

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

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9-35-86

File No. A7 095 96

In the Matter of)
ANDRIJA ARTUKOVIC)
Respondent)

IN DEPORTATION PROCEEDINGS

ON BEHALF OF RESPONDENT:

Ronald H. Bonaparte, Esq.
12011 San Vicente Blvd. 2nd. Flr.
Los Angeles, California 90049

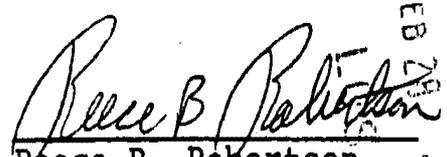
ON BEHALF OF SERVICE:

Ronnie L. Edelman, Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005

DECISION OF THE IMMIGRATION JUDGE

On motion of the Trial Attorney the deportation proceedings in this case are terminated as moot since the respondent has left the United States.




Reece B. Robertson
Immigration Judge

FEB 28 4 00 PM '86
U.S. DEPARTMENT OF JUSTICE
OFFICE OF SPECIAL INVESTIGATIONS
NATIONAL SERVICE

In the Matter of)

ANDRIJA ARTUKOVIC)

Respondent)

IN DEPORTATION PROCEEDINGS

ON BEHALF OF RESPONDENT:

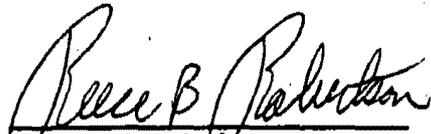
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Reece B. Robertson
Immigration Judge

U. S. IMMIGRATION COURT
300 N LOS ANGELES ST #8110
LOS ANGELES CA 90012

09-APR-85 1909 2392 00528
09-APR-85 2023 M896 LAX WU

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APRIL 9, 1985

FILE #: A07 095 961

NOTICE OF HEARING IN DEPORTATION PROCEEDINGS

RE: ANDRIJA ARTUKOVIC
64 B SURFSIDE COLONY
SURFSIDE CA 90743

PLEASE TAKE NOTICE THAT THE ABOVE CAPTIONED CASE WILL BE HEARD BY
AN IMMIGRATION JUDGE ON TUE JULY 30 1985 AT 8:30 AM AT THE OFFICE OF
THE IMMIGRATION JUDGE AT:

300 N. LOS ANGELES ST., ROOM 8110
LOS ANGELES, CA 90012

SINCE YOU ARE THE ATTORNEY/REPRESENTATIVE OF RECORD, THIS WILL BE
THE ONLY NOTICE OF THIS HEARING ISSUED. THE OFFICE OF THE
IMMIGRATION JUDGE WILL NOT NOTIFY YOUR CLIENT. IT IS YOUR
RESPONSIBILITY TO ADVISE YOUR CLIENT OF THIS INFORMATION AND TO
ASSURE HIS/HER APPEARANCE.

YOUR CLIENT'S FAILURE TO APPEAR AT THIS HEARING MAY RESULT IN ANY OR
ALL OF THE FOLLOWING ACTIONS:

1. FORFEITURE OF YOUR CLIENT'S BOND;
2. YOUR CLIENT'S DEPORTATION HEARING BEING CONDUCTED IN
HIS/HER ABSENCE UNDER SEC. 242(B) OF THE IMMIGRATION AND
NATIONALITY ACT;
3. AN ORDER OF DEPORTATION BEING ENTERED AGAINST YOUR CLIENT;
4. ISSUANCE OF A WARRANT FOR YOUR CLIENT'S ARREST AND
DEPORTATION.

OFFICE OF THE IMMIGRATION JUDGE
R HUMBLIS/DC3

10611

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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 ANDRIJA ARTUKOVIC,) No. CV 77-2333-IH
16)
Plaintiff,)
17)
v.)
18)
WILLIAM FRENCH SMITH, et al.,) DATE: February 19, 1985
19)
Defendants.) TIME: 11:00 a.m.
20)

21
22
23
24 DEFENDANTS' OPPOSITION TO PLAINTIFF'S

25 MOTION FOR AN ORDER TO SHOW CAUSE
26
27
28

FILED

FEB 4 1985

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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PRACTICE AND PROCEDURE

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Gordon and Rosenfield's, Vol. A.,
Immigration Law and Procedure, pp. 5-13 (1984) 7
Moore's Federal Practice, sec. 11.02(2) (1984 Ed.) 12

1 Artukovic is admittedly a former cabinet-level official of
2 a Nazi-puppet state which pursued genocidal policies primarily
3 against Jews and Serbs. He entered the United States in 1948 on a
4 tourist visa under a false name.

5 Subsequently, Artukovic conceded his deportability, but
6 applied for permanent resident status and suspension of
7 deportation. Those applications were denied because of his
8 wartime activities and Artukovic was ordered deported to his
9 native Yugoslavia. He continues to remain in this country,
10 however, solely by reason of a 1959 temporary stay of deportation
11 granted under 8 U.S.C. §1253(h), which bars the Government from
12 deporting him to Yugoslavia. ^{1/}

13 In 1982, relying on an intervening change in the law and
14 its own prior unappealed findings of fact, the BIA, on motion by
15 the Government, revoked the stay and reinstated the order of
16 deportation. Artukovic petitioned for review of that decision.
17 On December 22, 1982, the Court of Appeals vacated the BIA
18 decision and ruled that Artukovic's temporary stay of deportation
19 under 8 U.S.C. §1253(h) could be revoked only following a hearing
20 before an immigration judge. Artukovic v. INS, 693 F.2d 894, 899
21 (9th Cir. 1982).

22
23
24 ^{1/} Contrary to his assertion, Memorandum 2, Artukovic has
25 never been granted asylum to reside in the United States. In
26 fact, he petitioned the immigration court for asylum in October,
27 1984. Although the immigration court has not yet ruled on this
28 application, in an advisory opinion required under immigration
regulations, the Department of State has recommended that asylum
be denied in view of Artukovic's wartime activities (copy of
advisory letter, December 20, 1984, attached as Exhibit C).

1 In accordance with the Appeals Court's mandate, the
2 Government sought and obtained from the BIA an order, dated May
3 21, 1984, (copy attached as Exhibit D) reopening the proceedings
4 before the immigration court for the purpose of revoking the
5 temporary stay of deportation Artukovic enjoys under 8 U.S.C.
6 §1253(h). Under recent amendments to that section, the Government
7 contends, Artukovic is ineligible for a stay because he was a
8 prime movant in a Nazi-puppet regime which pursued genocidal
9 policies against Jews and Serbs. The BIA order specifically gave
10 Artukovic the opportunity to make applications at the immigration
11 court hearing for the various forms of relief available to
12 deportable aliens.

13 Nevertheless, Artukovic petitioned for review of that
14 order, claiming that the BIA had "limit[ed] the scope of
15 proceedings before the Immigration Law Judge in violation of this
16 Court['s decision]." (Petition for review, copy attached as
17 Exhibit E.) He asserted that the BIA order denied him the right
18 to apply for discretionary relief at the reopened immigration
19 court hearing. [Civil appeals docketing statement, "J. Issues to
20 be raised on appeal," copy attached as Exhibit F.)

21 On July 23, 1984, the Government filed a motion to dismiss
22 the petition for review (copy attached as Exhibit G) on the
23 grounds that (1) the Court of Appeals lacks jurisdiction under 8
24 U.S.C. §1105(a), and (2) the BIA decision granted Artukovic the
25 very relief he sought from this Court, viz. the right to apply for
26 relief from deportation at the reopened immigration court
27 hearing.
28

1 On August 30, 1984, the Court of Appeals granted the
2 Government's motion and dismissed Artukovic's case for lack of
3 jurisdiction (copy attached as Exhibit H). Hearing on the
4 Government's motion to revoke Artukovic's temporary stay of
5 deportation is scheduled to commence April 9, 1985, before
6 Immigration Judge Reece B. Robertson.

7 On August 20, 1984, the Embassy of Yugoslavia forwarded
8 diplomatic note No. 414/84, and supporting documentation,
9 requesting Artukovic's extradition to Yugoslavia. The State
10 Department Legal Adviser reviewed this submission and certified
11 that the United States should represent Yugoslavia in this matter
12 pursuant to diplomatic agreement because the offenses for which
13 extradition is demanded are covered between an extradition treaty
14 in full force and effect. (Affidavit of Andre Surena, State
15 Department Attorney Advisor, dated October 25, 1984, attached as
16 Exhibit I.) The extradition request was reviewed by the
17 Department of Justice Office of International Affairs for a
18 preliminary determination as to its legal sufficiency. It was
19 found to be sufficient and the request was forwarded to the United
20 States Attorney in Los Angeles. The United States Attorney lodged
21 a complaint for extradition and Artukovic was arrested on November
22 14, 1984. Matter of the Extradition of Andrija Artukovic, No. CV
23 84-8743-R(B) (C.D. Cal.). Artukovic's two motions for bail were
24 denied by Magistrate Brown, by Chief Judge Real and the Ninth
25 Circuit (No. 84-6624). He has remained in custody since his
26 arrest. On January 30, 1985, Artukovic was found competent to
27 assist counsel in an extradition proceeding. Hearing on the
28

1 extradition demand is scheduled to commence February 13, 1985,
2 before Magistrate Brown.

3 II

4 The Government Has Fully Complied With This Court's Orders

5 This case came before this Court as a dispute arising from
6 the immigration law procedures the United States Government should
7 follow in revoking Artukovic's temporary stay of deportation to
8 Yugoslavia, granted in 1959 under 8 U.S.C. §1253(h). The Court's
9 orders deal solely with Artukovic's immigration status and
10 permanently enjoin the Government "from doing any act to modify,
11 alter or revoke" the temporary stay except by a motion to reopen
12 or reconsider under 8 C.F.R. 242.22, before an immigration judge,
13 or under 8 C.F.R. 3.2 and 3.8. Nothing in the record suggests
14 that Yugoslavia's treaty rights to seek extradition were ever
15 considered by this Court. Compare 18 U.S.C. §3181 et seq., United
16 States-Kingdom of Serbia (Serbia) Treaty of 1901, 32 Stat. 1890,
17 with orders of the Court, September 9, 1977 and February 27,
18 1980.

19 Artukovic admits that the Government has followed the
20 Court's orders in seeking to terminate his temporary stay.
21 Memorandum 3-4. In fact, hearing on the Government's motion to
22 revoke the stay under 8 U.S.C. §1253(h) is scheduled to commence
23 on April 9, 1985, before Immigration Judge Reece B. Robertson.
24 Thus, there is no dispute that the Government has fully complied
25 with this Court's orders in enforcing the immigration laws against
26 Artukovic pursuant to 8 C.F.R. 3.2; 3.8; 242.22.

1 Artukovic argues, however, that the United States'
2 representation of Yugoslavia in the pending extradition case
3 violates the Court's order. Artukovic's argument is without
4 merit. It is based on the erroneous assumptions (1) that
5 deportation by the United States and an extradition demand by the
6 Government of Yugoslavia are identical legal proceedings, and (2)
7 that this Court's orders apply to extradition. Plainly, this
8 Court's orders are concerned solely with the Government's efforts
9 to deport Artukovic under the immigration laws. 8 U.S.C.
10 §1253(h). This Court's orders are in no way concerned with the
11 United States' discharge of its treaty obligations in representing
12 foreign governments in extradition proceedings. 18 U.S.C. §3181
13 et seq.; United States-Kingdom of Serbia Treaty.

14 In fact, deportation and extradition are entirely different
15 and distinct proceedings with different parties, governed by
16 different statutes and evidentiary standards, and decided in
17 different court. Deportation proceedings are brought by the
18 United States in immigration court and are governed by Title 8 of
19 the United States Code and chapter 8 of the Code of Federal
20 Regulations. The Government is required to prove by clear,
21 convincing and unequivocal evidence that Artukovic's involvement
22 in wartime persecution renders him ineligible for a continued stay
23 of deportation to Yugoslavia. Artukovic v. INS, 693 F.2d at 899.

24 Extradition proceedings, however, are governed by 18 U.S.C.
25 §3181 et seq., and the pertinent extradition treaty between the
26 United States and the foreign state which seeks the return of the
27 fugitive. Neither 8 U.S.C. §1253(h) nor chapter 8 of the Code of
28

1 Federal Regulations, cited in this Court's orders, applies to the
2 pending extradition proceedings.

3 The real party in interest in the extradition proceeding is
4 the demanding state, Yugoslavia, and not the United States. See
5 e.g., Ornelas v. Ruiz 161 U.S. 502, 507 (1896); Cleaugh v.
6 Strakosch, 109 F.2d 330, 332 (9th Cir. 1940); Wacker v. Bisson,
7 348 F.2d 602, 605-06 (5th Cir. 1965). Extradition is the right of
8 the foreign government, which is the legal promoter of the
9 proceeding. See In re Ferrelle, 28 F. 878 (C.C.S.D. N.Y. 1886);
10 President of the United States ex rel. Caputo v. Kelly, 92 F.2d
11 603 (2nd Cir. 1937), cert. denied, 303 U.S. 635 (1938).

12 By diplomatic agreement, the United States represents
13 foreign governments in extradition cases. Extradition proceedings
14 are pursued in the federal district courts, which must decide
15 whether there is probable cause to believe that the fugitive has
16 committed a crime which is an extraditable offense under the
17 pertinent treaty. See 18 U.S.C. §3181 et seq., Caplan v. Vokes,
18 649 F.2d 1347 (9th Cir. 1981).

19 As noted in Gordon and Rosenfield's, Vol. A, Immigration
20 Law and Procedure, pp. 5-13 (1984):

21 "It sometimes happens that an alien subject
22 to deportation also may be amenable to
23 extradition. The extradition proceedings, of
24 course, are entirely independent of the
25 deportation proceedings. Extradition
26 ordinarily will be regarded as the paramount
27 process and deportation proceedings will be
28

1 kept in abeyance while extradition proceedings
2 are pending. On the other hand, an alien's
3 discharge in extradition proceedings will not
4 be regarded as binding in deportation
5 proceedings."

6 (See also, order of Chief Judge Battisti filed July 17, 1984, In
7 re Matre of Extradition of John Demjanjuk, Misc. No. 83-349 (N.D.
8 Ohio), Exhibit J.)

9 III

10 There Is No Evidence Of Government Intent

11 To Circumvent The Court's Orders

12 As a matter of law, it is incontrovertible that the United
13 States' representation of Yugoslavia in extradition proceedings
14 pursuant to diplomatic obligation cannot be construed as violating
15 court orders dealing solely with immigration procedures. The
16 Court's orders prescribe United States conduct only under the
17 immigration laws. As a matter of fact, it is incontrovertible
18 that the Court's orders were never meant to affect extradition
19 proceedings since neither the Court nor the parties ever even
20 discussed Yugoslavia's extradition rights.

21 Nevertheless, Artukovic argues that this Court should
22 intervene in the extradition proceedings pending before Magistrate
23 Brown because the United States' representation of Yugoslavia is
24 improperly motivated. Memorandum 5. This claim is legally
25 irrelevant. Further, Artukovic's argument is unsupported by any
26 evidence. It is based solely on his attorney's assertions in a
27 memorandum submitted in a pending civil damages lawsuit arising
28

1 from Artukovic's alleged participation in the persecution and
2 killing of civilians during World War II. Handel v. Artukovic,
3 No. 84-1411-PAR(Kx) (C.D. Cal.). ^{2/} Obviously, the claim of
4 one's own lawyer in a brief does not constitute evidence.

5 Moreover, Artukovic's claim that the United States
6 "instigated" Yugoslavia's extradition demand is untrue.
7 Yugoslavia has had a long-standing interest in Artukovic's
8 extradition and, from 1951 to 1959 pursued a previous extradition
9 demand in the United States courts. See United States ex rel.
10 Karadzole v. Artukovic, 170 F.Supp. 383 (S.D. Cal. 1959); Ivanevic
11 v. Artukovic, 211 F.2d 565, cert denied, 348 U.S. 818 (1954);
12 Karadzole v. Artukovic, 247 F.2d 198 (9th Cir. 1957), remanded,
13 355 U.S. 393 (1958) (per curiam). (The United States was only a
14 "nominal party." 247 F.2d at 201, fn. 4.)

15 Further, as shown by the attached affidavit of Neal M.
16 Sher, Director of the Department of Justice Office of Special
17 Investigations (Exhibit K), the Government of Yugoslavia expressed
18 interest in renewing its extradition demand as early as July 1981,
19 at about the time the Board of Immigration Appeals reinstated its
20 order deporting Artukovic to Yugoslavia. Yugoslavia initiated
21 discussions with the United States well before the December 1982
22 Ninth Circuit decision requiring rehearing. There is no bar to
23 pursuing more than one extradition request since "The law of
24 international extradition long has recognized that the government
25 is free to pursue unsuccessful efforts." Hooker v. Klein, 573
26
27

28 ^{2/} On January 30, 1985, Judge Rymer dismissed the suit.

1 F.2d 1360, 1365 (9th Cir. 1978), cert. denied, 99 S.Ct. 323, 439
2 U.S. 932.

3 Artukovic's claim that the Government "lost interest" in
4 pursuing the deportation case is belied by his admission that
5 deportation proceedings are scheduled to commence April 9, 1985
6 and, further, by the fact that the State Department has
7 recommended denial of asylum to him because of his participation
8 in the persecution of civilians during World War II. No evidence
9 supports Artukovic's innuendo of impropriety by the United States
10 in discharging its obligation to represent Yugoslavia in the
11 extradition proceedings.

12 IV

13 Plaintiff Has Made No Showing Sufficient To
14 Justify An Order To Show Cause Re Contempt

15 As a general rule, the power to punish contempt is to be
16 sparingly used. Gompers v. Bucks Stove and Range Co., 221 U.S.
17 418, 450-451 (1910). The moving party bears the burden of proof
18 at all stages in a contempt proceeding. In re Van Meter, 413 F.2d
19 536, 538 (8th Cir. 1969). The proponent must produce 'clear and
20 convincing evidence' that the alleged contemnor violated an
21 operative command of an order. Shakman v. Democratic Organization
22 of Cook County, 533 F.2d 344, 351 (7th Cir. 1975), cert. denied,
23 429 U.S. 858 (1976). This 'clear and convincing' evidentiary
24 standard is higher than the "preponderance of the evidence"
25 standard normally applied in civil cases. United States v. Rizzo,
26 539 F.2d 458, 465 (5th Cir. 1976). Plaintiff has put forth
27 absolutely no evidence that would meet that test. In fact, his
28

1 moving papers are conspicuously absent of any declarations or
2 other evidentiary material to support his allegations.

3 V

4 The Government Should Recover The Expenses And
5 Attorney Fees Incurred In Defending Against
6 Artukovic's Frivolous Claim

7 Under Rule 11, Fed.R.Civ.P., the signature of Artukovic's
8 attorney certifies, inter alia, that his motion is "well grounded
9 in fact and is warranted by existing law," and "that it is not
10 interposed for any improper purpose, such as to harass or to cause
11 unnecessary delay or needless increase in the cost of litigation."
12 Costs, including attorneys fees, should be assessed against
13 Artukovic, his counsel or both because the instant motion was
14 signed in violation of this Rule and Local Rule 7.19.

