UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS
Washington, D.C. 20530

November 20, 1973

In re: John Winston Ono Lennon
File: A17 597 321

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

Dear Mr. Wildes:

Thank you for your letter dated November 16, 1973 concerning the above-captioned matter.

I have not yet seen a transcript of the oral argument. I am certain, however, that the Board made no commitment which could support your "understanding" as recited in the last paragraph of your letter. I have consulted the Board members and they corroborate my recollection. Without in any way implying what the Board's ultimate decision will be on your application for deferment of decision on the merits, I must therefore tell you that you are incorrect in your understanding that you will be informed of that ruling, if it is adverse, separately and in advance of any determination on the merits.

Sincerely yours,

Maurice A. Roberts

Maurice A. Roberts
Chairman

cc: Vincent A. Schiano, Esq.
Trial Attorney, I&N Service
New York, New York 10007

Irving A. Appleman, Esq.
Appellate Trial Attorney
I&N Service

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

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

Attorney for Plaintiff

PRELIMINARY STATEMENT

These are two actions brought by the plaintiff, a non-immigrant alien presently in the United States, against various United States governmental officials. Action #1 is an action pursuant to Title 5, Sec. 552(the Freedom of Information Act) for various records and information to be disclosed by the defendants therein, pursuant to said Act, and to enjoin the various defendants from withholding from the plaintiff the said records kept by them. The records involved are those relating to the cases of deportable aliens in the United States in which the defendants decide not to commence deportation proceedings, or to defer the actual deportation or removal of such deportable aliens, together with any evidence considered by the defendants in making such determinations.

Action #2 is a companion action against various other defendants, likewise, U.S. government officials, seeking to obtain a hearing on the issue of whether or not such officials conspired to prejudge an immigration case, including various applications discretionary relief and the commencement of deportation proceedings against the plaintiff herein, and whether or not the evidence used to take such action was tainted.

The plaintiff is the subject of a deportation order resulting from such proceedings, which he has presently appealed administratively to the Board of Immigration Appeals.

Plaintiff seeks in this motion to enjoin and prohibit the Immigration and Naturalization Service, including the Board of Immigration Appeals from finalizing the deportation order and

closing the administrative recor d, as well as from taking any attendant action to enforce his removal from the United States pending the disclosure of the information sought under the Freedom of Information Act so that it might be filed with the Board of Immigration Appeals as a supplemental brief and thus included in the administrative record.

Plaintiff urges that this Court has direct statutory jurisdiction to act in the matter; has full power by statute and within its equity jurisdiction to grant remedies in the nature of injunction, mandamus and prohibition, and that a basis for injunctive relief in this nature exists in connection with both actions. Although there is no case inpoint, it is submitted that the facts alleged in the complaint and the affidavit in support of this motion warrant such preliminary relief by virtue of the fact that in both cases the general equity powers of the Court may be used to preserve the status quo and avoid irreparable harm while statutory rights are being enforced.

STATEMENT OF FACTS

Plaintiff, who was admitted to the United States as a visitor on August 13, 1971, is presently the subject of a deportation order which issued on March 23, 1973 by the Immigration and Naturalization Service.

In early 1972 the Immigration Service took unprecedented and unexplained action in the immigration case of the plaintiff and his wife, and it appeared that applications for various forms of discretionary relief had been prejudged for reasons unrelated to those which governed their normal approval or denial. These actions followed a period of anti-Vietnam-War activity on the part of the plaintiff. Plaintiff's stay as a visitor was extended to February 29, 1972 and he was informed that no further extensions could be expected. On March 1, 1972 the Immigration Service wrote to plaintiff granting him permission to remain in the United States until March 15, 1972 and indicating that it would be expected that he would depart by that date. On March 6th, before plaintiff's time had expired, the Immigration Service, through District Director Marks, wrote the plaintiff purporting to revoke his permission to remain and at the same time served plaintiff with an Order to Show Cause charging plaintiff with deportability for "overstaying" in the United States in that he had remained beyond February 29, 1972 "without authority", making the plaintiff a respondent in deportation proceedings.

