied, 404 U.S. 846 (1971). In the absence of express congressional direction to the contrary, we shall not create a distinction between cannabis resin and marihuana under the Immigration and Nationality Act.

Several federal courts have noted that hashish (cannabis resin) is merely a refined form of marihuana. United States v. Piercefield, supra; see United States

v. Cepelis, supra. It would be illogical to construe the term "marihuana" under section 212(a)(23) as including the cannabis leaves (possibly mixed with stems and seeds) which contain intoxicating cannabis resin, while not including the pure form of the resin which has a much greater intoxicating effect. While it is true that ambiguous provisions of the immigration laws are often construed in favor of the alien, this general maxim does not require us to ignore common sense and legislative objectives in order to reach a construction favoring the alien. Cf. Chanan Din Khan v. Barber, 253 F.2d 547, 550 (9 Cir. 1958), cert. denied, 357 U.S. 920 (1958).

Matter of Paulus, 11 I&N Dec. 274 (BIA 1965), is distinguishable. That case involved a factual issue concerning the identity of the drug that the alien was convicted of trafficking in. The record of conviction referred only to a "narcotic drug" under California law, which included substances not defined as "narcotic drugs" under the immigration laws as interpreted by the federal courts. Since the conviction was alleged to be the ground for deportation under section 241(a)(11), we held that the factual uncertainty as to what drug was involved had to be resolved against the Service, the party bearing the burden of proving deportability.

In the present case, however, there is no factual dispute as to what drug the respondent was convicted of possessing. The issue is a legal one: Is cannabis resin "marihuana" within the meaning of section 212 (a)(23)? We have resolved this legal issue against the respondent.

Counsel has cited Matter of Gray, A30 310 271 (IJ September 23, 1971), an unpublished decision by an immigration judge, which held that hashish is not "marihuana" within the meaning of section 212(a)(23) of the Act. The Service took an appeal from that decision, but the appeal was later withdrawn. Such withdrawal, however, does not

indicate Service acquiesence to that decision. Cf. Matter of Mangabat, Interim Decision 2131 (BIA 1972), aff'd on other grounds Cabuco-Flores v. INS, 477 F.2d 108 (9 Cir. 1973). Our decisions are binding precedent on the immigration judges, rather than vice versa. 8 C.F.R. 3.1(g). The short answer to counsel's use of Gray is that we disagree with that decision and decline to adopt its reasoning in the present case.

In his brief, counsel attacks the constitutionality of section 212(a)(23). 19/ As he concedes, however, we have no power to consider a constitutional challenge to the statutes which we administer. Matter of Santana, 13 I&N Dec. 362, 365 (BIA 1969); Matter of Wong, 13 I&N Dec. 820, 823 n. 2 (BIA 1971); Matter of L-, 4 I&N Dec. 556, 557 (BIA 1951).

We are not unsympathetic to the plight of the respondent and others in a similar situation under the immigration laws, who have committed only one marihuana violation for which a fine was imposed. Nevertheless, arguments for a change in the law must be addressed to the legislative, rather than the executive, branch of government.

IV. SUMMARY AND CONCLUSION

We have concluded that the respondent's motion to defer our decision must be denied. We have also concluded that the respondent is deportable under section

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19/ We have also considered the amicus curiae brief submitted in behalf of the respondent by the American Civil Liberties Union. A large portion of that brief is devoted to arguments concerning the constitutionality of section 212(a)(23). We believe that the other issues raised in the amicus brief have been dealt with adequately in the course of our opinion and need not be reiterated.

241(a)(2) of the Act, and that he is statutorily ineligible for adjustment of status under section 245 of the Act. The respondent is not eligible for any relief from deportation except voluntary departure, which has been granted to him by the immigration judge. The immigration judge reached the correct result; the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 60 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

NEW YORK POST, FRIDAY, NOVEMBER 29, 1974

Rolling Stone

Lennon: 'Dirty Tricks' Victim?

By WARREN THOMAS

John Lennon doesn't know the half of it. He thinks that Nixon's men were behind his deportation problems—and he's right. Only he doesn't know how far they were willing to go.

In interviews with highly reliable sources within the U. S. Immigration and Naturalization Service, Rolling Stone has learned exclusively the steps that were taken after the government decided to deport Lennon.

Not only was there illegal outside interference in his case, the sources say, but there were plans for a big political trial as well—a Chicago 7, Harrisburg 7 and Gainesville 8 rolled into one. It would be a whole lot of fun. They would play Lennon's albums— his songs supporting such subversions as Irish freedom, Women's Lib, the rights of blacks and Indians. The decriminalization of marijuana. Sample lyrics:

"No short-haired yellowbellied son of Tricky Dicky is going to Mother Hubbard soft soap me." And when they finished that field day, they would turn to another—Lennon's friends, people like Jerry Rubin, Abbie Hoffman, Rennie Davis, Bobby Seale, Huey Newton—all the heavies. And then for overkill there was always Lennon's beliefs. "Didn't he say something about the Pope should smoke grass?" asked one source.

The idea for the public trial, according to the sources, came from James F. Greene, then associate commissioner of the Immigration Service and now deputy commissioner. He allegedly telephoned New York district director Sol Marks, telling him to revoke Lennon's visa and to prepare for the big trial.

* * *

Marks got his best man for the case, trial attorney Vincent A. Schiano. Schiano had been in charge of all the recent big New York deportation cases—Carlo Gambino, Irish revolutionary Joe Cahill, former Nazi Hermine Braunsteiner Ryan, happy hooker Xaviera Hollander. (She sent him a copy of her book inscribed: "You don't really find me an 'undesirable' alien, do you Mr. Schiano?" He passed on the pass.) However, Schiano was also a "troublemaker." He had led a union drive; he had questioned too many im-

Cont'd on following page.

Rolling Stone

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migration policies; and he had refused to answer questions during a grand jury investigation into what were described only as "irregularities." And so he had been stripped of his office of Chief Trial Attorney and given a desk in an out-of-the-way corner of the 11th floor citizenship section. As a final insult, they gave him no phone.

