

B. Section 212(a)(23) as enacted is void for vagueness.

Section 212(a)(23) does not contain a definition of the term "marijuana" and it is entirely unclear from a reading of the Section as to whether hashish or cannabis resin is included therein. Respondent's expert witness has testified that cannabis resin is not marijuana. The Government has called no expert witness to contradict this testimony but has relied upon the vague and indefinite term in the statute, asking the Board to refer to other statutes or to the legislative history to explain the statute's meaning, all in an attempt to avoid the issue of the essential vagueness of the statute. It is well settled that a Federal statute must be judged on its face U.S. v. Harriss, 347 U.S. 612. Reference to legislative history may only be had once it is ascertained that the language of the statute is sufficiently definite to satisfy due process standards. Id. at page 617. See also Gubbels v. Hoy, supra. The void for vagueness doctrine is not limited to criminal prosecutions. Small Co. v. American Sugar Refining Co., 267 U.S. 233, and immigration statutes are not excluded from the purview of the doctrine. Fleuti v. Rosenberg, 312 Fed.2d 652 (1962), rev'd on other grounds 374 U.S.449.

C. Section 212(a)(23) as enacted violates the right to privacy.

An arsenal of evidence has long been before us that marijuana is not a narcotic drug, not physically addictive, and does not produce psychological dependence

harmful to society or the user. Marijuana does not cause criminal or aggressive behavior. "The Challenge of Crime in a Free Society," Report by the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C., G.P.O. 1967) at 224, Marijuana does not lead to the use of dangerous or so-called hard drugs such as heroin. Mandel, "Who Says Marijuana Use Leads to Heroin Addiction," 43 Journal of Secondary Education (May 1968), at 211. And marijuana does not cause insanity. Allentuck, S., and Bowman, K.M., "The Psychiatric Aspects of Marijuana Intoxication," 99 Am. J. Psychiatry (September 1942) at 249.

The reliable modern scientific evidence reveals that although no drug, including aspirin, is totally harmless, marijuana is a comparatively mild, relatively harmless drug when taken by most people in conventional doses and produces no effects which are or would be harmful to society or the user in the vast majority of cases. The Government would be hard pressed to sustain its burden of proving a rational connection between the private use of marijuana and harm to the public or to the user. The same cannot be said of alcohol, however. Blum, "Mind Altering Drugs and Dangerous Drugs: Alcohol in the United States President's Commission on Law Enforcement and Administration of Justice, TASK FORCE REPORT: DRUNKENNESS. Nor can the same be said of tobacco.

Alcohol and nicotine are both demonstrably harmful to the user and to the public at large. Nevertheless, it is not surprising to find that both are legal. Although alcohol was for a time prohibited, such "prohibition" was later found to be unsuccessful. There is less and less rational basis for the prohibition of marijuana as its science develops and there is growing support for its complete decriminalization.

For Congress to exclude or deport an alien from the United States simply because he or she may have used marijuana in private and for his or her own personal use, violates the fundamental freedoms and rights to privacy and due process of law guaranteed by the U.S. Constitutional Amendments I, IV, IX and XIV in that this legislation cannot be proven either necessary to the protection of any compelling state interest or reasonably related to the serving of a legitimate public purpose.

The limited consideration which can be given to Constitutional argument by the Board necessarily limits the writer to contesting the application of this law to respondent John Lennon as being an unconstitutional violation of due process and the right to privacy.

Clearly, even if Congress had been correct in prohibiting persons from entering this nation who had been convicted of selling, distributing or manufacturing marijuana, it is more difficult to defend its similar prohibition as to a person who merely may have used or possessed marijuana for his own private use. In the case at Bar, the violation of

respondent's due process rights becomes even more unacceptable than the clear violation of the right to privacy, when combined with his conviction under the non-mens rea British statute.

The right to privacy was first enunciated in Justice Brandeis' famous dissent (his position has gradually become that of the majority) in Olmstead v. United States, 277 U.S. 438, 478, 48 S.Ct. 574, 72 L.Ed. 944 (1928):

"The makers of our constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized men." 277 U.S. 438, 478.

This argument has now become accepted, and although various Justices of the Supreme Court have disagreed as to the true source of the "right of privacy", very few of the Justices have disagreed with the proposition that there was indeed a right to privacy. See Griswold v. Connecticut 381 U.S. 479, 85 S.Ct. 1648, 14 L.Ed.2d 510 (1964); Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed. 2d 542 (1969).

An analogy to the Stanley argument may prove pertinent:

"Given the present state of knowledge i.e. [about marijuana] the State may no more prohibit mere possession of obscenity [i.e. marijuana] on the ground that it may lead to antisocial conduct [i.e. hard drugs] than it may prohibit possession of chemistry books on the ground that they may lead to the manufacture of homemade spirits." 394 U.S. at 566, 567.

It is respectfully submitted that the private possession of marijuana in no way interferes with the rights of the public, nor with the public interest, and that §212 (a)(23) is therefore of questionable constitutionality insofar as it excludes from the United States persons convicted of simple possession of marijuana. Its applicability should therefore not be extended.

CONCLUSION

Based on the unvaried practice of the Immigration Service to classify hardship cases such as this as "nonpriority" and to decline prosecution on humanitarian grounds, these proceedings should not have been instituted. The Immigration Judge wrongfully refused to permit respondent access to information which would have shown such a practice and likewise wrongfully deferred to the Immigration Service's discriminatory commencement and prosecution of these proceedings. In the alternative, the proceedings should have been terminated because the government did not sustain its burden of proof as to deportability by the standards established under the decisional law and regulations. The Service should not have been permitted to place the respondent in illegal status by its own discriminatory and unauthorized act and to make improper use of such illegal status to remove the respondent, upon the pretext that it acts only to carry out the law.