On March 3, 1972 plaintiff filed an application for classification as an outstanding artist under the immigration law. Title 8, U.S.C. 1153 (a)(3). After two months had passed without any action

on said petition, and based upon allegations that the Immigration Service had secreted and refused to act upon the application filed by plaintiff, a temporary restraining order was granted by Judge Lasker of this Court on May 1, 1972, restraining the defendats from proceeding with the deportation proceedings pending against the plaintiff pending a hearing on the allegations. When served with the restraining order, the Immigration Service immediately granted plaintiff's petition for a third preference classification as an outstanding artist, so that no hearing was ever held before this Court on the allegations that the petition had been hidden upon instructions it should not be adjudicated. The court action (Civil Action 72 C 1784) was withdrawn by stipulation upon the approval of the plaintiff's petition, and the Immigration Service continued with the deportation proceedings. Those proceedings resulted in the entry of a deportation order against the plaintiff as an "overstay", despite the fact that his status as an "overstay" was not the result of any act on his own part, but that the said status was created by the very officer who charged him with deportability for being an overstay. The deportation order is presently on appeal before the Board of Immigration Appeals.

Plaintiff feels aggrieved and irreparably harmed by the fact that he has been prevented from obtaining information on matters vital to his defense and submitting such information to the Immigration Judge and later to the Board of Immigration Appeals through acts on the part of the defendants in these actions which arbitrarily have withheld and continue to withhold such information, denying the plaintiff his due process rights to a full and fair hearing.

In particular, the plaintiff has been prevented from proving, through the acts of the defendants:

(1) That the deportation proceedings should not have been commenced or, once having been commenced, should have been terminated, since the plaintiff met the standards for "non-priority" processing of his case;

(2) That the proceedings should have been terminated since the disclosure of the defendants' records and statistics relating to non-priority cases would demonstrate that plaintiff, within his specific category, was being selectively prosecuted on a discriminatory basis and

(3) That there has been unreasonable governmental interference (in an inter-agency fashion) with the immigration proceedings by non-immigration governmental agencies with the handling of the plaintiff's case.

With respect to items (1) and (2) above, plaintiff made every conceivable effort to obtain the records prior to the institution of Action #1. On May 1, 1972 he requested that defendant Marks supply plaintiff with various records and information from defendants' files to assist in plaintiff's defence; the request was declined and plaintiff was referred to the Central Office of the Immigration Service in Washington, D.C., where further requests were made (see exhibits to complaint in Action #1). However, after a period of more than a year of correspondence requesting such information, the records were not forthcoming. In fact, though defendants have stated that the "data is not compiled" as to non-priority cases, they have at no time denied the existence of a non-priority program, nor have they denied that such records exist. These demands, made pursuant to Title 5, U.S.C. Sec.552(a)(3 continued until August 1, 1973 and no response whatsoever has been received to that final specific request, precipitating Action #1 herein.

Action #1 requests an injunction pursuant to the Freedom of Information Act and this motion respectfully requests a preliminary injunction restraining all future proceedings on the part of the defendants with respect to plaintiff's deportation order and the administrative appeal pending with respect to such order.

Plaintiff has requested that the Board of Immigration Appeals continue his case to await the outcome of these actions, but his request was denied by the Board. Moreover, at oral argument schedule by the Board, plaintiff's counsel requested that a decision be deferred pending the receipt of the records sought in Action #1 herein and until a hearing was had with respect to Action #2, but his request was denied by the Board, which has the request under advisement, together with its consideration of such of the merits of the appeal as could be briefed by plaintiff's counsel.

The defendants have delayed and refused to furnish the plaintiff with the requested information for almost two years, during which time they have nevertheless proceeded to press for a final order relating to plaintiff's deportability which order will be appealable to the United States Circuit Court and "shall be determined solely upon the administrative record upon which the deportation order is based...." Title 8, U.S.C. 1105(a)(4).

Plaintiff respectfully submits that the entry of a final order of deportation upon the limited record now before the Board of Immigration Appeals would constitute irreparable injury to plaintiff's case. He respectfully requests that the Immigration Service, including the Board of Immigration Appeals be stayed pending the disclosure of the information requested herein and until such information can be presented to the Board of Immigration Appeals to expand the administr

tive record.

ARGUMENT

POINT I: THE FEDERAL DISTRICT COURT HAS JURISDICTION TO ENTERTAIN ACTION NUMBER 1 UNDER 5 U.S.C.SECTION 552 AND 28 U.S.C. SECTION 1331(a).

