

12/31/74

No Reply Necessary!

To Jennie
(U.K. Freda)

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Form G-25
(Rev. 6-16-66)

ROUTE SLIP

Date 2/30/74

To D&D

Room 7017

- | | | |
|--|---|---|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return | <input type="checkbox"/> See me |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Note & File | <input type="checkbox"/> As requested |
| <input checked="" type="checkbox"/> Necessary action | <input type="checkbox"/> Signature | <input type="checkbox"/> For your information |
| <input type="checkbox"/> Per telephone conversation | <input type="checkbox"/> Call me Ext. _____ | |

Remarks

12/31/74
To Lennon file
No Reply
Necessary
B [Signature]

From Information Room _____
IMMIGRATION AND NATURALIZATION SERVICE GPO 922-615

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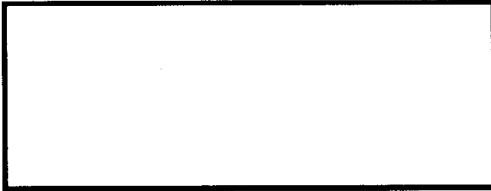
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LENNON

December 11, 1974

CO 892.71-C

(b)(6)



This refers to your recent letter concerning John Lennon.

Mr. Lennon entered the United States as a visitor in August 1971 and was authorized to remain until February 29, 1972. As a result of his failure to honor that departure date, he was informed that he was expected to depart by March 15, 1972, and that failure to comply would result in the institution of deportation proceedings.

Upon his failure to depart, a deportation hearing was held and the immigration judge found that Mr. Lennon was deportable in that he had remained in the United States for longer time than permitted. The immigration judge granted Mr. Lennon 60 days in which to depart voluntarily from the United States in lieu of deportation. He appealed the immigration judge's decision to the Board of Immigration Appeals.

On July 10, 1974, the Board of Immigration Appeals dismissed Mr. Lennon's appeal and granted him 60 days from the date of that decision in which to depart voluntarily from the United States. However, on September 6, 1974, a petition to review Mr. Lennon's deportation order was filed in the United States Court of Appeals in New York. The petition for review stays Mr. Lennon's deportation pending determination of the petition by that court.

File

Mr. Lennon is guaranteed and indeed has received the same constitutional rights of "due process" and "equal protection under the law" as would any other alien or citizen of this country, and you may be assured that he received a fair and impartial deportation hearing.

Thank you for your interest in this matter.

Sincerely,

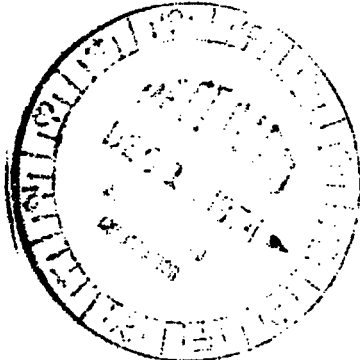
James F. Greene
Deputy Commissioner

SMD
SMD:ba,ba
aw

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(John Lennon)
243.129-C

ROUTING AND TRANSMITTAL SLIP		ACTION	
1 TO (Name, office symbol or location) MR. W O'BRIEN 7017	INITIALS	CIRCULATE <input checked="" type="checkbox"/>	
	DATE	COORDINATION	
2	INITIALS	FILE	
	DATE	INFORMATION	
3	INITIALS	NOTE AND RETURN	
	DATE	PER CON - VERSATION	
4	INITIALS	SEE ME	
	DATE	SIGNATURE	
REMARKS <u>See</u> I believe this one is in your Dartwick			
			
Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions.			
FROM (Name, office symbol or location) R B Lindsey		DATE 12/18/74	PHONE