In connection with respondent's application for permanent residence, the Board of Immigration Appeals is called upon to interpret and apply three terms nowhere defined in the Immigration and Nationality Act, namely, the "illicit" "possession" of "marijuana". It is clear that it is required to construe these terms in their narrowest possible meaning and that its construction must resolve any doubt as to their meaning in favor of the alien. The use of the British conviction, one which lacks an essential due process element present in all the laws of the United States, to exclude the respondent, would violate established principles of statutory construction, require the government to take a position inconsistent with other cases involving the same substance, broaden the applicability of a statute too vague and undefined for such application, and contravene the apparent intent of Congress,

causing a severe and cruel forfeiture of a dearly held right and great human anguish. The statute itself raises serious constitutional issues; obviously aimed at excluding actual or potential narcotics traffickers, its use in this case would flagrantly expand its application beyond its necessary or intended scope and deny the respondent due process.

The Board is respectfully called upon in this appeal to limit the application of the exclusionary provision in accordance with the mandates of the Constitution, the principles of statutory construction and great humanitarian traditions and institutions which are themselves the contributions of gifted aliens who immigrated to our shores.

Respectfully submitted,



LEON WILDES  
Attorney for Respondent  
John Winston Ono Lennon  
515 Madison Avenue  
New York, New York 10022

NO. 876,663

ANTHONY D. COX	X	IN THE COURT OF DOMESTIC
VS.	X	RELATIONS NO. 4
YOKO ONO LENNON	X	OF HARRIS COUNTY, TEXAS

FINAL JUDGMENT

BE IT REMEMBERED that on this the 14th day of May, 1973, at its regular setting, the above entitled and numbered cause came on to be heard, and came the Defendant, YOKO ONO LENNON, in person and by her respective attorneys of record, and the Plaintiff, ANTHONY D. COX, came not and wholly failed to appear, though properly notified of the date and time of said trial, as required by law, and the Defendant announced ready for trial, and no jury having been demanded, this cause was submitted to the Court for adjudication upon all matters of fact as well as of law, and the Court having thereafter examined the pleadings filed herein and having determined that same are in due and proper form and order, and having considered the evidence adduced during the trial and heard the argument of Counsel and being of the opinion and finding that the Court has jurisdiction of the parties and the minor child, KYOKO COX, and that it would be to the best interest of the said minor child if Defendant, her mother, YOKO ONO LENNON, be granted her permanent care, custody and control, further finds that Defendant, YOKO ONO LENNON, is the fit and proper person to have the permanent care, custody and control of the minor child, KYOKO COX, and that said Defendant, YOKO ONO LENNON, is able and willing to provide suitable environment, place of habitation, education, supervision, control and parental guidance for said child, KYOKO COX: and it further appearing to the Court and the Court finds that the present husband of the Defendant, to-wit: JOHN LENNON, has the ability, willingness and desire to participate in every way possible, necessary and advisable in the proper upbringing and education of such child,



and that, together with Defendant, he maintains a proper household for the upbringing of said child, and that it would serve the best interest of KYOKO COX to reside with her mother, Defendant, YOKO ONO LENNON, and JOHN LENNON.

The Court further finds that it would be for the best interest of the child, KYOKO COX, for the said Defendant, YOKO ONO LENNON, and husband, JOHN LENNON, to reside regularly and permanently within the territorial limits of the United States, provided that they may remove KYOKO COX outside the territorial limits of the United States for visits only.

The Court further finds that the Defendant, YOKO ONO LENNON, and husband, JOHN LENNON, have been unable to locate the child, KYOKO COX, notwithstanding that they have exhausted every means, expended large sums of money and have made every effort to find her. It is the Court's further finding that the said Plaintiff, ANTHONY D. COX, was held guilty of contempt of this Court for failure and refusal to produce the child when ordered by this Court, which sentenced him to confinement in jail for a period of five (5) days, and that, thereafter, the said ANTHONY D. COX, obtained his release after serving one day by posting a Five Thousand Dollar bond to guarantee his appearance before this Court and before the Appellate Court, and has forfeited the said bond; and has disappeared with said child and continues to secrete her and himself in willful violation of the orders of this Court.

And the Court further finds that it would be to the best interest of the child if the father, Plaintiff herein, ANTHONY D. COX, be given limited, supervised visitation privileges with the said child, said visitation to be limited to the first and third Sundays of each and every month from the hour of 2:00 P.M. until 6:00 P.M. at the residence of the said Defendant, YOKO ONO LENNON, and JOHN LENNON, and only in their joint presence.

It is therefore, ORDERED, ADJUDGED and DECREED that Defendant, YOKO ONO LENNON, is hereby granted permanent care, custody and

VEL 974 PAGE 674

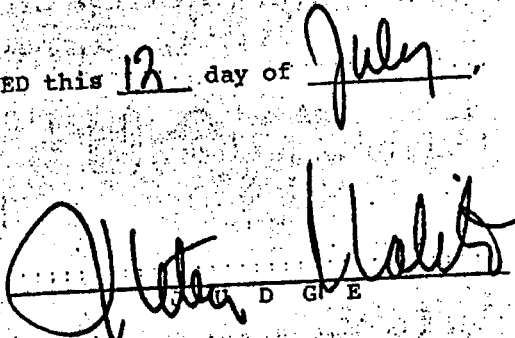
control of her minor child, KYOKO COX, and that the child is to reside within the territorial limits of the United States, consistent with all of the findings herein contained.