The Federal District Court has jurisdiction to entertain Action #1 pursuant to 5 U.S.C. Sec. 552, which provides, in part,:

> "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..." 5 U.S.C. Sec. 552(a)(3)

In addition, this Court is granted original jurisdiction of "all civil actions wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States;" 28 U.S.C. Sec. 1331(a), and a more complete description of jurisdiction of this Court as to Action #2, which concentrates on allegations of "selective prosecution" will demonstrate that this Court similarly has jurisdiction over Action #2.

That venue is properly laid in the Southern District of New York seems clear under 28 U.S.C. Sec. 1391:

> "(e) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides., or (2) the cause of action arose..." 28 U.S.C. Sec. 1391(e).

POINT II: PLAINTIFF IS ENTITLED TO THE RELIEF REQUESTED IN THE COMPLAINT, AND IS ADDITIONALLY ENTITLED TO A PRELIMINARY INJUNCTION, PURSUANT TO 5 U.S.C. SECTION 552

Among other things, the Freedom of Information Act compels each governmental agency to publish various rules of procedure and substantive rules of general appliability in the Federal Register (5 U.S.C. Sec. 552(a)(1)) or to make various opinions, statements of policy and interpretations available for public inspection and copying (5 U.S.C. Sec. 552(a)(2)). It should be conceded on the part of the defendants in Action #1, that with respect to the records requested and which are the subject-matter of that action, said records have neither been published in the Federal Register nor have they been made available for public inspection and copying.

The records sought are of general applicability to all aliens and are presumably uniformly applied; moreover, they directly involve the plaintiff, in that plaintiff is the respondent in a deportation proceeding, and should have had available to him and his attorney, throughout the proceedings, the standards necessary to be met to qualify as a "non-priority case", a case in which the government decides not to go forward with deportation proceedings. These specific records sought in Action #1, upon information and belief, consist of periodic reports by District Directors of local immigration offices to the Central Office located in Washington, D.C., in which each time a decision is made by a District Director to designate a case as "non-priority" the Director must state the reasons therefor, record

said reasons, and forward his recommendation or decision to the Central Office in Washington, D.C. where an officer or committee of officers acts on his decision and keeps duplicate records.

What these records contain is clearly beyond the speculation of the plaintiff, but it is strongly believed that these records will support either or both of the following two propositions: (1) that the deportation proceedings against plaintiff should not have been commenced or should have been terminated, within the current standards used in determining said matters by the District Director and for the Central Office; (2) that the government, in this specific instance, is selectively prosecuting the deportation case against the plaintiff for undisclosed reasons.

In answer to the anticipated reply of the government that even if the standards were applied to plaintiff, said action on the part of the District Director is merely discretionary and therefore not subject to review, it should be noted that such an argument can no longer withstand the postulate that the Courts have the power to review an abuse of discretion; nor can the argument that the government cannot be compelled to perform a discretionary act hold water. See, e.g., United States ex rel. Schonbrun v. Commanding Officer, 403 F.2d 371 (2d Cir. 1968); Feliciano v. Laird, 426 F.2d 424 (2d Cir. 1970), Massignani v. Immigration and Naturalization Service, 313 F. Supp. 252, aff'd 438 F.2d 1276 (7th Cir. 1971); and that to totally rob plaintiff of the opportunity to have discretion exercised with respect to hi

case, contrary to the rules of a governmental agency, would violate the plaintiff's right to due process. See United States ex rel. Rudick v. Laird, 412 F.2d 16 (2d Cir. 1969); Hammond v. Lenfest, 398 F.2d 705 (2d Cir. 1968); and Knoll Associates, Inc. v. Dixon, 232 F. Supp. 283 (S.D.N.Y. 1964).

That such records demanded, whether termed "private letter rulings" or "technical service memoranda", are not exempt from production and disclosure under the Freedom of Information Act has been recently made clear. Tax Analysts and Advocates v. I.R.S., June 6, 1973 (U.S.D.C. D. Col.) 31 U.S.L.W. 2667(1973). Therein, the government argued that similar rulings, since not relied upon in preparation of new agency determinations, should be exempt, but the Court, in overruling such argument, held that they were "undoubtedly 'records' within subsection(a)(3) of the Act and therefore subject to mandatory disclosure if no specific exemption is available."