OPTIONAL FORM 41
AUGUST 1967
GSA FPMR (41CFR) 100-11.206

GPO 648-10-81418-1 610-015 5041-101

Form Reply sent: _____

STATE - A.I.D. - USIA ROUTING SLIP		DATE 12/13/74	
TO:	Name or Title	Urgen. Symbol	Room No. Bldg.
1.	Mr. Edward F. O'Connor		
2.	Associate Commissioner		
3.	Examinations, INS Department of Justice		
4.	425 I Street, N.W.		
5.	Washington, D.C. 20536		
<input type="checkbox"/>	Approval	<input checked="" type="checkbox"/>	For Your Information
<input type="checkbox"/>	As Requested	<input type="checkbox"/>	Initial for Clearance
<input type="checkbox"/>	Comment	<input type="checkbox"/>	Investigate
<input type="checkbox"/>	File	<input checked="" type="checkbox"/>	Prepare Reply
<input type="checkbox"/>	For Correction	<input type="checkbox"/>	Justify
<input type="checkbox"/>		<input type="checkbox"/>	Necessary Action
<input type="checkbox"/>		<input type="checkbox"/>	Note and Return
<input type="checkbox"/>		<input type="checkbox"/>	Per Conversation
<input type="checkbox"/>		<input type="checkbox"/>	Signature
REMARKS OR ADDITIONAL ROUTING			
Re: Inquiry concerning deportation case of John Lennon.			
Attachments:			
<div style="border: 1px solid black; width: 300px; height: 20px;"></div>			10/19/74 /13/74
FROM: (Name and Org. Symbol)		ROOM NO. & BLDG.	PHONE NO.
Stephen A. Dobrenchuk, Chief Public Services Division Visa Office			21907

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FORM 3-68 JF-29 (Formerly Forms DS-10, AID-5-50 & IA-68)

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The White House has referred to this office for reply your letter of October 19 to Mrs. Betty Ford about the deportation case of Mr. John Lennon.

The deportation of aliens is a matter within the jurisdiction of the Immigration and Naturalization Service of the Department of Justice. We have therefore sent a copy of your letter to that Service for further reply to you.

Sincerely,

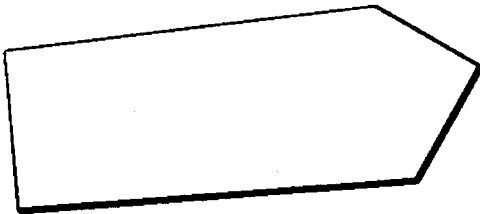
Stephen A. Dobrenchuk
Chief, Public Services
Division, Visa Office

SCA:VO:JGarner:cf:mp 12/13/74

DEC 4 1974

CO 893.1-C

(b)(6)



I have your letter of November 19, 1974, regarding the deportation matter of John Lemmon.

In Fiscal Year 1974, this Service deported 18,824 aliens to all parts of the world, while another 718,700 were required to depart without the issuance of deportation orders. Admittedly, few, if any, of these aliens were as well known as Mr. Lemmon. However, I think you will agree, from the number of illegal aliens expelled, as indicated above, that this Service has little time or inclination to single out any alien, be he John Lemmon or plain John Smith, for arbitrary treatment as alleged in your letter.

Thank you for your interest in this matter.

Sincerely,

James F. Greene
Deputy Commissioner

CC: CO 243.129-G

CC: Sara Donahue

CC: Commissioner's Reading File

ENF:HB:me

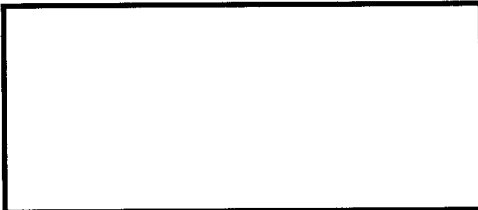
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LENNON

November 6, 1974

~~CO 893.1-C~~

(b)(6)



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

Mr. Lennon entered the United States as a visitor in August 1971 and was authorized to remain until February 29, 1972. As a result of his failure to honor that departure date, he was informed that he was expected to depart by March 15, 1972, and that failure to comply would result in the institution of deportation proceedings.

Upon his failure to depart, a deportation hearing was held and the immigration judge found that Mr. Lennon was deportable in that he had remained in the United States for longer time than permitted. The immigration judge granted Mr. Lennon 60 days in which to depart voluntarily from the United States in lieu of deportation. He appealed the immigration judge's decision to the Board of Immigration Appeals.

On July 10, 1974, the Board of Immigration Appeals dismissed Mr. Lennon's appeal and granted him 60 days from the date of that decision in which to depart voluntarily from the United States. However, on September 6, 1974, a petition to review Mr. Lennon's deportation order was filed in the United States Court of Appeals in New York. The petition for review stays Mr. Lennon's deportation pending determination of the petition by that court.