It is further ORDERED, ADJUDGED and DECREED that the Plaintiff, ANTHONY D. COX, is hereby awarded the following visitation privileges with the said minor child, KYOKO COX: On the first and third Sundays of each and every month from the hours of 2:00 P.M. until 6:00 P.M. and at other times agreeable to the Defendant, YOKO ONO LENNON, and JOHN LENNON. Said visitations are to be only at the place of residence of the Defendant, YOKO ONO LENNON, and JOHN LENNON, in the United States and in the joint presence of the said Defendant, YOKO ONO LENNON, and JOHN LENNON, and the said child is not to be taken from their residence.

It is further ORDERED, ADJUDGED and DECREED that the Clerk of this Court and/or the District Clerk of Harris County, Texas, issue any and all orders, writs of possession and other processes necessary to effectuate the provisions of this Judgment.

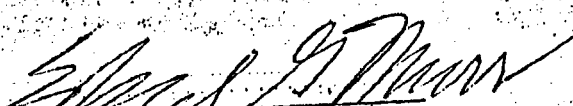
It is further ORDERED, ADJUDGED and DECREED that all costs of Court incurred by this proceeding are taxed against Plaintiff, ANTHONY D. COX, and if the same are not timely paid, then let execution issue.

ENTERED, RENDERED and SIGNED this 12 day of July, 1973.

  
D G E

APPROVED:

EDWARD G. MURR and RALPH BALASCO

BY:   
Attorneys For Defendant,  
YOKO ONO LENNON

WEL 974 PAGE 675

LEON WILDES  
ATTORNEY AT LAW  
515 MADISON AVENUE  
NEW YORK, NEW YORK 10022  
—  
(212) 753-3468

CABLE ADDRESS  
"LEONWILDES," N.Y.

STEVEN L. WEINBERG

June 27, 1972

Hon. Ira Fieldsteel  
Special Inquiry Officer  
U.S. Immigration and Naturalization Service  
20 West Broadway  
New York, New York 10007

Re: LENNON, John Winston Ono  
A17 597 321  
LENNON, Yoko Ono



(b)(6)

MOTION TO TAKE TESTIMONY OF GOVERNMENT WITNESS

Dear Sir:

It is respectfully moved, pursuant to 8 C.F.R. 287.4 (a) (2) that the Special Inquiry Officer issue subpoenas requiring the attendance of government witnesses and the production of books, papers and other documentary evidence, in support of the respondents' motion to terminate these deportation proceedings.

A motion to terminate these proceedings was made to the District Director on March 15, 1972 under 8 C.F.R. 242.7 and thereafter the motion was renewed before the Special Inquiry Officer in these proceedings. The motion was further renewed at the termination of the government's case and following the filing of applications for adjustment of status under section 245 of the Immigration and Nationality Act, as amended.

One of the bases for the motion was the fact that the Service had violated its own established practice and policy in commencing and maintaining deportation proceedings against these aliens. It is claimed that the Service has an invariable policy which was not followed in the instant case, and that the failure to follow this established

887

policy denies these aliens their due process rights under the U.S. Constitution and causes them irreparable harm. The Special Inquiry Officer granted the respondents' counsel until July 1, 1972 to file a brief in support of this proposition.

In order to secure the material necessary to brief the issue, respondents' counsel filed with the District Director on May 1, 1972 a request for the necessary information, specifying in detail the information required. A copy of this request is attached as Exhibit 1.

On May 23, 1972 the respondents' counsel telephoned the government's Trial Attorney, further requesting the said information. The government's Trial Attorney refused to comply with the request and further stated that the information would not be furnished. A further request dated June 5, 1972 was presented to the District Director, a copy of which is attached as Exhibit 2. The reply of the District Director dated June 14, 1972 is attached as Exhibit 3, inviting that all further questions with respect to "Service policy or instructions ... must be addressed to the Central Office".

It is apparent that the information contained in the reading room of the New York District Office of the Immigration and Naturalization Service does not contain the information requested by respondents, and that the evidence must be obtained from the Central Office of the Immigration and Naturalization Service in Washington D.C. Accordingly, it is respectfully requested that the Special Inquiry Officer issue a subpoena to the Commissioner of the Immigration and Naturalization Service or such other designated representative who may have custody of the information needed by respondents. It is further requested that the Special Inquiry Officer defer the consideration of this point in the respondents' brief until after any available information has been secured from the Central Office of the Immigration Service.

WHEREFORE respondents respectfully request that the Special Inquiry Officer enter an order issuing a subpoena to the Central Office of the Immigration and Naturalization

Service to appear, together with relevant books, records and other data, at an appropriate office of the Immigration and Naturalization Service to give testimony with respect to the matters stated in the request for information dated May 1, 1972, deferring consideration of the pertinent point in respondents' brief, and granting such other and further relief as may be just in the premises.

Respectfully submitted,

LEON WILDES  
Attorney for the Respondents  
515 Madison Avenue  
New York, New York 10022

LW:ba  
ENCLS.

885

May 1, 1972

Sol Marks, District Director  
Immigration & Naturalization Service  
20 West Broadway  
New York, N.Y. 10007

Dear Mr. Marks:

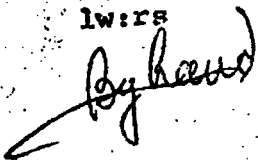
Pursuant to Title 5, U.S.C., Para. 552, the undersigned hereby demands that you make the attached information available to him forthwith. This information is an absolute necessity in connection with preparing defenses to the government's action against my clients, John Winston Ono Lennor and Yoko Ono Lennon.