But Schiano was still the man for the job, and Marks knew it. But the minute he put Schiano on the case, Schiano started causing problems. First of all, he didn't want a big political trial. Sources said Schiano argued that such a trial would be a disaster; it would create ill feelings among young people; it was unnecessary legally. The government wanted to get rid of Lennon, right? Schiano argued. That was a snap; Lennon either had or did not have a criminal record. If he had one, he was out—and everyone knew Lennon had been convicted in the Marylebone Magistrates' Court in London on Nov. 26, 1968, for possession of marijuana. (Actually it was hashish, Lennon's attorney says, but that's another story.) That was the law. Simple as that. Why bother with the songs?

* * *

Marks got back to Greene, sources said, and Greene got back to his boss, Raymond Farrell, who was then the commissioner. Whom Farrell called is unknown, but apparently someone concurred, because eventually Marks told Schiano to handle the trial however he wanted. The big political trial was out.

Schiano had still another beef. Why revoke the two-week extension on Lennon's visa? Wouldn't it be simpler to let it run out than to revoke it midway, creating a mile-wide hole in the proceeding that Lennon's lawyers were almost sure to run through? But apparently, the sources said, Marks was under intense pressure to kick Lennon out, and on that point Schiano lost.

On March 6, 1972, Marks revoked Lennon's visa extension which he had granted just five days earlier. "It is now understood that you have no intention of effecting your departure," he said in his letter to Lennon. It was an understanding, Marks said later, that he got when Lennon and his wife, Yoko Ono, applied on March 3, 1972, for status as artists, one way of eventually applying for permanent residency.

Marks, now retired and living in Florida, admits that the political trial idea was at least kicked around in his office. "That might have been discussed tangentially," he said, "but never with any seriousness." He also admits talking to Greene about the case but says that Greene didn't interfere in his decision to deport Lennon, as Lennon is now claiming in court. "I talked with him about it," Marks said. "A [redacted] necessarily would. I don't construe that as interference at all. After all, the com[redacted] of Immigration has complete authority vested in him by the Attorney General, which is in accordance [redacted] commis[redacted] shots on anything."

But did either Farrell or Greene call the shots in the Lennon case?

"Well, this is something that I will withhold comment on," Marks said.

ROLLING STONE MAGAZINE

(Continued Tomorrow)

PARADE May 12, 1974

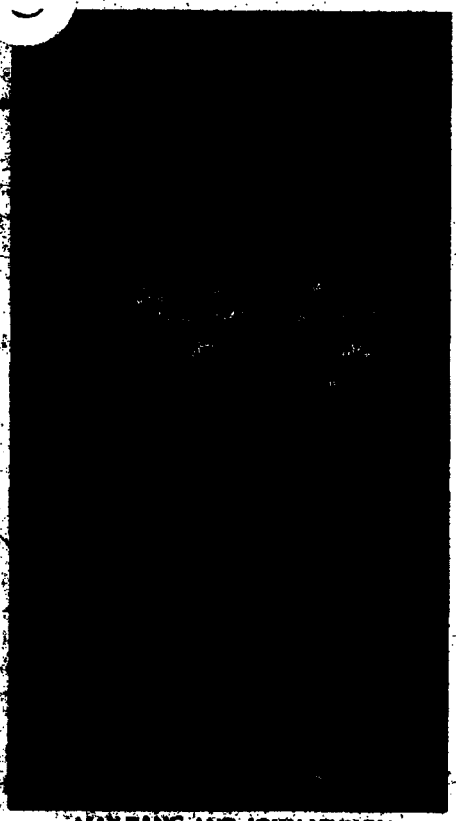
Yoko and John

The word is out that Yoko Ono and John Lennon have split—how reliable it is, no one but Yoko and John knows, and neither is telling.

Apparently Lennon is making the rounds of Los Angeles with his former secretary May Pang, while Yoko is making the recording scene in New York with guitarist David Spinoza.

Supposedly Spinoza is helping Yoko with her new record album. "I've been working on her album for more than nine months," Spinoza says, "and Yoko is coming up with some pretty weird notes. But so long as the loot is good, it's okay with me."

Also from the Beatles front comes the news that George Harrison will tour the U.S. this fall most probably with Ringo Starr. They will do about 25 concerts in a dozen cities.



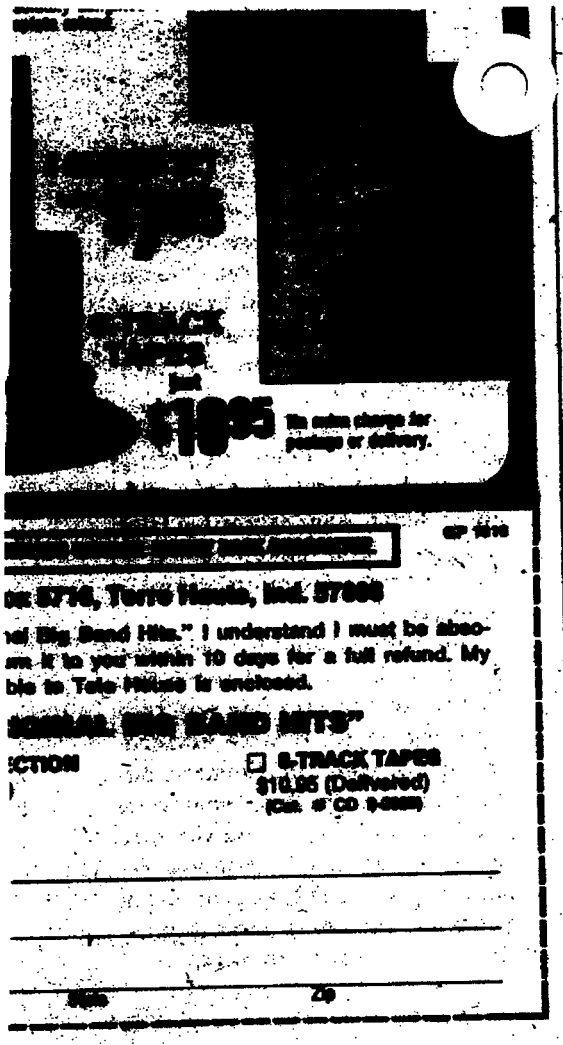
MAY PANG AND JOHN LENNON

TV Violence

Violence on television may bring a smile to the face of your son. If it does, watch out—it may very well mean aggressive behavior later, according to three experts in psychology, Ph.D.'s Paul Ekman, Robert M. Liebert and Wallace V. Friesen of the Department of Psychiatry at the University of California/San Francisco.