15 This motion is untimely. The fact that Artukovic waited
16 until January 21, 1985 to commence contempt proceedings against
17 the Government for an alleged violation of this Court's orders
18 which occurred on November 14, 1984, suggests that his motion was
19 interposed solely to harass the Government and delay the
20 extradition hearing then scheduled for February 12, 1985, and the
21 deportation hearing scheduled for April 9, 1985.

22 Moreover, Artukovic's claim that extradition proceedings
23 under 18 U.S.C. §3181 et seq., and the United States-Kingdom of
24 Servia (Serbia) Extradition Treaty are subject to this Court's
25 orders concerning immigration law regulations, 8 C.F.R. 3.2; 3.8;
26 242.22, is plainly not warranted by law or good faith argument.
27 Finally, Artukovic has made untrue factual statements by claiming
28

1 that his arrest on extradition charges is an attempt to "deport"
2 him and that he has received a "grant of Political Asylum."
3 Memorandum 2, 4. See p. 3 supra. This is the second such
4 meritless motion brought by Artukovic based on distortion of the
5 Court's orders. This Court denied the first motion as having no
6 basis in law or fact. Order, Honorable Irving Hill, U.S.D.J.,
7 February 25, 1980.

8 Under these circumstances, the Court, at a minimum, should
9 allow the Government to recover the costs and attorneys fees of
10 defending this frivolous motion. Anderson v. Allstate Insurance
11 Co., 630 F.2d 677, 684 (9th Cir. 1980); Badillo v. Central Steel &
12 Wire Co., 717 F.2d 1160, 1166-167 (7th Cir. 1983); Rubin v.
13 Buckman, 727 F.2d 71, 73 (3rd Cir. 1984); Moore's Federal Practice
14 (1984 ed.) ¶11.02[2].

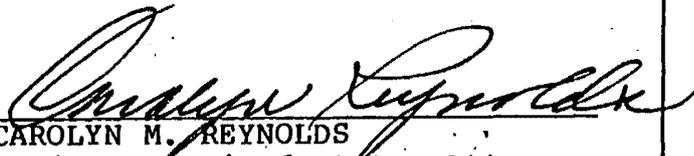
1 VI

2 Conclusion

3 Plaintiff's motion should be denied. The Government should
4 be permitted to recover expenses, including attorney's fees.

5 DATED: This 4th day of February, 1985.

6 ROBERT C. BONNER
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1 RONALD H. BONAPARTE
2 Attorney at Law
3 3600 Wilshire Boulevard
4 Suite 1902
5 Los Angeles, California 90010
6 386-4251

7 Attorney for Plaintiff

AUG 25 3.40 PM '77

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
BY

JS-6
FILED

SEP 16 1977

CLERK U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

ENTERED

SEP 19 1977

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

10 ANDRIJA ARTUKOVIC,)

NO. CV 77-2333-IH

11 Plaintiff,)

12 vs.)

PROPOSED JUDGMENT

13 GRIFFIN B. BELL, ATTORNEY)
14 GENERAL OF THE UNITED STATES;)
15 et al.,)

16 Defendants.)
17

18 This cause, having been tried by this court without a jury,
19 and the court having found for plaintiff on the issues presented
20 in the complaint, and having adopted the Proposed Findings of
21 Fact and Conclusions of Law of plaintiff;

22 IT IS HEREBY ORDERED that the defendants, GRIFFIN B. BELL,
23 ATTORNEY GENERAL OF THE UNITED STATES; LEONEL J. CASTILLO,
24 COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE; ED
25 O'CONNOR, REGIONAL COMMISSIONER OF THE IMMIGRATION AND NATURALIZA-
26 TION SERVICE; and JOSEPH SURECK, DISTRICT DIRECTOR OF THE IMMIGRA-
27 TION AND NATURALIZATION SERVICE, their agents, servants, employees,
28 attorneys, and all persons in active concert and participation with

Docketed
 Mid copy Phys
 Mid Notice Phys

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MAR - 3 1980
OFFICE OF
SPECIAL INVESTIGATIONS

FILED
FEB 28 1980
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY *RLLM* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTERED
FEB 29 1980
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ANDRIJA ARTUKOVIC,)	NO. CV 77-2333-IH
Plaintiff,)	AMENDMENT TO JUDGMENT
v.)	ENTERED
ATTORNEY GENERAL OF THE)	<u>SEPTEMBER 19, 1977</u>
UNITED STATES, et al.,)	
Defendants.)	

There came before the Court for hearing on February 25, 1980, a motion of Defendant filed February 14, 1980, "Defendant's Motion for Relief from Judgment." Appearances were: For Defendants, Andrea Sheridan Ordin, U.S. Attorney by Carolyn M. Reynolds, Assistant U.S. Attorney, Los Angeles, California; and Rodney G. Smith, Trial Attorney, Criminal Division, U.S. Department of Justice, Washington, D.C.; and for Plaintiff, Ronald H. Bonaparte, Los Angeles, California.

The Court having considered the various documents in support of said motion and in opposition thereto, and having heard argument, and having granted Plaintiff's motion, ORDERS AS FOLLOWS:

1.

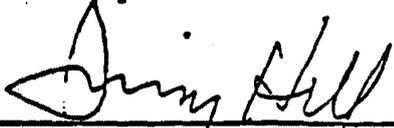
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1 1. By consent of both parties, Benjamin Civiletti is
2 substituted as Attorney General of the United States, and as a
3 defendant in that capacity for the previous defendant, Griffin
4 Bell.

5 2. The Court's judgment herein filed September 16,
6 1977, and entered September 19, 1977, is amended nunc pro tunc
7 by adding at the end of said judgment after the words "8 CFR
8 242.22" the additional words "or 3.2 and 3.8."

9 3. The Clerk shall transmit a copy of this Amendment
10 to Judgment by U.S. mail, when entered, to counsel for both
11 sides. The Clerk shall also note on the original of the
12 judgment as entered on September 19, 1977, at the end thereof,
13 the notation "amended by Amendment to Judgment dated February 27,
14 1980."

15 DATED: February 27, 1980.

16
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18 
19 _____
20 IRVING HILL, Judge
21 United States District Court
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United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

ARTUKOVIC

MAY 21 1984

RECEIVED

JUN 21 1984

OFFICE OF
SPECIAL INVESTIGATIONS

File: A7 095 961 - Los Angeles

In re: ANDRIJA ARTUKOVIC

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Ronald H. Bonaparte, Esquire
12011 San Vicente Boulevard
Second Floor
Los Angeles, California 90049

ON BEHALF OF SERVICE: Ronnie L. Edelman
Acting Appellate Trial
Attorney

ORAL ARGUMENT: March 29, 1984

CHARGE:

Order: Immigration Act of 1924 - Nonimmigrant visitor -
remained longer, than permitted

Immigration Act of 1917 - Alien not in possession of
a valid, unexpired passport

APPLICATION: Motion to reopen

This case was last before us on June 30, 1981, at which time the Board of Immigration Appeals upheld the decision of the immigration judge finding that jurisdiction to consider the United States Government's motion to reconsider resided only in the Board. We further granted the motion to reconsider and revoked the approval of respondent's application for withholding of deportation. Subsequently, the Court of Appeals for the Ninth Circuit vacated our decision on the grounds that due process required that the government make a motion to reopen the alien's case for a new hearing at which the government must prove by clear and convincing evidence that the alien possessed the personal culpability which would bring him within the provisions of the law. Artukovic v. INS, 693 F.2d 894 (9th Cir. 1982).

The respondent is a native of Yugoslavia who entered the United States in 1948 as a nonimmigrant visitor. He was found deportable on June 27, 1952, and his application for suspension of deportation was denied at that time. The Board affirmed the

decision of the special inquiry officer on April 3, 1953. The respondent was granted withholding of deportation to Yugoslavia on May 22, 1959, by the Regional Commissioner.

On February 2, 1984, in accordance with the above Ninth Circuit decision, counsel for the government filed a motion to reopen the respondent's deportation case for the purpose of introducing evidence establishing that respondent's withholding of deportation should be revoked. The motion will be granted.

A motion to reopen will not be granted unless it states new and material facts and is supported by evidentiary material. 8 C.F.R. 3.2, 3.8; INS v. Wang, 450 U.S. 139 (1981). A prima facie case must be established before a motion to reopen will be granted. See Matter of Martinez-Romero, Interim Decision 2872 (BIA 1981), aff'd, 692 F.2d 595 (9th Cir. 1982); Matter of Garcia, 16 I&N Dec. 653 (BIA 1978).

This motion to reopen is occasioned by the 1978 amendment to section 243(h) of the Immigration and Nationality Act, 8 U.S.C. 1253(h) providing that withholding of deportation shall not be granted to any alien if "the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group or political opinion. . ." ^{1/} Where there has been a change in the statute and new facts must be proved, a motion to reopen is appropriate. Artukovic v. INS, supra. The government has provided numerous documents tending to show that the respondent on account of his activities as an official of the Independent State of Croatia comes within the above cited provision of the Act as amended. We find that the government has made a prima facie case of the ineligibility of the respondent for withholding of deportation.

The respondent has argued that he should be allowed to apply for discretionary relief from deportation at the reopened hearing, in particular, for suspension of deportation under section 244(a) of the Act, 8 U.S.C. 1254(a). Counsel for the United States Government has requested that we limit reopening only to consideration of the eligibility of the respondent for withholding of deportation. Counsel for the government also contends that under section 244(a) of the Act, as amended, the respondent is ineligible for suspension of deportation or voluntary departure, because of his alleged participation in persecution of various minority groups in Croatia during World War II.

^{1/} 8 U.S.C. 1253(h), as amended by Act of October 30, 1978, Pub. L. No. 95-549, Title I, § 104, 92 Stat. 2066, and Act of March 17, 1980, Pub. L. No. 96-212, Title II, § 203(e), 94 Stat. 107.

8 U.S.C. 1254(a) and (e). The respondent argues that the provision of the Act which denies suspension of deportation to those who participated in Nazi persecution cannot be applied retroactively to bar him from relief. 2/

An order of the Board granting a motion to reopen and remanding to the immigration judge for further proceedings is effective for the stated purpose and for consideration of any and all matters which are properly raised before the immigration judge. See Matter of Patel, 16 I&N Dec. 600 (BIA 1978). We find no reason to limit our order in this case. If the Government proves by clear and convincing evidence that the respondent is ineligible for withholding of deportation because he participated in persecution, he will be ineligible likewise for suspension of deportation and voluntary departure. Matter of Laipeniks, Interim Decision 2949 (BIA 1983). 3/ If the Government fails to prove its case, the respondent should be allowed to apply for any form of relief to which he believes himself entitled.

ORDER: The proceedings are reopened and the record is remanded to the immigration judge for further proceedings consistent with the foregoing opinion.

Chairman

Board members Louis P. Maniatis and Mary M. Dunne have abstained from consideration of this case.

2/ Voluntary departure is denied to an alien who is within the provisions of 241(a)(19) of the Act, 8 U.S.C. 1251(a)(19), by 8 U.S.C. 1254(e) as amended by Act of October 30, 1978, Pub. L. No. 95-549, Title I, § 105, 92 Stat. 2066. An alien described in section 241(a)(19) of the Act may not be granted suspension of deportation according to 8 U.S.C. 1254(a) as amended by Act of December 29, 1981, Pub. L. No. 97-116, § 18(h)(2), 95 Stat. 1620.

3/ The Ninth Circuit has found that the 1978 amendment to section 243(h) was intended by Congress to be retroactive. Artukovic v. INS, supra at 897. In Matter of Fedorenko, Interim Decision 2963 (BIA 1984), the Board determined that the 1981 amendments to the Act must be applied retroactively to bar suspension of deportation to those who assisted Nazi persecution. Therefore, the respondent would be ineligible for suspension of deportation and also for voluntary departure, if the immigration judge determines that the respondent falls within the prohibition of the Act.

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7 (213) 471-3481
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9 Attorneys for Petitioner

RECEIVED

JUN 26 1984

OFFICE OF
SPECIAL INVESTIGATIONS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

10 ANDRIJA ARTUKOVIC,)
11)
12 Petitioner,)
13 vs.)
14 IMMIGRATION & NATURALIZATION)
15 SERVICE,)
16 Respondent.)

PETITION FOR REVIEW
No. 84-7000

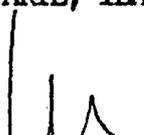
16 Appeal from an Order of the Board of Immigration Appeals
17 dated May 21, 1984. A7 095 961

18 Petitioner, ANDRIJA ARTUKOVIC, respectfully seeks review by
19 this court, pursuant to 8 U.S.C. §1105(a), of the decision of the
20 Board of Immigration Appeals, dated May 21, 1984, limiting the
21 scope of reopened proceeding before an Immigration Law Judge in
22 violation of decision of this court entered December 1, 1982,
23 Artukovic v. INS, 693 F.2d 894 [No. 81-7415].

24 All available administrative remedies have been exhausted.

25 Respectfully submitted,

26 BONAPARTE, IBARRA & O'KANE

27
28 
Ronald H. Bonaparte
Attorneys for Petitioner

84-1420

(if known)

CIVIL APPEALS
DOCKETING STATEMENT

Case Name: Andrija Artukovic

District Court/Agency: Immigration and Naturalization Service

District Court/Agency Docket No.: A7-095-961 District Judge: n/a

Party or Parties filing appeal/petition: Andrija Artukovic

Timeliness of Appeal or Petition for Enforcement or Review

(1) Date of entry of judgment or order appealed from: May 21, 1984

(2) Date notice of appeal or petition filed: June 20, 1984

(3) Authority fixing time limit for filing notice of appeal or petition:

Fed. R. App. P. 4(a)(1) X

Fed. R. App. P. 4(a)(2) _____

Fed. R. App. P. 4(a)(3) _____

Fed. R. App. P. 4(a)(4) _____

Fed. R. App. P. 4(a)(5) _____

Other _____

(4) Service date of any motion listed in Fed. R. App. P. 4(a)(4): _____

(5) Time limit for filing notice of appeal or petition: 30 days

Appeal From District Court N/A

(1) Is the order appealed from a final order (i.e., does it dispose of the action as to all claims by all parties)? _____

(2) If the order is not a final disposition, did the district court direct the entry of judgment in accordance with Fed. R. Civ. P. 54(b)? _____

(3) If not final, is the order properly appealable as an injunction under 28 U.S.C. § 1292(a)(1)? _____

(4) If none of the above applies, what is the basis for seeking appellate review? _____

Review of Agency Decision: If the appeal is from an agency decision, what statute or other authority grants this court power to review that decision? 8 U.S.C. 1106

Related Cases: List all related cases pending in this Court of Appeals as defined in Ninth Circuit Rule 13(b)(4): Artukovic v INS 81.7415

E. Nature of Relief Sought Below:

- () Damages: amount sought: \$ _____ amount granted: \$ _____
- () Injunctive Relief: () preliminary or () permanent
() granted or () denied
- () Declaratory Relief: () granted or () denied
- () Attorney's fees: amount sought: \$ _____ amount granted: \$ _____
- () Other (specify) _____

F. Nature of Disposition Below:

- () Bench Trial
- () Jury Verdict
- () Summary Judgment
- (x) Agency Order
- () Default Judgment
- () Grant/Denial of Injunction
- () Dismissal:
 - () Lack of jurisdiction
 - () Failure to State a Claim
 - () Failure to Prosecute
 - () Other
- () Other (specify) _____

G. Length of Trial or Hearing: Equivalent of one full days.

H. Preparation of Reporter's Transcript:

- (1) Have all necessary arrangements been made for preparation of the reporter's transcript (if any) on appeal? Yes _____ No x
- (2) Estimated date of completion of transcript (if known): _____

PLEASE CONFINE YOUR RESPONSES TO I, J, AND K TO THE SPACE PROVIDED.

I. Brief Description of Nature of Action and Result Below:

Appeal of final order of Board of Immigration Appeals limiting issues to be adjudicated at reopened hearing on order from 9th Circuit order 81-7415

J. Issues to be Raised on Appeal:

May appellant apply for discretionary relief at reopened hearing

K. Standard of Appellate Review as defined in Ninth Circuit Rule 13(b)(2)
(Specify the proper standard of review to be applied by the Court of Appeals for each issue to be raised, citing relevant authority.)

L. Do you believe that settlement is feasible in this case? Yes _____ No x
If no, state why:

Final agency order after argument and briefing of issues.

M. Do you desire oral argument on this appeal? Yes x No _____
If yes, why in your opinion should oral argument be heard:

The government's position in attempting to limit the order of the court needs substantial clarification.

N. ATTORNEYS REPRESENTING APPELLEE(S)/RESPONDENT(S)

APPELLEE(S) Andrija Artukovic

Attorney Ronald H. Bonaparte Telephone (213) 471-3481

Address: 12011 San Vicente Blvd. 2nd Floor

Los Angeles, California 90049

APPELLEE(S) _____

Attorney _____ Telephone () _____

Address: _____

APPELLEE(S) _____

Attorney _____ Telephone () _____

Address: _____

(List additional counsel on separate paper if necessary).

O. ATTORNEY OR APPELLANT (IF PRO SE) FILING DOCKETING STATEMENT:

NAME _____ (Telephone) () _____

ADDRESS _____

Check one: Attorney () pro se

Check one: () Appellant () Appellee () Cross-Appellant () Cross-Appellee

[Signature] _____ 7/5/84 _____
Signature Date

(If this is a joint statement, add names and addresses of other counsel below or on an additional sheet, together with certification that they all have concurred in the filing of this statement).

A copy of the judgment or order appealed from and any opinion, findings of fact or conclusions of law supporting the judgment or order must be attached to all copies of the docketing statement filed with this court.

This docketing statement must be accompanied by a proof of service of the statement on opposing counsel.

MINUTE BOOK COPY

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 30 1984

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

IMMIGRATION and NATURALIZATION SERVICE,

Respondent.

NO. 84-7428

ORDER

Before: WRIGHT, HARRIS, and REINHARDT, Circuit Judges.

Respondent's motion to dismiss this case for
lack of jurisdiction is granted.

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SEP 24 1984

OFFICE OF
SPECIAL INVESTIGATIONS

MoCal 8/27/84

SERVIA—EXTRADITION.

TREATY
BETWEEN
THE UNITED STATES AND SERVIA
FOR THE
MUTUAL EXTRADITION OF FUGITIVES FROM JUSTICE.*

*Signed at Belgrade, October 25, 1901.
Ratification advised by the Senate, January 27, 1902.
Ratified by the President, March 7, 1902.
Ratified by Servia, March 17, 1902.
Ratifications exchanged at Belgrade, May 13, 1902.
Proclaimed May 17, 1902.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Treaty between the United States of America and Servia providing for the extradition of fugitives from justice was concluded and signed by their respective Plenipotentiaries at Belgrade on the twenty-fifth (twelfth) day of October, one thousand nine hundred and one, the original of which Treaty, being in the English and Servian languages, is word for word as follows:

The United States of America and His Majesty the King of Servia, being desirous to confirm their friendly relations and to promote the cause of Justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of America and the Kingdom of Servia, and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America, Charles S. Francis, Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Servia.