In view of the fact that the Service has decided to press deportation proceedings against Mr. and Mrs. John Lennon, the undersigned hereby demands that you supply the answers to the attached questions in order for the Lennons to properly defend the deportation proceedings.

Very truly yours,

LEON WILDES

lw:rs



Pursuant to Title 5, U.S.C., §552, the undersigned hereby demands that you make the following information available forthwith to the undersigned:

(I) State the following separately, nationally and for the geographic area covered by the New York District Office of the Immigration and Nationalization Service, for specific annual periods during each of the past (five) 5 years:

(a) The number of aliens apprehended who are statutorily excludible or deportable and a breakdown as to the grounds for their deportability, and specifically governing, inter alia, excludibility under §212(a)(23) of the I.N.A., and deportability under I.N.A. §§241(a)(2) and 241(a)(9), and 241(a)(11).

(b) For same time periods and geographic areas and with the same breakdown as to each ground for excludibility and deportability as in (I)(a) above, state:

- (i) The number of such aliens in whose cases formal deportation proceedings were actually instituted;
- (ii) The number of such cases in which proceedings were not instituted because of humanitarian reasons, including age, illness, close family relationships, etc., stating the number under each separate category of humanitarian classification, including, but not limited to age, infirmity, relationship to U.S. citizen child, relationship to U.S. resident spouse, compelling national interest, pendency of third preference petitions or because aliens were professionals or members of the arts or sciences of third preference level;
- (iii) The number of such cases administratively considered "non-priority" cases in each such category and for each such period; the specific criterion or standards for such classification, and the range of periods of time for which such classification exists.
- (iv) The number of such cases in each category and for each such period for which proceedings were administratively deferred for temporary periods of time or delayed during the temporary pendency of such factors as are stated in I(b)(ii) above.
- (v) The number of cases for each time period and geographic area specified in which the removal

of aliens was stayed during the pendency of private immigration legislation in the Congress and, with respect to any case not stayed, if any, the reasons specified for nondeferral of all such cases.

(c) State the standards applied for classification of a case as "non priority" or other classification by reason of which an alien statutorily deportable is

(i) not made the subject of deportation proceedings; or

(ii) if processed for deportation, granted indefinite voluntary departure; or

(iii) extended periods of voluntary departure.

If separate standards exist for each such category, please state them; state whether they are embodied in written instructions, regulations, or operating manuals, and if so, furnish a copy of all such standards stating their respective effective dates and geographic jurisdictional areas of applicability.

Yours, etc.

LEON WILDES,  
515 Madison Avenue  
New York, N.Y. 10022  
212-753-3468

Attorney for John Winston Ono Lennon  
and Yoko Ono Lennon

888



UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
20 WEST BROADWAY  
NEW YORK, NEW YORK 10007

June 14, 1972

A17 597 321

(b)(6)

Leon Wildes  
Attorney at Law  
515 Madison Avenue  
New York, New York 10022

Dear Sir:

Reference is made to your letters of May 1 and June 5, 1972, in which you demand that certain statistical data be made available to you pursuant to Title 5, U.S.C., Para. 552, for use in preparing your defense of clients in deportation proceedings.

You are advised that this office maintains a public reading room on the twelfth floor where the following materials are available for your use:

1. Copies of the Annual Reports of the Immigration and Naturalization Service for the years 1965 through 1971.
2. Administrative Decisions under the Immigration and Nationality Laws of the United States, with cumulative indices.
3. Unpublished Service and Board decisions relating to proceedings in which the initial decision was made in the New York District office.
4. Statements of policy, interpretations, and those manuals and instructions to staff (or portions thereof) affecting the public, with an accompanying index of any material issued after July 4, 1967.
5. Copies of Immigration and Nationality Laws, of Title 8 of the United States Code Annotated, Title 8 of the Code of Federal Regulations--Chapter I, and the Department of State Foreign Affairs Manual, Volume 9 - Visas.

You are invited to research these materials and to obtain copies of any of the statistical tables which you find useful. If you desire statistics which are not covered in the annual reports of the Service, you may communicate with the Statistical Branch, Central Office, Washington, D. C. to ascertain the availability and cost of special statistical tabulations. Any question concerning Service policy or instructions which are not within the purview of 8 C.F.R. 103.9 (d) must be addressed to the Central Office.

Sincerely,

*Sol Marks*

SOL MARKS  
District Director  
New York District

88

302506

August 14, 1973

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

Robin Ann Colin, Esq.  
New York Civil  
Liberties Union  
84 Fifth Avenue  
New York, New York 10011

Dear Ms. Colin:

This is in response to your letter dated August 8, 1973 concerning the above-captioned matter.

There is no special form of application to be heard as amicus curiae pursuant to 8 C.F.R. 292.1(f). The Board has considered your letter of August 8, 1973 as an application and has granted it. We shall look forward to receiving your brief on appeal.