In their study of 5- and 6-year-old boys, they found that those who looked happiest while watching violence were aggressive later, and those who looked pained or disinterested were more helpful to others later.

The authors' findings with the group under study showed that "facial expressions while watching television reveal reliable information about emotion. Children differ markedly in their emotional reactions while watching violence on television. Such emotional reactions predict subsequent social behavior, including both aggressive and altruistic activities."



mother if he could hire me for 'local color.'"

After that, show business just [illegible] tually, Gallis has worked in burlesque, radio, and legitimate theater as [illegible] g voice-overs for TV commercials and playing six parts in the dubbing [illegible] ilmation movie "War and Peace." He's now appearing with the Anderson actors in a nostalgic musical on Broadway called "Over There." In between jobs, he globetrots and works on an as-yet-unpublished cookbook of international recipes.

"Every place I've been, wherever I eat something I like," Gallis says, "I request the recipe for my collection—so now I've got complete menus from many countries." Each year, he throws a party for 60 friends and fixes "rijsttafel," an Indonesian rice dish with two dozen condiments. For easier meals, though, he prefers delicious Italian dumplings called Spinach-Cheese Gnocchi, (pronounced "ny-oh-kee"), served with sautéed chicken cutlets and a watercress salad.

spinach-cheese gnocchi

1 pint ricotta cheese
1 pkg. (10 oz.) frozen chopped spinach
¼ cup grated Parmesan cheese
1 egg, lightly beaten
½ teaspoon nutmeg
¼ to ½ cup unseasoned bread crumbs
Salt and pepper
Flour
Melted butter or margarine

Put ricotta in a strainer over a bowl; let drain in refrigerator for at least 3 hours. Cook frozen spinach as suggested on box. Drain well in a strainer. Let cool; squeeze out as much liquid as possible. Place squeezed spinach in mixing bowl; add drained ricotta, mix well. Add Parmesan cheese, egg and nutmeg. Mix well; add bread crumbs gradually. Add only enough so that mixture can be shaped into balls. It must not be too firm, just firm enough to handle. Season with salt and pepper to taste. Form into 1-inch balls; roll in flour and place on wax paper. Sprinkle with flour. Bring 2 quarts unsalted water to a rolling boil and drop in the little balls a few at a time so as to not stop water from boiling. When they rise to top, boil 3 minutes longer. Remove with slotted spoon to a serving dish. Pour melted butter over all. Serve with additional grated Parmesan cheese. Makes six servings.

TESTED IN PARADE'S KITCHEN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON,
Plaintiff

-against-

ELLIOT RICHARDSON, Attorney General of the United States; LEONARD CHAPMAN, Commissioner, Immigration and Naturalization Service; EDWARD A. LOUGHRAN, Associate Commissioner, Immigration and Naturalization Service; SOCRATES ZOLATAS, Regional Commissioner, Northeastern Region, Immigration and Naturalization Service; SOL MARKS, Director, District No.3, Immigration and Naturalization Service,
Defendants

73 Civ. 4476 (RO)

JOHN WINSTON ONO LENNON,
Plaintiff

-against-

THE UNITED STATES OF AMERICA; ROBERT H. BORK, as Acting Attorney General of the United States; RICHARD KLIENDIENST, individually and as former Attorney General of the United States; JOHN A. MITCHELL, individually and as former Attorney General of the United States; RAYMOND FARRELL, individually and as former Commissioner of the Immigration and Naturalization Service; SOL MARKS, individually and as District Director, New York, Immigration and Naturalization Service, the IMMIGRATION AND NATURALIZATION SERVICE; and PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT,
Defendants

73 Civ. 4543 (RO)

NOTICE TO TAKE DEPOSITIONS UPON ORAL EXAMINATION

TO: Joseph Marro, Esq., Assistant U.S. Attorney
Southern District of New York
Foley Square
New York, New York

Sol Marks, District Director
Immigration and Naturalization Service
20 West Broadway
New York, New York

PLEASE TAKE NOTICE that at 9:30 A.M., on the 17th day of May, 1974, at 515 Madison Avenue, New York, New York, the plaintiff in the above-entitled actions will take the deposition of the defendant, SOL MARKS, whose principal place of business is at 20 West Broadway, New York, New York, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a Notary Public or before some other officer authorized by the law to take depositions. The oral examination will continue from day to day until completed. You are requested to produce the documents set forth below: all files, work folders, correspondence, transcripts, records, memoranda, notes, memorabilia, tapes, logs and all other records and documents including logs, steno books containing shorthand notes and all other records of telephone calls, interviews, appointments or other oral or written communications, all reports or communications with governmental or non-governmental agencies, authorities or persons relating to the plaintiff JOHN LENNON.

LEON WILDES
Attorney for Plaintiff
515 Madison Avenue
New York, New York 10022
(212) 753-3468

Dated: May 10, 1974
New York, New York

1597

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

LEON WILDES

Attorney for

Office and Post Office Address

515 Madison Avenue

Borough of Manhattan **New York, N. Y. 10022**

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

LEON WILDES

Attorney for

Office and Post Office Address

515 Madison Avenue

Borough of Manhattan **New York, N. Y. 10022**

To

Attorney(s) for

5-10-74

Civ. Action No. 4476

Index No. 4543 Year 19 73

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN [illegible] and [illegible],

PLAINTIFF

-against-

[illegible], ET AL,

DEFENDANTS

[illegible] and [illegible],

PLAINTIFF

-against-

[illegible] AMERICA ET AL,

DEFENDANTS

[illegible] PETITIONS
[illegible] ACTION

LEON WILDES

Attorney for [illegible]

Office and Post Office Address, Telephone

515 Madison Avenue

Borough of Manhattan **New York, N. Y. 10022**

(212) 753-3468

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

RECEIVED
MAY 21 '74
TRIAL ATTORNEY

DISTRICT DIRECTOR
RECEIVED
MAY 17 1974
New York, N. Y.