Plaintiff herein is uncertain as to whether any discretionary act was ever performed by the defendants in Action #1 with respect to classifying or not classifying him as a "non-priority case." He knows only that he duly requested such action. However, that the governmental agency may not take affirmative action (deportation proceedings) against a private party (plaintiff) by means of a decision (deportation order) in which it implies that the basis for such action is that the plaintiff is not a "non-priority case," and then refuse to disclose the standards and records relating to qualifications present and past for "non-

priority cases" also has been established, at least by implication. American Mail Line, Ltd. et al. v. Gulick, 411 F.2d 696 (D.C. Cir. 1969); see also, Getman v. National Labor Relations Board, 450 F. 2d 670 (1971).

As to the exemption pursuant to the Freedom of Information Act which protects "inter-agency or intra-agency" memorandums or letters which would "not be available by law to a party other than an agency in litigation with the agency," said exemption was intended to "encourage the free exchange of ideas during the process of deliberation and policy-making; accordingly, it has been held to protect internal communications consisting of advice, recommendations, opinions, and other material reflecting deliberative or policy-making processes, but not purely factual or investigative reports." Grumman Aircraft En'r Corp. v. Renegotiation Bd., 425 F. 2d 578 (1970); Bristol Myers Col. v. F.T.C., 424 F. 2d 935 (1970).

Therefore, although factual information may be protected only if it is inextricably intertwined with policy-making processes, the courts may "beware of the inevitable temptation of a governmental litigant to give (this exemption) an expansive interpretation in relation the particular records in issue." Ackerly v. Ley, 320 F. 2d 1336 (1969); see also, Soucie v. David, 448 F. 2d 1067 (C.A.D.C. 1970).

The agency herein, as demonstrated by the exhibits attached to the complaint, has previously identified "a class or category of documents" in the normal course of its affairs, and it must produce them in response to a request phrased in terms of that class or category, which request has been made. National Cable

Television Association, Inc. v. Federal Communications Commission, 479 F.''d 183 (D.C.Cir. 1973). Moreover, even if the agency had never segregated that class or category production is to be required where the agency was able to identify that material with reasonable effort. National Cable Television Assoc., Inc. v. F.C.C., supra. Finally, even if the agency can demonstrate that the memorandum involved is so intertwined with policy-making processes that it would violate the purpose of the exemption to disclose it, the District Court may resort to "in camera" inspection of some or all of the documents. Environmental Protection Agency v. Mink, 410 U.S. 73, 93 S.Ct. 827, 35 L. Ed. 2d 119 (1973).

POINT III: UNLESS THE COURT GRANTS THE PRELIMINARY INJUNCTION HEREIN REQUESTED, PLAINTIFF WILL SUFFER IRREPARABLE HARM, AND THAT HARM WILL BE DIRECTLY CAUSED BY THE WILFUL REFUSAL OF THE DEFENDANTS TO COMPLY WITH A BONA FIDE REQUEST PURSUANT TO THE FREEDOM OF INFORMATION ACT.

Where no deportation action has as yet been commenced against plaintiff, it is difficult to find that ireparable harm necessary to every preliminary injunction; the difficulty is removed, however, where deportation has been commenced, and clearly exists when a deportation order has issued. Massignani v. Immigration and Naturalization Service, 313 F. Supp. 251, 252, aff'd 438 F.2d 1276 (7th Cir. 1971).

Cases are innumerable for the principle that deportation visits great hardship upon an alien. The United States Supreme Court has held that deportation may be as severe a punishment as loss of livelihood. Delgadillo v. Carmichael, 332 U.S. 388, 68 S. Ct. 10, 92 L. Ed. 17. As stated by Mr. Justice Brandeis speaking for the Supreme Court in Ng Fung Ho. v. White, 259 U.S.276, 284, "deportation may result in the loss of all that makes life worth living."

Where the government itself wilfully refuses to disclose information which would assist the respondent (plaintiff herein) in presenting an adequate defense to the deportation proceedings, espedally when the governmental agency involved is required to do so by law, the irreparable harm is suffered by the alien at the hands of the government itself.

Plaintiff is a respondent directly affected by an outstanding deportation order; at present, he is appealing that order. However, the government has failed to disclose information which may

provide him with an adequate defense to the proceeding; the government failed to disclose same prior to initiation of the proceeding, during the proceeding, after the deportation order issued,and still refuses to disclose it while the administrative appeal is pending, as the plaintiff could now still raise such a defense at the administrative appellate level.

