> inside it and it turns out that the contents comprise, for example, cannabis resin, it does not lie in his mouth to say: "I did not know the contents included resin". On the contrary, on those facts he must be regarded as in possession of it and, if not lawfully entitled, would, therefore, be guilty of an offense such as that charged in the present case.

By pleading guilty, this respondent must have admitted therefore those elements which the court would have considered necessary to establish to sustain a conviction. The first of course would be that the material which the police discovered was, in fact, cannabis resin, a prohibited drug. The second would be the admission that he was, in fact, in "possession" of such drug by reason of the fact that it was either in his actual custody or held by some other person subject to his control or for him and on his behalf. Finally the plea of guilty would admit that he was aware that there was some extra substance in the Binocular case which was in his home but not necessarily that he knew it was cannabis resin.

Even if the holding of the court in Varga v. Rosenberg (supra) is considered to be definitive and binding on what constitutes possession for purposes of Section 212(a)(23) of the Act, it seems clear that this respondent by his plea of guilty admitted such dominion and control over the drug as would have given him the power of disposal.

The lack of a requirement that the state establish that the defendant, in addition to having the drug under his dominion and control, also knew that it was the particular drug whose idenity the government established, is not as foreign and outrageous to the system of jurisprudence

of the United States as counsel for the respondent would have me believe.

It is true that the large majority of cases involving prosecutions for "possession" under the Uniform Narcotic Drug Act require a knowledge by the defendant of the existence of the narcotics where found, in addition to the elements of immediate and exclusive control or at least joint control or constructive possession. (91 A.L.R.(2) 810). However, it has been held in a minority of jurisdictions that such knowledge is not an element.

For example in State v. Boggs, 57 Wn. (2d) 484 (1961) the court in sustaining the conviction of the defendant for unlawful possession of a narcotic drug stated as follows:

> "in essence it is the appellant's contention that awareness by the accused of the narcotic character of the article possessed is an essential element to this offense. The appellant bases this contention upon the assumption that an intent to possess a narcotic drug is required to be proved under a charge of unlawful possession of a narcotic drug. This assumption is erroneous. The Legislature by its enactment of controls against the evil of the narcotic traffic through the adoption of the Uniform Narcotic Drug Act has made mere possession of a narcotic drug a crime, unless the possession is authorized in the Act. RCW 69.33.230 provides:
>
> > "it shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter".
>
> In construing this statute in State v. Hinker, 50 Wn.(2d)809, 314 P. (2d) 645 (1957), we stated:
>
> > "whether intent or guilty knowledge is to be made an essential element of this crime is basically a matter to be determined by the Legislature.

> Had the Legislature intended to retain guilty knowledge or intent as an element of the crime of possession, it would have spelled it out as it did in the previous statute. The omission of the word with intent evidences a desire to make mere possession or control a crime."
>
> Our holding in the Hinker case, that guilty knowledge or intent is not an element of the crime of possession of narcotics under RCW 69.33.230, is controlling in the disposition of appellant's first contention".

See also the discussion by the court in State v. Callahan, 77 Wn. (2d) 27 (1969) for a discussion as to what constitutes"possession" under the laws of the state of Washington. As the court in that decision pointed out, possession of property may be either actual or constructive. Actual possession means that the goods are in the personal custody of the person charged with possession; whereas constructive possession means that the goods are not in actual physical possession, but that the person charged with possession has dominion and control over the goods. As the court there points out, in the previous case of State v. White, it had been held that where the evidence showed that the defendant had been living on the premises for a month, sharing the rent, bringing furniture into the house, inviting others to spend the night, the defendant had sufficient dominion and control over the premises to find him guilty of constructive possession of marijuana found in the living room of the house, although the defendant denied any knowledge of its presence.

See also the article in 58 Virginia Law Review 751 (May 1972), "Constructive Possession in Narcotics Cases. To Have and Have Not".

The note in 91 ALR (2) 810, states also that the fact that possession of narcotics is only for personal use, does not prevent it from being "possession" in violation of paragraph 2 of the Uniform Narcotics Drug Act, this contention having been uniformly rejected by the courts. See for example in State v. Reed (1961) 34 N.J. 554, 170 A (2d) 419, where the court said that if the legislature had intended to limit the illegality to possession with intent to sell, administer, compound, and etc., it could have so provided. By failing to so state it made "possession" only the ground of illegality. The court stated the person who possesses, has the power to dispense it to another.

The constitutionality of the lack of a requirement of scienter in criminal cases was discussed by the Supreme Court in U. S. v. Balint, 258 US 50 (1922). That case concerned a conviction for violation of Section 2 of the Narcotics Act, 38 Stat. 786, selling narcotics without a written form issued by the Commissioner of Internal Revenue The court said as follows:

> "While the general rule of common law was that the scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crime even where the statutory definition is not in terms included, there has been a modification of this view in respect to prosecution under statutes, the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court.
>
> It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so

> is an absence of due process of law. But that objection is considered and overruled in Shevlin - Carpenter Company v. Minnesota, 218 US 57, 69, 70, in which it was held that in the prohibition or punishment of particular acts, the State may, in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense, good faith or ignorance".

The Court of Appeals for the Third Circuit gave consideration to the general problem of the lack of a requirement of a particular state of mind or intent in a criminal prosecution in U.S. v. Greenbaum which involved a prosecution for unlawfully introducing into interstate commerce cans of adulterated eggs. The court said after quoting U.S. v. Balint (supra) as follows:

> "while the absence of any requirement of mens rea is usually met with in statutes punishing minor or police offenses (for which fines, at least in the first instance, are ordinarily the penalties), we think that interpretation of Legislative intent as dispensing with the knowledge and wilfulness as elements of specified crimes is not to be restricted to offenses differentiable upon their relative lack of turpitude. Where the offenses prohibited and made punishable are capable of inflicting widespread injury, and where the requirements of proof of the offenders guilty knowledge and wrongful intent would render enforcement of the prohibition difficult if not impossible (i.e. in effect tends to nullify the statute). the legislative intent to dispense with mens rea as an element of the offense has justifiable basis. Notable among such offenses are dealings in adulterated foods and drugs."

See also the annotation at 152 ALR 755 for a general discussion of prosecutions for violation of food laws where ignorance, mistake of fact, lack of criminal intent or good faith may be present.

I conclude therefore that the requirements for a conviction in 1968 under the Dangerous Drugs Act of 1965, including as they do as a bare minimum the proof of or admission of possession, dominion and control, although perhaps different from the majority of jurisdictions in the United States, is actually followed in some states of the United States dealing with possession of drugs. The absence of a requirement for scienter or mens rea is followed by the majority of courts of the United States in other types of convictions leading to a possible sentence to penal servitude, and is not so repugnant to the principles of jurisprudence of this country that Mr. Lennon's conviction should not be recognized as a conviction relating to the possession of marijuana.

It should be noted in this connection that the phrase "conviction of violation of a law relating to the possession of marijuana" is broader than "a conviction for the possession of marijuana". For example, in Matter of P - C -, 7 I&N Dec. 100, the alien involved had been convicted under Section 11502 of the Health and Safety Code of the State of California for having agreed to sell heroin but having in fact furnished another substance in lieu of the narcotic. It was argued in the course of that proceeding that the statute, in fact, deals with fraud and false pretenses and is not a statute relating to a narcotic drug since it was entirely clear that no narcotic drug had in fact changed hands, nor was such exchange even contemplated by the alien. The Board of

Immigration Appeals held however that a conviction under the named section was, in fact, a conviction "relating to the sale of narcotics" and that the phrase "relating to" is a term of broad coverage.