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.
Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

Check Applicable Box

☐ Individual Verification being duly sworn, deposes and says: deponent is the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ Corporate Verification the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at

Check Applicable Box

☐ Affidavit of Service By Mail On 19 deponent served the within upon attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit of Personal Service On 19 at deponent served the within upon herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19

.....
The name signed must be printed beneath

3-16-74

THE NEW YORK TIMES, SATURDAY, MARCH 16, 1974

Notes on People

L+ 10

The District Attorney's office in Los Angeles is trying to sort out exactly what happened in a nightclub fracas the other night, before deciding whether to charge John Lennon, the former Beatle, with battery. Mr. Lennon is reported to have shouted "foul [illegible]" at Smothers and Dick [illegible] during the course of their act at the Troubador club, and to have "taken a swing" at Ken Fritz, the manager of the Smothers Brothers, before being ejected from the club.

Outside, Brenda Mary Perkins, a photographer, tried to take pictures of Mr. Lennon, and, she said later in a complaint, he slapped her over the right eye.

While the investigation continued, Mr. Lennon is said to have sent the Smothers brothers and the nightclub his apologies for the incident.

10

JPM:ka
73-3362
73-3363

March 6, 1974

John L. Murphy, Esq.
Chief, Government Regulations Section
Criminal Division
U.S. Department of Justice
Washington, D. C. 20530

Attention: Robert Widmer
Attorney

Re: John Winston Ono Lennon v.
Richardson et al.
73 Civ. 4476 (RO)

John Winston Ono Lennon v.
United States of America
73 Civ. 4543 (RO)

Dear Mr. Murphy:

On February 22, 1974, Judge Richard Owen signed an order to show cause in the above-entitled action, bringing on a motion for a preliminary injunction. The injunction seeks to direct the Government to produce certain information under the Freedom of Information Act and to enjoin the defendants from continuing the deportation proceedings. The injunction also seeks to enjoin the Board of Immigration Appeals from rendering its decision until such time as the plaintiff can present to the Board additional evidence with regard to the plaintiff's claim to non-priority status.

The Government opposed the motion and the matter was argued on March 1, 1974. Following oral argument, the Court reserved decision and the Board agreed to withhold its decision pending the Court's disposition of the motion.

JPM:ks
73-3362
73-3363

John L. Murphy, Esq. March 6, 1974

We are enclosing copies of all the papers filed on this motion and we will advise of further developments.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
JOSEPH P. MEEHAN
Assistant United States Attorney
Telephone: (212) 264-6508

cc: W. E. Farnham, Esq.
Regional Counsel
Immigration and Naturalization Service
Federal Building
Burlington, Vermont 05402

Sol Marks, Esq.
District Director
Immigration and Naturalization Service
20 West Broadway
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON, Plaintiff -against- ELLIOT RICHARDSON, LEONARD CHAPMAN, EDWARD A. LOUGHRAN, SOCRATES ZOLATAS, and SOL MARKS, Defendants	CIVIL ACTION NO. 73 C 4476 (Action #1)
JOHN WINSTON ONO LENNON, Plaintiff -against- THE UNITED STATES OF AMERICA, ROBERT A. BORK, RICHARD KLEINDIENST, JOHN A. MITCHELL, RAYMOND FARRELL, LEONARD CHAPMAN, SOL MARKS, IMMIGRATION AND NATURALIZATION SERVICE, and PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT, Defendants	CIVIL ACTION NO. 73 C 4543 (Action #2)

SUPPLEMENT TO
PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION AND OTHER RELIEF

LEON WILDES
515 Madison Avenue
New York, New York 10022
753-3468

Attorney for Plaintiff

Subsequent to the filing of the plaintiff's brief in support of this motion, the leading case of Banercraft Clothing Co. v. Renegotiation Board , 151 U.S.App. DC 174, 466 F.2nd 345 (1972) was reversed in a five to four decision by the United States Supreme Court (42 L W 4203). In view of the review of this important decision, a supplement to the brief is being filed to demonstrate that the "reversal" of the United States Supreme Court does not in any way diminish the authority of the Banercraft case for the proposition that the Court may enjoin an agency, in particular the Immigration Service, pending the outcome of the Freedom of Information Act litigation.

The Supreme Court's decision reversing the Banercraft case should not be understood to limit in any way the jurisdiction of a District Court to issue an injunction in a proper case in order to preserve the status quo. By its own terms, it was limited to the issuance of injunctions against the Renegotiation Board.

> "We find it unnecessary, however, to decide in these cases, whether or under what circumstances, it would be proper for the District Court to exercise jurisdiction to enjoin agency action pending the resolution of an asserted FOIA claim. We hold only that in a renegotiation case, the contractor is obliged to pursue its administrative remedy, and when it fails to do so, may not attain its ends through the route of judicial interference. The nature of the renegotiation process mandates this result and were it otherwise, the effect would be that renegotiation, and its aims, would be supplanted and defeated by an FOIA suit." 42 LW 4209.

The Supreme Court analyzed the renegotiation process as being of a very special nature under the Renegotiation Act of 1951. 50 U.S.C.

50 U.S.C. App. 1211 et seq., noting that the Renegotiation Board operates primarily by informal negotiations with a contractor who has already made a contract with a government agency, to "endeavor to make an agreement with the contractor... with respect to the elimination of excessive profits." Sec. 105(a). The Renegotiation Act provides for a series of negotiations at various levels, there being no binding effect of a determination at a lower level upon the administrative officer or Board, at the higher level. In fact, the judicial review provided for by the Renegotiation Act before the Court of Claims is a complete de novo proceeding which "shall not be treated as a proceeding to review the determination of the Board" and the Board's determination "shall not be used in the Court of Claims as proof of the facts or conclusions stated therein". Sec. 105(a). Moreover, the Supreme Court expressly affirmed that the District Court has equitable jurisdiction under the Freedom of Information Act to enjoin agency action in a proper case.

> "With the express vesting of equitable jurisdiction in the District Court by Section 552(a), there is little to suggest, despite the Act's primary purpose, that Congress sought to limit the inherent powers of an equity court." 42 LW 4209."

Even the four justices dissenting limited their dissent to the issue of whether or not the renegotiation process precluded judicial intervention in the agency proceedings.

The distinction between the deportation process as described by statute and regulation, and the renegotiation process as likewise

scribed by statute and regulation, and as analyzed by Banercraft
both the Circuit Court and Supreme Court levels, majority
dissenting opinions, militate for the issuance of an injunction
these proceedings. The renegotiation and deportation processes
distinguishable in several significant ways:

1. JUDICIAL REVIEW. The Renegotiation Act provides for a de novo proceeding in the Court of Claims, unfettered by any prejudice from the agency proceeding and free from any claim that the Board's determination is supported by substantial evidence. The Immigration and Nationality Act, 8 U.S.C. 1105(a) specifically designates the petition for review to be "determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact" and requires a finding that the Immigration Service's findings be "supported by reasonable, substantial, and probative evidence on the record considered as a whole" 8 U.S.C. 1105(a)(4).