His Majesty the King of Servia, M. Michel V. Vouitch, President of His Council of Ministers, Minister for Foreign Affairs, Senator, Grand Officer of the Order of Milosh the Great, Grand Cross of the Order of Takovo, Officer of the Order of the White Eagle etc. etc., who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The Government of the United States and the Government of Servia mutually agree to deliver up persons who, having been charged with

* The Servian text, in Russian characters, is necessarily omitted in print.

or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the high contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been committed there.

ARTICLE II.

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary.
2. Arson.
3. Robbery, defined to be the act of feloniously and forcibly taking from person of another money or goods, by violence or putting him in fear; burglary, defined to be the act of breaking, and entering by night, into the dwelling house of another, with intent to commit felony; housebreaking or shopbreaking.
4. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of government, of public authorities, or of courts of justice, or the utterance of the thing forged or falsified.
5. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or of banknotes, or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals, dies or stamps of state; of postage and revenue stamps.
6. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers; larceny; obtaining money, valuable securities or other property by false pretenses, or receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, when such act is made criminal by the laws of both countries and the amount of money or the value of the property fraudulently obtained or received, is not less than two hundred dollars or one thousand francs in gold.
7. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars or one thousand francs in gold.
8. Perjury; subornation of perjury.
9. Rape; abduction; kidnapping.
10. Wilful and unlawful destruction or obstruction of railroads which endangers human life.
11. Crimes committed at sea:
 - a. Piracy, by statute or by the law of nations.
 - b. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
 - c. Wrongfully sinking or destroying a vessel at sea, or attempting to do so.

d. Assaults on board a ship on the high seas with intent to do grievous bodily harm.

12. Crimes and offenses against the laws of the United States of America for the suppression of slavery and slave trading.

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished in the United States as felony and in Serbia as crime or offense as before specified.

ARTICLE III.

Requisitions for the surrender of fugitives from justice shall be made by the Governments of the high contracting parties through their diplomatic agents, or in the absence of such through their respective superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the Court in which he has been convicted, or if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced.

The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in Serbia, respectively, in conformity with the laws regulating extradition for the time being in force in the State on which the demand for surrender is made.

ARTICLE IV.

Where the arrest and detention of a fugitive in the United States are desired on telegraphic or other information in advance of the presentation of formal proofs, complaint on oath, as provided by the statutes of the United States, shall be made by an agent of the Government of Serbia before a judge or other magistrate authorized to issue warrants of arrest in extradition cases.

In the Kingdom of Serbia the diplomatic or consular officer of the United States shall apply to the Foreign Office, which will immediately cause the necessary steps to be taken in order to secure the provisional arrest and detention of the fugitive.

The provisional detention of a fugitive shall cease and the prisoner be released if a formal requisition for his surrender, accompanied by the necessary evidence of criminality, has not been produced under the stipulations of this Treaty, within two months from the date of his provisional arrest and detention.

ARTICLE V.

Neither of the high contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Treaty.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if

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he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

No person surrendered by either of the high contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any questions shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the Government on which the demand for surrender is made, or which may have granted the extradition, shall be final.

ARTICLE VII.

Extradition shall not be granted, in pursuance of the provisions of this Treaty, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE VIII.

No person surrendered by either of the high contracting parties to the other shall, without his consent, freely granted and publicly declared by him, be triable or tried or be punished for any crime or offense committed prior to his extradition, other than that for which he was delivered up, until he shall have had an opportunity of returning to the country from which he was surrendered.

ARTICLE IX.

All articles seized which are in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable and in conformity with the laws of the respective countries, be given up to the Country making the demand, when the extradition takes place. Nevertheless, the rights of third parties with regard to such articles shall be duly respected.

ARTICLE X.

If the individual claimed by one of the high contracting parties, in pursuance of the present Treaty, shall also be claimed by one or several other powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to the State whose demand is first received: Provided, that the Government from which extradition is sought is not bound by treaty to give preference otherwise.

ARTICLE XI.

The expenses incurred in the arrest, detention, examination, and delivery of fugitives under this Treaty shall be borne by the State in whose name the extradition is sought: Provided, that the demanding Government shall not be compelled to bear any expense for the services of such public officers of the Government from which extradition is

sought as received a fixed salary; and, provided, that the charge for the services of such public officers as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

The present Treaty shall take effect on the thirtieth day after the date of the exchange of ratifications and shall not act retroactively.

The ratifications of the present Treaty shall be exchanged at Belgrade as soon as possible, and it shall remain in force for a period of six months after either of the contracting Governments shall have given notice of a purpose to terminate it.

In witness whereof, the respective Plenipotentiaries have signed this Treaty in duplicate and have hereunto affixed their seals.

Done at Belgrade this twenty-fifth (twelfth) day of October in the year of our Lord one thousand nine hundred and one.

CHARLES S. FRANCIS. [SEAL.]
DR MICHEL VOUTCH [SEAL.]

And Whereas the said Treaty has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Belgrade, on the thirteenth day of May, one thousand nine hundred and two;

Now therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this seventeenth day of May in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

[SEAL]

By the President:

JOHN HAY

Secretary of State.

THEODORE ROOSEVELT

CERTIFICATE OF SERVICE BY MAIL

I, LYDIA D. EDINBOROUGH, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

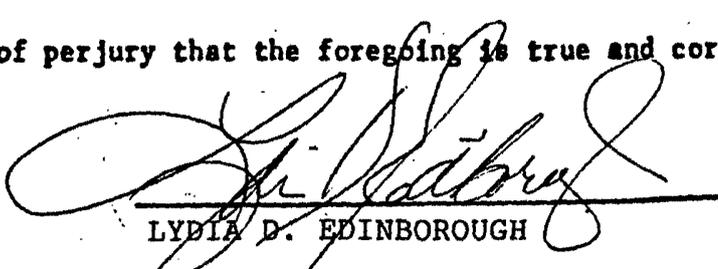
That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on February 4, 1985, I deposited in the United States mails in the United States Courthouse at 312 North Spring St., Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE

addressed to SEE ATTACHED SHEET

at their last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on February 4, 1985 at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.


LYDIA D. EDINBOROUGH

1 Ronald H. Bonaparte, Esq.
Bonaparte, Ibarra & O'Kane
2 12011 San Vicente Boulevard, Second Floor
Los Angeles, California 90049

3 Gary B. Fleishman, Esq.
4 315 South Beverly Drive
Beverly Hills, California 90212

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U.S. Department of Justice

Executive Office for Immigration Review

Office of the Immigration Judge

P. O. Box 711
Los Angeles, California 90053

DEC 14 12 11 PM '84

LOS ANGELES

NAME: **Andrija Marijan ARTUKOVIC**
CITIZEN OF: **Claims Stateless**
NATIVE OF: **Austro-Hungarian**
FILE #: **A07 095 961**
DATE: **December 13, 1984**

Chief, Asylum Division
Bureau of Human Rights and
Humanitarian Affairs
United States Department of State
2201 "C" Street, N.W.
Washington, D. C. 20520

Dear Sir:

Pursuant to 8 C.F.R. 108.3, there is enclosed for your views a copy of an application for Asylum on Form I-589 and attachments relating to the above-named subject. He/she asserts that he/she will be persecuted because of his/her political opinion if returned to Yugoslavia. Neither a determination of the applicant's credibility nor an evaluation of his/her claim has been made.

A hearing on this application has been scheduled for January 22, 1985***. Your response prior to this date would be most helpful to the Immigration Judge in arriving at a decision in this case. Please note that subject is not Detained.

*****RESPONSE BY JANUARY 8, 1985
PLEASE.**

Sincerely,

Rose E. Humbles

Rose E. Humbles

Immigration Court Clerk

Enclosures

cc: General Attorney, Los Angeles, California

Ronald H. Bonaparte, Esquire; 12011 San Vicente Blvd.; L. A., CA 90049

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

IMMIGRATION and NATURALIZATION SERVICE,

Respondent.

FILED

AUG 30 1984

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

NO. 84-7428

ORDER

Before: WRIGHT, NORRIS, and REINHARDT, Circuit Judges.

Respondent's motion to dismiss this case for
lack of jurisdiction is granted.

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NATURALIZATION
SERVICE
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LOS ANGELES

MoCal 8/27/84

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG -2 1984

ANDRIJA ARTUKOVIC,)	No. 84-7428
)	
Petitioner,)	
)	
vs.)	
)	ORDER
IMMIGRATION AND NATURALIZATION))	
SERVICE)	
)	
Respondent.)	

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

- (1) In light of the pending motion to dismiss, the prebriefing conference previously scheduled in this case for August 20, 1984 at 1:00 p.m. is cancelled.
- (2) Petitioner shall contact the Conference Attorney immediately upon a decision on the motion to schedule a further prebriefing conference, if necessary.

This order is subject to reconsideration by a judge if any objection is filed within 10 days of the entry of the order.

FOR THE COURT:

Joshua R. Steinhauer
 Joshua R. Steinhauer
 Conference Attorney

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 NATURALIZATION
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 30 1984

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

ANDRIJA ARTUKOVIC,

Petitioner,

vs.

IMMIGRATION and NATURALIZATION SERVICE,

Respondent.

NO. 84-7428

ORDER

Before: WRIGHT, NORRIS, and REINHARDT, Circuit Judges.

Respondent's motion to dismiss this case for
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MoCal 8/27/84

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANDRIJA ARTUKOVIC,
Petitioner,

vs

IMMIGRATION AND NATURALIZATION
SERVICE,
Respondent.

No. 84-7428 (A# 7 095 961)
JUDGMENT
CENTRAL CALIFORNIA

RECEIVED
U.S. IMMIGRATION &
NATURALIZATION
SERVICE
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LOS

Upon Petition to Review an order of the Immigration and Naturalization Service

This Cause came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and Respondent's Motion to Dismiss

and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Petition for Review of the Order of the said Immigration and Naturalization Service in this Cause be, and hereby is DISMISSED.

Filed and entered: August 30, 1984.

A TRUE COPY
ATTEST SEP 28 1984
PHILLIP B. WINBERRY
Clerk of Court
by: [Signature]
Deputy Clerk

MINUTE BOOK COPY

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDRIJA ARTUKOVIC,
Petitioner,

vs.

IMMIGRATION and NATURALIZATION SERVICE,
Respondent.

FILED

AUG 30 1984

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

NO. 84-7428

ORDER

Before: WRIGHT, NORRIS, and REINHARDT, Circuit Judges.

Respondent's motion to dismiss this case for
lack of jurisdiction is granted.

A TRUE COPY
ATTEST
SEP 28 1984
PHILLIP B. WINBERRY
Clerk of Court
By: *Deborah Lewis*
Deputy Clerk

MoCal 8/27/84

1 BONAPARTE, IBARRA & O'KANE
2 Attorneys at Law
3 12011 San Vicente Boulevard
4 2nd Floor
5 Los Angeles, California 90049

6 (213) 471-3481

7 Attorneys for Petitioner

FILED

JUN 25 1984

PHILLIP B WINBERRY
CLERK, U.S. COURT OF APPEALS

8 UNITED STATES COURT OF APPEALS
9 FOR THE NINTH CIRCUIT

10 ANDRIJA ARTUKOVIC,)
11)
12 Petitioner,)
13 vs.)
14)
15 IMMIGRATION & NATURALIZATION)
16 SERVICE,)
17)
18 Respondent.)

84-7428

PETITION FOR REVIEW

16 Appeal from an Order of the Board of Immigration Appeals
17 dated May 21, 1984. A7 095 961

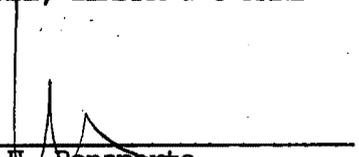
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U.S. IMMIGRATION &
NATURALIZATION
SERVICE
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LOS DIATY

18 Petitioner, ANDRIJA ARTUKOVIC, respectfully seeks review by
19 this court, pursuant to 8 U.S.C. §1105(a), of the decision of the
20 Board of Immigration Appeals, dated May 21, 1984, limiting the
21 scope of reopened proceeding before an Immigration Law Judge in
22 violation of decision of this court entered December 1, 1982,
23 Artukovic v. INS, 693 F.2d 894 [No. 81-7415].

24 All available administrative remedies have been exhausted.

25 Respectfully submitted,

26 BONAPARTE, IBARRA & O'KANE

27
28

Ronald H. Bonaparte
Attorneys for Petitioner

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

TO: Counsel Filing Notices of Appeal and Petitions for Review or Enforcement in Civil Cases

The attached Civil Appeals Docketing Statement must be completed and returned to the Clerk of the Court of Appeals, P. O. Box 547, San Francisco, California 94101, with proof of service upon opposing counsel or parties. A copy of the district court's opinion or order must be attached to the docketing statement. Please note that a failure by appellant to complete and return the docketing statement promptly may subject the appellant and counsel to sanctions including dismissal of the appeal pursuant to Local Rule 19(b).

Please read carefully the Procedures Governing Prebriefing Conference Program. In the case of any apparent conflict between these Procedures and the Appellate Processing Schedule for Non-Criminal Cases, these Procedures control.

The docketing statement will be utilized by the Court to determine if a prebriefing conference will be held and to establish a briefing schedule for the appeal. The purposes of the conference are to determine whether: (a) there are any jurisdictional defects in the appeal; (b) there are grounds for settlement of the appeal; (c) it is possible to narrow the issues on appeal and reduce the size of the record; (d) the appeal can be adequately briefed in fewer than the maximum number of pages permissible under Fed. R. App. P. 28(g) or oversized briefs are necessary; (e) joint briefing by multiple parties is practicable; and (f) the processing of the appeal can be simplified in any other way.

Where possible, the conference will be held in person before a Conference Attorney. If necessary, a Conference Attorney will conduct the conference by telephone. The Procedures require that the attorneys participating in the conference have authority to make decisions concerning the merits of the case. Where the Court determines that a conference is not necessary, the Court will establish a briefing schedule based on the docketing statement. Any order issued by a Conference Attorney is subject to reconsideration upon the filing of an appropriate request within ten (10) calendar days of the date the order is filed.

If you have any questions concerning the docketing statement or the Prebriefing Conference Program, please contact the Conference Attorneys' Office at (415) 556-1394.

(3/14/84)
7685f

OFFICE OF THE CLERK
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

DATE June 25, 1984

U.S. Court of Appeals Docket Number: 84-7428

ANDRIJA ARTUKOVIC, Petitioner, vs. IMMIGRATION & NATURALIZATION SERVICE, Respondent.

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number when corresponding with this office relative to your case. Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this Court.

If the U.S. Court of Appeals docket fee has not yet been paid and you have not been exempted by law from paying the fee, please make arrangements to do so as quickly as possible. **THIS U.S. COURT OF APPEALS DOCKET FEE MUST BE PAID TO THE U.S. DISTRICT COURT IF THE CASE ORIGINATED FROM A U.S. DISTRICT COURT OR TO THE U.S. TAX COURT IF THE CASE ORIGINATED THERE.** The fee is payable to the U.S. Court of Appeals if the case originated in a U.S. administrative agency, or if the case is an original proceeding in this court. No papers may be filed with the Court until the docket fee requirement has been satisfied. If the docket fee is not paid within ten days of the filing of the notice of appeal, dismissal proceedings will be commenced.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist which may be attached to your case file as an aid in monitoring case progress.

The following information is being provided to ensure that your case proceeds through our Court as efficiently as possible. Please review this information very carefully. It is provided in an attempt to answer the most frequently asked questions with regard to processing an appeal which are not directly covered by the Rules of the United States Court of Appeals for the Ninth Circuit (Local Rules)* or the Federal Rules of Appellate Procedure (FRAP)*. Copies of this letter have been furnished to all known lead counsel.

*For convenience, the terms "Local Rules" and "FRAP" will be used throughout this document in lieu of the formal abbreviations.

any other reason, the court may decide to hold the conference by telephone. The court may request that the district court file be transferred to this court for use during the conference.

3. The conference date will be set by written notice or by telephone with written confirmation. Unless counsel already has a directly conflicting court date, a request to alter the date will be disfavored. Requests to change the date of a conference should be made by telephone to the Conference Attorney's Office after consulting with opposing counsel about alternative dates.

4. Matters discussed at the conference will not be disclosed by the Conference Attorney except: (a) those matters embodied in an order concerning further proceedings in the appeal; and (b) to the judge reviewing an order entered by the Conference Attorney as to which a motion for reconsideration has been made. A judge who conducts a conference or reviews an order by a Conference Attorney may recuse himself or herself from any further participation in the case and must do so if settlement is discussed by the judge sitting as a Conference Attorney.

5. The costs of preparing and filing a docketing statement are not taxable, but time spent preparing for and attending a prebriefing conference may be recovered as part of attorneys' fees when such fees are awarded by the court and compensation for such work is not prohibited by statute.

6. In a case in which review of the docketing statement indicates that a conference would be unnecessary or inappropriate, a Conference Attorney may issue an order limiting the length of briefs, requiring joint briefing, setting the schedule for filing the record and briefs, or regulating any other aspect of the appeal that could be handled at a conference. Upon written request of counsel, the scheduling order may be amended by the Conference Attorney or a conference may then be scheduled.

7. Any order issued by a Conference Attorney is subject to reconsideration by a judge upon filing of an appropriate motion within ten (10) calendar days of the date the order is filed.

case may be settled, appellant may file a motion in the court of appeals for an extension of time to designate and order the transcript (proof of service on all parties and copy to the district court clerk). The filing of the motion will suspend the time limits for designating the reporter's transcript until the motion is acted upon by the court. The issues underlying the motion for an extension of time may be discussed at a prebriefing conference or ruled on separately.

D. Prebriefing Conference

1. In any civil case, the court may, at its option, require counsel to attend a prebriefing conference with a judge of the court or a senior staff member designated as a Conference Attorney. The purposes of a conference are to determine whether: (a) there is any jurisdictional defect and whether such a defect is remediable under Fed. R. App. P. 4(a)(5), Fed. R. Civ. P. 54(b), or otherwise; (b) there are grounds for settlement of the appeal; (c) it is possible to narrow the issues on appeal and reduce the size of the record that must be ordered for the appeal; (d) the appeal can be adequately briefed in fewer than the maximum number of pages permissible under Fed. R. App. P. 29(g) or oversized briefs are necessary; (e) joint briefing by multiple parties is practicable; and (f) the processing of the appeal can be simplified in any other way. Fed. R. App. P. 33. An order will then be entered by the judge or Conference Attorney incorporating matters considered at the conference.

2. Conferences must be attended by counsel with authority to make decisions about any aspects of the appeal covered by the preceding paragraph. If lead counsel cannot attend, that attorney must: (1) appoint a substitute attorney to attend the conference; (2) delegate to the attending attorney the broadest feasible authority to settle or narrow the appeal or agree on case processing matters; (3) be available by telephone at the time of the conference; and (4) inform the Conference Attorneys' Office of the change. The parties to an appeal may be required to attend a conference. When the offices of counsel are not in the vicinity of the conference site or for

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PROCEDURES GOVERNING PREBRIEFING CONFERENCE PROGRAM

A. Scope of Program

These Procedures apply to all civil appeals and petitions for review or enforcement of an agency decision except for appeals in which permission to appeal under 28 U.S.C. § 1292(b) has been granted and mandamus petitions.