-2-

Mr. Lennon is guaranteed and indeed has received the same constitutional rights of "due process" and "equal protection under the law" as would any other alien or citizen of this country, and you may be assured that he received a fair and impartial deportation hearing.

Thank you for your interest in this matter.

Sincerely,

James F. Greene
Deputy Commissioner

SMD:im :mm

Rv

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Lennon show trial was reportedly plotted

By JOE TREEN

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

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

Not only was there illegal outside interference in his case, the sources say, but there were plans for a big political trial as well — a Chicago 7, Harrisburg 7 and Gainesville 8 rolled into one. It would be a whole lot of fun. They would play Lennon's albums — his songs supporting such subversions as Irish freedom, Women's Lib, the rights of blacks and Indians, the "decriminalization of marijuana. Sample lyrics: "No short-haired, yellow-bellied son of Tricky Dicky is going to Mother Hubbard soft soap me." And, when they finished that field day, they would turn to another — Lennon's friends, people like Jerry Rubin, Abbie Hoffman, Renaldo Davis, Bobby Seale, Mury Newton — all the

ROOMY STOMP

heavies. And then for overkill there was always Lennon's beliefs. "Didn't he say something about the Pope should smoke grass?" asked one source.

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

Marks got his best man for the case, trial attorney Vincent A. Schiano. Schiano had been in charge of all the recent big New York deportation cases — Carlo Gambino, an Irish revolutionary; Joe Cahill, former Nazi; Herman Braunsteiner, Russian spy; hooker Xaveria Hollander. Marks, now retired and living in Florida, admits that the political trial idea was at

least kicked around in his office. "That might have been discussed tangentially," he said, "but never with any seriousness." He also admits talking to Greene about the case but says that Greene didn't interfere in his decision to deport Lennon, as Lennon is now claiming in court. "I talked with him about it," Marks said. "A case of this importance you necessarily would . . . I don't consider that as interference at all. After all, the commissioner or immigration has complete authority vested in him by the Attorney General, which is in accordance with the statutes, and the commissioner can call the shots on anything."

But did either Farrell or Greene call the shots in the Lennon case? "Well, this is something that will withhold comment on," Marks said.

Just who called the shots is the key to the whole Lennon case. Lennon is in court

trying to show that Marks was not allowed to exercise the discretion of his office, therefore depriving Lennon of U.S. Constitutional rights of due process (which he has, even though he isn't a U.S. citizen). If there had been no interference, Lennon argues, he might have even allowed to stay here on the ground that he is an artist. Or on the ground that he headed a large corporation. Or, more likely, he might have been granted what is called "priority" status, meaning he could have stayed for "humanitarian" reasons just like the 118 aliens his attorney says have been allowed to stay even though they have far worse criminal records than a pot charge. But Marks was never allowed to consider those possibilities, Lennon claims. He was only allowed to throw Lennon out.

Greene, however, denies giving Marks any orders in the case. "There was no direction," he said. "He told me what he was going to do."



The Main Ingredient performs at the U.S. Immigration and Naturalization Service, New York City, on Friday night. The Jamnosos are spotted in the background.

I approved of it then. I approve of it now." His only involvement in the case, he said, was to receive phone calls from Marks and pass messages up the chain of command to then-commissioner Farrell. "Mr. Marks informed me of the decision to proceed with the deportation. Why? Because this man (Lennon) is very prominent in the news world. Outside there would be tremendous interest in this matter," Greene said. "I talked in

ROUTE 9, JUNIPER PLAZA, FREEHOLD, N.J.
BRICK SHOWROOM, KENNEDY MAIL, BRICKOVEN, TEL. 970-9292
NEXT TO HAVERN ON THE WAY IN

Alphabet

THE SUNDAY STAR-LEDGER, December 1, 1974

LIMITED QUANTITIES
SALE THROUGH
DECEMBER 1
Lars Juvenile Furniture/ Houses/ Pools, Pp. 144a

20 West Broadway
New York, New York 10007

A17 597 321

August 30, 1974

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

Re: John Winston Ono LENNON

Dear Mr. Wildes:

In consonance with the telephonic replies I have made today to your several requests, I reiterate:

1. No stay of deportation will be granted administratively and the order of the Board of Immigration Appeals will be effectuated;
2. Nonpriority status, another form of expressing a stay of deportation, has been considered by me, and I find no strong equities nor compelling humanitarian factors present to justify granting a stay of deportation.