2. DISCOVERY RIGHTS. The usual rights of discovery are available in a proceeding before the Court of Claims under the Renegotiation Act 50 U.S.C. App. Sec.1218, the Court of Claims having been described "by virtue of its role in the renegotiation process and its general expertise in the field of government contract" as being "uniquely qualified to supervise discovery against the Renegotiation Board." Note, 41 Geo. Wash.L.Rev.1072, 1084 (1973). The Immigration and Nationality Act's regulations do not permit a respondent so subpoena a witness in his own behalf in a deportation proceeding, 8 C.F.R.287.4(a)(2), nor is the Circuit Court of Appeals, upon a hearing of a petitionfor review, in a position to hear witnesses, testimony, or engage in discovery, 8 U.S.C. 1105(a)(4) since the proceedings are required to be determined "solely upon the administrative record".

It is therefore urgent and imperative that the proceedings before the Board of Immigration Appeals be enjoined before they are closed and finalized by a ruling of the Board of Immigration Appeals, as the discovery provided under the Freedom of Information Act may not be admissible

before the Circuit Court of Appeals if it is obtained subsequent to the finalizing of the record before the Board of Immigration Appeals.

3. FINALITY AND BINDING EFFECT. The parties are not bound by a prior determination made at any level of the Renegotiation Board structure. 50 U.S.C. App. Sec. 1218. On the contrary, in an immigration proceeding, the parties are bound by the determination of the Board of Immigration Appeals. Since the Board exercises the discretion of the Attorney General, as does the Immigration Judge and the District Director, 8 C.F.R. 3.1(d), the ruling of the Board of Immigration Appeals is the final word of the Attorney General subject to review under the provisions of the Immigration and Nationality Act 8 U.S.C. 1105(a) and its decisions are final 8 C.F.R. 3.1(d)(2) except in cases which it voluntarily refers to the Attorney General on its own. Id.

4. CONGRESSIONAL INTENT. The purpose of the Renegotiation Act, as expressed by Congress; with time not being of the essence in view of the fact that the contract has already been made is that the renegotiation process may continue on various levels without reference to prior decisions below. The Immigration Act was intended to be one of confrontation, with a premium placed upon the prompt removal of deportable aliens from the United States. In fact, the purpose of Sec. 106(a) of the Immigration and Nationality Act (Judicial Review) was to supplant and replace the many different methods, often dilitory and indirect, of securing review of deportation orders which existed previously (e.g., declaratory judgment actions, habeas corpus, etc.). The procedure provided by Sec. 106(a) was intended to streamline the removal process through a one step confrontation based upon an exact and complete administrative record. The necessity that that record be complete and all inclusive militates that any action by the government to finalize it in incomplete form be enjoined and prohibited by a Court of competent jurisdiction. The Banercraft decision holds that this District Court has such jurisdiction and may properly exercise it in an appropriate case to avoid undue hardship, as might result if plaintiff is required to take his sole and exclusive appeal of the Attorney General's action upon an incomplete record. The irreparable harm to plaintiff of such a situation is obvious and should be remedied

by this honorable Court.

Respectfully submitted

LEON WELDES
Attorney for Plaintiff

3-1-74

Board of Immigration Appeals

Memorandum for the File

In re: John Winston Ono Lennon

File: A17 595 321

At 3:00 p.m. I received a telephone call from Assistant U. S. Attorney Joseph Marro in New York. He advised that an application for a temporary restraining order was argued before United States District Court Judge Owen today and the Court took the case under advisement. The Court requested Mr. Marro to find out from the Board whether it would hold up its decision until the Court has an opportunity to rule on the motion. In the absence of some such assurance, the Court will issue a temporary restraining order. Mr. Marro hoped that the Judge will not be put in a position where he has to issue a temporary restraining order.

I pointed out to Mr. Marro that we have just received an appendix to counsel's brief, which will have to be circulated to the Board. The Board's decision has not yet been drafted and it is highly unlikely that it will issue in final form, approved by the Board, in the near future. (Mr. Schmidt, who was present in my office when the telephone call came in, advised me that he has a rough draft of some 20 odd pages and that he is working on the last point. His rough draft will not be finished before next week). Mr. Marro stated that he thought Judge Owen, who is newly appointed and completely unfamiliar with immigration law, will probably come out with his decision on the motion in a week or two.

I told Mr. Marro that, while I could not commit the Board to withholding final decision indefinitely, it seemed to me that the Board's decision in due course would not come out in the next couple of weeks. We will, however, continue with the case as if nothing had happened. If our decision should be approved in final form, I will telephone him and advise him of that fact, if before that time the Judge has not rendered a decision on the motion. Mr. Marro stated that this was satisfactory.

Maurice A. Roberts
Chairman

March 1, 1974

MAR:mhl

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON, Plaintiff -against- ELLIOT RICHARDSON, LEONARD CHAPMAN, EDWARD A. LOUGHRAN, SOCRATES ZOLATAS, and SOL MARKS, Defendants	CIVIL ACTION NO. 73 C 4476 (Action #1)

JOHN WINSTON ONO LENNON, Plaintiff -against- THE UNITED STATES OF AMERICA, ROBERT A. BORK, RICHARD KLIENDIENST, JOHN A. MITCHELL, RAYMOND FARRELL, LEONARD CHAPMAN, SOL MARKS, IMMIGRATION AND NATURALIZATION SERVICE, and PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT, Defendants	CIVIL ACTION NO. 73 C 4543 (Action #2)

Mr. Lowe accepted service 2/21/74

ORDER TO SHOW CAUSE

Upon the annexed affidavit of LEON WILDES, attorney for plaintiff, sworn to the 19 day of February, 1974, the summons, complaint and exhibits in the above-captioned actions, and it appearing that under the requirements of Title 5, U.S.C.Sec.552(a)(3) plaintiff is entitled to a hearing at the earliest practicable date, it is