B. Docketing Statement

1. Upon receipt in the district court of a notice of appeal from a judgment or order other than in a criminal case, the Clerk of the district court will mail to all parties a docketing statement form. The form will be mailed by the Clerk of the court of appeals in the case of a petition for review or enforcement of an agency decision or an appeal from the Tax Court. Within twenty-one (21) calendar days of the filing of the notice of appeal in the district court or, in the other cases, within fourteen (14) calendar days of the mailing of the docketing statement form by the court of appeals, appellant shall file in the court of appeals an original and one (1) copy of a docketing statement with proof of service of one (1) copy on each appellee.

2. The statement must fully and accurately set forth the jurisdictional facts, nature of proceedings below, related cases, issues on appeal, and standards of appellate review applicable to those issues. Failure to include any matter in the docketing statement does not constitute a waiver. The court may, however, impose sanctions on counsel or appellant if it appears that available information has been withheld. Appellant must attach to the original and copy of the docketing statement copies of the judgment or order appealed from and any opinion, findings of fact or conclusions of law supporting the judgment or order.

3. Failure to file a docketing statement within the time set forth above is a ground for dismissal of the appeal or other sanctions under Rule 19(b) of this court.

4. Trial counsel is responsible for insuring that the docketing statement is timely filed in this court even if new counsel will handle the appeal. Only one docketing statement may be filed for each notice of appeal; if there is more than one appellant, appellants must consult and decide jointly who is responsible for filing the single docketing statement.

5. Appellee may file a single page response within seven days of service of the docketing statement. If appellee believes there is a jurisdictional defect, appellee should raise the issue in a response, at the prebriefing conference or in a motion to dismiss if no conference is scheduled. Multiple appellees should consult on the nature of the response to appellant's docketing statement and, if they decide to file a response, file only one response.

6. Appellee must file a separate docketing statement if a cross-appeal is filed. The prior paragraph applies to appellants who are also cross-appellees.

7. If a docketing statement indicates a jurisdictional defect, a judge, conference attorney or motions attorney may direct the parties by order, letter or telephone to address the question of jurisdiction in a specific form and time period.

8. In accordance with Local Rule 24, the respondent is required to file the docketing statement when an application for enforcement is filed by the National Labor Relations Board.

C. Time Limits for Ordering the Reporter's Transcript

1. The time limits established by the Federal Rules of Appellate Procedure and Local Rules for designating and ordering transcripts apply to all cases in the Prebriefing Conference Program. At the time of a prebriefing conference, counsel should be prepared to inform the Conference Attorney of (a) the date the transcript designation was filed in the district court, (b) the date the transcript was ordered from the court reporter and arrangements for payment were made, and (c) the reporter's estimated completion date.

2. If counsel believe that the size of the transcript may be substantially affected by discussion at a prebriefing conference or that there is a substantial possibility that the

OFFICE OF THE CLERK
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

DATE _____

U.S. Court of Appeals Docket Number: _____

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number when corresponding with this office relative to your case. Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this Court.

If the U.S. Court of Appeals docket fee has not yet been paid and you have not been exempted by law from paying the fee, please make arrangements to do so as quickly as possible. **THIS U.S. COURT OF APPEALS DOCKET FEE MUST BE PAID TO THE U.S. DISTRICT COURT IF THE CASE ORIGINATED FROM A U.S. DISTRICT COURT OR TO THE U.S. TAX COURT IF THE CASE ORIGINATED THERE.** The fee is payable to the U.S. Court of Appeals if the case originated in a U.S. administrative agency, or if the case is an original proceeding in this court. No papers may be filed with the Court until the docket fee requirement has been satisfied. If the docket fee is not paid within ten days of the filing of the notice of appeal, dismissal proceedings will be commenced.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist which may be attached to your case file as an aid in monitoring case progress.

The following information is being provided to ensure that your case proceeds through our Court as efficiently as possible. Please review this information very carefully. It is provided in an attempt to answer the most frequently asked questions with regard to processing an appeal which are not directly covered by the Rules of the United States Court of Appeals (for the Ninth Circuit (Local Rules)* or the Federal Rules of Appellate Procedure (FRAP)**). Copies of this letter have been furnished to all known lead counsel.

*For convenience, the terms "Local Rules" and "FRAP" will be used throughout this document in lieu of the formal abbreviations.

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**A. DIRECTORY OF THE CLERK'S OFFICE OF THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT**

MAIN OFFICE:

Location:

Office of the Clerk
U.S. Court of Appeals
and Post Office Building
Seventh and Mission Streets
San Francisco, California

Mailing Address:

Office of the Clerk
P.O. Box 547
San Francisco, CA 94101

Telephone Numbers:

- Attorney Admissions.....(415) 556-9633
- Administrative Agency, Tax Court and
Original Proceedings.....(415) 556-2588/89
- Criminal Appeals.....(415) 556-2765/
7493/9621

Civil Appeals

From Districts of:

- Central and Southern California;
Arizona; Las Vegas, Nevada.....(415) 556-9622/6122
- Northern and Eastern California;
Reno, Nevada; Hawaii;
Northern Mariana Islands.....(415) 556-6123/9721
- Eastern and Western Washington;
Oregon; Montana; Idaho; Alaska.....(415) 556-6120/6121
- Miscellaneous and Pro Per.....(415) 556-9627

BRANCH OFFICES*

Los Angeles, California

Office of the Clerk
U.S. Court of Appeals
1699 U.S. Courthouse
312 North Spring Street
Los Angeles, CA 90012

Seattle, Washington

Office of the Clerk
U.S. Court of Appeals
816 U.S. Courthouse
1010 Fifth Avenue
Seattle, WA 98104

Telephone:

Commercial: (213) 688-3635
FIS: Access number and
798-3635

Telephone:

Commercial: (206) 442-2937
FIS: Access number and
399-2937

The branch offices are authorized to accept emergency filings only. All other filings must be submitted to the main office in San Francisco.

IMPORTANT PUBLICATIONS WITH PROCEDURAL INFORMATION

Various documents are available which, in total, will provide you with a thorough understanding of case processing and will assist you in perfecting your case efficiently. These documents include:

1. The Federal Rules of Appellate Procedure (FRAP)
Copies of the rules may be obtained through the U.S. Government Printing Office. Also, they are usually available through federal government bookstores. Title 28 of the United States Code Annotated also contains the text of the rules.
2. The Rules of the United States Court of Appeals for the Ninth Circuit
The Local Rules, which augment FRAP, specify the rules of practice before the court. Copies of the Local Rules are no longer available from the Clerk's office. Please refer to the enclosed notice if you wish to purchase a copy of the rules.

NOTE: IMPORTANT LOCAL RULE CHANGES WERE MADE EFFECTIVE August 10, 1981 and October 1, 1981

Counsel should study the above documents carefully. Clerk's office personnel should not be called upon to answer general questions that can be answered with the above-listed documents.

ADMISSION TO THE BAR OF THE NINTH CIRCUIT

An attorney must be admitted to the bar of the court before he/she may participate in oral argument or file documents on behalf of a client. As a prerequisite to admission, counsel must first have been admitted to:

- (1) the bar of the Supreme Court of the United States, or
- (2) the bar of another circuit, or
- (3) the bar of a United States District Court, or
- (4) the bar of the highest court of a state.

The fee for admission is \$16 and is payable by money order or check to the "Clerk of the U.S. Court of Appeals." Admission may be accomplished by mail or in open court. Admission in open court is discouraged and is infrequent.

Admission by mail may be accomplished by obtaining the required forms by writing or calling one of our offices listed in the Clerk's Office Directory. Once completed, the forms must be returned to the Clerk's office in San Francisco or Los Angeles for processing. After application is processed, counsel will be mailed a certificate of admission.

NOTICES OF CHANGES OF ADDRESS

It is essential that counsel pursuing a case in this court keep the Clerk of Court advised of all changes in their addresses.

A notice of change of address must include:

- (1) a brief caption of the case,
- (2) the U.S. Court of Appeals case number,

(Section D - NOTICE OF CHANGES OF ADDRESS continued)

- (3) any new phone number(s),**
- (4) the name of the party being represented, and**
- (5) the new address.**

NOTE: A notice of change of address of counsel who is admitted to practice before the bar of this Court but who is not representing a party at the time of change need not be submitted.

E. MOTIONS PRACTICE

1. Practice, Generally

- (1) All motions must be submitted in writing and presented in the form described below.**
- (2) Oral argument on written motions is heard only as directed by the court.**
- (3) Motions as well as any other documents presented to the court need not be notarized or certified.**
- (4) A "Notice of Motion" is not required.**
- (5) Deficiencies in the form of motions or oppositions to motions may cause: action to be delayed; the document returned without action; denial of your motion; or your Opposition to be ignored.**

2. Form of Motions

The form of a motion must satisfy the following general requirements:

- (1) Introductory heading or cover page showing:
 - a. Court of Appeals heading
 - b. brief caption of case
 - c. Court of Appeals docket number
 - d. trial court or agency docket number
 - e. entitlement of motion**
- (2) Substantive body of motion (statement of points and authorities, arguments, etc.)**
- (3) Affidavit or Declaration**
- (4) Supporting documents from the record**
- (5) Signature of counsel, including:
 - a. address and telephone number of counsel
 - b. name and adversarial position (e.g., appellant or appellee) of party being represented by motion**
- (6) Proposed order form on separate page with the same case identification information as on cover page**
- (7) Certificate of Service including the name, address, and telephone number of all parties served**
- (8) Addressed and pre-stamped envelopes for service of order to yourself and all parties originally served with the motion**
- (9) Original and three copies of the motion prepared on 8 1/2 x 11 inch paper**

(Section E - MOTIONS PRACTICE continued)

NOTE: If you request return of a "filed" stamped copy of your motion, enclose a fourth copy of the motion and a self-addressed franked envelope. We cannot return a copy to you otherwise.

3. Oppositions to Motions

With the exception of item numbers (6) and (8) above, all other requirements as to the form of motions apply to documents filed in opposition to a motion.

4. Supporting Documents

In most cases, the trial court or agency record is not available to the U.S. Court of Appeals until briefing is completed. IF YOU FEEL THAT YOUR MOTION OR OPPOSITION WILL REQUIRE THAT THE COURT REVIEW PORTIONS OF THE RECORD, COPIES OF THOSE PORTIONS MUST BE SUBMITTED AS EXHIBITS WITH YOUR MOTION.

5. Motions for Extensions of Time to File Briefs - Non-Criminal Cases

Ordinary motions for extensions of time to file briefs in non-criminal cases may be processed immediately if:

- (1) the party has submitted a motion in proper form as described above,
- (2) the time period of the extension being requested is not excessive. (Generally, the extension granted will be limited to twenty-eight days.),
- (3) the affidavit recites the number of previous extensions granted of any type to your client,
- (4) the position of opposing counsel regarding the extension is stated, and
- (5) good cause is shown.

6. Motions for Extensions of Time to File Briefs - Criminal Cases

Ordinary motions for extensions of time to file briefs in criminal cases may be acted upon immediately if, in addition to satisfying the requirements in non-criminal motions for extension, the motion recites:

- (1) the number and type of previous extensions granted to the party,
- (2) the current exact bail status of defendant,
- (3) the most serious crime or crimes of which the defendant has been convicted in the court below, even though this information has been previously furnished. (The offense must be described, e.g., bank robbery, theft from the mails, and should include the criminal statute citation.)
- (4) a statement of the date the notice of appeal was filed, the date the reporter's transcript was ordered (which should be the date that adequate financial arrangements were made with the court reporter for payment of the transcript), and the date the certificate of record was filed,

(Section E - MOTIONS PRACTICE continued)

- (5) any objections by the opposing party,**
- (6) other recitations of good cause for the delay, and**
- (7) all other elements required by Rule 13(d)(2) of the Rules of the United States Court of Appeals for the Ninth Circuit.**

Because a motion for extension of time in a criminal case may, if granted, require a revision of the entire processing schedule for that case, the proposed order required under the "form of motions" provision of this section should set forth a schedule for completing the briefing process.

All motions for extensions of time must be submitted well in advance of the due date of the document for which the extension is being requested.

7. Motions for Bail Pending Appeal - Local Rule 8

To ensure that the appeal is being pursued diligently, Local Rule 8 requires that the party seeking bail attach a certificate to the moving paper attesting that the appeal transcript has been ordered.

The certificate must be signed by the court reporter. In addition to identifying the name, address and telephone number of the reporter, the certificate must include a verification, again by the court reporter, that the transcript has been ordered and that satisfactory arrangements have been made to pay for the transcript. Finally, the certificate must show the estimated date of completion of the transcript.

The importance of the certificate is underscored by the provision of Rule 8 which states that failure to submit the required certificate "will be prima facie evidence that the appeal is frivolous or taken for the purpose of delay."

The government is required to file a response to the bail motion. Rule 8 states that the government must file a response, whether an opposition or concurrence, within seven (7) days after receiving the motion.

Finally, the rule clearly provides that if the defendant is on bail at the time the motion for bail pending appeal is made, the defendant will remain on bail pending court action on that motion.

8. Emergency Motions - Local Rule 6

Local Rule 6 was amended on August 10, 1981. The rule requires the movant to make every practicable effort to notify the Clerk of Court at the earliest time there is an indication that urgent relief from this court will be sought.

As with all filings, emergency motions should be filed with the Clerk in San Francisco. However, under the new rule, if action is needed on the day the motion is filed or the next day and counsel has not been dilatory in seeking relief, an emergency motion may be filed in a divisional Court of Appeals Clerk's Office or, if such an office does not exist, in the district from which the emergency arises, with an individual

(Section E - MOTIONS PRACTICE continued)

circuit judge. If it appears either that same day/next day relief is not necessary or that counsel has been dilatory in requesting relief, the moving party will be directed to file the motion in San Francisco for consideration by the regular motions panel.

9. Other Procedural Motions

A motion for substitution of counsel in a criminal case should include a statement as to whether present counsel is retained or appointed. In this regard, see especially Sections 2 - 5 of the Appendix to the Rules of the U.S. Court of Appeals for the Ninth Circuit.

For motions to consolidate civil or criminal cases, please specifically note whether the cases arise from the same U.S. district court action. In addition, please note whether the cases were ever consolidated in the court below. A certification is required by the submitting party as to whether the motion to consolidate is opposed by other parties in the case.

10. Motions for Extensions of Time to File the Trial Transcript

The Federal Rules of Appellate Procedure provide that the court reporter must file any motions for extensions of time in order to file the transcript. The appellant and appellee must timely designate the transcript. The Court of Appeals Transcript Designation Form (CA-036) must be used when ordering the trial transcript. These forms are available through the local district court clerks' offices. In addition, the appellant must formally order and pay for the trial transcript.

It is imperative that the appellant immediately provide the court reporter with our U.S. Court of Appeals docket number. Otherwise we cannot effectively communicate with the court reporter.

RECORD ON APPEAL

1. In General

Local Rule 4 affects the procedural requirements for filing the record. Important amendments to Local Rule 4 were made effective August 10, 1981. These include the time schedule for designating the reporter's transcript and the clerk's record, the form and content of the record and the time within which the formal record must be transmitted to the U.S. Court of Appeals. Generally, the word "record" means:

- (1) the entire transcript of the trial in the lower court (reporter's transcript) together with
- (2) The entire file of pleadings submitted by the parties and orders entered in the lower court action (clerk's record).

(Section F - RECORD ON APPEAL continued)

For the purpose of understanding and resolving the issues raised on appeal, a review of the entire trial court record is usually not necessary.

The "record on appeal" contemplated by Local Rule 4 is distinguished from the trial court "record" in that the "record on appeal" should consist of only those portions of the trial transcript and trial court clerk's record which are relevant to the issues raised on appeal.

The documents which will comprise the record on appeal must be identified in formal designations filed with the clerk of the trial court by each of the parties. It is expected that the designations will identify the portions of the trial court record which the parties find necessary in arguing the issues on appeal. In addition to other documents designated, it is expected that the parties' designations will specify those exact documents from the record which comprise the excerpt and any supplemental excerpt of record as identified in Rule 13(a) (described in Section H of this packet).

The parties must designate and order the court reporter's transcript within the time limits provided in Local Rule 4 as amended August 10, 1981. The parties must designate the clerk's record during the briefing stage of the appeal. Two separate and distinct designations must be filed. If appellant fails to make either designation, the case will be subject to dismissal by our office for failure to prosecute. If appellee fails to make either designation, the appellee may waive his/her right to argue. In addition, disciplinary action may be brought against any attorney failing to properly file designations.

2. Designating the Reporter's Transcript - Civil Cases

As a result of amendments to Local Rule 4, our circuit has adopted a slightly different procedure for ordering and designating the reporter's transcript in civil appeals. Please note that habeas corpus cases are considered civil cases, not criminal cases.

The new procedure requires the appellant to file a single complete designation of the transcript. The time within which the appellant must advise the opposing side of the portions of the trial transcript which are being ordered for the appeal is ten (10) days after the notice of appeal is filed. Within ten (10) days after notice by the appellant, the appellee(s) shall serve on the appellant notice of any additional portions of the transcript which are deemed necessary for the purposes of the appeal. On the twenty-first (21) day the appellant will file one designation of transcript in the district court. At the same time, a copy of this designation will be sent to the court reporter, and arrangements made for payment of the transcript. The Court of Appeals Transcript Designation Form (CA-036) must be used when ordering the transcript. The transcript ordering forms are available through district court clerks' offices.

If no transcript is needed, CA-036 should be used to notify the district court.

(Section F - RECORD ON APPEAL continued)

3. Designating the Reporter's Transcript - Criminal Cases

The purpose of this circuit's procedure for ordering and designating the reporter's transcript in criminal appeals is to expedite processing of criminal cases and to provide a means for more careful monitoring of these appeals. The time within which the appellant must advise the opposing side of the portions of the trial transcript which are being ordered for the appeal is seven (7) days from the filing of the notice of appeal.

If the appellant decides that a reporter's transcript is not necessary and will not be ordered, he/she must advise the opposing side and the clerk of the trial court immediately. Likewise, if the appellee does not intend to rely on the trial transcript for the appeal, he/she should so advise the appellant and the trial court clerk. Within seven (7) days after the appellant has served a designation of reporter's transcript upon the appellee, the appellee should advise the appellant of whatever additional portions of the trial transcript should be ordered, if any. The appellant is then required to order all designated portions of the trial transcript. Amended Local Rule 4 states that "where the appellant is represented by retained counsel, the appellant must make suitable arrangements for payment for the transcript with the court reporter on or before the date the designation is filed in the district court or be subject to possible sanctions for failure to make arrangements." The Court of Appeals Transcript Designation Form, which may be obtained from the offices of the district court clerks, must be used when ordering the reporter's transcript. Where the appellant is represented by counsel appointed pursuant to the Criminal Justice Act, the transcript will be considered filed when appellant's counsel files a copy of the transcript designation with the district court.

In addition to identifying the portions of the trial transcript that will subsequently be filed with the clerk of the trial court and transmitted to the U.S. Court of Appeals, the designation must identify the name, address and telephone number of the reporter(s) who is (are) preparing the transcript(s), the date the transcript(s) was (were) ordered, the date the reporter(s) acknowledged receipt of the order(s), and the reporter(s)' estimated date of delivery of the finished transcript(s). The court reporter must notify the Clerk of the U.S. Court of Appeals when the reporter's trial transcript has been ordered. It is essential that you furnish the court reporter with your U.S. Court of Appeals docket number when ordering or soon after ordering the transcript. In a CJA case, you may also contact the court reporter about the appropriate CJA-24 form for ordering the transcript.