Sincerely yours,

Maurice A. Roberts  
Chairman

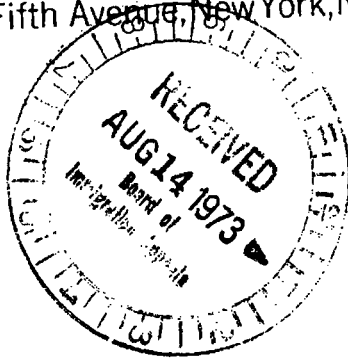
cc: Mr. Irving A. Appelman  
Appellate Trial Attorney  
ISN Service

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

MAR:mhl

# NYCLU

New York Civil Liberties Union, 84 Fifth Avenue, New York, N.Y. 10011. Telephone 924-7800



August 8, 1973

Chairman  
Board of Immigration Appeals  
U.S. Department of Justice  
Washington, D.C. 20530

RE: Appeal in the Matter of Lennon

Dear Sir:

Pursuant to a conversation on August 3, 1973 with a representative of the Board of Immigration Appeals, I am forwarding this letter to request an application form to be amicus curiae in the Lennon deportation appeal. I understand this application to be a formality in light of the fact that the New York Civil Liberties Union requested the status of amicus curiae in the deportation proceeding before the immigration judge and submitted a brief pursuant to the judge's acceptance of this request. Our extensive amicus curiae brief in the Lennon appeal has just been completed; I await your response prior to forwarding same. Thank you for your consideration.)

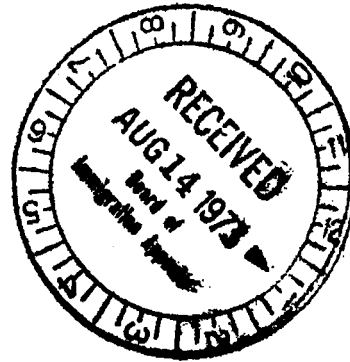
Very truly yours,  
*Robin Ann Colin*  
Robin Ann Colin

BOARD OF DIRECTORS

Sheldon Ackley, Chairman  
Howard R. Moody, Vice Chairman  
Faith A. Seidenberg, Vice Chairman  
Donald D. Shack, Vice Chairman  
Newell G. Alford, Jr., Secretary  
Maxwell Dane, Treasurer

William J. Butler  
Helen L. Buttenwieser  
Richard A. Cloward  
Ana Conigliaro  
George Cooper  
Bernard Fischman  
Osmond K. Fraenkel  
Victor S. Gattner  
Ernest Green  
John DeWitt Gregory  
Jeremiah S. Gutman  
Nat Hentoff  
Jon Hinkamp  
Arnold Hoffman  
Charles Hoffmann  
Steven Hyman  
David Gerald Jay  
Barbara Kaiser  
Benjamin Karlinowitz  
Marvin Karparkin  
Walter Keller  
Sam Korn  
James A. Lee  
William Leibovitz  
Lesly Lempert  
Steven Lipton  
Ephraim S. London  
Victor Lord  
John McAvoy  
John L. Miller, Jr.  
Edward Norton  
Robert Platt  
Harriet Raab  
Carl Rachlin  
Herbert Rausher  
Ruth Rosenberg  
Leonard Rubin  
Herman Schwartz  
Henry Schwarzschild  
Jerome Seidel  
Doris Shaffer  
Ivan Shapiro  
Robert M. Stein  
Agnes Weis  
Marvin Zevin

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



CABLE ADDRESS  
"LEONWILDES," N. Y.

August 7, 1973

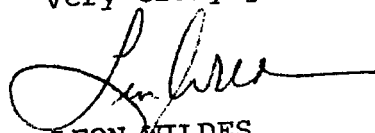
Board of Immigration Appeals  
U.S. Department of Justice  
521 12th Street, N.W.  
Washington, D.C. 20530

Re: LENNON, John Winston Ono  
A17 597 321

Gentlemen:

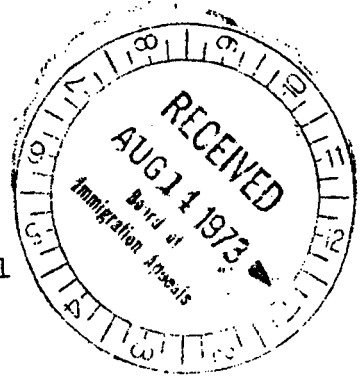
Enclosed herewith is a stipulation signed by the parties in the above-captioned proceedings and containing an agreed list of errata to the official transcript of proceedings, submitted herewith to be attached to the official transcript.

Very truly yours,

  
LEON WILDES

LW/ts  
Encl.

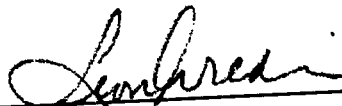
IMMIGRATION AND NATURALIZATION SERVICE

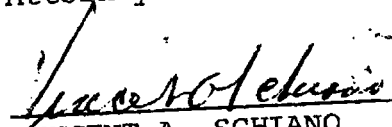


----- :  
: :  
In the Matter of: :  
: :  
JOHN WINSTON ONO LENNON, : A17 597 321  
Respondent :  
: :  
----- :

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respondent and for the Immigration and Naturalization Service, that the transcript of proceedings be amended as provided by the attached list of errata, consisting of seven pages of corrections.

  
LEON WILDES  
Attorney for Respondent

  
VINCENT A. SCHIANO  
Chief Trial Attorney

Dated: July 24, 1973

<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
1A	12	I tried to drop Winston but they made me keep Winston as well.
3A	9	It is a practice of the Immigration Service, although it appears to my knowledge nowhere in the regulations of the law, to accord to the beneficiaries of third preference approved cases, that is those which are likely to be approved, the privilege of deferred departure while they prepare applications for adjustment of status or if there are problems in their way while they are cleared.
3A	15	The District Director has felt obliged not to invoke that beneficial practice in this particular case and we feel that has a deleterious effect upon the cultural interest of the United States, and since the interest of the United States is of the utmost issue in that determination, we have today filed such a motion.
5A	9	The next consideration that I intend to mention is relative there.
5A	14	Because of some recent development over there with respect to the police officers involved and because of the retention of local counsel in England for the purpose of obtaining that expungement, we feel that we need additional time within which to determine whether adjustment of status is the appropriate remedy and we want to be able to apply at a time so as not to break up a family unit.
1	22	Mrs. Lennon was absolutely no legal impediment whatsoever in her application, and the institution of these proceedings in her case was an act which was certainly improvident and possibly a severe abuse of discretion.
2	5	It is our contention, first of all, that Mr. Lennon who has a conviction in England for possession of marijuana, is not statutorily ineligible.
2	10	And the statute is very clear and explicit in stating that it is for the purpose of the manufacture, production, compounding, etcetera