ORDERED, that the defendants and each of them show cause at a motion term of this Court, at the United States District Courthouse thereof, Foley Square, New York, New York on the 15 day of ~~February~~ March, 1974 at ~~10 o'clock~~ 2:15 in the forenoon, or as soon thereafter as counsel may be heard why an Order should not be made herein:

1. Enjoining the defendants in Action #1 to cease from withholding from plaintiff the records kept by defendants as to ~~the cases in which the defendants decide not to commence deporta-~~ tion proceedings or decide to defer commencement of deportation

m519

proceedings (records as to "non-priority cases"), together with any evidence considered by the defendants in making such decisions and determinations;

2. Ordering defendants in Action #1 to make available to plaintiff the records described in paragraph #1 of this prayer for relief, and more fully described in the affidavit and complaint attached hereto, or in lieu thereof, ordering such defendants to supply to plaintiff a statement of the reasons for the decision and determination of all non-priority cases and a summary of the evidence before the defendants when they so decided and determined; and

3. Ordering that all proceedings on the part of defendants, their agents, servants, and employees be stayed, as such proceedings relate directly to the deportation proceedings presently pending which involve plaintiff directly, including but not limited to, the determination by the Board of Immigration Appeals concerning the plaintiff's appeal from a deportation order which adversely affected him, and

4. Ordering such other and further relief as to this Court seems just and proper in the circumstances.

SUFFICIENT CAUSE APPEARING THEREFORE, it is FURTHER ORDERED that service of a copy of this Order and the papers upon which it was granted upon the United States Attorney for the Southern District of New York on or before / P.M. on February 25 1974 be sufficient.

J. Owen
UNITED STATES DISTRICT JUDGE

DATED: NEW YORK, NEW YORK
February 22, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON, Plaintiff -against- ELLIOT RICHARDSON, LEONARD CHAPMAN, EDWARD A. LOUGHRAN, SOCRATES ZOLATAS, and SOL MARKS, Defendants	CIVIL ACTION NO. 73 C 4476 (Action #1)
JOHN WINSTON ONO LENNON, Plaintiff -against- THE UNITED STATES OF AMERICA, ROBERT A. BORK, RICHARD KLIENDIENST, JOHN A. MITCHELL, RAYMOND FARRELL, LEONARD CHAPMAN, SOL MARKS, IMMIGRATION AND NATURALIZATION SERVICE, and PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT, Defendants	CIVIL ACTION NO. 73 C 4543 (Action #2)

AFFIDAVIT IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION AND OTHER RELIEF

STATE OF NEW YORK)
)SS.:
COUNT OF NEW YORK)

LEON WILDES, an attorney duly admitted to practice law in the courts of the State of New York, being duly sworn, deposes and says:

1. I am the attorney for the plaintiff in these actions and likewise represent him in deportation proceedings instituted and maintained against plaintiff by the defendants MARKS, and IMMIGRATION AND NATURALIZATION SERVICE. As such, I am thoroughly familiar with the facts and circumstances surrounding the deportation proceedings against plaintiff, the basis for the within action pursuant to the Freedom of Information Act (Action #1) and the facts which form a basis for the action pursuant to Title 18, U.S.C., Sec.3504 and the United States Consti-

tution (Action #2) and make this affidavit in support of plaintiff's motion for a preliminary injunction and other relief.

2. Plaintiff, JOHN LENNON, a non-immigrant alien residing in the City and State of New York and a citizen of Great Britain, is an internationally known musician and is presently the subject of a deportation order which was issued against him on March 23, 1973.

3. On August 13, 1971, plaintiff, together with his wife, Yoko Ono Lennon, was admitted to the United States as a non-immigrant visitor for professional purposes and for the purpose of appearing in custody proceedings as to his stepchild, Kyoko Cox, his wife's child by a former marriage, and was authorized to remain in the United States until February 29, 1972. On March 1, 1972, a letter was written by defendant MARKS granting plaintiff permission to remain in the United States until March 15, 1972.

4. On March 6, 1972, while plaintiff and his wife were still lawfully in the United States, defendant MARKS wrote to the plaintiff and his wife revoking their permission to remain in the United States, and, simultaneously, issued Orders to Show Cause against the plaintiff and his wife charging them with deportability based upon allegedly having overstayed in the United States, making the plaintiff a respondent in a deportation proceeding as an "overstay", created by the very revokation of status of the same officer who instituted the proceedings, and with no act or allegation of any wrong-doing on the part of the plaintiff whatsoever. At the time the defendants were aware that the institution of deportation proceedings constituted an extreme hardship upon the plaintiff in that he and his wife were in the midst of serious custody proceedings in two jurisdictions in the United States with respect to their child, and in that the plaintiff and his wife were engaged in a desperate effort to locate the child. It was further known to the defendants at the time that the very institution of deportation proceedings

could preclude most available forms of discretionary relief available within the deportation process because of the fact that the plaintiff had been convicted, upon a plea of guilty, of the offense of possession of cannabis resin before a British court in 1968.

5. Deponent, in behalf of the plaintiff, requested on several occasions that proceedings not be instituted, and, once instituted, that they be cancelled, upon the grounds that they were discriminatorily commenced, tended to separate a family unit, would cause irreparable harm to the efforts to achieve legal and physical custody of the child, would deprive the United States of an artist of outstanding talents without due process of law, and was not in accordance with established (but unpublished) procedures not to institute proceedings in such cases. All of deponent's requests for such relief were denied.

6. Deponent prepared and filed in behalf of the plaintiff and his wife applications for third preference priority as outstanding artists on March 3, 1972. Upon information and belief, the department of the defendant, IMMIGRATION AND NATURALIZATION SERVICE charged with adjudicating such applications was instructed not to act upon the application, but in fact, to secrete the applications in a sealed envelope in a secret place for safekeeping, with no intention upon the part of the defendants to adjudicate the applications as required by law. Precipitated by an action against the defendant MARKS commenced in the District Court for the Southern District of New York, entitled JOHN WINSTON ONO LENNON AND ANOTHER against SOL MARKS, Civil Action Number 72 C 1784, defendant MARKS granted plaintiff's application for third preference priority status as an outstanding artist, acknowledging that the plaintiff was an alien, who because of his exceptional abilities in the arts, "will substantially benefit the national economy, cultural interests, or welfare of the United States." 8 U.S.C.1153. Nevertheless, defendant MARKS proceeded with the deportation proceedings against the plaintiff and his wife.

