tional research. Counsel has recently heard of a decision in another district in a case which appears to be on all fours with the instant case in which the Immigration Judge came to the opposite conclusion. A request under the Freedom of Information Act was filed and a copy of the decision obtained. It now appears that an appeal to the Board of Immigration Appeals has been filed in that case and that the Office of General Counsel of the Service has withdrawn such appeal. Further research into the case is required as ithhad been assumed by all parties including the Immigration Judge that this was a matter of first instance in that no ruling of the Board or any court or other administrative body had ruled on the issue of whether or not cannabis resin or hashish was within the statutory definition of the term "marijuana" under Section 212(a)(23) of the Immigration and Nationality Act.

Further research into the British cases has not been completed and requires additional opinions of counsel in England which are now still in the process of preparation.

There is substantial suspicion that the respondent was placed in the positionoof an overstay and these proceedings prosecuted based upon information secured by surveillance of the respondent and/or electronic wiretaps, which may substantially have effected the due process rights of the respondent, and additional time is required to investigate these suspicions.

It is not contemplated that any further request for additional time within which to file the brief of counsel in this matter will be requested. Your courtesy and consideration are much appreciated.

Very truly yours,

LEON WILDES

LW/ts
cc: Appelate Traal Attorney

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May 15, 1973

In re: John Winston Ono Lennon
File: A17 595 321

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

Dear Mr. Wildes:

This will supplement my letter dated May 1, 1973 concerning the above-captioned matter.

The administrative record has now been received at the Board. Oral argument will be scheduled for Monday, September 10, 1973. It will be satisfactory if you have your brief on appeal in our hands by August 6, 1973. This should give you sufficient time to prepare your brief and will leave time for the filing of a responsive brief by the Immigration and Naturalization Service before the oral argument.

Sincerely yours,

Maurice A. Roberts
Chairman

cc: Mr. Irving A. Appleman
Appellate Trial Attorney
I&N Service

MAR:mhl

CC: Mr. Schiano, Trial Attorney, New York

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April 24, 1973

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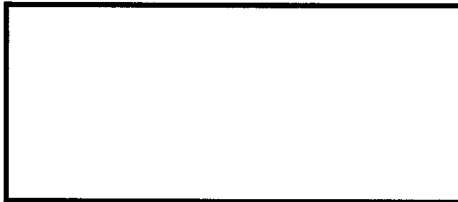

This refers to your letter bearing twenty-three signatures in addition to your own concerning Mr. John Lennon.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennnon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D.D. NEW YORK - Your A17 597 321 John Lennon.
For your information and file. Letter under reference attached.

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This refers to your letter to this Service concerning Mr. John Lennon.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

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cc: D.D. New York - Your John LENNON.
For the file.

August 9, 1973 CO 893.—C

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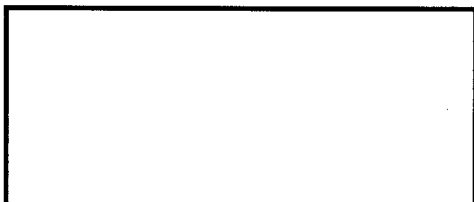

This refers to your letter of July 30 concerning John Lennon.

The Immigration Judge hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D. D. New York - Your A17 597 321 John LENNON

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... AND FORWARDED
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON,

Plaintiff,

-against-

73 Civ. 4476 (RO)

ELLIOT RICHARDSON, LEONARD CHAPMAN, EDWARD A. LOUGHRAN, SOCRATES ZOLATAS, and SOL MARKS,

Defendants.

JOHN WINSTON ONO LENNON,

Plaintiff,

-against-

73 Civ. 4543 (RO)

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.

MEMORANDUM OF LAW IN OPPOSITION TO A MOTION FOR A PRELIMINARY INJUNCTION

Preliminary Statement

This memorandum of law is submitted in opposition to plaintiff's request for a preliminary injunction, seeking discovery and production of records relatng to the "non-priority" category of deportable aliens and enjoining the

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defendants and the Board of Immigration Appeals from rendering a final decision on the issue of plaintiff's deportability.