A situation somewhat analogous to the relationship between the respondent's conviction and his immigration excludability exists in the body of cases involving prosecutions under 18 USC 1407. That provision of law requires a registration upon the crossing of a border of the United States by a narcotics addict, user or violator, with a possible $1000 fine or up to three years imprisonment as a criminal sanction. The annotation in 4 ALR (Fed) 616 shows that wilfulness is not an ingredient of the statute but that it is mala prohibita.

For example, in Adams v. US. C.A. 9, 299 F (2) 327 (1962), the individual concerned had been convicted in California for the possession of marijuana and committed to the Youth Authority of that State. He was charged with having crossed the border without reporting his conviction and the court excluded evidence on the effect of the expungement of his record by an honorable discharge from the Youth Authority. The court pointed out that Section 1407 should not depend on all of the peculiarities of the laws of the various states. It was stating in effect that a conviction for the purposes of Section 1407 is a conviction even though it might have been expunged by the operation of the laws of California. In Smith v. U.S. (1963) C.A. 9, 321 Fed. (2) 731, Cert. Den. 375 U.S. 988, the subject had been convicted in Arkansas for a violation of narcotic laws and sentence had been suspended on condition that he leave the State.

The court sustained his conviction under Section 1407 for failing to report this conviction, rejecting the contention that the court imposed condition of leaving the State was an unconstitutional condition and therefore no valid conviction under the Arkansas laws. The court assumed for the purposes of the case that an illegal sentence had been imposed but held that since the defendant would have been entitled to request that he be resentenced, the illegal sentence did not vitiate the conviction under 1407.

In Hasarat v. U.S. C.A. 9 321 F (2) 582, (1963), the court was concerned with a conviction under the California Health and Safety Code for agreeing to sell narcotics and selling something else, as was the concern of the Board of Immigration Appeals in Matter of P - C -, 7 I&N 100 (supra). It was held that this was a conviction for a narcotic or marijuana law violation which required registration upon crossing the border and failure to do so was a violation of Section 1407.

There is therefore a considerable volume of law relating to prosecutions for violation of 18 USC 1407 which are based on the existence of an underlying conviction of the defendant for a narcotics or marijuana violation where the courts have refused to consider relevant the mental state of the defendant, the legality of the original conviction or even its expungement under the laws of that state.

The Board of Immigration Appeals in Matter of Romandia-Herreros, 11 I&N Dec. 772 gave consideration to an alien who had engaged in activity relating to the possession of codeine and morphine.

However, after indictment in California and while out on bail, he left for Mexico and the California proceedings were not completed. However, under the laws of Mexico he was prosecuted in Mexico for a crime committed in a foreign territory for a violation of law which would also have been a crime in Mexico, namely the possession of morphine and codeine. The Board of Immigration Appeals held that he was deportable under Section 241(a)(11) of the Immigration and Nationality Act despite his conviction in a foreign state whose only claim to jurisdiction over the crime was the fact that the defendant was a national of that country, all of the alleged criminal acts having taken place in the United States. A somewhat similar decision was reached in Matter of Adamo, 10 I&N Dec. 593, which did not relate to a narcotics conviction but a conviction for embezzlement before an Italian Court for acts which had been committed entirely in the United States. The Board of Immigration Appeals stated that the record of a foreign conviction showing that it was a penal conviction is conclusive evidence of the nature of a conviction. It stated that it could not go behind the record to inquire into the legal status of the tribunal other than in those rare exceptions relating to convictions in absentia or convictions for political offenses. The difficulty the Board of Immigration Appeals refers to is amply exhibited by the instant case when we seek to explore the delicate nuances of the state of mind required for convictions under the Dangerous Drugs Act of 1965.

It will be noted that Section 212(a)(23) refers to the excludability of a person convicted of a crime relating to the possession of marijuana

whereas the respondent herein stands convicted of possession of cannabis resin. It is urged at some length, that when Congress used the term "marijuana" in the section of the consideration, it did not intend to include "cannabis resin".

The respondent offered in his behalf the testimony of Dr. Lester Grinspoon, Associate Clinical Professor of Psychiatry at Harvard Medical School whose medical qualifications qualify him fully as an expert in this field. A book written by Dr. Grinspoon entitled "Marijuana Reconsidered" (Harvard University Press, 1971) was made part of this record as Exhibit 13. Reference to Exhibit 13, beginning at page 30 thereof, indicates that since 1753 the name Cannabis Sativa has been given to the plant known as Indian Hemp. Cannabis Sativa is one of a relatively small number of so-called hallucinagenic plants. It is an easily grown plant, widely cultivated or growing naturally in many parts of the world. It is a source not only of hallucinagenic material, but also of hemp fibre and a seed oil. Although the plant may differ widely in its appearance depending upon the climate under which it is grown, it is generally agreed that all specimens are of a single species. The plant and its products are referred to by a wide number of different terms, depending upon where it is grown and where it is used. The male and female plant differ markedly in appearance, though both bear flowers. The chemical compounds responsible for the intoxicating effect of cannabis are commonly found in a sticky, golden resin which, during periods of the growing season's greatest heat, is exuded from the female flowers and is found also in the adjacent leaves

and stalks. Although it is generally held that the plants active agents are found solely in the resin produced by the female flower parts there is insufficient evidence to support this hypothesis. It is possible that the other parts of the female and male plants may contain active substances. The resin and resin bearing parts of hemp are prepared for use in a variety of ways. Three grades of the drug are prepared in India and serve as a kind of standard against which preparations produced in other parts of the world are compared for potency. They are bhang, ganja, and charras. The least potent and cheapest preparation, bhang, is derived from hemp, grown in the plains areas and may consist simply of hemp leaves picked from door yard plants, dried, and then crushed into a coarse powder. The resulting drug is of inferior quality and may be smoked or made into a decoction. Ganja, the second strongest preparation, is prepared from the flowering tops of cultivated female plants. The dried tops, with their exuded resin are generally smoked sometimes mixed with tobacco leaves. Ganja is estimated at being two or three times as strong as bhang and is more desirable and costlier.

Pure resin of the pistillate flowers is called charras, and is the most potent of the intoxicants. The resin which is collected from the plants may be treated somewhat before it is sold and consumed but the treatments are largely mechanical in nature. The resin may be sifted to eliminate dirt and impurities, shaped, dried, and sliced into sheets. Charras or cannabis resin is called hashish in Egypt, Asia Minor and Syria.

The essence of Dr. Grinspoon's testimony is contained on page 41 of his book where he states that most westerners and certainly most Americans who use cannabis take it in a form of cigarettes which are roughly comparable to Indian bhang in content, mode of preparation and potency. As such, such cigarettes are about 1/5 to 1/8 the potency of Indian charras and in general the hand rolled cigarette predominates in the United States.

What Dr. Grinspoon is urging in his testimony is that the common usage in the United States limits the term "marijuana" to cigarettes composed of the dried leaves and perhaps seeds and miscellaneous parts of the marijuana plant as distinct from cannabis resin which is an exudation of the female plant during its flowering period.

The legislative history of Section 212(a)(23) and 241(a)(11) is not as explicit as one might wish in defining the term marijuana. The term first appeared in the Immigration and Nationality Act of 1952 but only in reference to activities relating to traffic, sale or possession for such related purposes. The statute contains no definition of marijuana. The Narcotics Control Act of 1956 was aimed at various aspects of the narcotics problem. The immigration sections were only one part of the Congressional effort. The immigration modification was aimed directly at specifically including mere possession of narcotics or a conspiracy to violate the narcotic laws as grounds for excludability or deportability. It was the Congressional belief that a conviction for the possession of

marijuana would constitute a conviction for the possession of narcotics and consequently would call the section into operation.