867

314

<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
2	contd.	requiring the ability to traffic in narcotics rather than possession presumably for one's own use.
2	20	In the alternative, if the government believes that Mr. Lennon's <u>marijuana</u> conviction is a bar to his residence, we initiated - we have commenced - a proceeding in the English court to obtain a judicial expungement of that conviction...
3	13	Mrs. Lennon is the mother of a young child, Kyoko, who is a citizen of the United States.
3	20	These parents have spent a great deal of time and agony in trying to secure and finally securing temporary custody orders with respect to the child only to find that the child was spirited away by the natural father.
4	15	First in locating their child, then in obtaining custody and now having the paper which would be meaningless without finding the child.
4	16	Will it be then that the father simply intends to wait out his time until they are removed from the United States in order that he can continue his illegal custody of the child. There is a party to these proceedings, perhaps only represented today by the press, and that is the public.
5	7	The contribution of the Lennons themselves while here in the United States to the international effort in Bangladesh has exceeded in value the contributions of the United States government to the U.S. for that purpose.
6	8	What is occurring is akin to what happened in Mandel v. Mitchell, where the Federal Court observed that it was an abuse of discretion when discretionary relief was denied solely in restraint of first amendment rights.
8	23	MR. WILDES: Is the question whether its approval is necessary?
9	2	MR. WILDES: Well, if they are exempted and of course this is up to the District Director

9616

315



<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
9	contd.	again, these petitions could have been approved as the standard adjudicating time in this kind of case, when the Labor Department need not be consulted, would be the normal one month period.
10	17	MR. WILDES: Well before replying to that, if I may ask, is it the Special Inquiry Officer's position that he does not have authority to terminate a proceeding before him?
11	5	MR. WILDES: As you know, the application for adjustment of status is a discretionary application left to the Special Inquiry Officer's discretion.
11	24	It is just impossible to call these people up and say be here Tuesday afternoon at three o'clock, you have to give them notice.
11	26	We have arranged for the Counsel to Apple Records, who is travelling to England tonight, and this is one of his functions.
12	24	MR. WILDES: What we need, Mr. Special Inquiry Officer, is largely a question of opinion, and I think that I should, as counsel to the Lennons, be given sufficient latitude to determine when, and what witnesses I would like to have to present my case.
15	13	MR. WILDES: No, there are a number of errors which have occurred which, if I may, before commenting on the allegations and the legal conclusion in the order to show cause, I should like to comment on, to bring the case up to date because there are any number of occurrences which are not at this point in the record.
15	19	To this point in the proceedings a number of things have taken place which if given an opportunity to report on, then, we will go on.
15	21	There is a discriminatory kind of pre-judgment of every application and request being filed.
15	22	In pursuance of my obligation to represent my

865

3/6

<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
15	contd.	clients, some time ago, I, on April 28, presented myself at the Immigration Service office and requested, as I had done previously, to see my clients' file.
16	4	Since I know that the District Director has a mandatory obligation to rule on them, I therefore requested of the Federal Court that the District Director be ordered to rule on the applications.
16	6	As a temporary request, I asked that an injunction against deportation proceedings be entered pending the approval or denial action on the third preference petitions.
16	17	I had no alternative but to appear the same afternoon before the Federal Court for the Southern District of New York where I requested a temporary restraining order.
17	17	It is necessary it be pointed out, and I wanted it in the record of these proceedings, that I had to go to a court, and get an injunction, in order to get it done, and it appears to have been done between nine and ten that morning.
18	8	My application to do so before the District Director did result finally in a letter denying my application which merely indicated that the applications were denied in the exercise of discretion because Mr. Lennon has a conviction on his record and for "other circumstances" in the case.
18	11	At no time, despite the fact that I have asked what these "circumstances" are, was I informed of it.
20	8	MR. WILDES: I must admit, I have never even conceived of asking the question in the deportation context.
26	18	We admit allegation number 7 only in that we were served with the latter which is in evidence as Exhibit #5.
26	20	However, only with respect to the factual

264

<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
26	contd.	allegations.
26	20	We deny this was an effective revocation.
27	20	MR. WILDES: I have various other documents, one or two of which lack translation, and I can plan to submit all of them.
32	21	MR. WILDES: The Special Inquiry Officer is probably aware that though our Immigration Act was concerned with traffic in narcotic drugs, it never mentioned the word - marijuana - and the transgression in the Act was limited to the possession for certain purposes, which had to do with traffic. In 1956 it was amended to include so-called simple possession.
35	17	I am an Associate Clinical Professor of Psychiatry (Research) at the Massachusetts Mental Health Center. I am also a member of the Boston Psychoanalytic Society.
35	21	I have published roughly about sixty papers, most of which have to do with drugs, and two books, and my particular interest in this particular drug - marijuana - now spans four and a half years during which I have been doing research on it.
36	3	All right. <u>Marihuana Reconsidered</u> by Lester Grinspoon, M.D. will be Exhibit 12.
36	9	Well, the word Cannabis actually comes from the label which Linnaeus affixed to the plant.
36	13	Yes...affixed in 1775 to the plant which is commonly called Indian Hemp.
36	14	He called the plant Cannabis sativa, and pretty much since that time, products of the Cannabis sativa plant have in generic terms been referred to as Cannabis, and that is to say, the non-fiber-as there are also fiber products from the plant, the non-fiber products are subsumed under the generic term referred to as Cannabis.
36	20	Well, Cannabis Resin is the - let me go