The Government opposes the preliminary injunction on the ground that the plaintiff has not established a likelihood of success on the merits and because he has failed to demonstrate that he will suffer irreparable harm.

Statement of the Facts

The facts of this case have been set forth in the accompanying affidavit of Joseph P. Marro, Assistant United States Attorney and reference is respectfully made thereto. The pertinent facts may be summarized as follows:

The plaintiff, John Winston Ono Lennon, is an alien, a native of Great Britain and citizen of the United Kingdom. He entered the United States on August 31, 1971 as a nonimmigrant visitor for pleasure and was authorized to remain until February 29, 1972. He did not depart as required and deportation proceedings were commenced against him. On March 23, 1973 he was found deportable for having remained in the United States without authority. This order is presently on appeal to the Board of Immigration Appeals.

On October 18, 1973 the plaintiff commenced an action in this Court under the Freedom of Information Act, 5 U.S.C. §552. Lennon v. Richardson, et al., (hereinafter

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"Action #1"). This action seeks additional information with regard to the category of "non-priority" cases, established by the Immigration Service in instances where deportation would be unconscionable because of appealing humanitarian factors. On October 24, 1973, the plaintiff commenced a second action in which he alleged unlawful electronic surveillance, pre-judgment and violation of constitutional rights. Lennon v. United States of America, et al., (hereinafter "Action #2").

The plaintiff has now moved for a preliminary injunction.

Relevant Statute

Freedom of Information Act, 5 U.S.C. §552:

> (2) Each agency, in accordance with published rules, shall make available for public inspection and copying -
>
> (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
>
> (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
>
> (C) administrative staff manuals and instructions to staff that affect a member of the public;
>
> unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in

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each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or prom[illegible] July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if -

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action.

Relevant Operations Instructions

Section 103.1(a)(1):

(ii) Nonpriority. In every case where the district director determines that adverse action would be unconscionable because of the existence of appealing humanitarian factors, he shall recommend consideration for nonpriority. His recommendation shall be made on Form G-312, which shall be signed personally by him.

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If the recommendation is approved the alien shall be notified that no action will be taken by the Service to disturb his immigration status, or that his departure from the United States has been deferred indefinitely, whichever is appropriate.

Summary of the Argument

The motion for a preliminary injunction must be denied because the plaintiff cannot satisfy the twofold requirements for the granting of such relief. He can neither establish a likelihood of ultimate success on the merits, or that he will suffer irreparable harm if an injunction dos not issue.

He can not show a likelihood of success because the facts demonstrate that the plaintiff is in the United States without authority and because this Court lacks jurisdiction to review the decision to initiate deportation proceedings. The Court also does not have jurisdiction to review the refusal to grant the plaintiff "non-priority" status as that determination is committed to agency discretion. Even if it were reviewable, judicial scrutiny would be limited to abuse of discretion and no such abuse has been demonstrated herein.

With regard to irreparable harm, the Board of Immigration Appeals has no authority to pass on applications for "non-priority" status and consequently, the need for the information sought under the Freedom of Information Act would have no bearing on the Board's decision on the issue of whether deportability has been established by clear

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unequivocal and convincing evidence.

ARGUMENT

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED

POINT I

THE CRITERIA FOR A PRELIMINARY INJUNCTION

The plaintiff has moved for a preliminary injunction primarily to enjoin the Board of Immigration Appeals from rendering a final decision on the issue of plaintiff's deportability. He argues that the determination of the Board should be stayed until such time as he can present to the Board the additional information he hopes to obtain under the Freedom of Information Act (Action #1). He contends that this information will be relevant to show that he is entitled to be placed in the category of "non-priority cases", whereby the Immigration and Naturalization Service, in the exercise of discretion, declines to proceed with the deportation process because of appealing humanitarian reasons. In this regard he contends that he was entitled to such status and as a result, deportation proceedings should never have been commenced or alternatively, the proceedings should now be terminated.

However, in order to succeed on his present application, he must persuade the Court that he satisfies the prerequisites for the extraordinary relief he now seeks.