You are, of course, free to petition for such other relief as may be afforded by other tribunals.

I am enclosing the seventy page copy of the oral argument before the Board of Immigration Appeals dated October 31, 1973.

Sincerely,

MAURICE F. KILEY
Acting District Director

Enc.
WBG:ekw



20 West Broadway
New York, New York 10007

August 30, 1974

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

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MAURICE F. KILEY
Acting District Director

Enc.
WBG:ekw

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
N.Y.C. MAIL UNIT

AUG 29 10 23 AM '74

Date August 28, 1974

TO : District Director
New York, New York

FROM : Appellate Trial Attorney *SAA*
Office of General Counsel
Immigration and Naturalization Service

SUBJECT: JOHN LENNON, A17 595 321

- Attached is a self-explanatory communication concerning the above matter.
- Attached is a copy of an order entered by the Board. It is requested that it be designated for publication.
- It is requested that the Board expedite the subject case.
- The Immigration and Naturalization Service desires to be represented at oral argument of this case. Please advise date set for oral argument, and any subsequent changes.

Remarks:

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(b)(6)

DISTRICT DIRECTOR
RECEIVED
AUG 29 1974
New York, N. Y. 10001

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(b)(6)

**APPLICATION FOR A SEARCH OF THE RECORDS OF
THE IMMIGRATION AND NATURALIZATION SERVICE**

TAKE OR MAIL TO -
Immigration and Naturalization Service

Fee Stamp

RECEIVED
INFORMATION

457283I

AUG 14 1974

Immigration and
Naturalization Service
New York, N.Y.

TYPE OR PRINT THE NAME AND MAILING ADDRESS OF THE PERSON TO WHOM
INFORMATION OR COPIES OF RECORD SHOULD BE RETURNED UNDER THE LINE BELOW.

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

(See Instruction 2 on reverse)

PERSON CONSENTING

NAME AND ADDRESS

SIGNATURE OF PERSON CONSENTING

PLACE "X" IN APPLICABLE BOX(ES) (See attached rider)

IT IS REQUESTED THAT:

INFORMATION BE GIVEN REGARDING PERSON DESCRIBED BELOW. EXACT COPIES OF THE RECORD BE FURNISHED.

RECORD BE MADE AVAILABLE FOR INSPECTION.

1. SPECIFIC INFORMATION DESIRED: NAME AGE OR DATE OF BIRTH ADMISSION DATA NATURALIZATION DATA

OTHER: All information, correspondence, memoranda relating to nonpriority classification.

2. PURPOSE FOR WHICH DESIRED: SOCIAL SECURITY BENEFITS OTHER (Explain fully) pending litigation

DATA FOR IDENTIFICATION OF THE RECORD

3. FAMILY NAME LENNON	GIVEN NAME John	MIDDLE NAME Winston	4. ALIEN REGISTRATION NUMBER A17 597 321
5. OTHER NAMES USED, IF ANY John Lennon		6. NAME USED AT TIME OF ENTRY John Lennon	
7. PLACE OF BIRTH Liverpool, England	8. DATE OF BIRTH 10/9/40	9. PORT ABROAD FROM WHICH LEFT FOR UNITED STATES	
10. PORT OF ENTRY	11. DATE OF ENTRY	12. NAME OF VESSEL OR OTHER MEANS OF ENTRY	

GIVE THE FOLLOWING INFORMATION IF THE PERSON WAS NATURALIZED

13. NAME ON NATURALIZATION CERTIFICATE	14. CERTIFICATE NUMBER	15. NATURALIZATION DATE
16. ADDRESS AT TIME OF NATURALIZATION		17. NAME AND LOCATION OF NATURALIZATION COURT

18. SIGNATURE OF APPLICANT

Leon Wildes

**DO NOT COMPLETE THIS BLOCK -
RESERVED FOR GOVERNMENT USE ONLY**

INS OFFICE:

DATE:

THE RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE REFLECT THE FOLLOWING:

- LAWFUL ADMISSION FOR PERMANENT RESIDENCE ON _____ AT _____
- NATURALIZATION INFORMATION AS SHOWN ABOVE IS CORRECT.
- NATURALIZATION IN (COURT) _____ ON (DATE) _____
AT (LOCATION) _____
- DATE OF BIRTH _____
- ARRIVAL RECORD DATED _____ SHOWED SUBJECT'S AGE AT TIME TO BE _____
- COPIES ATTACHED AS REQUESTED _____ SIGNATURE _____
TITLE _____

INFORMATION AND INSTRUCTIONS

1. APPLICATION-Form N-585. Persons desiring a search of the records of this Service shall submit the completed application, in duplicate, to the nearest office of the Immigration and Naturalization Service except in those cases where naturalization data is desired relating to a naturalization that occurred between September 21, 1906, and April 1, 1956. In these cases the form should be sent to the Immigration and Naturalization Service, 119 "D" Street, N.E., Washington, D.C. 20536.

2. CONSENT REQUIRED. The subject of a Service record may consent in writing to another person's obtaining information to which the subject would be entitled. A block is provided in the application form where such consent is shown. Information from visa petitions may be furnished upon application of the petitioner or beneficiary, but an application by a third person requires the petitioner's written consent.

3. FEES. (a) Basic Charges. A single fee of \$3.00 shall be charged for a search of the records of the Immigration and Naturalization Service. The fee is required for the search and is not returnable. When the information requested relates to two or more persons, groups, or things, the search for each is a separate service and an additional fee or fees shall be submitted. In addition, fees are chargeable for searching time or for monitoring time as prescribed by 8 CFR 103.7. Searching time, generally, is considered as covered by the basic fee of \$3.00; however, additional charges shall be imposed for unusual requests that result in expenditure of considerable time. Charges for monitoring shall be assessed when the requester's examination requires assignment of an employee specifically for that purpose.

(b) Copies. A fee of 25 cents per page, with a minimum fee of 50 cents, shall be paid for copies of Service records, but no charge (other than the basic search fee of \$3.00) shall be required for the first page of a record.

(c) Manner of Submission. If this application is mailed, DO NOT SEND CASH. Attach a check or a United States postal money order (or, if outside the United States, an international money order) made payable to "Immigration and Naturalization Service, Department of Justice." An applicant residing in the U.S. Virgin Islands shall make his remittance payable to "Commissioner of Finance of the Virgin Islands," and if residing in Guam to "Treasurer, Guam."

4. NATURALIZATION RECORDS. If naturalization occurred prior to September 27, 1906, the subject's place of residence at the time of naturalization must be furnished. Such records rarely contain information regarding members of the naturalized person's family.

5. ARRIVAL RECORDS. Some passenger lists of the Bureau of Customs dating from 1820 are maintained by the General Reference Section, the National Archives, Washington, D.C. 20408. Inquiries concerning these records should not be made on this form nor submitted to this Service but should be forwarded directly to that agency with sufficient information for an adequate search, i.e., approximate dates of travel, name under which the person arrived, name of vessel, and port of entry and embarkation.

This Service has records of arrivals at the port of New York since June 16, 1897, and at certain other ports since 1891. Our records of arrivals prior to July 1, 1924, do not contain birthdates but merely show age at time of entry. A Certification of Birth Data may be issued for a fee of \$3.00 to foreign-born children under twenty-one years of age who:

(a) Have been admitted to the United States for permanent residence, whether or not they have since become naturalized, or

(b) Are citizens of the United States and have been issued a Certificate of Citizenship by the Service.

The parent, guardian, or other adult having a legitimate interest in a person who is under fourteen years of age may file an application on such person's behalf.

Where documentary evidence is presented to show the child's name has been legally changed, the certification may be issued in the child's new name.

WJ 5831

**APPLICATION FOR A SEARCH OF THE RECORDS OF
THE IMMIGRATION AND NATURALIZATION SERVICE**

TAKE OR MAIL TO —
Immigration and Naturalization Service

Fee Stamp

M57283I

TYPE OR PRINT THE NAME AND MAILING ADDRESS OF THE PERSON TO WHOM
INFORMATION OR COPIES OF RECORD SHOULD BE RETURNED UNDER THE LINE BELOW.