In U.S. Code Congressional and Administrative News, 84th Cong. 2nd Session, (1956) Volume 2, page 3294, footnote #1, is found the following quotation "general references to narcotics in this report includes within the term marijuana which is similarly treated with respect to penalties, etc."

It is clear therefore that in drafting the Narcotics Control Act of 1956, Congress believed that when it used the term narcotics, it was including the term marijuana. Accordingly, there was no need for Congress to define marijuana in a section where it had used the term "narcotics". Congress' misconception as to the inclusion of "marijuana" within the scope of "narcotics" led to the subsequent court decisions and further amendment of the statute in 1960 to specifically include marijuana by name. In connection with the 1960 amendment here again was no definition. However, in the "Narcotic Control Act of 1956" which included a number of different sections relating to different provisions of law, all of which were enacted as a unit, entitled "The Narcotic Control Act of 1956", there occurs title 21, Section 176(a), relating to the smuggling of marijuana, which specifically states "as used in this section, the term "marijuana" has the meaning given to such term by Section 4761 of the Internal Revenue Code of 1964." Section 4761 defines the term "marijuana" as including all parts of the plant including the resin extracted from any part of such plant. It is true that Section 176(a) states "<u>as used in this section</u>," in

defining the term marijuana. It does not seem unreasonable to me that if Congress included the 1956 version of Section 212(a)(23) in a considerably broader Act and in one portion of that Act defined marijuana, to conclude that the same definition of marijuana would apply to all uses of the term within the various discreet sections of the larger Act, whether specifically added to such sections or not. It certainly would be a bizarre interpretation of Congressional intent to believe that Congress would define the term for one section within the larger Act and expect a different interpretation for the same term to be applied in Section 212(a)(23) without making a specific reference to the difference in meaning. If we consider the term to have been adequately defined in 1956 by the reference to the Internal Revenue Code, such definition would continue through the 1960 amendment which merely added marijuana disjunctively to the possession section at its beginning.

If we assume however, that the Congressional efforts to define the term outlined above were inadequate to reach the term as used in Section 212(a)(23), the question which has to be answered is what Congress would have intended to cover by the use of the term marijuana, had the matter received its specific attention. The record is clear in the 1956 and 1960 amendments that Congress was attempting to make excludable and deportable aliens convicted of mere possession of narcotics in general and marijuana in particular. As indicated above, cannabis resin is the direct natural product of the cannabis sativa plant. It is a resin naturally exuded by the plant. It contains in a concentrated form the hallucinagenic agent

which is the very basis for the attitude towards marijuana. To imply that the Congress, intent as it was on reaching for exclusion and deportation persons convicted of possession of marijuana would have rejected a person convicted of the possession of the concentrated natural products of the marijuana plant is to corrupt statutory interpretation into a futile exercise of semantics.

Ironically enough, there have been several recent decisions to which neither the respondent nor the government have referred me, in which the present contentions of the government and respondent have been reversed. In these cases, it is the government which urged that marijuana and hashish were different and the criminal defendant therein concerned that they were identical. These were cases which arose subsequent to the decision by the Supreme Court in Leary v. U.S. 395 US 6, 89 Supreme Court 1532 (1969). In that case the Supreme Court held unconstitutional the presumption in Title 21, Section 176(a) of knowledge of illegal importation of marijuana arising from possession, on the ground that there was widespread cultivation of the plant in the United States and that there was no necessary or reasonable connection between coming into possession of the dried leaves and a presumption of knowledge that the same was illegally imported from another country. In U.S. v. Piercefeld, 437 F (2d) 1188 (1971) the defendant argued that with respect to the irrationality of the presumption of knowledge of importation from the sole fact of possession, there could be no distinction between hashish and marijuana. He was accused of the unlawful importation of hashish and since there was no direct evidence of the unlawful

importation, the court must have relied on the presumption in Section 176(a) The Court of Appeals held however that the Trial Court had not, in fact, utilized the presumption and that there was sufficient evidence to support a finding of unlawful importation of hashish. It referred to the testimony of a chemist for the United States Customs Laboratory who stated that hashish had never been manufactured in the United States and that it would be necessary to have 625 pounds of marijuana with the highest resin quality to make one pound of hashish from marijuana grown within the United States.

In U.S. v. Capelis, 426 F. 2d 137 (1970) (C.A. 9), the court was confronted with the identical situation. In this case also, the government although arguing that hashish was marijuana within the meaning of 21 USC 176(a), the government contended that hashish was not within the scope of Leary v. U.S., and that by reason of climatic considerations and the difficulty of producing domestic hashish, users would be likely to know that the hashish was illegally imported. The court concluded that the record before it was inadequate for a proper conclusion and remanded the case for a finding by the trial court as to whether it had, in fact, relied on Section 176(a) presumption, and if so to grant a new trial and explore the nature of hashish. On remand the trial court affirmed that it had not relied on the presumption but had relied on the evidence before it and concluded on a factual basis that the defendant had actual and not merely presumed knowledge of the illegal importation. No case has been found holding that hashish is different from marijuana in the context of a prosecution under a statute specifically mentioning only marijuana.

A carefully delineated distinction between marijuana and hashish appears to be a more recent product of increased legislative sophistication. In paragraph 54-5.4.101 of the Virginia Code annotated, effective April 5, 1970 the maximum punishment for the possession of marijuana is $1000 fine and imprisonment not exceeding 12 months. However, for drugs other than marijuana the punishment can be considerably more, even for a first offender. The statute specifically defines marijuana as meaning any part of the plant cannabis sativa but not including resin extracted from any part of such plant and defines hashish as distinct from marijuana as including the resin extracted from any part of the plant cannabis sativa.

After a careful consideration of all the relevant material, I reach the conclusion that whether considered from the point of view of expressed Congressional intent as evidenced by the specific definition referred to by Congress in amending Section 212(a)(23) in 1956, or by inferring that intent of Congress with regard to the definition of marijuana which most effectively would give expression to the general intent of Congress in enacting that section, I reach the conclusion that a conviction for the possession of cannabis resin is a conviction for a crime relating to the possession of marijuana and consequently within the scope of Section 212(a)(23) of the Act.

The next contention of counsel for the respondent is one which is basically set forth in his letter of August 14, 1972 to the Wall Street Journal entitled "The Cultural Lag in Immigration Laws".

Since the letter presents the legal situation so accurately, it may be quoted verbatim, where relevant.

> "If John Lennon's desirability as an artist is acknowledged by the Immigration Service itself, what at the same time makes him so undesirable an alien, allegedly unable to become a permanent resident, is a little known provision of the immigration law barring from admission any alien convicted of any offense, no matter how trivial, relating to the possession of marijuana. A similar provision exists requiring deportation of aliens who are already here.
>
> Court decisions have held that this absolute bar applies regardless of whether any punishment was imposed, whether the offense is technically considered a crime under local law, irrespective of the amount of marijuana possessed or other circumstances of the case, or even whether the offense was actually the subject of an executive pardon. Moreover, no extenuating circumstances, such as hardship to American dependants, may be considered. . .
>
> The Immigration and Nationality Act provision which absolutely bars from admission and mandates the deportation of persons convicted of a violation of any law or regulation relating to the illicit possession of marijuana can no longer be justified in its present form. . .. The trends of our modern scientists who treat marijuana as a less serious social and medical danger than tobacco and liquor, and the reduction in the seriousness of marijuana possession convictions in many jurisdictions demonstrate a need for a change in the immigration laws harsh attitude towards marijuana."

The answer to this plea for Congressional action is contained within the letter as well. It states:

> "In the United States the authority to formulate immigration policy rests with the Congress and is derived from the constitutional power to regulate commerce with foreign states."