If the plaintiff could expand his brief upon appeal at a later date, based upon the information sought upon its disclosure, the within motion for a preliminary injunction would be unnecessary. However, plaintiff is limited by Sec. 106(a) of the Immigration and Nationality Act, 8 U.S.C., 1105(a)(4), which restricts appellate review to the record established at the administrative level. And, should plaintiff find it necessary to continue his appeal to the Second Circuit Court of Appeals, as provided by Sec. 106(a), from an adverse decision, plaintiff would still be limited to the record upon appeal, which record is totally barren with respect to the information sought in the Actions herein outlined. He would thus be irreparably harmed if this Court did not enjoin the deportation proceedings.

There is authority, on the level of a Circuit Court of Appeals, for the granting of a preliminary injunction of agency action pending the litigation of a Freedom of Information Act request, where a probability of irreparable injury has been shown. See Bannercraft Clothing Co. v. Renegotiation Board, 151 U.S.App.D.C 174, 466 F. 2d, 345 (1972); see also Sears Roebuck & Co. v. NLRB, 153 U.S.App.D.C.-,473 F. 2d 91 (1972). It is submitted that after almost two years of delay, during which time the Immigration

Service has never made any claim of privilege, nor indicated that the information was non-existent or unavailable, nor made any claim that one of the exceptions to disclosure applies, and in the face of the possible irreparable harm to the plaintiff, a temporary injunction should issue. Plaintiff's irreparable harm consists of the fact that he is faced with the choice of being removed pursuant to an improper deportation order or attempting to appeal such order upon an incomplete record. Through either alternative the plaintiff sustains irreparable harm. On the other hand, the government can sustain no harm whatsoever if the evidence which it is required to furnish to the public is disclosed prior to the entry of a final order of deportation, rather than subsequent thereto.

Although the within application may be a matter of first impression; in that there is no precedent for issuing a preliminary injunction in a Freedom of Information Act case in an immigration context, it is abundantly clear that upon principle the preliminary injunction should issue and that if the application is denied, plaint will be without recourse. To permit the government to continue to withhold evidence, and to interfere unwarrantedly with plaintiff's deportation proceeding, based upon illegally obtained evidence, bad motive, and improper procedure, without cessation, is to effectively deny the plaintiff his right to due process and a fair and impartial hearing. Dombrovskis v. Esperdy, 321 F. 2d 463 (2d Cir. 1963).

In Bannercraft, the U.S. Court of Appeals in the District of Columbia Circuit, the circuits having the largest volume of litigation under the Freedom of Information Act, sustained the granting of injunctions by the District Courts restraining the agency involved from continuing the administrative process pending the outcome of the Freedom of Information Act proceeding. The plaintiffs in the Freedom of Information Act proceeding were contractors whose contract was subject to renegotiation in administrative proceedings provided by law before the Renegotiation Board. They filed proper requests for the documents which they sought under the Freedom of Information Act with the Renegotiation Board, and in each case their requests were rejected, the Board citing one or more of the exemptions contained in the Freedom of Information Act as a ground for rejecting the requests. The contractors successfully argued before the District Court that an injunction was essentially an order to preserve the status quo and to prevent irreparable injury. Specifically, they claimed that without an injunction the renegotiation process would be completed long before the sta tus of the disputed documents could be determined. The Court found that "Although completion of renegotiation would not formally moot the controversy, appellees contended, it would frustrate the purpose of the Information Act by depriving them of access to the documents during the period when such access would be useful." (Id. at page 348).

The agency argued that the Freedom of Inform a tion Act nowhere conferred jurisdiction on trial judges to enjoin Board proceedings. They also argued, in the alternative, that even if such authority to enjoin Board proceedings existed, the doctrine of exhaustion of

administrative remedies precluded equitable intervention in on-going administrative procedures. The Board's arguments were rejected by the Circuit Court of Appeals.