As always in criminal cases, a U.S. magistrate or a U.S. district court judge will issue a time schedule order which sets the exact designation, briefing and record filing schedule. Local Rule 4 does not affect the district court's role in this process.

4. Notions for Extensions of Time to File the Transcript

In both civil and criminal cases, if the court reporter finds that the trial transcript cannot be completed within the time prescribed by Local Rule 4(e), a request for an extension of time to file the transcript must be made by the court reporter to the U.S. Court of Appeals rather than the appellant.

-5. Designating the Clerk's Record

After the transcript is filed in the district court, or alternatively, the district court clerk receives notice that no transcript will be ordered, the clerk of the U.S. district court files a "certificate of record" with the Clerk of the U.S. Court of Appeals. The certificate, which will stand in the record's stead for the purpose of establishing a record filing date, must attest that all documents which will comprise the record including the reporter's transcript, if any, are available to the parties in the trial court clerk's office.

The entire clerk's record will remain in the custody of the trial court clerk until approximately the time that the appellee files an answering brief. The parties must now designate portions of the clerk's record necessary for the appeal after they have drafted their briefs.

With regard to the specific time for filing the designation of necessary portions of the trial court clerk's record, the appellant is required to file a designation with the clerk of the trial court at the same time that the opening brief is served. In civil appeals, the appellee must file a designation of the clerk's record simultaneously with the serving of his/her appellee's brief. In criminal appeals, the appellee is required to file a designation of the clerk's record within fourteen (14) days after service of the appellant's brief.

In particular cases, however, the U.S. Court of Appeals may require early transmission or additional copies of the record, or both. When the court elects to exercise this option, all concerned parties will be notified by the Clerk of Court. The appellant will be required to pay for any additional copies of the record required by the U.S. Court of Appeals.

6. Identifying and Referencing Documents in Designations and Briefs

Documents from the trial court clerk's record designated for the appeal will be tabbed and identified by the docket control number assigned to them when they were initially entered on the trial court docket. This will be accomplished by the trial court clerk.

In filing their designations of the trial court clerk's record each party must identify the documents to comprise the record on appeal by the docket control number and by the document's title. Likewise, in designating exhibits, the parties must identify each exhibit by its assigned number and a brief description or entitlement.

(Section F - RECORD ON APPEAL continued)

In referencing documents in their briefs, the parties will be expected to rely on the same docket control number. For example, if the findings of the trial court are numbered "28" on the trial court docket, a reference to that document in a brief should read CR "28". The abbreviation "CR" will be understood as the trial court clerk's record.

If there are numerous pages in a single document and the passage referenced is only on one particular page, the brief reference should read "CR 28" followed by a reference to the number of the page within the document. References to passages in the reporter's transcript should be referred to as "RT" along with an identification of the reporter's exact number of the page being referenced. Thus, the court reporter's transcript will continue to be referenced sequentially.

In order to be of assistance to the judges, briefs should ideally contain a general index of the documents from the record on appeal to which the parties make reference in their briefs. When such indices are incorporated in the briefs, they should cite the pages where each document is discussed.

C. BRIEFS

1. Due Dates

In civil cases you will be notified by this office when the record on appeal is considered filed. This should occur shortly after the clerk of the trial court files the certificate of record with the U.S. Court of Appeals. The certificate of record is filed when the reporter's transcript is filed with the trial court. If you have not received such a notice from our court within two weeks from the submission of the certificate of record by the clerk of the district court, please contact our office. The appellant's opening brief is due forty (40) days after the notification of the filing of the record by the court. This filing date will be reflected on the notice mailed from this office. However, the appellant has the responsibility for computing the due date and ensuring the timely filing of the primary brief. Appellee's brief is due thirty (30) days from the date of service of the appellant's brief. Note that the file date of appellant's brief is (by Rule 25 of FRAP) the date the brief is mailed to the Clerk's Office and to the appellee. The same rule applies to the appellee's brief. Briefs need only be transmitted by first class mail. "Express" mail or guaranteed overnight private service need not be utilized.

In criminal cases, the briefing schedule will be set by the U.S. Magistrate or U.S. district court judge. This schedule is adopted by order of this court and overrides the days allowed for filing each brief as described in FRAP. An appellant's brief filed earlier than the due date in the schedule does not advance the due date for the appellee's brief in criminal cases. If, by oversight or otherwise, a briefing schedule has not yet been set, parties in criminal cases shall follow the time schedule set out in Rule 31 of FRAP.

(Section G - BRIEFS continued)

2. Certification as to Interested Parties

Local Rule 13(b)(3) provides for notifying the court of any party with a vested interest in the outcome of an appeal. The court has a need to know the identity of such parties in order to evaluate the possible disqualification or recusal of any of the judges who might participate in reviewing the appeal. All private (non-governmental) parties who file briefs in other than criminal and habeas corpus cases will be expected to provide a list of parties interested in the outcome of the appeal. The certified list of all persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the case should be attached to the inside front cover of the parties' initial brief. This certification shall be in the following form:

**Number and Title of Case
Certification Required by Ninth Circuit
Court of Appeals Rule 13(b)(3)**

The undersigned, counsel of record for _____
certifies that the following listed party (or parties) has (have) an interest in the outcome of this case. These representations are made to enable judges of the court to evaluate possible disqualifications or recusal.
(Here list names of all such parties and identify their connection and interest.)

Attorney of record for: _____

If there are no known interested parties other than those participating in the case, a single statement to this effect shall be provided.

3. Statement of Related Cases

Local Rule 13(j) requires each party to a case to submit a short statement identifying any related case pending in this Court which the Court should consider along with the case being briefed. This statement shall be included in the first brief filed by each party, and should be on a separate sheet attached as the last page of the brief. It is not to be counted as one of the fifty (50) allowable pages in the brief. If there are no related cases, the parties shall provide a statement to that effect. If the appellee has knowledge of no additional cases other than those listed by the appellant, the appellee shall

(Section G - BRIEFS continued)

provide a statement to that effect rather than reproduce the list provided by the appellant. Cases are deemed related if they:

- (1) arise out of the same case or consolidated case in the trial court or agency; or,
- (2) involve a case which was previously heard in this court; or,
- (3) involve the same parties as a case now pending in this court or a trial court or agency; or,
- (4) involve the same or closely related issues; or,
- (5) involve the same basic transaction or event as does another pending case; or,
- (6) have any other similarities of which you think the court should be aware.

H. EXCERPT OF RECORD

Since appeals are referred to a panel of three (3) judges of the U.S. Court of Appeals, copies of selected portions of the record must be made available to each of the Ninth Circuit judges assigned to review the appeal. Under Local Rule 13(1)(a), the appellant is required to provide the U.S. Court of Appeals with these selected excerpts of the record at the time the opening brief is filed. The excerpts, "pre-designated" by rule, are expected to provide judges with a foundation for understanding the issues raised on appeal. The finer points of the issues will be reviewed by referencing the single copy of the more comprehensive record designated by the parties as provided in Local Rule 4. Preparation of the excerpt of record is specifically the responsibility of the appellant. However, Local Rule 13(a) was amended effective October 1, 1981. The rule now states that if the appellee believes that the excerpt filed by the appellant fails to include any of the required documents, exhibits, or pages of the reporter's transcript, the appellee may either file at the time its brief is filed a supplemental excerpt containing those documents, or may move for an order directing the appellant to supplement the excerpt with the necessary documents, exhibits, or pages of the reporter's transcript.

The revised Local Rule 13 describes in broad terms the documents that are required in the excerpt. The list covers the types of documents that might be encountered in both criminal and civil appeals. Counsel should include the specific documents relevant to the particular type of case on appeal.

With the exception of a copy of the current trial court docket, exhibits and reporter's transcript, it is expected that the documents required for the excerpt of record will be available in counsel's own case file. Where new counsel has been retained for the appeal, trial counsel is expected to provide him/her with the documents which are relevant to the excerpts as well as any other documents which have relevance to the appeal. A copy of the current trial court docket sheet, along with any other document needed for the excerpts which are not available in counsel's own file, should be obtained from the clerk of the trial court. The trial court docket sheet should be current up to the time the excerpt is prepared. The documents which comprise the excerpt of record do not have to be certified as true copies. Although not absolutely essential it is desirable, however, to have the trial court's stamp on the documents included in the excerpt.

(Section H - EXCERPT OF RECORD continued)

The documents contained in the excerpt should be arranged according to file date with the oldest document shown first. The copy of the trial court docket sheet should appear as the last document in the excerpt.

The excerpt should be reproduced on letter size white paper by any duplicating or copying process capable of producing a clear black image, and each copy shall be bound at the top and shall have a tan cover styled in the same manner as a brief. The excerpts may either be paginated or the documents marked with tabs corresponding to the tab numbers of the documents in the official clerk's record or page numbers of the reporter's transcript. Immediately preceding the cover sheet shall be an index with a description of the documents, exhibits, and portions of the reporter's transcript contained therein and their corresponding page or tab numbers.

The information on the front cover of the excerpt of record should be styled exactly as a brief except that the wording "Excerpt of Record" should be substituted for "Brief of Appellant." The wording "Supplemental Excerpt of Record" shall be used when a supplement is prepared.

In addition to five (5) copies of the excerpt required by the U.S. Court of Appeals, counsel for the appellant, or the appellant without counsel must provide opposing counsel with a copy of the excerpt simultaneously with the service of appellant's brief. Because the appellant's brief and the excerpt must be filed simultaneously, a defect in either document will cause a delay in the filing of the appellant's opening brief until the defect is corrected.

Section (e) (3) of Local Rule 13 alerts counsel to the possibility that additional copies of the excerpt will be required should the court consider a case en banc. The Clerk of Court would then ask counsel to submit an additional fifteen (15) copies of the excerpt of record.

I. CONTENTS OF BRIEF

For those appeals filed on or after October 1, 1981, a new section has been added to Local Rule 13. Local Rule 13(b) states that in addition to satisfying the requirements of Rule 28 of the Federal Rules of Appellate Procedure, the brief of each party shall contain a discussion of the topics described below. The rule also provides that if the position of the appellee with respect to a particular topic is identical to that expressed in the appellant's brief, it shall be sufficient for the appellee to state expressly under an appropriate heading that he/she agrees with the position taken by the appellant.

1. Jurisdiction, Timeliness and Bail Status

The Statement of the Case in each brief shall contain a discussion, citing relevant authority, of the following topics under appropriate headings and in the following order:

- (1) The basis for subject matter jurisdiction in the district court or agency whose action is the subject of review.
- (2) The basis for jurisdiction in the U.S. Court of Appeals.
- (3) Whether the order is properly appealable. The parties shall state whether the order appealed from finally disposes of all claims with respect to all parties. If it

(Section I - CONTENTS OF BRIEF continued)

Does not, the parties shall discuss whether the order is properly reviewable on some other basis. (E.g., Fed. R. Civ. P. 54(b), 28 U.S.C. §1292.)

- (4) Whether the appeal is timely. The parties shall set forth the date of the entry of judgment in the court or agency below and the date the notice of appeal or petition for review was filed and, citing relevant authority, shall explain whether the notice of appeal or petition for review was timely.
- (5) Attorneys Fees. Any party in a civil case who intends to seek attorneys fees for the appeal must include a short statement to that effect and must identify the authority under which the attorneys fees will be sought.
- (6) Bail Status. The opening brief in a criminal appeal shall contain a statement as to the bail status of the defendant.

2. Standard of Review; Appeal Based on Trial Ruling

The argument section of the brief shall contain a discussion, citing relevant authority, of the following subjects:

- (1) The standard of review on appeal. With respect to each contention raised on appeal, each party shall identify the proper standard of review on appeal at the outset of the discussion of that contention. (E.g., "abuse of discretion," "clearly erroneous," "substantial evidence in the record as a whole," "de novo review.")
- (2) Whether objection was made to challenged evidentiary rulings or jury instructions. Whenever an appeal is based upon a failure to admit or exclude evidence, or the giving or refusal to give a particular jury instruction, or any other act or ruling for which a party must record an objection to preserve the right to appeal, the brief shall expressly state whether a proper objection was made to the court's ruling and shall cite the part of the record at which the objection is recorded.

3. Addendum to Briefs

Another new requirement under revised Local Rule 13 is that when determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts thereof are to be reproduced in an addendum at the end of appellant's brief. If appellee's brief or a reply brief refers to additional provisions, the relevant parts shall be similarly set forth in addenda. The addendum must be separated from the main body of the brief by a distinctly colored page.

The excerpt, certification as to interested parties, statement of related cases, and addendum of statutory materials are not counted in determining the length of a brief under Rule 28(g) F.R.A.P. All other materials required by Local Rule 13 are counted in determining the length of briefs, and none of the requirements of the rule shall be used as justification for the parties filing a motion for an oversize brief. Furthermore, the parties may not avoid the page limitations by incorporating reference memoranda submitted to the district court or agency from which the appeal is taken.

J. COST AND ATTORNEYS FEES

Local Rule 14 has been revised, and should be carefully reviewed by the parties as certain limitations of the amounts recoverable as costs on appeal have been explicitly set forth. This includes the costs allowable for reproduction of briefs and excerpts of record. The revised rule also states that the itemized and verified bill of costs shall be submitted on the standard form provided by this court. The standard cost bill form will be submitted to the parties at the time the court decision is forwarded. In the event a prevailing party does not receive a copy of the standard form, he/she may request the Cost Bill Form by telephoning the Clerk's Office at (415) 556-5441.

If a party is filing a request for attorneys' fees, the request must be filed separately from any cost bill and must be filed in conformance with revised Local Rule 14(g) and 14(h).

K. RECALCITRANT WITNESS APPEALS - 28 U.S.C. §1826

Effective October 1, 1981, a new rule has been adopted which sets forth the procedures for handling recalcitrant witness appeals. Under 28 U.S.C. §1826, recalcitrant witness appeals must be decided by the U.S. Court of Appeals within thirty (30) days of the date an appeal is taken. Therefore, to ensure expeditious handling of these appeals, Local Rule 28 directs that the notice of appeal must be forwarded by the district court clerk's office to the U.S. Court of Appeals immediately upon filing of the notice.

The rule further directs that it is the responsibility of the appellant to notify directly the criminal motions unit of the U.S. Court of Appeals that such a notice of appeal has been filed. This notification must be given both in writing and by telephone within twenty-four (24) hours of the filing of the notice of appeal. The written notification should be addressed to:

Criminal Motions Unit
United States Court of Appeals
for the Ninth Circuit
P. O. Box 547
San Francisco, CA 94101

The criminal motions unit may be reached by telephone through the Clerk's Office. Failure to provide notice may result in sanctions against counsel.

L. PLACEMENT OF CASES ON THE CALENDAR FOR DISPOSITION

As a general rule, cases are calendared according to the age of the case. Criminal cases; cases having statutory priority; and cases placed on the calendar by court order have calendaring priority.

Criminal cases are generally heard within two to three months after completion of briefing. Non-criminal cases with no statutory priority may wait up to two years for oral argument. (This time period is expected to be gradually reduced.)

If counsel feel their case has statutory priority, the court should be so notified in the opening brief. The notification should be clear and concise, and prominently noted in the first page of the brief.

**(Section L - PLACEMENT OF CASES ON THE CALENDAR FOR DISPOSITION
continued)**

If events occur which make your case moot before calendaring, please notify the court with service upon all parties.

Upon motion and for good cause shown, a case may be advanced to early calendaring by court order. Such motions to advance calendaring are not favored, and are granted only after a showing of the most compelling factual circumstances.

A waiver of oral argument does not advance a case to calendaring and submission.

I. HEARING INFORMATION

- (1) Counsel will be advised of the time and place of hearing by written notice approximately five (5) weeks prior to argument time. Under some circumstances shorter notice will be required.
- (2) The identity of panel members cannot be disclosed until one week prior to hearing. You will be informed via the Hearing Notice as to how the identification of the panel members may be ascertained.
- (3) Argument time for each side can be divided and shared by as many counsel as the parties deem necessary.
- (4) Additional information concerning oral argument will be transmitted when the hearing announcement is mailed to the parties.

II. PARTICIPATION OF STUDENT INTERNS

Local Rule 27 permits certain eligible law students acting under supervision of a member of the bar of this court to appear on behalf of any client if the client has filed a written consent with the court. The rule sets forth in detail the requirements which must be met by the student and the responsibilities of the student's supervising attorney. The parties should carefully review the contents of this rule.

**OFFICE OF THE CLERK
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 947, 7th & Mission Streets
San Francisco, CA 94101**

**APPELLATE PROCESSING SCHEDULE
FOR ADMINISTRATIVE AGENCY PROCEEDINGS**

**SUMMARY OF MAJOR EVENTS IN PROCESSING ADMINISTRATIVE
AGENCY CASES IN THE U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT**

EVENT NO.	EVENT	BY	WHEN	COMMENTS
1.	Filing of the Petition for Review, Application for Enforcement or a Notice of Appeal in Tax Court.	Petitioner	Within the time prescribed by law after the agency decision is handed down.	This event starts the appellate process. An original and seven copies of the petition are required to allow service upon agency counsel. If NLRB applies for enforcement, an original and three copies are required as the NLRB serves respondent counsel.
2.	Satisfaction of U.S. Court of Appeals docket fee requirement	Petitioner	With the filing of the Petition or the filing of a Notice of Appeal in Tax cases. Appeal may be dismissed if docket fee is not satisfied	In Tax Court appeals the \$65 docket fee is paid to the Clerk of the Tax Court. In all other cases, the \$65 docket fee is paid to the Clerk, U.S. Court of Appeals unless: 1) an order of this court is filed granting leave to proceed in forma pauperis; or, 2) the petitioner is the U.S. government.
3.	Submission of Certificate of Record (The record on appeal in Tax Court and Immigration and Naturalization Service cases)	Agency or Clerk of Tax Court	Within 40 days after service upon it of the Petition for Review or notification of the filing of an Application for Enforcement or filing of a notice of appeal in the Tax Court.	The certificate attests that the complete record is available for the purpose of the appeal. The actual record remains in the custody of the agency for use of the parties in preparing their briefs except parties must make arrangements for access to the record in Tax Court and Immigration and Naturalization cases.
4.	Setting of briefing schedule	U.S. Court of Appeals Clerk	Upon filing by the U.S. Court of Appeals of the Certificate of Record submitted by agency or the filing of the record on appeal by the Clerk of the Tax Court or Immigration and Naturalization Service.	The parties will be advised by the U.S. Court of Appeals of the filing of the Certificate of Record. Parties must calculate the due dates of briefs as prescribed by FRAP Rule 31(a).