7. The defendants refused to discontinue deportation proceedings against the plaintiff's wife, despite the fact that she had been previously a permanent resident of the United States based upon her prior marriage to a United States citizen, despite the fact of the approval of a separate third preference petition in her behalf, and regardless of the regulations and operations instructions which provide that she should normally have been accorded an opportunity to apply for permanent residence without the institution of deportation proceedings. The proceedings against her, in fact, resulted in the granting to her of the status of permanent residence and resulted at the same time in the denial of the same remedy to her husband, the plaintiff.

8. Deponent was informed by a member of the staff of Senator Buckley of New York that his clients were thought to be "national security risks" and that the proceedings against them were instituted for this reason. On March 30, 1972 deponent wrote to the defendant FARRELL requesting a personal meeting to afford his clients the opportunity to be confronted with the allegations being made against them and to set the record straight. The meeting was declined. A copy of the exchange of correspondence is attached as an exhibit to this affidavit.

9. Plaintiff moved before the Immigration Judge to terminate the proceedings on the ground of their discriminatory commencement, but the application was denied by the administrative judge who ruled that "it is not the province of the Immigration Judge or of the Board of Appeals to review the wisdom of the District Director's action starting the proceedings, but to determine whether the deportation charge is sustained by the requisite evidence" (Decision, page 6). Plaintiff appealed the ruling of the Immigration Judge to the Board of Immigration Appeals, but, according to the decisions of the Board of Immigration Appeals cited by the Immigration Judge, neither the Immigration Judge nor the Board has jurisdiction to review the actions challenged in these judicial proceedings. Moreover, the record on

before the Board of Immigration Appeals is limited to the proceedings before the Immigration Judge, and the record on appeal of the Board's decision to the Circuit Court of Appeals is limited to the record on appeal before the Board of Immigration Appeals. The purpose of these actions is to expand the record before the Board and, consequently and eventually, before the Circuit Court of Appeals, to include submittedly improper activities and prejudgment on the part of various government officials. The inclusion of this material in the record will submittedly show that the proceedings were commenced discriminatorily in violation of established standards for political or other purposes other than the even-handed enforcement of the immigration laws, possibly based upon tainted evidence.

10. Deponent and his client have maintained that the deportation proceedings should never have been commenced and that, once commenced, should have been terminated for the reason that, upon information and belief the defendant, IMMIGRATION AND NATURALIZATION SERVICE considers this type of case to be in its 'non-priority' category, to wit: one which would normally not be commenced or if commenced would be terminated or otherwise concluded in a manner permitting the alien to remain in the United States despite the fact that he was technically deportable. Accordingly, based upon the thesis that the case was properly in the "non-priority" category, that such a category exists, though no where incorporated inpublished regulations, and that it is uniformly applied through a Non-Priority Review Board within the defendant NATURALIZATION IMMIGRATION AND NATURALIZATION SERVICE , and deponent demanded various records and information from the defendant MARKS under Title 5, U.S.C. Sec.552 on May 1, 1972, which demand is annexed to the attached complaint in Action #1 as Exhibit "A" . The requested information was not supplied. It is to be noted that plaintiff's request for similar relief during the deportation proceedings was likewise thwarted because the applicable regulation 8 C.F.R. 287.4 (a)(2) do not accord a respondent in deportation

tion proceedings the right to subpoena a witness, but sts such action in the Immigration Judge who refused to grant the subpoena.

11. The records concerned are records kept by the defendants in the ordinary course of their business as a governmental agency and consist, upon information and belief, of forms on each case setting forth the alien's status, grounds of deportability, and the basis for the determination not to enforce the alien's departure despite his deportability, as well as various statistics, data, standards and other records concerning the number of such aliens who are excludable or deportable. Upon information and belief such records are kept by the defendants (in Action #1) MARKS, as District Director, ZOLATAS, as Regional Commissioner, and CHAPMAN, as Commissioner of the Immigration and Naturalization Service.

12. After a long series of communications (see Exhibits attached to the complaint in Action #1 labeled "A" through "M") the defendants did supply certain general information. However, at no time have the defendants supplied plaintiff or your deponent with the records which we believe exist concerning the standards, criteria, and actual individual case records surrounding non-priority cases, which records are the subject of the within action commenced and maintained pursuant to the Freedom of Information Act.

13. Defendant LOUGHRAN, however, has confirmed the existence of the non-priority program and has defined what he calls a non-priority case to be "one in which the Service, in the exercise of discretion determines that adverse action would be unconscionable because of appealing humanitarian factors" such cases being identified at an early stage in Service processing and are not put under deportation proceedings.

14. It is the contention of your deponent that plaintiff is entitled to these records or a detailed summary or a listing

thereof pursuant to the Freedom of Information Act as stated in Action #1.

15. Moreover, deponent requests in behalf of the plaintiff that this Court stay all proceedings being maintained against the plaintiff as a respondent effected by a deportation order presently being administratively reviewed by the Board of Immigration Appeals, and on which oral argument was held on October 30. 1973 despite deponent's objections, and this affidavit is made in support of a motion for a preliminary injunction.

16. A preliminary injunction is requested because throughout the processing of the proceedings against his client, deponent has requested the records sought herein, and these records have neither been disclosed nor are they forthcoming. Nevertheless, procedures to deport the plaintiff continue.

17. It is respectfully submitted that the disclosure of these records will support the proposition that the plaintiff's case clearly fits within the category of a "non-priority case" and that by existing though unpublished standards used by the defendants in determining and deciding that an alien fits within such category, and if such standards were disclosed, the deportation proceedings could not have been properly commenced or maintained against plaintiff. It is further urged that the disclosure of such records will demonstrate that the proceedings against the plaintiff were prosecuted selectively, in a prejudicial manner, for reasons unrelated to his immigration status and that consequently they should be terminated.

18. Deponent appeared personally before the full panel of the Board of Immigration Appeals on October 30, 1973 to request that it voluntarily defer its determination reviewing the deportation proceeding before it, pending the disclosure of the records sought herein, but such application has been effectively denied (see attached letter dated November 20, 1973 of the Chairman of the Board of Immigration Appeals) and, upon information and belief, a decision of the Board is or may be imminent.