> "We hold that the Freedom of Information Act does confer jurisdiction on District Courts to enjoin administrative proceedings pending a judicial determination of the applicability of the Information Act to document involved in those proceedings. We further hold that the exhaustion doctrine poses no obstacle to issuance of such an injunction in a proper case"(Id. at page 349)

The Court further held that not only did the statute confer authority upon the District Courts to enjoin pending administrative proceedings, but it required that the District Court decide the questions before it as quickly as possible and proceeded with a thorough examination of the statutory scheme under the Renegotiation Act and the number of judicial doctrines thought to present obstacles to the issuance of such an injunction. The Court pointed out (as is the case under the Immigration and Nationality Act, Title 8 , U.S.C. Sec. 1105(a)) that the Renegotiation Act provided for a "exclusive" remedy by appeal to a different court and acknowledged that "Clearly, then, in all three cases, the administrat remedies are not yet exhausted." Nevertheless, and despite the fact that the Freedom of Information Act does not in explicit terms grant jurisdiction to enjoin agency proceedings until the records are produced or until their status is decided, the Court held that such authority is within the general equity powers of a Court.

> "As the Act's history makes clear, Congress was also troubled by the plight of those forced to litigate with agencies on the basis of secret laws or incomplete information.... When this subsidiary statutory purpose is kept in mind, the possibility that Congress intended to authorize injunctions against pending administrative pro-

> ceedings until secret records are revealed or their status determined seems less unlikely". (Id. at page 352).

The Court found that among equity's oldest inherent powers is the authority to preserve the status quo pending a judicial review of the merits, and held that

> "Since temporary stays of pending administrative procedures may be necessary on occasion to enforce the policy of the Freedom of Information Act, we hold that the District Court has jurisdiction to issue such stays" (Id. at page 354).

The Court further distinguished the exhaustion of administrative remedies as not being a jurisdictional matter, but rather one which went to the timing of the action and cited a host of cases in which federal courts have reached the merits or stayed administrative proceedings despite the existence of unexhausted administrative remedies citing as well Professor Davis to the effect that exhaustion of administrative remedies is "sometimes required and sometimes not" (see 3 K Davis, Administrative Law Treatise, Section 20.10 (1958)).

With respect to the requirement of a showing of irreparable injury, a normal requirement in equity for the issuance of an injunction, the Court finds that the parties showed a sufficient likelihood of irreparable injury in that they were being required to renegotiate contracts without access to important relevant documents. A Fortiori, when the alternative is being required to contest determinations as to discretionary relief and deportability without access to the document which might constitute complete defenses or otherwise show the illegality of governmental action.

The Court, dealing with the equitable doctrine requiring that plaintiff demonstrate that there is no adequate remedy at law,

found that the prospect of ultimate appellate review of any final order issuing out of the administrative proceeding was not an adequate remedy at law, and held that "...it should be apparent here that if the contractors are to be granted relief at all, they must have it now before the administrative momentum carries their cases beyond the point where the harm can be undone." (Id. at page 357). Moreover, the Court reasoned that even assuming that the damage could somehow be undone at a later stage of the proceedings, and despite the fact that the statute involved (the Renegotiation Act) thus vested an exclusive power in the Court of Claims to hear the matter de novo, neither the Board nor the Court of Claims had authority to correct errors made under the Freedom of Information Act, since such authority was vested by the Information Act only upon the District Court to order production of appropriate document "and there is no reason to assume that this jurisdiction was not intended to be exclusive" (id. at page 358).

> "Certainly it cannot be said that Congress intended the Board to enforce the Information Act against itself when one remembers that the main purpose of the Act was to provide a disinterested forum to assess the discoverability of agency records....
>
> Since a violation of the Freedom of Information Act can only be asserted in a collateral District Court action, it is pointless to remand appellees to their administrative remedies. The plain fact is that there are no administrative remedies under the Freedom of Information Act. Once a party has properly requested information from an agency, he has exhausted all the administrative avenues of relief which the Act provides. His only remaining remedy is an action in the United States District Court - the very mode of relief which our appellees sought and which the Board now attempts to frustrate by pointing to other remedies which do not exist and which would not provide adequate relief if they did exist." (Id. at pages 358-9).

The Court likewise noted that equity does not require the performance of a useless act, and since the plaintiffs were unable to assert a Freedom of Information Act violation on appeal before the administrative agency involved or before the Court involved on judicial review, it would not be required that they exhaust such remedies.