EVENT NO.	EVENT	BY	WHEN	COMMENTS
5.	Submission of petitioner's opening brief and excerpt of record or copies of administrative proceedings as set by Local Rule 13(a)	Petitioner	Within 40 days from filing of the Certificate of Record or record by the Clerk of the Court of Appeals.	The brief and excerpt/administrative copies are filed with the Court of Appeals and served on the respondent by the petitioner.
6.	Submission of respondent's brief	Respondent	Within 30 days from the service of the petitioner's opening on respondent.	The brief is filed with the Court of Appeals and served on the petitioner.
7.	Submission of petitioner's reply brief	Petitioner	Within 14 days after the service of respondent's brief.	This brief is optional.
8.	Calendaring	Court of Appeals	As calendar space is available. Currently up to 18 months after briefing unless the case has statutory priority.	The preliminary calendar is generated from a computer bank of available cases. Cases on the calendar are checked for readiness.
9.	Record on appeal in non-tax court and non-Immigration & Naturalization Service cases.	Agency	Within 14 days of the filing of the respondent's brief.	One set of the record is received for use by the court. The respondent simultaneously with the filing of the respondent's brief must serve notification upon the agency that briefing is complete.
10.	Issuance of Hearing Notice	Court of Appeals Clerk	Approximately one month prior to hearing date.	Prompt acknowledgement is required. Parties will be advised when the court does not require oral argument.
11.	Hearing	Court of Appeals	As indicated on the hearing notice.	Counsel must check-in with the clerk's office no later than 30 minutes prior to the calling of the calendar.
12.	Submission	Judges of the Court	As ordered by the panel judges.	Generally, submission is simultaneous with the the close of hearing. Submission may be deferred pending receipt of information requested by the Court.
13.	Decision	Judges of the Court	Anywhere from several weeks to several months after submission.	

EVENT NO.	EVENT	BY	WHEN	COMMENTS
14.	Filing of Petition for Rehearing	"Losing" Party	within 30 days after decision is filed.	This petition is optional.
15.	Issuance of Mandate	Court of Appeals Clerk	21 days after the decision is filed, unless otherwise ordered by the Court, or 7 days following the denial of a petition for rehearing.	In NLRB proceedings, wherein the enforcement is granted, denied or suspended in whole the Court will enter judgment with the decision. In all other cases, the NLRB will submit a proposed judgment. The opposing party will have seven days to file objections to the proposed judgment.*
16.	Petition for writ of Certiorari to U.S. Supreme Court.	"Losing" Party	See Supreme Court Rules	

* As January 1, 1982

(3)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ADMINISTRATIVE AGENCY CASE MANAGEMENT CHECKLIST FOR USE BY ATTORNEYS AND LITIGANTS

Short Case Caption _____ ; USCA Docket No. _____

EVENT NO.	EVENT NAME	CURRENT DUE DATE	ACTUAL COMPLETION DATE
1.	File Petition, Application, or Notice of Appeal		
2.	Satisfy U.S. Court of Appeals Docket Fee		
3.	Submit Certificate of Record	(by Agency or Tax Court Clerk)	
4.	Setting of Briefing Schedule	(by Clerk, U.S. Court of Appeals)	
5.	Submission of Opening Brief and Excerpt or Copies of Administrative Proceedings		
6.	Submission of Respondent's Brief		
7.	Submission of Reply Brief (optional)		
8.	Calendaring		
9.	Record on Appeal	(by Agency)	
10.	Issuance of Hearing Notice	(by Clerk, U.S. Court of Appeals)	
11.	Hearing		
12.	Submission		
13.	Decision		
14.	Filing of Petition for Rehearing (optional)		
15.	Issuance of Mandate		
16.	Petition for Writ of Certiorari (to U.S. Supreme Court)		

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

)
)
) Court of Appeals
) Docket No. _____
)
)
)

) Docket Number(s) of Court of
) Appeals Companion and/or cross
) appeals (if known) _____
) _____
)
)

) District Court
) Docket Number _____
)
)

) Date Transcript(s)
) Filed _____
)
)
)

CERTIFICATE OF RECORD

This certificate is submitted in conformance with Rule 4(f) of the Local Rules of the U.S. Court of Appeals for the Ninth Circuit. The record on appeal, consisting of the trial transcript (if any) and the trial court clerk's record, is ready for the purposes of the appeal. This record is available in the office of the U.S. District Clerk identified below.

The documents comprising the trial court clerk's record have been numbered in conformance with Rule 11(b) of the Federal Rules of Appellate Procedure. These document numbers are reflected on the U.S. District Court docket sheet and should be used for reference purposes in the briefs.

The actual filing date for this document in the U.S. Court of Appeals will initiate the briefing schedule in civil cases (including habeas corpus cases). All parties in civil cases will receive separate notification of this filing date. In criminal cases, the briefing schedule is set by a Time Schedule Order from the U.S. Court of Appeals.

Clerk, U.S. District Court

for the _____ of

by: _____

Deputy Clerk

date: _____

CA9-095 (9/21/79)

1 BONAPARTE, IBARRA & O'KANE
Attorneys at Law
2 12011 San Vicente Boulevard
2nd Floor
3 Los Angeles, California 90049
4 (213) 471-3481
5 Attorneys for Petitioner

FILED

JUN 25 1984

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

7 UNITED STATES COURT OF APPEALS
8 FOR THE NINTH CIRCUIT

9
10 ANDRIJA ARTUKOVIC,)
11)
12)
13)
14)
15)

11 Petitioner,)
12 vs.)
13 IMMIGRATION & NATURALIZATION)
SERVICE,)
14)
15 Respondent.)

84-742
PETITION FOR REVIEW

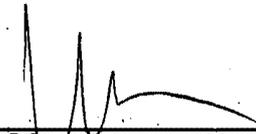
RECEIVED
U.S. IMMIGRATION &
NATURALIZATION
SERVICE
LOS ANGELES
JUN 28 10 36 AM '84

16 Appeal from an Order of the Board of Immigration Appeals
dated May 21, 1984. A7 095 961

17
18 Petitioner, ANDRIJA ARTUKOVIC, respectfully seeks review by
19 this court, pursuant to 8 U.S.C. §1105(a), of the decision of the
20 Board of Immigration Appeals, dated May 21, 1984, limiting the
21 scope of reopened proceeding before an Immigration Law Judge in
22 violation of decision of this court entered December 1, 1982,
23 Artukovic v. INS, 693 F.2d 894 [No. 81-7415].

24 All available administrative remedies have been exhausted.

25 Respectfully submitted,
26 BONAPARTE, IBARRA & O'KANE

27
28 
Ronald H. Bonaparte
Attorneys for Petitioner

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

TO: Counsel Filing Notices of Appeal and Petitions for Review or Enforcement in Civil Cases

The attached Civil Appeals Docketing Statement must be completed and returned to the Clerk of the Court of Appeals, P. O. Box 547, San Francisco, California 94101, with proof of service upon opposing counsel or parties. A copy of the district court's opinion or order must be attached to the docketing statement. Please note that a failure by appellant to complete and return the docketing statement promptly may subject the appellant and counsel to sanctions including dismissal of the appeal pursuant to Local Rule 19(b).

Please read carefully the Procedures Governing Prebriefing Conference Program. In the case of any apparent conflict between these Procedures and the Appellate Processing Schedule for Non-Criminal Cases, these Procedures control.

The docketing statement will be utilized by the Court to determine if a prebriefing conference will be held and to establish a briefing schedule for the appeal. The purposes of the conference are to determine whether: (a) there are any jurisdictional defects in the appeal; (b) there are grounds for settlement of the appeal; (c) it is possible to narrow the issues on appeal and reduce the size of the record; (d) the appeal can be adequately briefed in fewer than the maximum number of pages permissible under Fed. R. App. P. 28(g) or oversized briefs are necessary; (e) joint briefing by multiple parties is practicable; and (f) the processing of the appeal can be simplified in any other way.

Where possible, the conference will be held in person before a Conference Attorney. If necessary, a Conference Attorney will conduct the conference by telephone. The Procedures require that the attorneys participating in the conference have authority to make decisions concerning the merits of the case. Where the Court determines that a conference is not necessary, the Court will establish a briefing schedule based on the docketing statement. Any order issued by a Conference Attorney is subject to reconsideration upon the filing of an appropriate request within ten (10) calendar days of the date the order is filed.

If you have any questions concerning the docketing statement or the Prebriefing Conference Program, please contact the Conference Attorneys' Office at (415) 556-1394.

(3/14/84)
7685f

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PROCEDURES GOVERNING PREBRIEFING CONFERENCE PROGRAM

A. Scope of Program

These Procedures apply to all civil appeals and petitions for review or enforcement of an agency decision except for appeals in which permission to appeal under 28 U.S.C. § 1292(b) has been granted and mandamus petitions.

B. Docketing Statement

1. Upon receipt in the district court of a notice of appeal from a judgment or order other than in a criminal case, the Clerk of the district court will mail to all parties a docketing statement form. The form will be mailed by the Clerk of the court of appeals in the case of a petition for review or enforcement of an agency decision or an appeal from the Tax Court. Within twenty-one (21) calendar days of the filing of the notice of appeal in the district court or, in the other cases, within fourteen (14) calendar days of the mailing of the docketing statement form by the court of appeals, appellant shall file in the court of appeals an original and one (1) copy of a docketing statement with proof of service of one (1) copy on each appellee.

2. The statement must fully and accurately set forth the jurisdictional facts, nature of proceedings below, related cases, issues on appeal, and standards of appellate review applicable to those issues. Failure to include any matter in the docketing statement does not constitute a waiver. The court may, however, impose sanctions on counsel or appellant if it appears that available information has been withheld. Appellant must attach to the original and copy of the docketing statement copies of the judgment or order appealed from and any opinion, findings of fact or conclusions of law supporting the judgment or order.

3. Failure to file a docketing statement within the time set forth above is a ground for dismissal of the appeal or other sanctions under Rule 19(b) of this court.

4. Trial counsel is responsible for insuring that the docketing statement is timely filed in this court even if new counsel will handle the appeal. Only one docketing statement may be filed for each notice of appeal; if there is more than one appellant, appellants must consult and decide jointly who is responsible for filing the single docketing statement.

5. Appellee may file a single page response within seven days of service of the docketing statement. If appellee believes there is a jurisdictional defect, appellee should raise the issue in a response, at the prebriefing conference or in a motion to dismiss if no conference is scheduled. Multiple appellees should consult on the nature of the response to appellant's docketing statement and, if they decide to file a response, file only one response.

6. Appellee must file a separate docketing statement if a cross-appeal is filed. The prior paragraph applies to appellants who are also cross-appellees.

7. If a docketing statement indicates a jurisdictional defect, a judge, conference attorney or motions attorney may direct the parties by order, letter or telephone to address the question of jurisdiction in a specific form and time period.

8. In accordance with Local Rule 24, the respondent is required to file the docketing statement when an application for enforcement is filed by the National Labor Relations Board.

C. Time Limits for Ordering the Reporter's Transcript

1. The time limits established by the Federal Rules of Appellate Procedure and Local Rules for designating and ordering transcripts apply to all cases in the Prebriefing Conference Program. At the time of a prebriefing conference, counsel should be prepared to inform the Conference Attorney of (a) the date the transcript designation was filed in the district court, (b) the date the transcript was ordered from the court reporter and arrangements for payment were made, and (c) the reporter's estimated completion date.

2. If counsel believe that the size of the transcript may be substantially affected by discussion at a prebriefing conference or that there is a substantial possibility that the

case may be settled, appellant may file a motion in the court of appeals for an extension of time to designate and order the transcript (proof of service on all parties and copy to the district court clerk). The filing of the motion will suspend the time limits for designating the reporter's transcript until the motion is acted upon by the court. The issues underlying the motion for an extension of time may be discussed at a prebriefing conference or ruled on separately.

D. Prebriefing Conference

1. In any civil case, the court may, at its option, require counsel to attend a prebriefing conference with a judge of the court or a senior staff member designated as a Conference Attorney. The purposes of a conference are to determine whether: (a) there is any jurisdictional defect and whether such a defect is remediable under Fed. R. App. P. 4(a)(5), Fed. R. Civ. P. 54(b), or otherwise; (b) there are grounds for settlement of the appeal; (c) it is possible to narrow the issues on appeal and reduce the size of the record that must be ordered for the appeal; (d) the appeal can be adequately briefed in fewer than the maximum number of pages permissible under Fed. R. App. P. 29(g) or oversized briefs are necessary; (e) joint briefing by multiple parties is practicable; and (f) the processing of the appeal can be simplified in any other way. Fed. R. App. P. 33. An order will then be entered by the judge or Conference Attorney incorporating matters considered at the conference.

2. Conferences must be attended by counsel with authority to make decisions about any aspects of the appeal covered by the preceding paragraph. If lead counsel cannot attend, that attorney must: (1) appoint a substitute attorney to attend the conference; (2) delegate to the attending attorney the broadest feasible authority to settle or narrow the appeal or agree on case processing matters; (3) be available by telephone at the time of the conference; and (4) inform the Conference Attorneys' Office of the change. The parties to an appeal may be required to attend a conference. When the offices of counsel are not in the vicinity of the conference site or for

any other reason, the court may decide to hold the conference by telephone. The court may request that the district court file be transferred to this court for use during the conference.

3. The conference date will be set by written notice or by telephone with written confirmation. Unless counsel already has a directly conflicting court date, a request to alter the date will be disfavored. Requests to change the date of a conference should be made by telephone to the Conference Attorney's Office after consulting with opposing counsel about alternative dates.

4. Matters discussed at the conference will not be disclosed by the Conference Attorney except: (a) those matters embodied in an order concerning further proceedings in the appeal; and (b) to the judge reviewing an order entered by the Conference Attorney as to which a motion for reconsideration has been made. A judge who conducts a conference or reviews an order by a Conference Attorney may recuse himself or herself from any further participation in the case and must do so if settlement is discussed by the judge sitting as a Conference Attorney.

5. The costs of preparing and filing a docketing statement are not taxable, but time spent preparing for and attending a prebriefing conference may be recovered as part of attorneys' fees when such fees are awarded by the court and compensation for such work is not prohibited by statute.

6. In a case in which review of the docketing statement indicates that a conference would be unnecessary or inappropriate, a Conference Attorney may issue an order limiting the length of briefs, requiring joint briefing, setting the schedule for filing the record and briefs, or regulating any other aspect of the appeal that could be handled at a conference. Upon written request of counsel, the scheduling order may be amended by the Conference Attorney or a conference may then be scheduled.

7. Any order issued by a Conference Attorney is subject to reconsideration by a judge upon filing of an appropriate motion within ten (10) calendar days of the date the order is filed.

OFFICE OF THE CLERK
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

DATE June 25, 1984

U.S. Court of Appeals Docket Number: 84-7428

ANDRIJA ARTUKOVIC, Petitioner, vs. IMMIGRATION & NATURALIZATION SERVICE, Respondent.

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number when corresponding with this office relative to your case. Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this Court.

If the U.S. Court of Appeals docket fee has not yet been paid and you have not been exempted by law from paying the fee, please make arrangements to do so as quickly as possible. **THIS U.S. COURT OF APPEALS DOCKET FEE MUST BE PAID TO THE U.S. DISTRICT COURT IF THE CASE ORIGINATED FROM A U.S. DISTRICT COURT OR TO THE U.S. TAX COURT IF THE CASE ORIGINATED THERE.** The fee is payable to the U.S. Court of Appeals if the case originated in a U.S. administrative agency, or if the case is an original proceeding in this court. No papers may be filed with the Court until the docket fee requirement has been satisfied. If the docket fee is not paid within ten days of the filing of the notice of appeal, dismissal proceedings will be commenced.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist which may be attached to your case file as an aid in monitoring case progress.

The following information is being provided to ensure that your case proceeds through our Court as efficiently as possible. Please review this information very carefully. It is provided in an attempt to answer the most frequently asked questions with regard to processing an appeal which are not directly covered by the Rules of the United States Court of Appeals for the Ninth Circuit (Local Rules)* or the Federal Rules of Appellate Procedure (FRAP)*. Copies of this letter have been furnished to all known lead counsel.

*For convenience, the terms "Local Rules" and "FRAP" will be used throughout this document in lieu of the formal abbreviations.

OFFICE OF THE CLERK
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 347
San Francisco, California 94101

DATE _____

U.S. Court of Appeals Docket Number: _____

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

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**A. DIRECTORY OF THE CLERK'S OFFICE OF THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT**

MAIN OFFICE:

Location:

Office of the Clerk
U.S. Court of Appeals
and Post Office Building
Seventh and Mission Streets
San Francisco, California

Mailing Address:

Office of the Clerk
P.O. Box 547
San Francisco, CA 94101

Telephone Numbers:

Attorney Admissions.....(415) 556-9633
Administrative Agency, Tax Court and
Original Proceedings.....(415) 556-2588/89
Criminal Appeals.....(415) 556-2765/
7493/9621

Civil Appeals

From Districts of:

Central and Southern California;
Arizona; Las Vegas, Nevada.....(415) 556-9622/6122
Northern and Eastern California;
Reno, Nevada; Hawaii;
Northern Mariana Islands.....(415) 556-6123/9721
Eastern and Western Washington;
Oregon; Montana; Idaho; Alaska.....(415) 556-6120/6121
Miscellaneous and Pro Per.....(415) 556-9627

BRANCH OFFICES*

Los Angeles, California

Office of the Clerk
U.S. Court of Appeals
1699 U.S. Courthouse
312 North Spring Street
Los Angeles, CA 90012

Seattle, Washington

Office of the Clerk
U.S. Court of Appeals
816 U.S. Courthouse
1010 Fifth Avenue
Seattle, WA 98104

Telephones:

Commercial: (213) 688-3635
FTS: Access number and
798-3635

Telephone:

Commercial: (206) 442-2937
FTS: Access number and
399-2937

The branch offices are authorized to accept emergency filings only. All
other filings must be submitted to the main office in San Francisco.

IMPORTANT PUBLICATIONS WITH PROCEDURAL INFORMATION

Various documents are available which, in total, will provide you with a thorough understanding of case processing and will assist you in perfecting your case efficiently. These documents include:

1. The Federal Rules of Appellate Procedure (FRAP)
Copies of the rules may be obtained through the U.S. Government Printing Office. Also, they are usually available through federal government bookstores. Title 28 of the United States Code Annotated also contains the text of the rules.
2. The Rules of the United States Court of Appeals for the Ninth Circuit
The Local Rules, which augment FRAP, specify the rules of practice before the court. Copies of the Local Rules are no longer available from the Clerk's office. Please refer to the enclosed notice if you wish to purchase a copy of the rules.

NOTE: IMPORTANT LOCAL RULE CHANGES WERE MADE EFFECTIVE August 10, 1981 and October 1, 1981

Counsel should study the above documents carefully. Clerk's office personnel should not be called upon to answer general questions that can be answered with the above-listed documents.

ADMISSION TO THE BAR OF THE NINTH CIRCUIT

An attorney must be admitted to the bar of the court before he/she may participate in oral argument or file documents on behalf of a client. As a prerequisite to admission, counsel must first have been admitted to:

- (1) the bar of the Supreme Court of the United States, or
- (2) the bar of another circuit, or
- (3) the bar of a United States District Court, or
- (4) the bar of the highest court of a state.

The fee for admission is \$16 and is payable by money order or check to the "Clerk of the U.S. Court of Appeals." Admission may be accomplished by mail or in open court. Admission in open court is discouraged and is infrequent.

Admission by mail may be accomplished by obtaining the required forms by writing or calling one of our offices listed in the Clerk's Office Directory. Once completed, the forms must be returned to the Clerk's office in San Francisco or Los Angeles for processing. After an application is processed, counsel will be mailed a certificate of admission.