The government of the United States is a government of separated powers. The function of the judicial branch of government and such judicial functions of the executive as I exercise is one of interpretation and adjudication, not legislation.

As the Supreme Court of the United States said in Sinclair Refining Company v. Atkinson, 370 U.S. 195 (1962):

> "The question of what change, if any, should be made in the existing law is one of legislative policy properly within the exclusive domain of Congress - it is a question for lawmakers, not law interpreters. Our task is the more limited one of interpreting the law as it now stands. In dealing with problems of interpretation and application of federal statutes, we have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers. Where Congressional intent is discernable and here it seems crystal clear, we must give effect to that intent."

See also such cases as Mugler v. Kansas, 123 US 623 (1887) which involved a conviction for selling of beer in violation of law where Justice Harlan stated as follows:

> "There is no justification for holding that the state, under the guise merely of police regulations, is here aiming to deprive a citizen of his constitutional rights. If therefore, a state deems the absolute prohibition of the manufacture and sale within her limits, of intoxicating liquors for other than medical, scientific and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representative. They have nothing to do with the mere policy of legislation."

On the general question as related to the line of cases connected with prohibition and the general history of marijuana legislation, see the comprehensive article "The Forbidden Fruit and The Tree of Knowledge; an Inquiry Into The Legal History of American Marijuana Prohibition" Richard J. Bonnie and Charles H. Whitebread, 56 Virginia Law Review, pages 971 to 1203, October 1970

One unusual aspect of these proceedings was the result of the activities of an organization known as the National Committee for John and Yoko. the committee organized for the purpose of soliciting public support for these respondents generally from persons of statute in various fields of artistic endeavor, but including also well known people in political and other fields. The testimony of several of such people was taken in the course of these proceedings (record page 44 to 62)

In addition a collection of over 100 letters solicited by the national committee for John and Yoko, were submitted as a single exhibit 15, all endorsing the respondents and recommending that they be permitted to remain permanently in the United States.

The position taken by the great majority of these correspondents is that the respondents are outstanding artists in their field, that they are of great value to the artistic life of the United States, and that the only reason permanent residence is being denied these respondents is because of their well-known opposition to war and violence and the participation by the United States in the war in Vietnam. The writers of the letters run the gamut from Baron Harlech of England and Mayor Lindsay of

the City of New York through every field of artistic endeavor from poet to professor, from sculptor to musician and museum director, nearly all people of outstanding artistic ability.

Although counsel for the respondent has scrupulously briefed every other aspect of this case, he has not drawn my attention to any case which would make this evidence relevant. Obviously the opinion of the witnesses and letter writers is not needed to establish the artistic qualifications of these respondents. The Immigration and Naturalization Service itself recognizes them as persons of exceptional ability in the arts who will be of substantial benefit to the national economy, cultural interests or welfare of the United States. The position of the letter writers and presumably by inference the position of the respondents appears to be that if a sufficient number of gifted artistic persons hold the respondents in high esteem, the provisions of the Immigration and Nationality Act may safely be disregarded in view of the overall benefits to the cultural life of the country as a whole.

The adjudication by artistic acclaim has of course certain serious difficulties. Is the judicial process to be reduced to a type of popularity contest? If so, would the respondents be willing to abide by the results of the statistical count? The Trial Attorney has indicated that he has received numerous letters from individuals who protest the presence of the respondents in the United States. How many more negative votes would be produced if a show of opinion was solicited generally rather than in the limited fashion engaged in by the national

committee for John and Yoko. Should the votes of creative artists count for more than the votes of automobile workers and farmers? What about the unpopular alien, the spy, the murderer, the captain of organized crime; are they to be deprived of due process of law because they are engulfed in the tide of hostile public opinion?

Whatever value such expression of public opinion might have in an area where Congress had entrusted the exercise of discretion to the judge, it is an empty academic exercise to pursue the matter further where we are concerned with the strict legality of an alien's excludability from the United States under a specific section of law. I respect the opinions of the artistic world for what they are, but find them not relevant in this particular context.

In the course of the hearings before me and in the initial brief filed by the respondent in this matter, some emphasis was placed on the then pending case of Mandel v. Attorney General, 325 F. supp. 620. It had been urged in that case that an alien who had been found ineligible for admission under Section 212(a)(28) of the Immigration and Nationality Act, as a person who advocated the economic international and governmental doctrines of world communism, has no personal right of entry but his exclusion from the United States would result in a deprivation of First Amendment rights to citizens of the United States to have him enter and to hear him.

However, on appeal to the Supreme Court of the United States it was held in Kleindienst, Attorney General v. Mandel, 408 U.S. 753, 92 S. Ct. 2576 (1972), that the power to exclude aliens is inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers - a power to be exercised exclusively by the political branches of the government. It pointed out that the Supreme Court, without exception, has sustained Congress' plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden. The court pointed out that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens. The alien in that case did not, in fact, question the right of Congress to exclude. What was urged was that where a provision for waiver existed for a temporary admission (i.e. such a waiver as was granted to Mr Lennon for his temporary admission) the refusal to grant the waiver must be limited by the First Amendment. The Supreme Court felt that the Attorney General had given Mandel a sufficient reason for refusing him a waiver and that it would refuse to interfere with the Attorney General's exercise of the plenary power which Congress had delegated to him by Section 212(a)(29) and 212(d)(3). Obviously the position of the government is completely unassailable where the statute makes no provision whatsoever for a waiver in the case of aliens excludable under Section 212(a)(23) of the Act.

One last point merits discussion. The respondents are confronted by a legitimate legal and emotional dilemma rising out of their fight for

custody of Mrs. Lennon's 9-year-old daughter by her former marriage. The record indicates that the last legal proceeding relating to this custody was an opinion by the United States Court of Appeals for the Third Circuit. (Anthony B. Cox v. Yoko Ono Cox. decided March 30, 1972 Exhibit 15(a)) in which the court affirmed the decision of the District Court of the Virgin Islands modifying the divorce decree between the parties and awarding the care, custody and control to Mrs. Lennon subject to the right of reasonable visitation by the father. There is also a court order in effect issued by the Court of Domestic Relations of Paris County, Texas on March 7. 1972 granting Mrs. Lennon the custody of the child. provided that such custody may be exercised at any place within the territorial limits of the United States of America. Obviously, in order to enjoy such custody. Mrs. Lennon is required to remain in the United States, a requirement which is now made possible of solution by the grant of permanent residence to Mrs. Lennon. On the other hand it can hardly be an entirely satisfactory solution for her if Mr. Lennon is required to depart from the United States. The situation is further compounded by the fact that the respondents have been unable to locate the child and thus although they are legally entitled to her custody the reduction of that theoretical right to practical custody has not been achieved. Thus the "Law" which is enforcing the departure of Mr. Lennon from the United States has been unable to enforce its own edict with regards to the custody of Mrs. Lennon's child.

However, as of May 1972 the situation appeared to be at an indefinite impasse. Mrs Lennon had not seen the child for over two years she

claimed that she was unable to locate the child and there is no indication as of now that any progress has been made in that direction. There would appear to be some question as to whether the child, in fact, wants to return to Mrs Lennon. She appears to have called her mother in 1971 and complained that she was being harrassed by detectives. As a result the detectives were replaced by people who were personal friends of the Lennons apparently to continue surveillance. (Page 98 of record) It would appear that if the child is able to telephone the respondents and the detectives and their replacements are able to be close enough to the child so that she feels harrassed, her whereabouts are not entirely unknown. In any event although the human equities of the situation are apparent, they do not in any way alter the excludability of Mr. Lennon from the United States and his consequent ineligibility for permanent residence. It lies within the power of the enforcement authorities of the Immigration and Naturalization Service to defer enforcing Mr. Lennon's departure from the United States if it could be demonstrated that such postponement is justified by the circumstances. This would however be merely in the nature of a postponement and would not in any way grant him the right of permanent residence in the United States.