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This Circuit has recently restated the long established criteria for obtaining a preliminary injunction. "[T]he two-fold requirement for a preliminary injunction is a demonstration of probability of success on the merits and a showing that irreparable harm will result if such relief is denied." Gulf & Western Industries, Inc. v. The Great Atlantic & Pacific Tea Company, Inc., 476 F.2d 687, 692 (2d Cir. 1973). See also: Delaware & Hudson Railway Company v. United Transportation Union, 450 F.2d 603, 609 (D.C. Cir. 1971), cert. denied, 403 U.S. 911; Hamilton Watch Company v. Benrus Watch Company 206 F.2d 738 (2d Cir. 1953); Rudolphe Noel, et al. v. Green, etc., F.Supp. Docket No. 73 Civ. 3682 (S.D.N.Y., decided February 6, 1974) (J. Gagliardi). As the plaintiff can neither establish a likelihood of success on the merits nor any irreparable injury, his motion for a preliminary injunction must be denied.

POINT II

THE PLAINTIFF HAS FAILED TO ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS

The plaintiff's attempt to persuade the Board of Immigration Appeals that the deportation proceedings should never have been commenced must fail because he can not show

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that such action was improper or unlawful. Under the broad grant of authority contained in Section 103(a) of the Immigration and Nationality Act, 8 U.S.C. §1103(a), the Attorney General is charged with the administration and enforcement of our immigration laws. Pursuant to Section 241(a)(2) of that Act, 8 U.S.C. §1251(a)(2), an alien is deportable if he is in the United States without authority. Thus, as plaintiff has not offered any evidence to show that he was given permission to remain in this country beyond February 28, 1972, the institution of deportation proceedings can not be questioned.

In addition, although we have found no immigration case directly relating to the decision to initiate deportation proceedings, the Government contends that the determination as to whether to prosecute is not reviewable. Under Section 106(a) of the Immigration and Nationality Act, 8 U.S.C. §1105a(a), review of a final order of deportation can be obtained only in the Court of Appeals and this is the sole and exclusive remedy provided for by Congress. Consequently, if the plaintiff is found deportable by the Board, he can contest this finding in the Court of Appeals.

Moreover, we contend that the decision of the Attorney General to commence deportation proceedings is

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similar in nature to the power of a prosecutor in arriving at a decision whether to prosecute. In this area of prosecutorial discretion, it has long been settled that the decision to investigate, arrest or prosecute are matters entrusted solely to the discretion of the prosecutor's office, over which the Courts will not interfere. (See page 6 of the Immigration Judge's decision, annexed to the Government's affidavit as Exhibit B.) Confiscation Cases, 74 U.S. (7 Wall) 454 (1868); Milliken v. Stone, 16 F.2d 981 (2d Cir. 1927); Peek v. Mitchell, 419 F.2d 575 (6th Cir. 1970); Powell v. Katzenbach, 359 F.2d 235 (D.C. Cir. 1965), cert. denied, 384 U.S. 906, rehearing denied, 384 U.S. 967 (1966); Moses v. Katzenbach, 342 F.2d 931 (D.C. Cir. 1965), affirming, Moses v. Kennedy, 219 F.Supp. 762 (D.D.C. 1963); United States v. Cox, 342 F.2d 167 (5th Cir.), cert. denied sub nom, Cox v. Hauberg, 381 U.S. 935 (1965); Goldberg v. Hoffman, 225 F.2d 463 (7th Cir. 1955); Pugach v. Klein, 193 F.Supp. 630 (S.D.N.Y. 1961). Indeed, the established rule is that a prosecutor's discretion is absolute. Smith v. United States, 375 F.2d 243, 247 (5th Cir. 1967), cert. denied, 389 U.S. 841.

Moreover, in a recent decision of this Circuit, the Court reexamined this question and concluded that in the absence of a statute or regulation, "the problems inherent in the task of supervising prosecutorial decisions do not lend themselves to resolution by the judiciary."

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Inmates of Attica Correctional Facility v. Rockefeller, 477 F.2d 375, 380 (2d Cir. 1973).