NOTICES OF CHANGES OF ADDRESS

It is essential that counsel pursuing a case in this court keep the Clerk of Court advised of all changes in their addresses.

A notice of change of address must include:

- (1) a brief caption of the case,
- (2) the U.S. Court of Appeals case number.

(Section D - NOTICE OF CHANGES OF ADDRESS continued)

- (3) any new phone number(s),**
- (4) the name of the party being represented, and**
- (5) the new address.**

NOTE: A notice of change of address of counsel who is admitted to practice before the bar of this Court but who is not representing a party at the time of change need not be submitted.

E. MOTIONS PRACTICE

1. Practice, Generally

- (1) All motions must be submitted in writing and presented in the form described below.**
- (2) Oral argument on written motions is heard only as directed by the court.**
- (3) Motions as well as any other documents presented to the court need not be notarized or certified.**
- (4) A "Notice of Motion" is not required.**
- (5) Deficiencies in the form of motions or oppositions to motions may cause: action to be delayed; the document returned without action; denial of your motion; or your Opposition to be ignored.**

2. Form of Motions

The form of a motion must satisfy the following general requirements:

- (1) Introductory heading or cover page showing:
 - a. Court of Appeals heading
 - b. brief caption of case
 - c. Court of Appeals docket number
 - d. trial court or agency docket number
 - e. entitlement of motion**
- (2) Substantive body of motion (statement of points and authorities, arguments, etc.)**
- (3) Affidavit or Declaration**
- (4) Supporting documents from the record**
- (5) Signature of counsel, including:
 - a. address and telephone number of counsel
 - b. name and adversarial position (e.g., appellant or appellee) of party being represented by motion**
- (6) Proposed order form on separate page with the same case identification information as on cover page**
- (7) Certificate of Service including the name, address, and telephone number of all parties served**
- (8) Addressed and pre-stamped envelopes for service of order to yourself and all parties originally served with the motion**
- (9) Original and three copies of the motion prepared on 8 1/2 x 11 inch paper**

(Section E - MOTIONS PRACTICE continued)

NOTE: If you request return of a "filed" stamped copy of your motion, enclose a fourth copy of the motion and a self-addressed franked envelope. We cannot return a copy to you otherwise.

3. Oppositions to Motions

With the exception of item numbers (6) and (8) above, all other requirements as to the form of motions apply to documents filed in opposition to a motion.

4. Supporting Documents

In most cases, the trial court or agency record is not available to the U.S. Court of Appeals until briefing is completed. IF YOU FEEL THAT YOUR MOTION OR OPPOSITION WILL REQUIRE THAT THE COURT REVIEW PORTIONS OF THE RECORD, COPIES OF THOSE PORTIONS MUST BE SUBMITTED AS EXHIBITS WITH YOUR MOTION.

5. Motions for Extensions of Time to File Briefs - Non-Criminal Cases

Ordinary motions for extensions of time to file briefs in non-criminal cases may be processed immediately if:

- (1) the party has submitted a motion in proper form as described above,
- (2) the time period of the extension being requested is not excessive. (Generally, the extension granted will be limited to twenty-eight days.),
- (3) the affidavit recites the number of previous extensions granted of any type to your client,
- (4) the position of opposing counsel regarding the extension is stated, and
- (5) good cause is shown.

6. Motions for Extensions of Time to File Briefs - Criminal Cases

Ordinary motions for extensions of time to file briefs in criminal cases may be acted upon immediately if, in addition to satisfying the requirements in non-criminal motions for extension, the motion recites:

- (1) the number and type of previous extensions granted to the party,
- (2) the current exact bail status of defendant,
- (3) the most serious crime or crimes of which the defendant has been convicted in the court below, even though this information has been previously furnished. (The offense must be described, e.g., bank robbery, theft from the mails, and should include the criminal statute citation.)
- (4) a statement of the date the notice of appeal was filed, the date the reporter's transcript was ordered (which should be the date that adequate financial arrangements were made with the court reporter for payment of the transcript), and the date the certificate of record was filed,

(Section E - MOTIONS PRACTICE continued)

- (5) any objections by the opposing party,**
- (6) other recitations of good cause for the delay, and**
- (7) all other elements required by Rule 13(d)(2) of the Rules of the United States Court of Appeals for the Ninth Circuit.**

Because a motion for extension of time in a criminal case may, if granted, require a revision of the entire processing schedule for that case, the proposed order required under the "form of motions" provision of this section should set forth a schedule for completing the briefing process.

All motions for extensions of time must be submitted well in advance of the due date of the document for which the extension is being requested.

7. Motions for Bail Pending Appeal - Local Rule 8

To ensure that the appeal is being pursued diligently, Local Rule 8 requires that the party seeking bail attach a certificate to the moving paper attesting that the appeal transcript has been ordered.

The certificate must be signed by the court reporter. In addition to identifying the name, address and telephone number of the reporter, the certificate must include a verification, again by the court reporter, that the transcript has been ordered and that satisfactory arrangements have been made to pay for the transcript. Finally, the certificate must show the estimated date of completion of the transcript.

The importance of the certificate is underscored by the provision of Rule 8 which states that failure to submit the required certificate "will be prima facie evidence that the appeal is frivolous or taken for the purpose of delay."

The government is required to file a response to the bail motion. Rule 8 states that the government must file a response, whether an opposition or concurrence, within seven (7) days after receiving the motion.

Finally, the rule clearly provides that if the defendant is on bail at the time the motion for bail pending appeal is made, the defendant will remain on bail pending court action on that motion.

8. Emergency Motions - Local Rule 6

Local Rule 6 was amended on August 10, 1981. The rule requires the movant to make every practicable effort to notify the Clerk of Court at the earliest time there is an indication that urgent relief from this court will be sought.

As with all filings, emergency motions should be filed with the Clerk in San Francisco. However, under the new rule, if action is needed on the day the motion is filed or the next day and counsel has not been dilatory in seeking relief, an emergency motion may be filed in a divisional Court of Appeals Clerk's Office or, if such an office does not exist, in the district from which the emergency arises, with an individual

(Section E - MOTIONS PRACTICE continued)

circuit judge. If it appears either that same day/next day relief is not necessary or that counsel has been dilatory in requesting relief, the moving party will be directed to file the motion in San Francisco for consideration by the regular motions panel.

9. Other Procedural Motions

A motion for substitution of counsel in a criminal case should include a statement as to whether present counsel is retained or appointed. In this regard, see especially Sections 2 - 5 of the Appendix to the Rules of the U.S. Court of Appeals for the Ninth Circuit.

For motions to consolidate civil or criminal cases, please specifically note whether the cases arise from the same U.S. district court action. In addition, please note whether the cases were ever consolidated in the court below. A certification is required by the submitting party as to whether the motion to consolidate is opposed by other parties in the case.

10. Motions for Extensions of Time to File the Trial Transcript

The Federal Rules of Appellate Procedure provide that the court reporter must file any motions for extensions of time in order to file the transcript. The appellant and appellee must timely designate the transcript. The Court of Appeals Transcript Designation Form (CA-036) must be used when ordering the trial transcript. These forms are available through the local district court clerks' offices. In addition, the appellant must formally order and pay for the trial transcript.

It is imperative that the appellant immediately provide the court reporter with our U.S. Court of Appeals docket number. Otherwise we cannot effectively communicate with the court reporter.

RECORD ON APPEAL

1. In General

Local Rule 4 affects the procedural requirements for filing the record. Important amendments to Local Rule 4 were made effective August 10, 1981. These include the time schedule for designating the reporter's transcript and the clerk's record, the form and content of the record and the time within which the formal record must be transmitted to the U.S. Court of Appeals. Generally, the word "record" means:

- (1) the entire transcript of the trial in the lower court (reporter's transcript) together with
- (2) The entire file of pleadings submitted by the parties and orders entered in the lower court action (clerk's record).

(Section F - RECORD ON APPEAL continued)

For the purpose of understanding and resolving the issues raised on appeal, a review of the entire trial court record is usually not necessary.

The "record on appeal" contemplated by Local Rule 4 is distinguished from the trial court "record" in that the "record on appeal" should consist of only those portions of the trial transcript and trial court clerk's record which are relevant to the issues raised on appeal.

The documents which will comprise the record on appeal must be identified in formal designations filed with the clerk of the trial court by each of the parties. It is expected that the designations will identify the portions of the trial court record which the parties find necessary in arguing the issues on appeal. In addition to other documents designated, it is expected that the parties' designations will specify those exact documents from the record which comprise the excerpt and any supplemental excerpt of record as identified in Rule 13(a) (described in Section H of this packet).

The parties must designate and order the court reporter's transcript within the time limits provided in Local Rule 4 as amended August 10, 1981. The parties must designate the clerk's record during the briefing stage of the appeal. Two separate and distinct designations must be filed. If appellant fails to make either designation, the case will be subject to dismissal by our office for failure to prosecute. If appellee fails to make either designation, the appellee may waive his/her right to argue. In addition, disciplinary action may be brought against any attorney failing to properly file designations.

2. Designating the Reporter's Transcript - Civil Cases

As a result of amendments to Local Rule 4, our circuit has adopted a slightly different procedure for ordering and designating the reporter's transcript in civil appeals. Please note that habeas corpus cases are considered civil cases, not criminal cases.

The new procedure requires the appellant to file a single complete designation of the transcript. The time within which the appellant must advise the opposing side of the portions of the trial transcript which are being ordered for the appeal is ten (10) days after the notice of appeal is filed. Within ten (10) days after notice by the appellant, the appellee(s) shall serve on the appellant notice of any additional portions of the transcript which are deemed necessary for the purposes of the appeal. On the twenty-first (21) day the appellant will file one designation of transcript in the district court. At the same time, a copy of this designation will be sent to the court reporter, and arrangements made for payment of the transcript. The Court of Appeals Transcript Designation Form (CA-036) must be used when ordering the transcript. The transcript ordering forms are available through district court clerks' offices.

If no transcript is needed, CA-036 should be used to notify the district court.

(Section F - RECORD ON APPEAL continued)

3. Designating the Reporter's Transcript - Criminal Cases

The purpose of this circuit's procedure for ordering and designating the reporter's transcript in criminal appeals is to expedite processing of criminal cases and to provide a means for more careful monitoring of these appeals. The time within which the appellant must advise the opposing side of the portions of the trial transcript which are being ordered for the appeal is seven (7) days from the filing of the notice of appeal.

If the appellant decides that a reporter's transcript is not necessary and will not be ordered, he/she must advise the opposing side and the clerk of the trial court immediately. Likewise, if the appellee does not intend to rely on the trial transcript for the appeal, he/she should so advise the appellant and the trial court clerk. Within seven (7) days after the appellant has served a designation of reporter's transcript upon the appellee, the appellee should advise the appellant of whatever additional portions of the trial transcript should be ordered, if any. The appellant is then required to order all designated portions of the trial transcript. Amended Local Rule 4 states that "where the appellant is represented by retained counsel, the appellant must make suitable arrangements for payment for the transcript with the court reporter on or before the date the designation is filed in the district court or be subject to possible sanctions for failure to make arrangements." The Court of Appeals Transcript Designation Form, which may be obtained from the offices of the district court clerks, must be used when ordering the reporter's transcript. Where the appellant is represented by counsel appointed pursuant to the Criminal Justice Act, the transcript will be considered filed when appellant's counsel files a copy of the transcript designation with the district court.

In addition to identifying the portions of the trial transcript that will subsequently be filed with the clerk of the trial court and transmitted to the U.S. Court of Appeals, the designation must identify the name, address and telephone number of the reporter(s) who is (are) preparing the transcript(s), the date the transcript(s) was (were) ordered, the date the reporter(s) acknowledged receipt of the order(s), and the reporter(s)' estimated date of delivery of the finished transcript(s). The court reporter must notify the Clerk of the U.S. Court of Appeals when the reporter's trial transcript has been ordered. It is essential that you furnish the court reporter with your U.S. Court of Appeals docket number when ordering or soon after ordering the transcript. In a CJA case, you may also contact the court reporter about the appropriate CJA-24 form for ordering the transcript.

As always in criminal cases, a U.S. magistrate or a U.S. district court judge will issue a time schedule order which sets the exact designation, briefing and record filing schedule. Local Rule 4 does not affect the district court's role in this process.

(Section F. - RECORD ON APPEAL continued)

4. Motions for Extensions of Time to File the Transcript

In both civil and criminal cases, if the court reporter finds that the trial transcript cannot be completed within the time prescribed by Local Rule 4(e), a request for an extension of time to file the transcript must be made by the court reporter to the U.S. Court of Appeals rather than the appellant.

-5. Designating the Clerk's Record

After the transcript is filed in the district court, or alternatively, the district court clerk receives notice that no transcript will be ordered, the clerk of the U.S. district court files a "certificate of record" with the Clerk of the U.S. Court of Appeals. The certificate, which will stand in the record's stead for the purpose of establishing a record filing date, must attest that all documents which will comprise the record including the reporter's transcript, if any, are available to the parties in the trial court clerk's office.

The entire clerk's record will remain in the custody of the trial court clerk until approximately the time that the appellee files an answering brief. The parties must now designate portions of the clerk's record necessary for the appeal after they have drafted their briefs.

With regard to the specific time for filing the designation of necessary portions of the trial court clerk's record, the appellant is required to file a designation with the clerk of the trial court at the same time that the opening brief is served. In civil appeals, the appellee must file a designation of the clerk's record simultaneously with the serving of his/her appellee's brief. In criminal appeals, the appellee is required to file a designation of the clerk's record within fourteen (14) days after service of the appellant's brief.

In particular cases, however, the U.S. Court of Appeals may require early transmission or additional copies of the record, or both. When the court elects to exercise this option, all concerned parties will be notified by the Clerk of Court. The appellant will be required to pay for any additional copies of the record required by the U.S. Court of Appeals.

6. Identifying and Referencing Documents in Designations and Briefs

Documents from the trial court clerk's record designated for the appeal will be tabbed and identified by the docket control number assigned to them when they were initially entered on the trial court docket. This will be accomplished by the trial court clerk.

In filing their designations of the trial court clerk's record each party must identify the documents to comprise the record on appeal by the docket control number and by the document's title. Likewise, in designating exhibits, the parties must identify each exhibit by its assigned number and a brief description or entitlement.

(Section F - RECORD ON APPEAL continued)

In referencing documents in their briefs, the parties will be expected to rely on the same docket control number. For example, if the findings of the trial court are numbered "28" on the trial court docket, a reference to that document in a brief should read CR "28". The abbreviation "CR" will be understood as the trial court clerk's record.

If there are numerous pages in a single document and the passage referenced is only on one particular page, the brief reference should read "CR 28" followed by a reference to the number of the page within the document. References to passages in the reporter's transcript should be referred to as "RT" along with an identification of the reporter's exact number of the page being referenced. Thus, the court reporter's transcript will continue to be referenced sequentially.

In order to be of assistance to the judges, briefs should ideally contain a general index of the documents from the record on appeal to which the parties make reference in their briefs. When such indices are incorporated in the briefs, they should cite the pages where each document is discussed.

G. BRIEFS

I. Due Dates

In civil cases you will be notified by this office when the record on appeal is considered filed. This should occur shortly after the clerk of the trial court files the certificate of record with the U.S. Court of Appeals. The certificate of record is filed when the reporter's transcript is filed with the trial court. If you have not received such a notice from our court within two weeks from the submission of the certificate of record by the clerk of the district court, please contact our office. The appellant's opening brief is due forty (40) days after the notification of the filing of the record by the court. This filing date will be reflected on the notice mailed from this office. However, the appellant has the responsibility for computing the due date and ensuring the timely filing of the primary brief. Appellee's brief is due thirty (30) days from the date of service of the appellant's brief. Note that the file date of appellant's brief is (by Rule 25 of FRAP) the date the brief is mailed to the Clerk's Office and to the appellee. The same rule applies to the appellee's brief. Briefs need only be transmitted by first class mail. "Express" mail or guaranteed overnight private service need not be utilized.

In criminal cases, the briefing schedule will be set by the U.S. Magistrate or U.S. district court judge. This schedule is adopted by order of this court and overrides the days allowed for filing each brief as described in FRAP. An appellant's brief filed earlier than the due date in the schedule does not advance the due date for the appellee's brief in criminal cases. If, by oversight or otherwise, a briefing schedule has not yet been set, parties in criminal cases shall follow the time schedule set out in Rule 31 of FRAP.

(Section G - BRIEFS continued)

provide a statement to that effect rather than reproduce the list provided by the appellant. Cases are deemed related if they:

- (1) arise out of the same case or consolidated case in the trial court or agency; or,
- (2) involve a case which was previously heard in this court; or,
- (3) involve the same parties as a case now pending in this court or a trial court or agency; or,
- (4) involve the same or closely related issues; or,
- (5) involve the same basic transaction or event as does another pending case; or,
- (6) have any other similarities of which you think the court should be aware.

H. EXCERPT OF RECORD

Since appeals are referred to a panel of three (3) judges of the U.S. Court of Appeals, copies of selected portions of the record must be made available to each of the Ninth Circuit judges assigned to review the appeal. Under Local Rule 13(1)(a), the appellant is required to provide the U.S. Court of Appeals with these selected excerpts of the record at the time the opening brief is filed. The excerpts, "predesignated" by rule, are expected to provide judges with a foundation for understanding the issues raised on appeal. The finer points of the issues will be reviewed by referencing the single copy of the more comprehensive record designated by the parties as provided in Local Rule 4. Preparation of the excerpt of record is specifically the responsibility of the appellant. However, Local Rule 13(a) was amended effective October 1, 1981. The rule now states that if the appellee believes that the excerpt filed by the appellant fails to include any of the required documents, exhibits, or pages of the reporter's transcript, the appellee may either file at the time its brief is filed a supplemental excerpt containing those documents, or may move for an order directing the appellant to supplement the excerpt with the necessary documents, exhibits, or pages of the reporter's transcript.

The revised Local Rule 13 describes in broad terms the documents that are required in the excerpt. The list covers the types of documents that might be encountered in both criminal and civil appeals. Counsel should include the specific documents relevant to the particular type of case on appeal.

With the exception of a copy of the current trial court docket, exhibits and reporter's transcript, it is expected that the documents required for the excerpt of record will be available in counsel's own case file. Where new counsel has been retained for the appeal, trial counsel is expected to provide him/her with the documents which are relevant to the excerpts as well as any other documents which have relevance to the appeal. A copy of the current trial court docket sheet, along with any other document needed for the excerpts which are not available in counsel's own file, should be obtained from the clerk of the trial court. The trial court docket sheet should be current up to the time the excerpt is prepared. The documents which comprise the excerpt of record do not have to be certified as true copies. Although not absolutely essential it is desirable, however, to have the trial court's

(Section E - EXCERPT OF RECORD continued)

The documents contained in the excerpt should be arranged according to file date with the oldest document shown first. The copy of the trial court docket sheet should appear as the last document in the excerpt.

The excerpt should be reproduced on letter size white paper by any duplicating or copying process capable of producing a clear black image, and each copy shall be bound at the top and shall have a tan cover styled in the same manner as a brief. The excerpts may either be paginated or the documents marked with tabs corresponding to the tab numbers of the documents in the official clerk's record or page numbers of the reporter's transcript. Immediately preceding the cover sheet shall be an index with a description of the documents, exhibits, and portions of the reporter's transcript contained therein and their corresponding page or tab numbers.