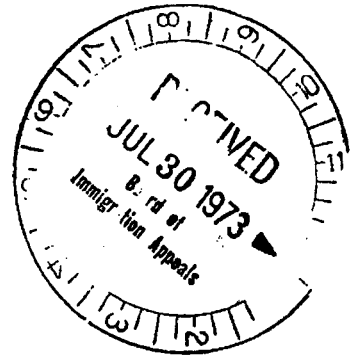
pg 3

<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
36	contd.	back a little bit - the plant is a DICECOUS plant, that is there are male and female plants.
37	1	There is a male and a female, and this resin is obtained from the female plant at a time when the female begins to flower, extracted from the inflorescence of the flower's pistillate parts.
37	4	Now the resin is obtained in a number of ways, usually in Nepal and India and in other parts of the world as well but whatever way is used for taking it, the product as it finally emerges is referred to, in India as CHARAS and in the rest of the world as Hashish.
37	17	The word marijuana, the eticology of it is not certain, but it is largely thought now to derive from the Portuguese word maniguango which means intoxicant.
37	19	Regardless of its origin, the word is a north American word for what in India is referred to as Bhang and in England it is also called Marijuana but frequently the word pagga, which is a term which comes from South Africa, what it actually is - the cut parts of the cannabis sativa plant, usually of the female, but it may also be female and male, and it's a cutting of these stamminate and pistillate tops usually mixed with stems and seeds and so forth and so on.
38	1	The term marijuana is used in other parts of the world, but there is no question that marijuana refers to just this particular form of the plant and not to the resin.
38	4	In other words, what you are saying, in essence, is, that there is a plant known as Cannabis, or Cannabis sativa, which is the Indian Hemp and that there are various things which will come from that plant, that the common usage of marijuana is that the leav es or the stems or the tops or the seeds or a combination of those, whereas Cannabis resin is, you might say, a specialized and

<u>PAGE</u>	<u>LINE</u>	<u>SENTENCE</u>
38	contd.	limited product of the plant, which consists of the resin from the female plant when it begins to flower?
39	20	Growing at a certain altitute in Nepal, this scraped-off yellow oleo resin put it in a box and you would have a very high grade solid Cannabis resin.
40	2	There are other things that have to do with the commercial aspects of the product, they form or make it into little bricks or fingers, or what have you.
40	17	Now, in some forms of Hashish the highest grade of resin is collected.
40	19	But what they do for example is run through the field of Cannabis sativa plants; the one that produces the resin stands about six feet high and they run through the fields either with leather jackets on or nude and they come in from the field and people scrape these little bits and traces off them.
40	23	And that is actually the first step in the production of Hashish, there are other impurities also, I mean it isn't pure Cannabinol derivatives quite obviously, there are other things in it, but it's the purest form.
41	6	That's correct, and in fact, the leaves and the tops, the tops of the plant, the inflorescence is at the top of the plant, there are actually two grades of that.
41	8	There is Bhang which is like our marijuana but there is also Canja which is another leaves and tops preparation, another kind of a product as opposed to the resin product.
41	25	Are you talking about Cannabinol, or Cannabadiol, or what?
42	4	Cannabis resin consists of a number of Cannabinols of which some of them I have mentioned delta-1-tetrahydracannabinol, delta-6-tetrahydracannabinol.

86

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



CABLE ADDRESS  
"LEONWILDES," N. Y.

July 24, 1973

Immigration and Naturalization Service  
20 West Broadway  
New York, New York 10007  
Attention: Vincent A. Schiano, Chief Trial Attorney

Re: LENNON, John Winston Ono  
A17 597 321

Dear Mr. Schiano:

In accordance with our agreement, there is submitted herewith an itemized list of errata concerning the transcript of hearing in the above-captioned proceedings, consisting of seven pages. This was prepared based upon my own correction of the record and the corrections made by Dr. Lester Grinspoon as to his testimony. I have not submitted the transcript for review by any witness other than Dr. Grinspoon.

Also attached is a stipulation with respect to these items. I am confident that you will find the corrections acceptable. If you do, please sign the stipulation and attach the errata and the stipulation to the original transcript of proceedings.

If there is any question with respect to any of the corrections, please feel free to telephone my office.

Very truly yours,

LEON WILDES

LW/ts  
Encls.

✓  
P.S. A copy of this letter, without enclosures, is being sent to the Board of Immigration Appeals to be attached to the original transcript of proceedings, so that the Members of the Board will know that certain agreed changes in the transcript will be forthcoming.

860

July 18, 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 refer to your letter of July 12, 1973, requesting additional time within which to file a brief in the above matter scheduled for argument on September 10, 1973.

The Board has carefully considered your request and has decided that it has not been established that there is need for extensive delay in the submission of a brief. We shall grant you until August 16, 1973, to submit your brief to the Board. This is an additional ten days from August 6, 1973, the date which the Board originally set for the brief to be in our hands.

The Immigration Service will be granted until August 30, 1973 to submit its brief with the Board. The respondent's reply brief, if any, shall be submitted to the Board by September 6, 1973. No further extensions will be granted.