The plaintiff's alternative theory of attack is that the Board should [illegible] the deportation proceedings because the plaintiff is entitled to "non-priority" status. Initially, the Board of Immigration Appeals has no authority to determine "non-priority" status (8 CFR §3.1). Such a recommendation must be made by the District Director, approved by the Regional Commissioner and finally ordered by the Chairman of the Central Office of the Immigration and Naturalization Service on Non-Priority Cases. Operation Instruction §103.1(a)(1)(ii); See also Exhibit D, annexed to the Government's affidavit.

Additionally, it is the Government's contention that the determination to grant or deny "non-priority" status is a matter of complete discretion which is not subject to judicial review. Cf: United States ex rel Schonbrun v. Commanding Officer, 403 F.2d 371 (2d Cir. 1968); Petition of Joe Cahill, 447 F.2d 1343 (2d Cir. 1971); Roth v. Laird, 446 F.2d 855 (2d Cir. 1971). However, if this Court does have jurisdiction to review this determination, such review would be narrowly limited to whether the decision constituted an abuse of discretion. Wong Wing Hang v. Immigration and Naturalization Service, 360 F.2d 715 (2d Cir. 1966). Clearly,

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under the facts of this case there has been no showing that the denial of "non-priority" status constituted such an abuse of discretion.*

Finally, with regard to the plaintiff's request to enjoin the defendants from deporting the plaintiff, we merely note that no final order of deportation has as yet been entered and until the Board of Immigration Appeals does so, such a request is premature. Petition of Joe Cahill, supra; Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1937); Aircraft and Diesel Equipment Corp. v. Hirsch, 331 U.S. 752 (1946); Toilet Goods Association, Inc. v. Gardner, 387 U.S. 158 (1967); Federal Power Commission v. Union Producing Company, 230 F.2d 36 (D.C. Cir. 1956); Sea-Land Service, Inc. v. Federal Maritime Commission, 402 F.2d 631 (D.C. Cir. 1968).

Thus, it is clear that the plaintiff has failed to establish that he will ultimately succeed in challenging either the decision to commence the proceedings or the denial of "non-priority" status.

* Here the record establishes that the plaintiff was authorized to remain in this country until February 28, 1972 and was convicted of a violation of law relating to the possession of marijuana which renders him excludable and deportable. In view of the Congressional intent to treat drug related offenses sternly, the favorable exercise of discretion would seem unlikely. See the decision of the Immigration Judge, Exhibit B, pp. 11-14.

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POINT III

THE PLAINTIFF HAS FAILED TO DEMONSTRATE THAT HE WILL SUFFER IRREPARABLE HARM

The plaintiff argues that he will suffer irreparable harm if the Board of Immigration Appeals is not enjoined from rendering its decision on the issue of deportability because, he contends, that he would "be limited to the record upon appeal, which record is totally barren with respect to the information sought in the Actions herein outlined". (See p. 16 of plaintiff's memorandum of law.) However, even if the information had been made available to the plaintiff, it would be entirely irrelevant to the issues pending before the Board. That issue is solely whether deportability has been established by clear, convincing and unequivocal evidence. Woodby v. Immigration and Naturalization Service, 385 U.S. 276 (1966).

In support of his argument that this Court has jurisdiction to enjoin administrative action, counsel has relied on two cases, Bannercraft Clothing Co. v. Renegotiation Board, 466 F.2d 345 (D.C. Cir. 1972) and Sears Roebuck & Co. v. N.L.R.B., 473 F.2d 91 (D.C. Cir. 1972). However, the decision in Bannercraft, supra, has recently been reversed and remanded by the Supreme Court, The Renegotiation Board v. Bannercraft Clothing Company, Inc., et al., U.S. 42 U.S.L.W. 4203 (decided February 19, 1974).

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In Bannercraft, supra, the Supreme Court found it unnecessary to determine "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". 42 U.S.L.W. at p. 4209. However, the Court did suggest that under certain circumstances where there is a clear showing of irreparable injury, injunctive action under the Freedom of Information Act may be warranted and that in the absence of such, "failure to exhaust administrative remedies serves as a bar . . . . Meyers, supra; Sears, Roebuck & Co. v. N.L.R.B., 473 F.2d 91, 93 (1973)". 42 U.S.L.W. at p. 4210. Even in Sears, supra, the Court in declining to grant the injunction stated that:

> ". . . it is only in extraordinary circumstances that a court may, in the sound exercise of discretion, intervene to interrupt agency proceedings to dispose of a single, intermediate or collateral issue. A cogent showing of irreparable harm is an indispensable condition of such intervention." at p. 93

Thus, it is clear that if there is any inherent power in the District Court to enjoin an agency from rendering a decision, it would be limited to where the information is sought under the Freedom of Information Act, is essential for the agency to correctly determine the merits and, in the absence of such, severe and irreparable injury will occur

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to the adversely affected party. In the present case, the plaintiff can not make such a showing.