It is clear that the Immigration and Naturalization Service, including the Board of Immigration Appeals, and the Circuit Court of Appeals on judicial review, do not have jurisdiction to enforce the Freedom of Information Act. The government could not argue otherwise. The Information Act, by its terms, confers jurisdi ction, presumably exclusive, to enforce its provisions upon the U.S. District Courts. Moreover, plaintiff in these proceedings does not attempt to take from the Board of Immigration Appeals the determination of any matters reserved to it by the Immigration and Nationality Act relating to the merits of the deportation charge as stated in the Order to Show Cause and the applications for discretionary relief, this being the total jurisdiction of the Immigration Judge, Title 8, U.S.C. 1252, and of the Board of Immigration Appeals, as created and prescribed by regulation, 8 C.F.R. Sec.3.1. What plaintiff requests herein is that the agency be enjoined from altering the status quo so that the requested disclosures, long overdue and denied without reason, are made "before the administrative momentum" carries the case "beyond the point where the harm can be undone".

Although the government has made no showing of any harm which it might sustain if the agency proceedings are enjoined, any delay entailed can be overcome by prompt disclosure on the government's part of the records involved, which are totally subject to its control

It should also be noted that the Freedom of Information Act itself directs that the District Court give precedence to Freedom of Information Act claims and set them down for trial "at the earliest practicable date" [illegible] Sec. 552(a)(3).

CONCLUSION

It is respectfully urged that the Court, in the interest of justice and pursuant to its general equity powers, and upon the points of law above stated, enjoin the defendants from all further proceedings relating to the deportation of the plaintiff until a reasonable time after plaintiff has been furnished with the information and records sought in Action #1, pursuant to the Freedom of Information Act, or until such time as this Court may deem just and grant such other and further relief as to this Court seems proper in the circumstances.

Respectfully submitted,

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

2-14-72

Board of Immigration Appeals

Memorandum for the File

In re: John Winston Ono Lennon

File: A17 595 321

Assistant United States Attorney Joseph Marro of the Southern District of New York telephoned yesterday in my absence concerning this matter. I returned his call this morning (Area Code 212, 264-6588).

Mr. Marro stated that he was calling at the request of the respondent's attorney and of the United States District Court judge before whom respondent's civil litigation is pending. Those actions charge bias and prejudice on the part of the District Director in starting the deportation proceedings, seek information which has been denied under the Freedom of Information Act, seek a judicial hearing on the charge of unlawful electronic surveillance and request, among other things, an injunction against further proceedings in the deportation matter. Respondent's attorney had requested the Board to defer decision on the appeal, pending completion of the litigation in the District Court. This Board had heard oral argument on that request, together with oral argument on the merits of the appeal, and had reserved decision. Respondent's attorney now wishes to proceed with the litigation and present evidence in support of his request for an injunction. This would include, among other things, taking the deposition of various Government officials, possibly including the members of this Board. Before embarking on this action, counsel suggested that Mr. Marro communicate with me to ascertain how soon the Board's decision might be expected. The District Court judge agreed that this should be done.

I had discussed this case this morning with Paul Schmidt, the staff attorney to whom it has been assigned. He told me that he has reviewed the record, done fairly exhaustive research, and is about to embark on a first draft of opinion, which he hopes to be in a position to present to the Board by the end of next week. Of course, he cannot predict when a final opinion ready for signature will be available.

Accordingly, I told Assistant United States Attorney Marro that while this case is now under active consideration, all I can state is that an opinion should be forthcoming in the not too distant future, without indicating in any way what that decision will be or how soon it can be expected. I told him that it was unlikely that the decision would be coming out in a week or so but that conceivably it might be forthcoming in perhaps a month or more.

Mr. Marro expressed his appreciation for this information, which he will relay to counsel and to the Court.

Maurice A. Roberts
Chairman

February 14, 1974

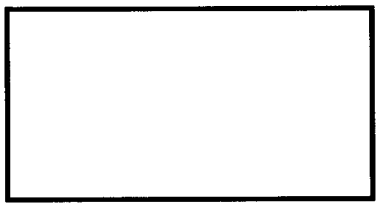
cc: Mr. Irving A. Appleman
Appellate Trial Attorney
I&N Service

OFC
STR
ET
AC

JAN 29 1974

CO 837-C

(b)(6)

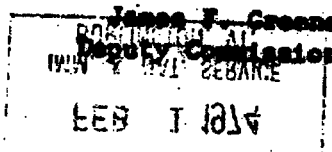


This will acknowledge receipt of your letter of July 13, 1973, concerning Mr. John Lennon. NE59/9.3

Mr. Lennon's appeal to the Board of Immigration Appeals was argued before that body on October 29, 1973. The decision on the appeal is still pending. Further action by this Service is contingent upon that decision.