19. In Action #2 plaintiff seeks similar relief but upon different grounds. Plaintiff seeks to compel the defendants to perform their duty to affirm or deny the occurrence of an illegal act or acts pursuant to Title 18, U.S.C., Sec.3504 and to conduct a hearing to determine whether or not various decisions of the defendant, the IMMIGRATION AND NATURALIZATION SERVICE, with respect to discretionary applications filed by the plaintiff which have resulted in a deportation order against him, were in fact prejudged by the defendants, and in addition, whether such prejudgment was motivated, ordered, or supported by evidence obtained through illegal or unconstitutional means.

20. Deponent has no adequate remedy at law. Since deportation proceedings visit great hardship upon an alien, irreparable harm will be suffered by the plaintiff unless this Court stays all proceedings by the defendants against the plaintiff until such time as the records sought herein are forthcoming and may become a part of the proceedings before the Board of Immigration Appeals. Moreover, if any remedy at law exists, such remedy does not assure the plaintiff of adequate relief, because:

(a) The existing remedy of review before the Board of Immigration Appeals is too narrow to cover all of the wrongdoing claimed by the plaintiff. The jurisdiction of the Board is limited by law to reviewing the proceedings before the Immigration Judge which are in turn limited to hearing the sole issue of whether the plaintiff was deportable as an overstay and, if so, whether he was eligible for certain limited categories of discretionary relief. Neither the Immigration Judge nor the Board of Immigration Appeals claims any authority to review the actions of the District Director or the other defendants who, upon information and belief, have engaged in a conspiracy to deny all applications for discretionary relief and have refused and neglected [illegible] minority cases re-

quested in this action.

(b) Neither the Board of Immigration Appeals nor the Circuit Court of Appeals has authority, jurisdiction, or facilities to conduct evidentiary hearings relating to tainted evidence, prejudgment, or selective prosecution as requested in these actions. Moreover, the remand of such proceedings to be conducted by the Immigration Judge would be patently unfair and inappropriate in view of the claimed prejudgment of all aspects of the case against the plaintiff.

(c) To permit the defendants to finalize an order of deportation upon the prejudicial and incomplete record presently before the Board of Immigration Appeals would constitute a patent miscarriage of justice, would prevent the plaintiff from obtaining full and adequate review of agency action, would place the defendants in a position to benefit from their own possibly illegal and arbitrary act, and to profit from the baseless refusal to disclose information necessary to the plaintiff's defense which should always have been available to the public, to make possible the use of tainted evidence without recourse to an aggrieved party affected thereby, and to permit possible prejudgment of applications by government officials without recourse to the affected party.

21. In view of the stated unavailability of an adequate remedy, the plaintiff will suffer irreparable harm if the proceedings before the Board of Immigration Appeals are not stayed as requested herein, nor is there any other impartial forum before which the proceedings requested herein may be heard. Furthermore, the existence of a stay of deportation of the alien in connection with judicial review of the ruling of the Board of Immigration Appeals can in no way be considered to diminish

the irreparable harm which plaintiff would sustain if the Board of Immigration Appeals is permitted to reach its decision at this time, because such petition for review by statute "shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive" 8 U.S.C.1105(a)(4). Such limited review and the stay of deportation attendant thereto are obviously inadequate remedies under the circumstances.

22. The defendants can suffer no prejudice whatsoever, nor can they allege any harm to the government if the plaintiff, JOHN LENNON, is permitted access to this honorable Court before the completion of proceedings before the Board of Immigration Appeals rather than after their completion.

WHEREFORE, it is respectfully requested that the Court grant an Order staying all proceedings on the part of the defendants, their agents, servants and employees as such proceedings relate directly or indirectly to the deportation proceedings presently pending which involve the plaintiff herein, including but not limited to the determination by the Board of Immigration Appeals concerning the plaintiff's appeal from a deportation order which adversely affected him until a reasonable time (30 days) after the completion of proceedings before this Court, within which time plaintiff may furnish the Board of Immigration Appeals with the results of such proceedings, and granting such other and further relief as to this Court seems just in the circumstances.

LEON WILDES

Sworn to before me this
19th day of February, 1974.

[redacted]
Notary Public, State of New York
No. 31 - 2036862
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D.C. 20536

PLEASE ADDRESS REPLY TO

AND REFER TO THIS FILE NO.

April 7, 1972

Mr. Leon Wildes
Attorney at Law
515 Madison Avenue
New York, N. Y. 10022

Dear Leon:

The Commissioner has asked me to respond to your letter of March 30, 1972. Although, as you know, I would normally be delighted to discuss any problem with you, I don't see any point to such a meeting at the present time. The cases of Mr. and Mrs. Lennon are pending before a special inquiry officer. It goes without saying that any evidence bearing on their cases would have to be presented to the special inquiry officer and that his decision would be based on the evidence in the record. Neither I nor any other Service officer can influence the special inquiry officer's consideration and decision. I have no doubt that in this case, as in other cases, the Service will continue to adhere to its high standards of fairness and impartiality.

Warmest personal regards.

Sincerely,

Charles Gordon

Charles Gordon
General Counsel

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 3-3468

CABLE ADDRESS
"LEONWILDES," N. Y.

March 30, 1972

The Honorable Raymond Farrell, Commissioner
Immigration and Naturalization Service
Central Office
119 D Street North East
Washington, D.C. 20536

Re: Mr. and Mrs. John and Yoko Lennon
A17 597 321
[redacted] (b)(6)

Dear Sir:

As you know, I represent Mr. and Mrs. John Lennon in connection with their desire to regularize their immigration status so that they may continue their efforts to secure the custody of Mrs. Lennon's child, Kyoko, a citizen of the United States. Our efforts to date have met with unusual and unexplained opposition on the part of the Immigration Service.

I have received information through an official source that my clients are alleged to be national security risks and that such allegations are cited to justify the departure in this case from the usual fair and impartial application of the immigration laws of the United States Immigration and Naturalization Service.

I respectfully request a personal meeting with your office to afford my clients an opportunity to be

confronted with these serious, but apparently mistaken allegations, to submit explanatory information and, in short, to set the record straight. Since the institution of the present deportation proceedings are an apparent result of the allegations referred to, I submit that their pendency cannot constitute an appropriate basis for declining to arrange such a meeting.

I would appreciate your earliest reply so that a mutually convenient date could be arranged.

Very truly yours,

Leon Wildes

LEON WILDES

LW/ns