The Board of Immigration Appeals has the power to review the finding of the Immigration Judge as to the issue of deportability and any denials of discretionary relief made during the deportation hearing, 8 CFR §3.1. The Board has no statutory or regulatory authority to adjudicate applications for classification as a "non-priority case". As previously discussed in Point II, supra, only the Chairman of the Central Office Committee on Non-Priority Cases has the ultimate authority to pass on such applications for "non-priority" status, following recommendations by the District Director and the Regional Commissioner. Hence, since the information sought to be produced has no relevance to the Board's decision, the Board should not be enjoined.

Furthermore, if the Board affirms the order of deportation the plaintiff can get review of that order in the Court of Appeals where he will receive an automatic stay. Section 106 a of the Immigration and Nationality Act, 8 U.S.C. §1105a(a). In addition, if the plaintiff still chooses to litigate the denial of "non-priority" status, he can bring a declaratory action in this Court or amend his complaint to include this request. Consequently, he has failed to demonstrate any harm, and his application for a preliminary injunction must be denied.

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CONCLUSION

Plaintiff's motion for a preliminary injunction must be denied in all respects.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

JOSEPH P. MARRO
Assistant United States Attorney

- Of Counsel -

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON,

Plaintiff,

-against- 73 Civ. 4476 (RO)

ELLIOT RICHARDSON, LEONARD CHAPMAN, EDWARD A. LOUGHRAN, SOCRATES ZOLATAS, and SOL MARKS,

Defendants.

JOHN WINSTON ONO LENNON

Plaintiff,

-against- 73 Civ. 4543 (RO)

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.

AFFIDAVIT IN OPPOSITION TO A MOTION FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOSEPH P. MARRO, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, attorney for the defendants, United States of America and the various

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individual defendants while acting in the course and scope of their official duties, and as such, I am in charge of this action. This affidavit is based upon information contained in the official records of the United States of America.

2. I submit this affidavit in opposition to the plaintiff's request for a preliminary injunction (1) directing the defendants to produce certain records allegedly in the possession of the defendants which pertain to the "non-priority" category of deportable aliens and (2) enjoining the Board of Immigration Appeals and all defendants from taking any further action directly related to the deportation proceedings pending against the plaintiff.

3. The Government opposes this motion on the ground that the plaintiff has failed to satisfy the criteria governing the grant of such extraordinary relief in that he has failed to demonstrate a likelihood of success on the merits or that he will suffer irreparable harm.

4. The plaintiff, John Winston Ono Lennon, is an alien, a native of Great Britain and citizen of the United Kingdom and its colonies. He is married to Yoko Ono Lennon, a lawful permanent resident of this country. Mr. Lennon entered the United States on August 13, 1971 as a non-immigrant visitor for pleasure and was authorized to remain only until February 29, 1972. He did not depart this country at the expiration of his authorized stay and on March 7, 1972, deportation proceedings were commenced against him by the issuance of an order to show cause and notice of hearing. A copy of the order to show cause is annexed hereto as Exhibit "A".

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5. An extensive deportation hearing was held in this matter. During the course of this proceeding, the plaintiff moved to terminate the deportation proceedings on the ground that they were discriminatorily commenced and for other reasons. This motion was denied by the Special Inquiry Officer (now called Immigration Judge) in his decision of March 23, 1973. A copy of this decision is annexed hereto as Exhibit "B".

6. The Special Inquiry Officer, by his decision and order of March 23, 1973, found the plaintiff deportable as charged in the order to show cause. An appeal from that determination is presently pending before the Board of Immigration Appeals.