Sincerely,

James F. Greene
Deputy Commissioner

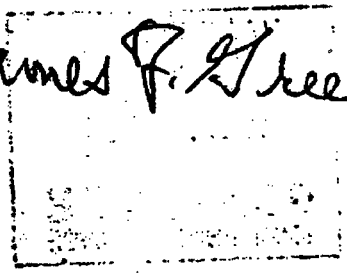


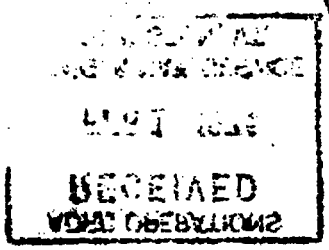
cc: Regional Commissioner, Burlington, Vermont

Letter under acknowledgement, with attachment, is attached for for your information. Please furnish a copy to the District Director, New York, New York for inclusion in file A17 597 321.

ENF:OHC:dlw

James F. Greene





159

PAGE WITHHELD PURSUANT TO
(b)(6)

Working Separation

John and Yoko Lennon have agreed to a trial separation, a purely professional separation, according to Yoko.

"I'm going to see," she says, "if I can make it on my own, which is something I should have done in the first place. But you know what love does to people. They want to do everything together."

Yoko plans to tour Europe while John remains in California where he's just finished a new album produced by Phil Spector.

Yoko hopes that if she achieves success, "people will stop turning against me. I can't tell you what antagonism I seem to arouse. Everytime I'm pregnant, John's fans send me dolls with pins stuck in them and all sorts of crazy voodoo stuff. I don't know. Maybe the negativism is what causes me to have so many miscarriages."

Whether Yoko can make it in the cutthroat rock business without John beside her is highly doubtful.

JOHN AND YOKO: CAN SHE SUCCEED ON HER OWN?

157

OPTIONAL FORM NO. 10 — MAY 1962 EDITION GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

NE 50/9.3-C

DATE: February 4, 1974

TO : District Director,
New York, New York

FROM : E. J. Wildblood, Jr., Associate Deputy
Regional Commissioner, Operations, Burlington

SUBJECT: Your A17 597 321, John Lennon

Attention: Assistant District Director, Investigations

Attached for your information and inclusion in the subject's file are copies of correspondence between Mrs. George W. Boyd and Deputy Commissioner Greene concerning the subject.

E. J. Wildblood, Jr.

Attachment

5010-109

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

1655

United States Senate

JAMES L. BUCKLEY JAN 14 1974

Respectfully referred to:

District Director
Immigration and Naturalization Service
20 West Broadway
New York, NY 10007

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested. Your findings and views, in duplicate form, along with return of the enclosure, will be appreciated by

JAMES L. BUCKLEY
U.S.S.

PLEASE REPLY TO: Regional Office
110 East 45th Street
New York, NY 10017

Form #2

155

1658

DISTRICT DIRECTOR
RECEIVED
JAN 15 1974
New York, N. Y. 10007

CJO

CC

PAGE WITHHELD PURSUANT TO
(b)(6)

A17 997 321

January 22, 1974

Honorable Benjamin A. Gilman
House of Representatives
Washington, D. C.

Re: LENNON, John

Dear Congressman Gilman:

This case is now pending before the Board of Immigration Appeals and full argument has been heard.

As soon as a determination has been made by the Board as to Mr. Lennon's status in the United States, I will be pleased to inform you thereof.

Sincerely,

SOL MARKS
District Director
New York District

Enc.

cc: Commissioner, Central Office

Attention: Congressional Mail Unit

[redacted]:ekw

A17 587 321

January 22, 1974

Honorable James L. Buckley
140 East 48th Street
New York, New York 10017

Re: LEMMON, John

Dear Senator Buckley:

This case is now pending before the Board of Immigration Appeals and full argument has been heard.

As soon as a determination has been made by the Board as to Mr. Lemmon's status in the United States, I will be pleased to inform you thereof.

Sincerely,

SOL MARKS
District Director
New York District

Enc.

cc: Commissioner, Central Office
Attention: Congressional Mail Unit

WBG:ekw

for file

156

PAGE WITHHELD PURSUANT TO
(b)(6)