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

(See Instruction 2 on reverse)

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**DO NOT COMPLETE THIS BLOCK —
RESERVED FOR GOVERNMENT USE ONLY**

18. SIGNATURE OF APPLICANT *Leon Wildes*

INS OFFICE: _____ DATE: _____

THE RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE REFLECT THE FOLLOWING:

LAWFUL ADMISSION FOR PERMANENT RESIDENCE ON _____ AT _____

NATURALIZATION INFORMATION AS SHOWN ABOVE IS CORRECT.

NATURALIZATION IN (COURT) _____ ON (DATE) _____
AT (LOCATION) _____

DATE OF BIRTH _____

ARRIVAL RECORD DATED _____ SHOWED SUBJECT'S AGE AT TIME TO BE _____

COPIES ATTACHED AS REQUESTED _____ SIGNATURE _____
TITLE _____

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3. FEES. (a) Basic Charges. A single fee of \$3.00 shall be charged for a search of the records of the Immigration and Naturalization Service. The fee is required for the search and is not returnable. When the information requested relates to two or more persons, groups, or things, the search for each is a separate service and an additional fee or fees shall be submitted. In addition, fees are chargeable for searching time or for monitoring time as prescribed by 8 CFR 103.7. Searching time, generally, is considered as covered by the basic fee of \$3.00; however, additional charges shall be imposed for unusual requests that result in expenditure of considerable time. Charges for monitoring shall be assessed when the requester's examination requires assignment of an employee specifically for that purpose.

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(b) Are citizens of the United States and have been issued a Certificate of Citizenship by the Service.

The parent, guardian, or other adult having a legitimate interest in a person who is under fourteen years of age may file an application on such person's behalf.

Where documentary evidence is presented to show the child's name has been legally changed, the certification may be issued in the child's new name.

A copy of the following documents located in the administrative files or work folders relating to this case are respectfully request:

Each and every document during the period of January 1972 to this date relating to consideration of this alien and/or his wife Yoko Ono Lennon, A19 489 154 for nonpriority classification under Operations instructions section 103.1 (a) (1), including, but not limited to, any form C-312, any communication or memorandum between the New York District Director's office and any other office of the Immigration and Naturalization Service or any other governmental or non-governmental person or body, whether relating to consideration of this case as "non-priority" or under any other procedure or practice relating to the deferral of departure of the alien from the United States or permitting him to remain here without institution of deportation proceedings, or execution of any order of deportation; if no such documents exist in the files relating to this alien, kindly so state.

There^{is} pending litigation relating to the existence of a "nonpriority" program and for disclosure of the practices, procedures and actual cases involved in such program in the U.S. District Court, Southern District of New York, 73 Civ. 4476. However, at no time has the Immigration and Naturalization Service indicated whether or not consideration was ever given to granting this alien such nonpriority status. The purpose of this request is to ascertain whether such an application was ever entertained, and actual consideration given to the application. Since form G-321 is not a form available to the public, nor is there any published regulation by which an alien may formally apply for this remedy, my client would wish to know whether his counsel's request for such classification was given any active consideration at all.

My notice of appearance as attorney for this alien is in the related file.

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

DATE: Aug 14, 1974

TO: Bill Gurock

FROM: Doc Mauro

- For Your Information
- Approval/Signature
- Per Conversation
- Note and Return
- Note and File
- Please Reply (copy to me)
- Report Action Taken

FPI-NI-7-3-73-SOM-789

JOHN WINSTON ONO LENNON,

Plaintiff,

-against-

ELLIOT RICHARDSON, Attorney General of the United States; LEONARD CHAPMAN COMMISSIONER, Immigration and Naturalization; EDWARD A. LOUGRAN, Associate Commissioner, Immigration & Naturalization; SOCRATES ZOLATAS, Regional Commissioner, North-eastern Region, Immigration & Naturalization; SOL MARKS, Director, District No. 3, Immigration and Naturalization,

Defendants.

40669
73 Civ. 4476

JOHN WINSTON ONO LENNON,

Plaintiff,

-against-

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

Defendants.

FILED
U.S. DISTRICT COURT
MAR 3 1 45 PM '74
S.D. OF N.Y.