It should be noted in this context that the government has not acted without a certain degree of compassion in this matter. If the government had seen fit to lodge an additional charge of deportability based on the conviction of Mr. Lennon in England, a purely clerical detail the same reasoning which has sustained his excludability would of necessity result

in his deportability from the United States and under the provisions of Section 244(e) of the Act would make his actual enforced deportation mandatory rather than permitting him to request voluntary departure from the United States at his own expense.

Since Mr. Lennon has failed to establish his legal eligibility for admission into the United States and an immigrant visa, the application for adjustment of status under Section 245 of the Immigration and Nationality Act will be denied.

Mr Lennon requested the privilege of voluntary departure from the United States in lieu of deportation in the event that his application for permanent residence was denied (page 83), He is statutorily eligible for such relief. He has declined to designate any country to which he would prefer to be sent in the event deportation becomes necessary. His deportation will therefore be directed to England the country of his citizenship.

No claim of persecution has been made as to England in the event deportation to that country becomes necessary. This is contained in stipulation between counsel marked Exhibit 22.

ORDER: IT IS ORDERED that the application of Yoko Ono Lennon for adjustment of status under Section 245 of the Immigration and Nationality Act to that of a permanent resident of the United States be and the same hereby is, granted.

IT IS FURTHER ORDERED that the application of John Winston Ono Lennon for adjustment of status under Section 245 of the Immigration and Nationality Act be, and the same hereby is, denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation the respondent, John Winston Ono Lennon, be granted voluntary departure without expense to the government on or before sixty days from the date this decision becomes final or any extension beyond such date as may be granted by the District Director and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent, John Winston Ono Lennon, fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: the respondent shall be deported from the United States to England on the second charge contained in his Order to Show Cause, to wit: Section 241(a)(2) of the Immigration and Nationality Act.

IRA FIELDSTEEL
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A17 595 321 - New York (1)
[redacted] " " (2)

(b)(6)

MAR 2 3 1973

In the Matter of)

JOHN WINSTON ONO LENNON (1))
and
YOKO ONO LENNON (2))

Respondents)

IN DEPORTATION PROCEEDINGS

CHARGES: (Both) Section 241(a)(2) - I & N Act
nonimmigrant - remained longer than permitted

APPLICATION: (Both) Adjustment of Status
Section 245 - I & N Act

In Behalf of Respondents:

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y. 10022

In Behalf of Service:

Vincent Schiano, Esq.
Trial Attorney

DECISION OF THE IMMIGRATION JUDGE

DISCUSSION: The respondents are respectively a 32-year-old married male alien, a native and citizen of England and his 40-year-old alien wife, a native and citizen of Japan, who last entered the United States together at New York, N. Y. on August 13, 1971. At the time of their arrival they were admitted as nonimmigrant visitors for pleasure who were authorized to remain in the United States until February 29, 1972.

On March 1, 1972 the respondents were advised that their temporary stay in the United States as visitors had expired on February 29, 1972 and

(b)(6)

A17 597 321

[redacted]

May 2, 1972

MEMORANDUM FOR FILE

In re: John LENNON
Yoko Ono LENNON

Mr. Sol Marks called Mr. Edwin Redding, United States Department of Labor, concerning the adjudication of a labor certification for John Lennon and his wife, Yoko Ono Lennon. Forms MA 7-50A were submitted with supporting documentation in connection with their petitions for third preference classification. The Labor Department forms were not submitted to the Labor Department.

Mr. Marks described the occupations for both applicants. Mr. Redding concluded that he has no hesitation to telephonically approve the labor certification for John Lennon. If, in our judgment, the documents supporting Yoko Ono's petition would appear to be approvable for the issuance of a labor certification, he would go along with such approval. A review of her documents establishes that she is entitled to a labor certification.

In view of the foregoing, it is considered that telephonic approval has been received granting labor certifications for John Lennon and his wife, Yoko One Lennon.

A. Spivack
Assistant District Director for
Travel Control

5-2-72

D STATES DEPARTMENT OF JUS
IMMIGRATION AND NATURALIZATION SERVICE

Processing Sheet

Application or Petition Form No. I-140 File No. A17-597-321

1) Approval notice to bene cc atty
3rd pref
England
Composer (Musician)
Block # 5 - The visa petition had been approved.

B-2
2/29/72

5/2/72

This form may be overprinted or stamped to show instructions, items requested, items received, or other pertinent data which may facilitate processing.

Keep this sheet on top of all material in file until initial decision is made GPO 949-506

Form I-468
(Rev. 11-1-70)

Form approved
Budget Bureau No. 43-R0418.

PETITION TO CLASSIFY PREFERENCE STATUS OF ALIEN ON BASIS OF PROFESSION OR OCCUPATION

DATE FILED

FEE STAMP

TO THE SECRETARY OF STATE

Petition was filed on March 6, 1972 Approval expires:

Petition is approved for status under section ☒ 203(a) (3). ☐ 203(a) (6).

☒ Sec. 212(a)(14) certification attached. ☐ Blanket Sec. 212(a)(14) certification issued.

U.S. APPROVED

The petition is revalidated to

☐ Sec. 212(a)(14) certification attached.

☐ Blanket Sec. 212(a)(14) certification issued.

REMARKS * SEE MEMO DATED 5-2-72 FROM [redacted] MR. SPIVACK ADD (TC)

DATE OF ACTION MAY 2 - 1972

DD

DISTRICT NEW YORK, N.Y.

DATE OF ACTION

DD

DISTRICT

PETITIONER IS NOT TO WRITE ABOVE THIS LINE

Read this form and the attached instructions carefully before filling in petition

Petition is hereby made to classify the status of the alien beneficiary named herein for issuance of an immigrant visa as ("X" one)

☒ **A THIRD PREFERENCE IMMIGRANT**—An alien who is a member of the professions, or who because of his exceptional ability in the sciences or arts will substantially benefit prospectively the national economy, cultural interests or welfare of the United States. (Sec. 203(a)(3) Immigration and Nationality Act, as amended.) If this box is checked, the alien or a person on his behalf, must complete only Part I, below, and Part III.

☐ **A SIXTH PREFERENCE IMMIGRANT**—An alien who is capable of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States. (Sec. 203(a)(6), Immigration and Nationality Act, as amended.) If this block is checked, alien's prospective employer must complete Parts I and II below, and Part III.

(If you need more space to answer fully any questions on this form, use a separate sheet, identify each answer with the number of the corresponding question and sign and date each sheet.)

PART I—INFORMATION CONCERNING ALIEN BENEFICIARY

1. NAME (Family name in capital letters) LENNON	(First name) John	(Middle name) Winston	(Maiden name, if alien is a married woman)
2. BIRTHDATE Oct. 9, 1940	3. BIRTHPLACE (City or town)	(State or province)	(Country) England
4. ALIEN REGISTRATION NO. (If any) A17 597 321			
5. PRESENT ADDRESS (Number and street) 105 Bank Street,	(City or town) New York	(State or province) New York	(Country) U.S. (ZIP Code, if in U.S.)
6. CITY AND STATE IN THE UNITED STATES WHERE ALIEN INTENDS TO RESIDE 105 Bank Street,	(City) New York	(State) New York	
7. PROFESSION OR OCCUPATION composer, musician, artist, author, actor, filmmaker	NUMBER OF YEARS EXPERIENCE over 13 years	(If none explain why.)	