7. The plaintiff commenced the first of two recent actions in this Court on or about October 18, 1973 by the filing of a summons and complaint. Lennon v. Richardson, et al., 73 Civ. 4476 (hereinafter "Action #1"). Action #1 is brought under the provisions of the Freedom of Information Act, 5 U.S.C. §552. That action seeks discovery of certain information pertaining to the classification of immigration cases as "non-priority cases." This status is granted in the exercise of discretion where adverse deportation action would be unconscionable because of appealing humanitarian factors. When a case is in such status, deportation orders are not enforced.

8. The plaintiff commenced a second action on or about October 24, 1973 by the filing of a summons and complaint. Lennon v. United States of America, et al., 73 Civ. 4543 (hereinafter, "Action #2"). This action contained three alleged causes of action. The plaintiff

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requested the Government (pursuant to 18 U.S.C. §3504) to affirm or deny the occurrence of unlawful acts which gave rise to the deportation proceeding - to wit, the use of electronic or mechanical recording devices or wiretaps. The second cause of action alleged pre-judgment of the deportation proceedings with regard to the commencement thereof and various applications for essentially discretionary relief. His third cause of action alleged violation of his constitutional rights based on the activities alleged in his prior causes of action.

9. On February 22, 1974 the plaintiff obtained an order to show cause bringing on this motion for a preliminary injunction. The Government was served with the order on February 25, 1974. The motion concerns itself only with Action #1 and primarily seeks disclosure of certain documents under the Freedom of Information Act pertaining to the "non-priority" category and to enjoin the Board of Immigration Appeals from rendering its decision on the issue of deportability until such information is presented to the Board.

10. The Government contends that it has previously supplied the plaintiff with all available information regarding the standards for "non-priority cases" as evidenced by the letter of E.A. Loughran, Associate Commissioner of Immigration. A copy of this letter is annexed hereto as Exhibit "C." Moreover, the Board is without authority to determine an application for classification as a non-priority case. Such applications are presented to the Service on Form G-312 and require approval by the District Director,

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Regional Commissioner and ultimately, the Central Office Committee on Non-Priority Cases. A copy of the Form G-312 is annexed hereto as Exhibit "D".

WHEREFORE, it is respectfully requested that the plaintiff's motion for a preliminary injunction be denied in all respects.

JOSEPH P. MARRO
Assistant United States Attorney

Sworn to before me this
day of March, 1974.

3-30-73

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

Fee Stamp

In the Matter of:

John Winston Ono LENNON

File No. A17 595 321

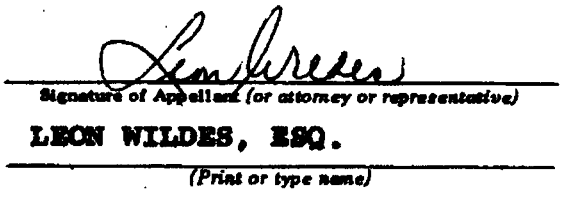
1. I hereby appeal to the Board of Immigration Appeals from the decision, dated March 23, 1973, in the above entitled case.

2. I am (am) / (am not) filing a written brief or a written statement with the above Service office within the time allowed for such filing.

3. I do (do) / (do not) desire oral argument before the Board of Immigration Appeals in Washington, D.C.

4. Briefly, state reasons for this appeal.

(See Rider Attached)



Signature of Appellant (or attorney or representative)

LEON WILDES, ESQ.

(Print or type name)

March 30, 1973

Date

515 Madison Avenue, New York, NY

Address (Number, Street, City, State, Zip Code)

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Form I-290A

INSTRUCTIONS

1. **Fees.** This notice of appeal must be accompanied by a fee of $25. (Only a single fee need be paid if two or more persons are covered by a single decision.) Attach money order or check, payable to the "Immigration and Naturalization Service, Department of Justice." Do NOT send cash. If this form is filed in Guam, make remittance payable to the "Treasurer, Guam;" if filed in the Virgin Islands, make remittance payable to "Commissioner of Finance of the Virgin Islands." The fee is required for filing the appeal and is not returnable regardless of the action taken thereon.