Sincerely yours,

Louisa Wilson  
Acting Chairman

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

LW:mhl

July 17, 1973

Mr. Irving A. Appelman  
Appellate Trial Attorney  
I&N Service

Louisa Wilson, Acting Chairman  
Board of Immigration Appeals

John Winston Oso ~~LEONEN~~,  
A17 595 321

Counsel for the above-named respondent has been granted until August 16, 1973, to submit a brief to the Board.

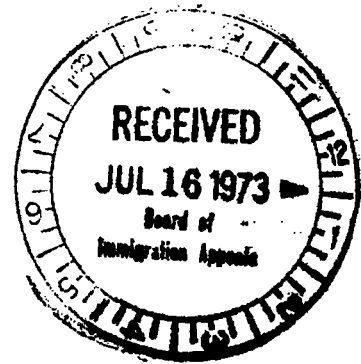
The Service is being granted until August 30, 1973 to submit a reply brief if it so desires.

The case remains on the calendar for September 10, 1973.

LW:mhl



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



CABLE ADDRESS  
"LEONWILDES," N. Y.

July 12, 1973

U.S. Department of Justice  
Board of Immigration Appeals  
Safeway Building  
11th Floor  
521 12th Street, N.W.  
Washington, D.C. 20530

Re: LENNON, John Winston Ono  
A17 595 321

Gentlemen:

I respectfully request that I be accorded additional time within which to file my brief in the above-captioned matter. The notice of appeal filed in this matter requested that I be given until October 2, 1973 to file such brief and your office was kind enough to accord a period of time to file the brief which expires on August 6, 1973. Every effort has been made to complete the brief by that time, but it now appears that it will not be possible. Request is hereby made for permission to file the brief on or before November 1, 1973 for the reasons stated in my letter to the Board of April 26, 1973 and for the following additional reasons:

Counsel remains unable to brief the issue of denial of his client's due process right to a fair hearing because of the failure of the Central Office of the Immigration and Naturalization Service to respond to his requests under the Freedom of Information Act for data as to the prosecution of similar cases by the Service. The request to the Central Office was made on April 13, 1973 for a list of items, which has not been furnished to date despite the fact that the Central Office was notified of the requirement that a brief be filed in these proceedings on or before August 6, 1973.

A new development has occurred which requires addi-

Lennon, 2

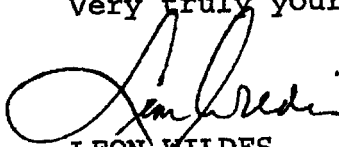
tional research. Counsel has recently heard of a decision in another district in a case which appears to be on all fours with the instant case in which the Immigration Judge came to the opposite conclusion. A request under the Freedom of Information Act was filed and a copy of the decision obtained. 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 it had 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 position of 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: Appellate Trial Attorney

856

25 2523

May 16, 1973

Leon Wildes, Esquire  
515 Madison Avenue  
New York, New York 10022

John Winston LENNON  
A17 595 321

Dear Mr. Wildes:

Sept. 10, 1973

\*

August 6, 1973

cc: Appellate Trial Attorney  
\*brief due by August 6, 1973.

File

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. Appelman  
Appellate Trial Attorney  
I&N Service

MAR:mhl

File

May 1, 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 is in response to your letter dated April 26, 1973 concerning the above-captioned matter.

The record on this appeal has not yet been received at the Board. Further action on your request for an extension of time within which to file your brief on appeal will be deferred pending receipt of the record. It may be that by the time we receive the record and calendar the case for oral argument, you will have had adequate time to prepare your brief.

Sincerely yours,

Maurice A. Roberts  
Chairman

MAR:mhl

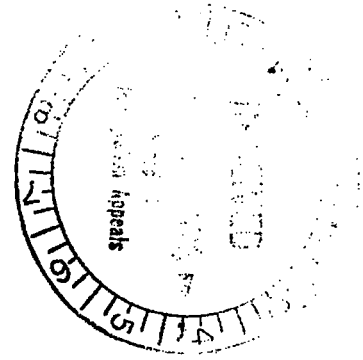
LEON WILDES  
ATTORNEY AT LAW  
*515 Madison Avenue*  
*New York, N.Y. 10022*

PLAZA 3-3468

CABLE ADDRESS  
"LEONWILDES," N. Y.

April 26, 1973

Board of Immigration Appeals  
U.S. Department of Justice  
Safeway Building  
11th Floor  
521 12th Street, N.W.  
Washington, D.C. 20530



Re: LENNON, John Winston Ono  
A17 595 321

Gentlemen:

I am writing to request additional time within which to file my brief on appeal in the above-captioned matter. I realize that the record file will not be available to you upon your receipt of this letter.

On March 23, 1973 the Immigration Judge rendered a forty-seven (47) page decision in which he held the Respondent, John Lennon, deportable and denied his application for adjustment of status under Section 245 of the Immigration and Nationality Act. The case involves factual and legal issues of great complexity and novelty. A trial brief of some seventy-two (72) pages was filed on a number of the issues of fact and law involved in the case. Perhaps the best illustration of the complexity of the issues is the fact that the Immigration Judge's consideration of the factual and legal issues embodied in his decision has taken over a year, the hearing having been closed on May 17, 1972.

Our Notice of Appeal requested that we be granted until October 2, 1973 to file the brief in support of this appeal. The Immigration Judge has granted a period of only one month, namely, to May 3, 1973, a grossly inadequate period of time. The undersigned has telephoned the Immigration Judge to request additional time but his request was rejected. It is felt that a further request for the same relief to the Immigration Judge would