8. DOES BENEFICIARY INTEND TO ENGAGE IN HIS PROFESSION OR OCCUPATION IN THE UNITED STATES? ☒ YES ☐ NO. IF "NO," EXPLAIN.

9. TO YOUR KNOWLEDGE, HAS A VISA PETITION EVER BEEN FILED ON BEHALF OF THIS BENEFICIARY BASED ON HIS PROFESSION OR OCCUPATION?
☐ YES ☒ NO. If "Yes," give name of each petitioner and date and place of filing.

10. IF BENEFICIARY IS NOW IN THE U.S. (a) HE LAST ARRIVED ON Aug. (Month) 13, (Day) 1971 (Year)
AS A Visitor, B-2 (Visitor, student, exchange alien, temporary worker, crewman, stowaway, etc.)
SHOWN ON HIS FORM I-94 OR I-95 (Show latest date) (b) SHOW DATE BENEFICIARY'S STAY EXPIRED OR WILL EXPIRE AS Feb. 29, 1972

11. BENEFICIARY'S SPOUSE	NAME (Last name) Lennon	(First name) Yoko	(Middle name) Ono	PRESENT ADDRESS (No. and Street) (City or town) (State or Province) (Country) 105 Bank St., New York, N.Y.	
12. BENEFICIARY'S CHILDREN	NAME (Show M or S for Married, or Single)	SEX	COUNTRY OF BIRTH	ADDRESS	

(b)(6)

13. "X" THE APPROPRIATE BOX BELOW AND FURNISH THE INFORMATION REQUIRED FOR THE BOX MARKED.

☐ Alien will apply for a visa abroad at the American Consulate in _____ (City in foreign country) _____ (Foreign country)

☒ Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at New York (City) New York (State). If the application for adjustment of status is denied the alien will apply for a visa abroad at the American Consulate in _____ (City in foreign country) _____ (Foreign country)

PART II—INFORMATION CONCERNING PETITIONING EMPLOYER AND POSITION *(Fill in Part II only if petition is for 6th preference)*

14. NAME OF PETITIONER (Full name of organization; if petitioner is an individual give full name with last in capital letters)

15. ADDRESS (Number and street) (Town or city) (State) (ZIP code)

16. PETITIONER IS (X one)
☐ U.S. CITIZEN ☐ PERMANENT RESIDENT ALIEN ("A" NUMBER_____) ☐ NONIMMIGRANT ☐ ORGANIZATION

17. NET ANNUAL INCOME

18. WILL BENEFICIARY BE EMPLOYED AT THE ABOVE ADDRESS? ☐ YES ☐ NO. IF "NO," GIVE ADDRESS WHERE HE WILL WORK.

19. DO YOU DESIRE AND INTEND TO EMPLOY THE BENEFICIARY ☐ YES ☐ NO.

20. HAVE YOU EVER FILED A VISA PETITION FOR AN ALIEN BASED ON HIS PROFESSION OR OCCUPATION? ☐ YES ☐ NO. IF "YES," HOW MANY SUCH PETITIONS HAVE YOU FILED?

21. ARE SEPARATE PETITIONS BEING SUBMITTED AT THIS TIME FOR OTHER ALIENS? ☐ YES ☐ NO. IF "YES," GIVE NAME OF EACH ALIEN.

22. THE FOLLOWING DOCUMENTS ARE SUBMITTED AS A PART OF THIS PETITION AND ARE MADE A PART THEREOF.

FILL IN ITEMS 23 THROUGH 32 ONLY IF PART B OF FORM ES–575 IS NOT REQUIRED TO BE ATTACHED. *(See instruction 5)*

23. OCCUPATIONAL TITLE OF POSITION BENEFICIARY WILL OCCUPY

24. TOTAL HOURS BENEFICIARY WILL WORK PER WEEK

25. RATE OF PAY

26a. IS THE EMPLOYMENT SEASONAL? ☐ YES ☐ NO.

26b. IS THE EMPLOYMENT TEMPORARY ☐ YES ☐ NO.

27. STATE BRIEFLY THE NATURE OF PETITIONER'S BUSINESS OR ACTIVITY.

28. AVERAGE NUMBER OF EMPLOYEES AT ESTABLISHMENT WHERE BENEFICIARY WILL WORK.

29. NUMBER OF EMPLOYEES BENEFICIARY WILL SUPERVISE.

30. DESCRIBE FULLY THE JOB TO BE PERFORMED, INCLUDING DUTIES, WORKING CONDITIONS AND EQUIPMENT OPERATED.

31. STATE IN DETAIL THE MINIMUM EDUCATION, TRAINING AND EXPERIENCE REQUIRED FOR PROFICIENCY IN JOB. (Specify degrees and major fields of study required. Specify apprenticeship, trade school or other training required.)

32. DESCRIBE SKILLS, KNOWLEDGES AND ABILITIES REQUIRED FOR PROFICIENCY IN JOB. Specify any other special requirements, list licenses and physical requirements.

PART III—OATH OF ... IRMATION OF PETITIONER OR AUTHORIZED REP. ...NTATIVE

33. This petition was prepared by: ("X" one) ☐ the petitioner ☒ another person.
If petition was prepared by another person, item 35 below must also be completed.
The petition may be subscribed and sworn to or affirmed only by the following persons:
In third preference cases—by the beneficiary himself, or by the person filing the petition on the beneficiary's behalf. If the petition is being filed by a person on behalf of the alien beneficiary, item 34 below must be completed by that person.
In sixth preference cases—by the employer who desires and intends to employ the beneficiary. If the employer is an organization the petition must be signed, subscribed and sworn to or affirmed by a high level officer or employee of the organization.

I swear (affirm) that I have examined the contents of this petition and the accompanying documents and that the statements in this petition and the accompanying documents are true and correct to the best of my information and belief.

NAME John Lennon (Print petitioner's full, true, and correct name)

SIGNATURE John Lennon (Petitioner's full, true, and correct name)

TITLE

Subscribed and sworn to (affirmed) before me this 29th day of February A.D. 19 72

at New York, New York

[SEAL] My commission expires 3/31/73

LEON WILDES NOTARY PUBLIC State of New York New York County No. 24-0702175 Qualified in Nassau County Commission Expires March 31, 1973

(Signature of officer administering oath) Notary (Title)

34. **DECLARATION OF PERSON FILING PETITION FOR THIRD PREFERENCE ON BEHALF OF ALIEN BENEFICIARY**

I declare that I have been requested and authorized by the alien beneficiary to file this petition on his (her) behalf.

(Signature) (Address—Number, Street, City, State and ZIP Code) (Date)

35. **SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN PETITIONER**

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(Signature) 515 Madison Av.,N.Y.,N.Y.10022 (Address—Number, Street, City, State and ZIP Code) 2/29/72 (Date)

TO PETITIONER: DO NOT FILL IN THIS BLOCK—FOR USE OF IMMIGRATION OFFICER

a. Corrections numbered ( ) to ( ) were made by me or at my request. (Date) (City)

(Signature of petitioner or authorized member of petitioner's organization) (Title)

b. The person whose signature appears immediately above was interviewed under oath and affirmed all allegations contained herein.

(Date) (City) (Signature and Title)

INSTRUCTIONS

Failure to follow instructions may require return of your petition and delay final action

179

1. HOW TO PREPARE PETITION.

a. Print legibly in ink or use a typewriter.
b. Submit one copy only for each alien beneficiary.