2. **Counsel.** In presenting and prosecuting this appeal the appellant may, if he desires, be represented at no expense to the Government by counsel or other duly authorized representatives. No interpreters are furnished by the Government for the argument before the Board.

3. **Briefs.** A brief in support of or in opposition to an appeal is not required, but if a brief is filed it shall be in triplicate and submitted *to the officer of the Immigration and Naturalization Service having administrative jurisdiction over the case* within the time fixed for the appeal or within any other additional period designated by the special inquiry officer or other Service officer who made the decision. Such officer, or the Board for good cause, may extend the time for filing a brief or reply brief. The Board in its discretion may authorize the filing of briefs directly with it, in which event the opposing party shall be allowed a specified time to respond.

4. **Oral argument.** Oral argument is optional; no personal appearance by the appellant or counsel is required. The Board will consider every case on the record submitted, whether or not oral representations are made. Oral argument in any one case should not extend beyond fifteen (15) minutes, unless arrangements for additional time are made with the Board in advance of the hearing.

   An appellant will not be released from detention or permitted to enter the United States to present oral argument to the Board but may make arrangements to have someone represent him before the Board, and unless such arrangements are made at the time the appeal is taken, the Board will not calendar the case for argument.

5. **Summary dismissal of appeals.** The Board may deny oral argument and summarily dismiss any appeal in any deportation proceeding in which (i) the party concerned fails to specify the reason for his appeal on the reverse side of this form, (ii) the only reason specified by the party concerned for his Appeal involves a finding of fact or conclusion of law which was conceded by him at the hearing, or (iii) the appeal is from an order that grants the party concerned the relief which he requested.

6. **FILING OF NOTICE OF APPEAL. THE NOTICE OF APPEAL, IN TRIPLICATE, WITH THE REQUIRED FEE, *MUST* BE SUBMITTED TO THE IMMIGRATION AND NATURALIZATION SERVICE OFFICE WHERE THE CASE IS PENDING. THE NOTICE OF APPEAL IS *NOT* TO BE FORWARDED DIRECTLY TO THE BOARD OF IMMIGRATION APPEALS.**

GPO 947-268

U.S. DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of :	
JOHN WINSTON ONO LENNON	File No. A17 595 321

RIDER TO NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

The decision should be reversed because:

Deportation proceedings were improperly and discriminatorily instituted and should have been terminated; their institution and continuance were an abuse of administrative discretion; maintenance of deportation proceedings which prevent compliance with U.S. Court orders is improper.

As to the sole ground for deportability sustained by the Immigration Judge, the government failed to prove that the disputed allegations of fact were true by clear, unequivocal and convincing evidence.

The Immigration Judge committed error and denied Respondent due process in refusing to terminate the proceedings, in refusing to permit Respondent to depose a knowledgeable representative of the Immigration Service, in refusing to grant adequate time for submission of rebuttal briefs, and in refusing to defer his decision to await the outcome of proceedings in England relating to the Respondent.

Respondent's application for adjustment of status should not have been denied and he should not have been held excludable under Section 212(a)(23) of the Immigration and Nationality Act as his conviction is not included in Section 212 (a)(23); the Immigration and Nationality Act contains no definition of the term "marijuana" and since deportation visits great hardship upon an alien, the language used by Congress should be strictly construed and any doubt as to its meaning resolved in favor of the alien; the statute under which Respondent was convicted permitted a conviction to be entered without proof of "mens rea" and punished a type of possession not contemplated by Section 212 (a)(23) of the Immigration and Nationality Act; only convictions for possessing marijuana under certain circumstances which would enable the accused to traffic in the forbidden substance are included in Section 212 (a)(23); the use of the British conviction as a bar to residency would deny Respondent due process; the legislative history of Section 212(a)(23) confirms that Respondent's conviction is not therein included.

Respondent's conviction should have been considered a petty offense under Section 212(a)(9) and his application for permanent residence should therefore have been granted.

Section 212(a)(23) of the Immigration and Nationality Act is unconstitutional insofar as it relates to the "illicit possession of marijuana"; its application to the Respondent effectively denies him due process of law and the equal protection of the law and violates the right to privacy.