73 Civ. 4543

United States District Court
S. D. New York
May 1, 1974

Leon Wildes, New York, N.Y. for Plaintiff

Paul J. Curran, United States Attorney for the Southern District of New York, for United States of America, Joseph Marro, Assistant United States Attorney, of counsel

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OPINION AND ORDER

Plaintiff John Lennon has moved for an order enjoining various officials involved in the enforcement and administration of United States immigration laws from further proceedings regarding his deportation.* An appeal from his deportation order of March 23, 1973 is presently pending before the Board of Immigration Appeals (the "Board").

Plaintiff and his wife entered the United States in 1971 with authority to remain until February 29, 1972. On March 1, 1972 they were advised that their authorization had expired and they were expected to leave by March 15. However, on March 6, concluding they had no intention to leave by March 15, the District Director of the Immigration and Naturalization Service ("INS") commenced deportation proceedings against them. This proceeding came on to be heard before Immigration Judge Fieldsteel. At that time, plaintiff and his wife asserted that the deportation proceedings had been discriminatorily commenced because INS had violated its practice by not allowing them "non-priority" status.**

*Those officials are the defendants in the two actions Lennon commenced in October 1973 described infra.

**"Non-priority" refers to a category of cases in which the INS will defer the departure of an alien indefinitely and take no action to disturb his immigration status on the ground that such action "would be unconscionable because of the existence of appealing humanitarian factors."

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In this case, the asserted grounds for "non-priority" status were that the wife desired to remain in the United States to endeavor to locate and obtain custody of her child by a former marriage, and plaintiff-husband desired to remain with and assist her.

The Immigration Judge allowed the wife permanent residence,* but plaintiff-husband was ordered deported. The Immigration Judge ruled that his sole function was to determine whether the deportation charge was sustained by sufficient evidence, and finding that plaintiff-husband had been convicted in England upon his plea of possession of "cannibis resin", ruled he was deportable as a matter of law.** The Immigration Judge denied plaintiff's request to terminate the deportation proceedings on the grounds of (1) discriminatory commencement and (2) because of INS' alleged violation of its own practice as regards "non priority" status, stating:

It is within the District Director's prosecutive discretion whether to institute deportation proceedings against a deportable alien or temporarily to withhold said proceedings. Where such proceedings have begun, it is not in the province

*Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. Sec. 1255.

**Section 212(a)(23) of the Immigration and Nationality Act, 8 U.S.C. Sec. 1182(a)(23).

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of the Immigration Judge or of the Board on Appeal to review the wisdom of the District Director's action starting the proceedings...

Plaintiff's appeal from the determination of the Immigration Judge to the Board of Immigration Appeals is sub judice.

Thereafter, and in October 1973, plaintiff commenced two actions in this Court. Action #1, under the Freedom of Information Act, 5 U.S.C. Section 552, seeks INS information and records relevant to the maintenance by INS of a "non-priority" category of cases and the standards used in determining its applicability.

Action #2 seeks an order 1) requiring certain government defendants to divulge, pursuant to 18 U.S.C. Sec. 3504, whether or not plaintiff has been the subject of unlawful surveillance and 2) granting a hearing on the question of whether or not the defendants had "prejudged the case against him."

Plaintiff's principal contention is that he is entitled to a stay of all proceedings "until a reasonable time after plaintiff has been furnished with the information and records sought in Action No. 1," on the.

ground that while he is not subject to deportation until after a final decision of the Board,* and review by the Court of Appeals,** he will be forced to go to the Court of Appeals on an inadequate and prejudicial record in the event the decision of the Board is against him.***

There seems little question that the District Court has jurisdiction to enjoin agency action for violation of a Freedom of Information Act claim.

Renegotiation Board v. Bannercraft Clothing Co., 42 U.S.L.W. 4203 (U.S. Feb. 19, 1974); Sears Roebuck & Co. v. N.L.R.B., 473 F.2d 91 (D.C. Cir. 1973). However, such power is to be exercised only upon a clear showing of irreparable injury. Sears Roebuck, supra, at p. 93 states:

...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.

*8C.F.R. Section 3.6(a) (1973).