2. WHO MAY FILE A PETITION.

a. *Third preference petition.* A petition to accord an alien a third preference classification for issuance of an immigrant visa may be filed by the alien himself or any person on his behalf. The alien must be a member of the professions, or a person who because of his exceptional ability in the sciences or arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States.

b. *Sixth preference petition.* A petition to accord an alien a sixth preference classification for issuance of an immigrant visa may be filed by any person or organization desiring and intending to employ within the United States an alien who is capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

c. *Western Hemisphere natives.* A petition is not required and should not be submitted on behalf of an alien who was born in any independent foreign country of the Western Hemisphere or in the Panama Canal Zone or the spouse and children of any such alien if accompanying or following to join him.

3. WHERE TO SUBMIT THE PETITION.

a. *Outside United States.* A person executing the petition outside the United States must take the completed petition to the nearest Immigration and Naturalization Service officer or American Consular officer. That officer will administer the oath or affirmation and furnish the address of the office of the Immigration and Naturalization Service in the United States to which the petition should be sent by the petitioner.

b. *In United States.* A person executing the petition in the United States must take or mail the completed petition to the office of the Immigration and Naturalization Service having jurisdiction over the intended place of residence of a third preference alien, or over intended place of employment of a sixth preference alien.

4. SPOUSE AND UNMARRIED CHILDREN UNDER 21 YEARS OF AGE OF BENEFICIARY.

Do not submit petitions for beneficiary's spouse or unmarried children under 21 years of age. When a third or sixth preference petition is approved, the beneficiary's spouse, and his unmarried children under 21 years of age, if accompanying or following to join him, will automatically be eligible for the same preference status as the beneficiary.

5. CERTIFICATION BY THE SECRETARY OF LABOR.

a. *General.* A third or sixth preference alien may not be admitted to the United States unless the Secretary of Labor has certified that (a) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (b) the employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

Application for the certification of the Secretary of Labor (or his designated representative) must be made on Labor Department Form ES-575A, or Form ES-575A and B, in accordance with the Instructions for Completion of Application for Alien Employment Certification. The forms and instructions may be obtained from any Immigration and Naturalization Service office, consular office, or State Employment Service office.

The Department of Labor publishes lists (Schedules) of occupations in Part 60, Title 29, Code of Federal Regulations. "Schedule A" is a list of occupations for which the Secretary of Labor has issued a blanket certification for qualified persons. "Schedule B" is a list of occupations for which the Secretary of Labor will not issue a certification for the reason that sufficient workers are available in the United States or the admission of an alien for employment in such occupations will adversely affect wages and working conditions of workers in the United States similarly employed. "Schedule C—Prece...

tification List," is a list of occupations for which the Secretary of Labor has issued a certification for qualified persons whose intended place of residence is not excluded by the list from precertification. No job offer for alien employment (Form ES–575B) is required for persons within Schedule A or C—Precertification List. Information concerning the Schedules may be obtained at principal offices of the Immigration and Naturalization Service, consular offices and offices of the State Employment Service.

b. *Third preference petition.* An alien (or a person on his behalf) who believes that he qualifies as a member of the professions or that he has exceptional ability in the sciences or the arts must submit his petition to the Immigration and Naturalization Service office having jurisdiction over his intended place of residence in the United States, together with Form ES–575A executed in accordance with the Instructions for Completion of Application for Alien Employment Certification. The Immigration and Naturalization Service office will forward Form ES–575A to the Department of Labor unless the occupation is on the current list of occupations for which the Secretary of Labor has issued the required certification, or unless the alien is clearly not qualified for third preference classification.

Sixth preference classification.

(1) A sixth preference petition may be filed only if:

(a) The petition is accompanied by the certification of the Secretary of Labor (or his designated representative); or

(b) the beneficiary is qualified for and will be employed in an occupation on Schedule A; or

(c) the beneficiary is qualified for and will be employed in an occupation on "Schedule C—Precertification List" and his intended place of residence is not excluded by the list from precertication; or

(d) the beneficiary is qualified as a member of a profession or has exceptional ability in the sciences or arts.

(2) If the occupation is currently listed in "Schedule A" or "Schedule C—Precertification List," or the beneficiary is a member of a profession or a person of exceptional ability in the sciences or arts, the employer should file his petition in the appropriate office of the Immigration and Naturalization Service together with properly executed Form ES–575A (Statement of Qualifications of Alien), and supporting documents. Form ES–575B (Job Offer for Alien Employment) is not required for cases described in this paragraph.

(3) If the case does not come within the immediately preceding paragraph, application for the certification of the Secretary of Labor (or his designated representative) must be made by filling out Forms ES–575A and B in accordance with the Instructions for Completion of Application for Alien Employment Certification, Part A and Part B. The employer should submit the completed Forms ES–575A and B, with the documentary evidence required by the instructions, to the local office of the State Employment Service. If the certification is issued it will be endorsed on Form ES–575, which will be returned to the employer by the Department of Labor together with the documentary evidence submitted in support thereof. The employer will then file the petition, with Form ES–575A, Form ES–575B, and the supporting documents attached.

6. SUPPORTING DOCUMENTS.

The following must be submitted with the petition:

a. Form ES–575A executed in accordance with the instructions for completion of that form.

b. In sixth preference cases, Form ES–575B with the certification of the Secretary of Labor (or his designated representative) unless the alien's occupation is within paragraph 5c(2) above.

c. Documentary evidence of the benficiary's qualifications as follows:

(1) *School Records.*—If alien's eligibility is based in whole or in part on higher education or attendance at a technical or vocational school, attach certified copy of school record. The record must show period of attendance, major field of study, and degrees or diplomas awarded.

(2) *License or Other Official Permission to Practice a Profession.*—If alien is a member of a profession, attach a copy of the license or other official permission granted him to practice the profession in the country where he has been found qualified to practice that profession, if a license or other permission is required in that country.

(3) *Evidence of Exceptional Ability in the Sciences or the Arts.*—If alien's eligibility is based upon exceptional ability in the sciences or the arts, documentary evidence supporting the claim should be submitted. Such evidence may testify to the universal acclaim and either national or international recognition accorded the alien; show that he has received a nationally or internationally recognized prize or award or won a nationally or internationally recognized competition for excellence for a specific product or performance or for outstanding achievement; or testify that he is a member in a national or international association of persons which maintains standards of membership requiring outstanding achievement as judged by recognized national or international experts in the specific discipline or field of endeavor.

(4) *Affidavits and Published material.*—If alien's eligibility is based on technical training or specialized experience, documentary evidence supporting the claim should be submitted. The recommended forms of evidence are affidavits or published material.

Affidavits.—These must be made by independent sources, such as alien's former employers or recognized experts familiar with alien's work, and must:

(a) Identify the affiant, showing the capacity in which he is testifying.

(b) Give the place and the dates during which alien gained his experience.

(c) Describe in detail the duties performed, tools used, supervision exercised over him and exercised by him. A mere statement for example that the alien was employed as a baker, is not adequate.

(d) Show the date on which the affidavit was signed.

Published Material.

(a) Copies of material published by or about the alien may be submitted.

(b) The material must be identified as to date, place and name of publication.

7. RULES FOR DOCUMENTS.

All supporting documents must be submitted in the original. No additional copies are required. However, if the return of the original is desired, and if a copy is by law permitted to be made, a photostat or typewritten copy may be submitted. Photostatic copies unaccompanied by the original may be accepted if the copies bear a certification by an immigration or consular officer that the copies were compared with the original and found to be identical. A document not in the English language must be accompanied by a translation, certified by the translator as to the accuracy of the translation, and as to his competency to translate. (Do not make a copy of a certificate of naturalization or citizenship.)

8. FILING DATE OF PETITION.

Issuance of immigrant visas to beneficiaries of approved third or sixth preference visa petitions is governed by the chronological order in which such petitions were properly filed. Failure to submit with the petition the attachments required by paragraph 6 above will prevent proper filing of the petition and result in its return to the petitioner.