In view of the novelty of the factual and legal issues and the complexity of the proceedings as well as of the decision rendered herein, Respondent respectfully requests that he be granted until October 2, 1973 to file his brief in support of this appeal.

Respectfully submitted,

LEON WILDES, ESQ.
Attorney for Respondent,
JOHN WINSTON ONO LENNON
515 Madison Avenue
New York, New York 10022

FILE
L-55°

SIGNED AND MAILED 1973 APR -2 AM 9:15

MAR 28 1973

CO 703.1038

A17 597 321

Dear Mr. Symington:

Further reference is made to your interest in the cases of Mr. and Mrs. John Lennon.

Since my letter to you of July 31, 1972, the Special Inquiry Officer has rendered a decision in Mr. Lennon's case. That officer on March 23, 1973, found him deportable and granted Mr. Lennon the privilege of departing the United States voluntarily within 60 days. Mr. Lennon, of course, has the right to appeal that decision to the Board of Immigration Appeals in Washington, D. C.

The application of Mrs. Lennon for adjustment of status to that of a permanent resident of this country has been granted.

You have my assurance that every consideration consistent with current immigration law and related regulations is being given to Mr. and Mrs. Lennon.

Sincerely,

Raymond F. Farrell
Commissioner

Honorable James W. Symington
House of Representatives
Washington, D. C.

CC: DISTRICT DIRECTOR, NEW YORK, NEW YORK - For information.

Best "Reproducible" Copy Available

SIGNED AND MAILED

MAR 28 1972

Dear Mr. Bingham:

[illegible]

[illegible]

[illegible] consideration consistent with [illegible] and related regulations is being [illegible]

Sincerely,

Raymond F. Farrell
Commissioner

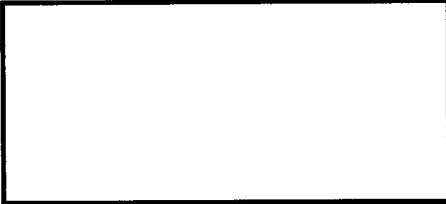
Honorable Jonathan B. Bingham
House of Representatives
Washington, D. C.

CC: DISTRICT DIRECTOR, NEW YORK, NEW YORK - For information.

(b)(6)

May 2, 1973 CO 893.1

(b)(6)



Your letter to the President concerning Mr. John Lennon has been referred to this Service for reply as it concerns an immigration matter.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

SIGNED AND FORWARDED
MAY 2 1973
Date
Detention and Deportation

E. A. Loughran
Associate Commissioner
Management

cc: D.D. New York - Your A17 597 321 John Lennon
For the file.

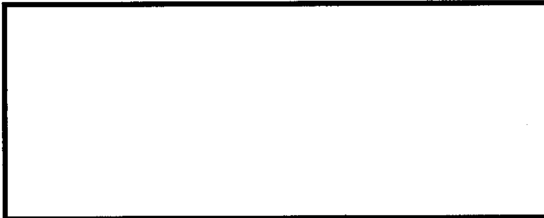
PAGE WITHHELD PURSUANT TO
(b)(6)

-PM
17 APR
1973

President Nixon
The White House
Washington D.C

April 10, 1973 CO 893.1

(b)(6)



This refers to your letter to this Service concerning Mr. John Lennon.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D. D. New York - Your A17 597 321 John LENNON. For file.
Attachment- (This letter is AGAINST permitting him to remain.)

CJL:rwc

137

APR 10 1973

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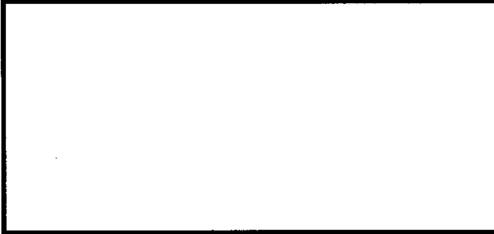
(b)(6)

April 10, 1973 CO 893.1

(b)(6)



This refers to your letter to this Service concerning the immigration case of John Lennon.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D.D. New York - Your A17 597 321 John LENNON. For file.

SIGNED AND FORWARDED
APR 1973
Date
and Deportation

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(b)(6)