**8 U.S.C. Section 1105(a)(3).

***Plaintiffs point out that review before the Court of Appeals"shall be determined solely upon the administrative record upon which the deportation order is based. The Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;"

8 U.S.C. Section 1105(a)(4).

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On the facts before me, there is no such showing. The plaintiff cannot be deported as a matter of law until a final determination has been made herein by the Court of Appeals, unless that Court so orders. The information and records sought have been held to be irrelevant as a matter of law by the Immigration Judge.* If that ruling is proper, there is no basis for an injunction to permit plaintiff to obtain these records to introduce in that proceeding. If it is improper, either the Board or the Court of Appeals may reverse with appropriate directions to the Immigration Judge to receive and consider such proof.**

*I note that even if the requested information should prove to be relevant in a way overlooked by the parties or the Court, plaintiff is not entirely without remedy. 8 C.F.R. Sec. 3.8 provides a procedure for the reopening of a Board determination upon motion of a party. If the Board should fail to permit plaintiff to reopen and in doing so commits an abuse of discretion, judicial review is available in the Court of Appeals. Schieber v. Immigration and Naturalization Service, 461 F.2d 1078 (2d Cir. 1972). The existence of this procedure further supports my view that the plaintiff will not suffer irreparable injury by the continuation of Board proceedings.

**In the event that the position of the Immigration Judge is held to be incorrect and proceedings to determine the merits of plaintiff's selective prosecution claim proceed without awaiting the release of the information to which plaintiff is entitled in Action #1, I will, at that point, reconsider plaintiff's application for a stay.

Thus plaintiff will have his review and be protected against improper deportation during its course.

The plaintiff alternatively seeks this preliminary injunction pending the outcome of Action #2 on the ground that if the injunction is not granted, he will have no recourse from his asserted "prejudgment" herein and/or the claimed use of tainted evidence against him.

However, plaintiff, in his very limited presentation on this ground, has made no showing that any Immigration official involved in this proceeding has not exercised his independent judgment,* and the Board has yet to rule. Any claim of prejudgment is necessarily premature when an agency's appellate body has yet to act.**

Nor has plaintiff demonstrated a need for a stay of the Immigration proceedings until defendants affirm or deny the use of illegal evidence against plaintiff. Judge Fieldsteel's opinion is based solely

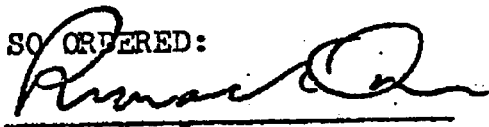
*Exhibit "D" to the complaint in Action #2, while provocative, is not a showing.

**Given a proper showing, a hearing on prejudgment might be appropriate after the Board's determination. See U.S. v. ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954). To stay the proceedings at this point would be improperly disruptive, even assuming a proper showing had been made.

on the record of Lennon's conviction in England.*
Plaintiff has, in any event, specified no evidence
admitted in the proceedings which might be inadmissible
as the product of an unlawful act and therefore
I see no reason to delay further proceedings.
Consequently, I decline to grant a preliminary in-
junction on the alternative grounds urged as to
Action #2.

For the foregoing reasons, the plaintiff's
motion for a preliminary injunction is denied.

SO ORDERED:


U. S. D. J.

*There can be, and is, no claim that the evidence of the
conviction was illegally obtained.

LEON WILDES

ATTORNEY AT LAW

515 Madison Avenue
New York, N.Y. 10022

PLAZA 3-3488

1974 AUG 13 PM 3:23

CABLE ADDRESS
"LEONWILDES," N. Y.

August 9, 1974

Maurice F. Kiley, Acting District Director
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Re: LENNON, John Winston Ono
A17 597 321

Dear Sir:

Confirming our telephone conversation of last week, I am writing to request an extension of voluntary departure privilege in behalf of my client, the above-named. A copy of this request is being forwarded to the Board of Immigration Appeals for inclusion in the record. I am also attaching a copy of form N-585 currently being filed to obtain copies of certain documents in the administrative file of this case. As indicated, I will set forth the reasons for my request in this letter and I would appreciate your earliest possible response.

As you know, the undersigned requested that the Board of Immigration Appeals defer its ruling in the deportation proceedings in this case pending the outcome of two related court actions pending in the United States District Court for the Southern District of New York. The essential reason for the request to defer the determination was the Board's stated position that its jurisdiction is limited to consideration of the evidence produced upon the deportation proceeding, and that it has no jurisdiction to consider elements entering into the determination of a District Director in commencing deportation proceedings. The Board has affirmed the denial of permanent residence and has granted my client permission to depart voluntarily from the United States within sixty days from the date of its order (July 10,

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