9. OATH OR AFFIRMATION.

a. In the United States the oath or affirmation may be made before an immigration officer (without fee), or a notary public. The oath may also be made before an officer authorized to administer oaths for general purposes, in which case the official seal or certificate of authority to administer oaths must be affixed.

b. Outside the United States, the oath or affirmation must be made before a United States consular or immigration officer.

c. The person signing the petition may be required to appear before an officer of the Immigration and Naturalization Service to reaffirm or reswear to the allegations contained in the petition and for other inquiry which may be pertinent. However, when the petitioner is an organization, that person may authorize another member of the organization to appear. In that event, a statement by the person who signed the petition must be submitted to the effect that the named member of the organization, whose title shall also be indicated, has been authorized to appear before the Immigration and Naturalization Service in behalf of the petitioner.

10. FEE. Submit a fee of $25 with this petition.

a. The fee is required for filing the petition and is not returnable regardless of the action taken thereon.

b. If you mail your petition, attach money order or check, payable to Immigration and Naturalization Service, Department of Justice. (Exceptions: Remittances in Guam must be payable to Treasurer, Guam; and those in the Virgin Islands must be payable to Commissioner of Finance, Virgin Islands.)

11. PENALTIES. Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact or using any false document in the submission of this petition.

U.S. GOVERNMENT PRINTING OFFICE : 1969 OF—339-086

GPO 962-005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 – Price 10 cents; $5.00 per 100

UNITED STATES DEPARTMENT OF
IMMIGRATION AND NATURALIZATION
BUREAU OF IMMIGRATION APPEALS

In Re	
Deportation Proceedings Against	
JOHN LENNON,	
Appellant	

APPELLANT'S MEMORANDUM OF LAW

H. Miles Jaffe
Eve Cary
Attorneys for the New Yo
Civil Liberties Union
Amicus Curiae
84 Fifth Avenue
New York, N.Y. 10011
(212) 924-7800

UNITED STATES DEPARTMENT OF
IMMIGRATION AND NATURALIZATION
BUREAU OF IMMIGRATION APPEALS

In Re
Deportation Proceedings Against
JOHN LENNON,
Appellant

APPELLANT'S MEMORANDUM OF LAW

Interest of Amicus Curiae

The New York Civil Liberties Union is an organization established to protect Constitutional rights. We believe that the matter of deportation proceedings against John Lennon presents important issues of due process and equal protection under the Fifth Amendment as well as a serious First Amendment question involving the right of American citizens to receive artistic communications free of governmental interference.

I. THE FUNDAMENTAL REQUIREMENTS OF DUE PROCESS APPLY TO DEPORTATION PROCEEDINGS AND HAVE NOT BEEN MET IN THIS PROCEEDING

It is fundamental to the American system of justice that a reviewing court carefully examine the full record of a deportation proceeding to assure that due process is being afforded the alien. See Rowoldt v. Perfetto, 355 U.S. 115 (1957); concurring opinion of Frankfurter, J. in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1950). Convictions of aliens which have been obtained in a manner violative of our basic due process standards have been subject to further inquiry in courts in which such convictions have been challenged. See Marino v. Holton, 227 F.2d 886 (7th Cir. 1955), cert. den. 350 U.S. 1006; State v. Gilman, 291 A.2d 425 (1972).

The standard of United States law is used as a guideline "to avoid divergent and anomalous results which would follow from an application of varying systems of

foreign law.", Giammario v. Hurney, 311 F.2d 285 (3rd Cir. 1962). In deportation proceedings involving foreign convictions for alleged misdemeanors, such crimes have been assessed and evaluated in accordance with the standards of United States law. Giammario v. Hurney, supra. United States' standards of law and justice are also used in evaluating foreign convictions for crimes of moral turpitude. See Mercer v. Lence, 96 F.2d 122 (10th Cir. 1938), cert. den. 305 U.S. 611; U.S. ex rel.Ciarello v. Reimer, 32 F. Supp. 797 (DCNY, 1940). In such cases, courts look into the inherent nature of the crime, the facts charged in the indictment upon which the alien was convicted, the charge, plea, verdict and sentence. U.S. ex rel. Teper v. Miller, 87 F. Supp. 285 (DCNY, 1949)

The circumstances surrounding the conviction of John Lennon for possession of marijuana raise fundamental questions as to the validity of the conviction and the weight to be given it.

The record reflects that Lennon had recently

moved into an apartment owned by the Apple Record Company and often used by other persons. Without explanation or legal warrant, the police, headed by the notorious Constable Norman Pilcher, entered the apartment, searched it and discovered in a closet small quantities of marijuana in three different containers including a binoculars case.

The arrest and the discovery of the marijuana in the apartment are clouded by the questionable conduct of Constable Pilcher, who developed for himself a record and reputation for arresting famous musicians. Mr. Pilcher is to be tried for his illegal activity on the force in the fall of 1973.

The validity of the conviction of Lennon is also in question, because of the pressures on him at the time to enter a plea and terminate the proceeding. The plea was entered on a charge

of possession, pursuant to a statute which had no requirement of scienter. While there is ambiguity as to the English proceeding, there seems to be some indication that the violation was technical and that Lennon may well have been advised that ignorance of the substance's existence was not a defense.

These facts raise the most basic questions of due process. Evaluated in accordance with the standards of this country, Giammario, supra, a conviction obtained by illegal police work, an illegal entry and search under a criminal statute requiring no criminal mens rea, cannot provide a basis for exclusion of an individual otherwise fully qualified for alien-resident status.

The immigration judge, quite correctly, did review the question of the validity of the conviction involved. As will be shown, however, his conclusions were

not supported by the law he cites.

Although theoretically the onus of reevaluating the guilt or innocence of appellant and the extenuating circumstances pertinent thereto has not been placed on the courts, practically speaking the courts are not precluded from reexamining such matters:

> "As Judge Magruder pointed out in that case [Pino v. Nichols] Congress did not place the burden upon the courts to consider extenuating circumstances. However, if the circumstances in the instant case are as petitioner alleges, the Attorney General may wish to give whatever consideration is possible to them. Indeed, at oral argument counsel for respondent stated that such consideration will be given to petitioner."
> Giammario v. Hurney, supra at 287

The Appeal Board is mandated here to review the appellant's conviction in accordance with a fundamental due process standard for the following reasons: the general practice of reviewing foreign convictions noted by the court in Giammario, supra, the legal support

underlying such review documented above, the overriding interests of justice and policy involved and the fact that the immigration judge in the Lennon deportation proceeding chose to consider several important matters related to appellant's conviction which are presently part of the record (i.e., the matter of Officer Pilcher, the illegality of the search and arrest, the absence of "scienter" in the English possession statute). This review is also compelled by the United States statute involved here which permits exclusion where the alien has been convicted of illicit possession of marijuana. The requirement of illicitness cannot be met under American constitutional law without a showing of criminal mens rea in the original conviction. A conviction not meeting the standards of the statute or the Constitution cannot form a basis for exclusion.

A. The Constitutional Requirements of Due Process Have Not Been Met by the English Standard

The introduction of this argument has made plain the circumstances of Lennon's conviction in England. The appellant does not argue that the board must review the nature of police abuse or the legality of a in every case, but where the totality of circumstances cast doubt on the validity of a conviction, justice requires some scrutiny of that background. Some standards are so fundamental to our concept of "ordered liberty" that no court of law or administrative board could choose to ignore them. Palko v. Connecticut, 302 U.S. 319 (1937).

The proceeding against Lennon is entirely based on a criminal conviction for possession of marijuana. It appears, however, that the most important element--crimina intent to possess--was not, in the original jurisdiction