The information on the front cover of the excerpt of record should be styled exactly as a brief except that the wording "Excerpt of Record" should be substituted for "Brief of Appellant." The wording "Supplemental Excerpt of Record" shall be used when a supplement is prepared.

In addition to five (5) copies of the excerpt required by the U.S. Court of Appeals, counsel for the appellant, or the appellant without counsel must provide opposing counsel with a copy of the excerpt simultaneously with the service of appellant's brief. Because the appellant's brief and the excerpt must be filed simultaneously, a defect in either document will cause a delay in the filing of the appellant's opening brief until the defect is corrected.

Section (e)(3) of Local Rule 13 alerts counsel to the possibility that additional copies of the excerpt will be required should the court consider a case en banc. The Clerk of Court would then ask counsel to submit an additional fifteen (15) copies of the excerpt of record.

I. CONTENTS OF BRIEF

For those appeals filed on or after October 1, 1981, a new section has been added to Local Rule 13. Local Rule 13(b) states that in addition to satisfying the requirements of Rule 28 of the Federal Rules of Appellate Procedure, the brief of each party shall contain a discussion of the topics described below. The rule also provides that if the position of the appellee with respect to a particular topic is identical to that expressed in the appellant's brief, it shall be sufficient for the appellee to state expressly under an appropriate heading that he/she agrees with the position taken by the appellant.

1. Jurisdiction, Timeliness and Bail Status

The Statement of the Case in each brief shall contain a discussion, citing relevant authority, of the following topics under appropriate headings and in the following order:

- (1) The basis for subject matter jurisdiction in the district court or agency whose action is the subject of review.
- (2) The basis for jurisdiction in the U.S. Court of Appeals.
- (3) Whether the order is properly appealable. The parties shall state whether the order appealed from finally disposes of all claims with respect to all parties. If it

(Section I - CONTENTS OF BRIEF continued)

does not, the parties shall discuss whether the order is properly reviewable on some other basis. (E.g., Fed. R. Civ. P. 54(b), 28 U.S.C. §1292.)

- (4) Whether the appeal is timely. The parties shall set forth the date of the entry of judgment in the court or agency below and the date the notice of appeal or petition for review was filed and, citing relevant authority, shall explain whether the notice of appeal or petition for review was timely.
- (5) Attorneys Fees. Any party in a civil case who intends to seek attorneys fees for the appeal must include a short statement to that effect and must identify the authority under which the attorneys fees will be sought.
- (6) Bail Status. The opening brief in a criminal appeal shall contain a statement as to the bail status of the defendant.

2. Standard of Review; Appeal Based on Trial Ruling

The argument section of the brief shall contain a discussion, citing relevant authority, of the following subjects:

- (1) The standard of review on appeal. With respect to each contention raised on appeal, each party shall identify the proper standard of review on appeal at the outset of the discussion of that contention. (E.g., "abuse of discretion," "clearly erroneous," "substantial evidence in the record as a whole," "de novo review.")
- (2) Whether objection was made to challenged evidentiary rulings or jury instructions. Whenever an appeal is based upon a failure to admit or exclude evidence, or the giving or refusal to give a particular jury instruction, or any other act or ruling for which a party must record an objection to preserve the right to appeal, the brief shall expressly state whether a proper objection was made to the court's ruling and shall cite the part of the record at which the objection is recorded.

3. Addendum to Briefs

Another new requirement under revised Local Rule 13 is that when determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts thereof are to be reproduced in an addendum at the end of appellant's brief. If appellee's brief or a reply brief refers to additional provisions, the relevant parts shall be similarly set forth in addenda. The addendum must be separated from the main body of the brief by a distinctly colored page.

The excerpt, certification as to interested parties, statement of related cases, and addendum of statutory materials are not counted in determining the length of a brief under Rule 28(g) P.R.A.P. All other materials required by Local Rule 13 are counted in determining the length of briefs, and none of the requirements of the rule shall be used as justification for the parties filing a motion for an oversize brief. Furthermore, the parties may not avoid the page limitations by incorporating reference memoranda submitted to the district court or agency from which the appeal is taken.

J. COST AND ATTORNEYS FEES

Local Rule 14 has been revised, and should be carefully reviewed by the parties as certain limitations of the amounts recoverable as costs on appeal have been explicitly set forth. This includes the costs allowable for reproduction of briefs and excerpts of record. The revised rule also states that the itemized and verified bill of costs shall be submitted on the standard form provided by this court. The standard cost bill form will be submitted to the parties at the time the court decision is forwarded. In the event a prevailing party does not receive a copy of the standard form, he/she may request the Cost Bill Form by telephoning the Clerk's Office at (415) 556-5441.

If a party is filing a request for attorneys' fees, the request must be filed separately from any cost bill and must be filed in conformance with revised Local Rule 14(g) and 14(h).

K. RECALCITRANT WITNESS APPEALS - 28 U.S.C. §1826

Effective October 1, 1981, a new rule has been adopted which sets forth the procedures for handling recalcitrant witness appeals. Under 28 U.S.C. §1826, recalcitrant witness appeals must be decided by the U.S. Court of Appeals within thirty (30) days of the date an appeal is taken. Therefore, to ensure expeditious handling of these appeals, Local Rule 28 directs that the notice of appeal must be forwarded by the district court clerk's office to the U.S. Court of Appeals immediately upon filing of the notice.

The rule further directs that it is the responsibility of the appellant to notify directly the criminal motions unit of the U.S. Court of Appeals that such a notice of appeal has been filed. This notification must be given both in writing and by telephone within twenty-four (24) hours of the filing of the notice of appeal. The written notification should be addressed to:

Criminal Motions Unit
United States Court of Appeals
for the Ninth Circuit
P. O. Box 547
San Francisco, CA 94101

The criminal motions unit may be reached by telephone through the Clerk's Office. Failure to provide notice may result in sanctions against counsel.

L. PLACEMENT OF CASES ON THE CALENDAR FOR DISPOSITION

As a general rule, cases are calendared according to the age of the case. Criminal cases; cases having statutory priority; and cases placed on the calendar by court order have calendaring priority.

Criminal cases are generally heard within two to three months after completion of briefing. Non-criminal cases with no statutory priority may wait up to two years for oral argument. (This time period is expected to be gradually reduced.)

If counsel feel their case has statutory priority, the court should be so notified in the opening brief. The notification should be clear and concise, and prominently noted in the first page of the brief.

**(Section L - PLACEMENT OF CASES ON THE CALENDAR FOR DISPOSITION
continued)**

If events occur which make your case moot before calendaring, please notify the court with service upon all parties.

Upon motion and for good cause shown, a case may be advanced to early calendaring by court order. Such motions to advance calendaring are not favored, and are granted only after a showing of the most compelling factual circumstances.

A waiver of oral argument does not advance a case to calendaring and submission.

I. HEARING INFORMATION

- (1) Counsel will be advised of the time and place of hearing by written notice approximately five (5) weeks prior to argument time. Under some circumstances shorter notice will be required.
- (2) The identity of panel members cannot be disclosed until one week prior to hearing. You will be informed via the Hearing Notice as to how the identification of the panel members may be ascertained.
- (3) Argument time for each side can be divided and shared by as many counsel as the parties deem necessary.
- (4) Additional information concerning oral argument will be transmitted when the hearing announcement is mailed to the parties.

I. PARTICIPATION OF STUDENT INTERNS

Local Rule 27 permits certain eligible law students acting under supervision of a member of the bar of this court to appear on behalf of any client if the client has filed a written consent with the court. The rule sets forth in detail the requirements which must be met by the student and the responsibilities of the student's supervising attorney. The parties should carefully review the contents of this rule.

**OFFICE OF THE CLERK
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 347, 7th & Mission Streets
San Francisco, CA 94101**

**APPELLATE PROCESSING SCHEDULE
FOR ADMINISTRATIVE AGENCY PROCEEDINGS**

**SUMMARY OF MAJOR EVENTS IN PROCESSING ADMINISTRATIVE
AGENCY CASES IN THE U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT**

EVENT NO.	EVENT	BY	WHEN	COMMENTS
1.	Filing of the Petition for Review, Application for Enforcement or a Notice of Appeal in Tax Court.	Petitioner	Within the time prescribed by law after the agency decision is handed down.	This event starts the appellate process. An original and seven copies of the petition are required to allow service upon agency counsel. If NLRB applies for enforcement, an original and three copies are required as the NLRB serves respondent counsel.
2.	Satisfaction of U.S. Court of Appeals docket fee requirement	Petitioner	With the filing of the Petition or the filing of a Notice of Appeal in Tax cases. Appeal may be dismissed if docket fee is not satisfied	In Tax Court appeals the \$65 docket fee is paid to the Clerk of the Tax Court. In all other cases, the \$65 docket fee is paid to the Clerk, U.S. Court of Appeals unless: 1) an order of this court is filed granting leave to proceed in forma pauperis; or, 2) the petitioner is the U.S. government.
3.	Submission of Certificate of Record (The record on appeal in Tax Court and Immigration and Naturalization Service cases)	Agency or Clerk of Tax Court	Within 40 days after service upon it of the Petition for Review or notification of the filing of an Application for Enforcement or filing of a notice of appeal in the Tax Court.	The certificate attests that the complete record is available for the purpose of the appeal. The actual record remains in the custody of the agency for use of the parties in preparing their briefs except parties must make arrangements for access to the record in Tax Court and Immigration and Naturalization cases.
4.	Setting of briefing schedule	U.S. Court of Appeals Clerk	Upon filing by the U.S. Court of Appeals of the Certificate of Record submitted by agency or the filing of the record on appeal by the Clerk of the Tax Court or Immigration and Naturalization Service.	The parties will be advised by the U.S. Court of Appeals of the filing of the Certificate of Record. Parties must calculate the due dates of briefs as prescribed by FRAP Rule 31(a).

EVENT NO.	EVENT	BY	WHEN	COMMENTS
5.	Submission of petitioner's opening brief and excerpt of record or copies of administrative proceedings as set by Local Rule 13(a)	Petitioner	Within 40 days from filing of the Certificate of Record or record by the Clerk of the Court of Appeals.	The brief and excerpt/administrative copies are filed with the Court of Appeals and served on the respondent by the petitioner.
6.	Submission of respondent's brief	Respondent	Within 30 days from the service of the petitioner's opening on respondent.	The brief is filed with the Court of Appeals and served on the petitioner.
7.	Submission of petitioner's reply brief	Petitioner	Within 14 days after the service of respondent's brief.	This brief is optional.
8.	Calendaring	Court of Appeals	As calendar space is available. Currently up to 18 months after briefing unless the case has statutory priority.	The preliminary calendar is generated from a computer bank of available cases. Cases on the calendar are checked for readiness.
9.	Record on appeal in non-tax court and non-Immigration & Naturalization Service cases.	Agency	Within 14 days of the filing of the respondent's brief.	One set of the record is received for use by the court. The respondent <u>simultaneously</u> with the filing of the respondent's brief must serve notification upon the agency that briefing is complete.
10.	Issuance of Hearing Notice	Court of Appeals Clerk	Approximately one month prior to hearing date.	Prompt acknowledgement is required. Parties will be advised when the court does not require oral argument.
11.	Hearing	Court of Appeals	As indicated on the hearing notice.	Counsel must check-in with the clerk's office no later than 30 minutes prior to the calling of the calendar.
12.	Submission	Judges of the Court	As ordered by the panel judges.	Generally, submission is simultaneous with the the close of hearing. Submission may be deferred pending receipt of information requested by the Court.
13.	Decision	Judges of the Court	Anywhere from several weeks to several months after submission.	

EVENT NO.	EVENT	BY	WHEN	COMMENTS
14.	Filing of Petition for Rehearing	"Losing" Party	within 30 days after decision is filed.	This petition is optional.
15.	Issuance of Mandate	Court of Appeals Clerk	21 days after the decision is filed, unless otherwise ordered by the Court, or 7 days following the denial of a petition for rehearing.	In MRB proceedings, wherein the enforcement is granted, denied or suspended in whole the Court will enter judgment with the decision. In all other cases, the MRB will submit a proposed judgment. The opposing party will have seven days to file objections to the proposed judgment.*
16.	Petition for Writ of Certiorari to U.S. Supreme Court.	"Losing" Party	See Supreme Court Rules	

* As January 1, 1982

(3)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ADMINISTRATIVE AGENCY CASE MANAGEMENT CHECKLIST FOR USE BY ATTORNEYS AND LITIGANTS

Short Case Caption _____ ; USCA Docket No. _____

EVENT NO.	EVENT NAME	CURRENT DUE DATE	ACTUAL COMPLETION DATE
1.	File Petition, Application, or Notice of Appeal		
2.	Satisfy U.S. Court of Appeals Docket Fee		
3.	Submit Certificate of Record	(by Agency or Tax Court Clerk)	
4.	Setting of Briefing Schedule	(by Clerk, U.S. Court of Appeals)	
5.	Submission of Opening Brief and Excerpt or Copies of Administrative Proceedings		
6.	Submission of Respondent's Brief		
7.	Submission of Reply Brief (optional)		
8.	Calendaring		
9.	Record on Appeal	(by Agency)	
10.	Issuance of Hearing Notice	(by Clerk, U.S. Court of Appeals)	
11.	Hearing		
12.	Submission		
13.	Decision		
14.	Filing of Petition for Rehearing (optional)		
15.	Issuance of Mandate		
16.	Petition for Writ of Certiorari (to U.S. Supreme Court)		

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Los Angeles, California

File No. A7 095 961

May 20, 1985

In the Matter of
ANDRLJA ARTUKOVIC
Respondent

IN DEPORTATION PROCEEDINGS

ON BEHALF OF RESPONDENT:

Ronald H. Bonaparte, Esq.
12011 San Vicente Blvd. 2nd. Flr.
Los Angeles, California 90049

ON BEHALF OF SERVICE:

Ronnie L. Edelman, Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005

DECISION OF THE IMMIGRATION JUDGE

On motion of the Trial Attorney the hearing now scheduled for July 30, 1985
will be taken off calendar.

Reece B. Robertson
Immigration Judge

CC: Alan Youtsler, Esq.
General Attorney
Los Angeles, California

LOS DIARY
MAY 23 2 30 PM '85
RECEIVED
U.S. IMMIGRATION &
NATURALIZATION
SERVICE

**BONAPARTE,
IBARRA & O'KANE**
A Professional Law Corp.

October 17, 1984

Our Case No.
Reply To
Attention.

Ronald H. Bonaparte
Olivia T. Ibarra
John J. O'Kane
Maria Pilar Luna

Of Counsel
George Yamasaki, Jr.

Administrative Supervisors
D. W. Burgoon
Audrey Leighton
Monica M. Stolze

The Honorable Reece B. Robertson
Immigration Judge
United States Department of Justice
Immigration and Naturalization Service
300 North Los Angeles Street
Los Angeles, California 90012

12011 San Vicente Blvd.
Second Floor
Los Angeles
California 90049
(213) 471-3481
Telex No. 297380

Re: Andrija Artukovic
File No. A7 095 961

Dear Judge Robertson:

111 Pine Street
Thirteenth Floor
San Francisco
California 94111
(415) 543-5401
Telex No. 470276

At the last hearing on this matter, you gave me until October 19, 1984, to file the request for discretionary relief. I am filing the following requests for discretionary relief, in addition to voluntary departure which, of course, needs no formal application. The following requests for discretionary relief are requested:

5030 Campus Drive
Newport Beach
California 92660
(714) 955-2012

1. Asylum. You will find enclosed ^{(b)(6)} two copies of form I-589, executed by [redacted] for his father who cannot sign his name. The information has been taken from transcripts of documents in the Artukovic file, which have been previously filed in this case and are a part of the record which is in your possession. You will also find one copy of form G-325A. There is no filing fee on an asylum application.

125 High Holborn
London, WCTV 6GF
England
01-242-9477
Telex No. 299085

2. Application for Suspension of Deportation. The following documents are enclosed: Form I-256A, fingerprint chart, and photographs. The form G-325A from the asylum application will be incorporated herein and used for this application. A filing fee in the amount of \$75.00 is enclosed.

National
Correspondents In:
New York
Washington, D.C.
Chicago
Houston

3. Immediate Relative Application by [redacted] for his father, Andrija Artukovic. Form I-130 executed by [redacted] and filing fee in the amount of \$35.00.

(b)(6)

(b)(6)

4. Adjustment of Status Application. The following documents are enclosed for the adjustment of status application by Andrija Artukovic: Forms I-485, G-325A, I-181, and I-468. The G-325A is incorporated from the one filed for the asylum application. Also enclosed is the filing fee in the amount of \$50.00.

International
Correspondents:
Hong Kong
Tokyo

5. Motion to Terminate Under 212(c) of the Immigration Act. I-191, the Application for Advance Permission to Return to Unrelinquished Domicile is enclosed, together with the filing fee in the amount of \$50.00.

The applications are submitted without exhibits except for the U. S. passport of Radoslav Artukovic. A xerox copy of the U. S. passport is attached with the original; we would ask that the xerox copy be certified as a true and correct copy of the original so that the original does not stay in your hands.

This letter also constitutes a motion that I be allowed to examine all exhibits in your possession that have been previously filed in this matter and become a part of the record from the inception of deportation proceedings in 1951 to the present date. I would also ask that I be allowed to identify documents in these files that can be attached to these different applications as exhibits instead of having to produce xerox copies of original documents which are in the possession of the Service and which have been previously filed in deportation proceedings in this matter. I believe identifying these documents as the exhibits would be the most expeditious way for both the Government and the Respondent to proceed in this matter, instead of cluttering up the record with documents which are already in the record. It's also the easiest way to identify documents which will be used as exhibits for these applications.

I understand that the Government may raise legal issues on the filing of both an adjustment application, immediate relative application and a motion to terminate. I am ready to argue questions on these issues as well as the suspension and asylum application at any time set by this court.

(b)(6)

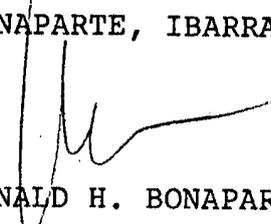
All the documents have been signed by Andrija Artukovic's son, because his father is not able to understand what he is signing nor is he able to sign his signature. The only exception is the fingerprint chart. Because of the problem having Andrija Artukovic sign this chart, the decision was made to have his son sign all the documents for him. The information on all

documents has been obtained from exhibits previously filed in deportation proceedings in this matter which are in the possession of my office.

Thank you for your courtesy.

Very truly yours,

BONAPARTE, IBARRA & O'KANE



RONALD H. BONAPARTE

RHB:ejt

Enclosures

HAND FILED

REQUEST FOR ASYLUM IN THE UNITED STATES

INS Office:
Date:

1. Family Name: ARTUKOVIC
 First Name: Andrija
 Middle Name: Marijan
 2. A number (if any or known): A7 095 961
 All other names used at any time (include maiden name if married): Anich, Alois, and Arnaut, David
 3. Sex: Male Female
 4. Marital status: Single Divorced Married Widowed
 I was born: (Month) November (Day) 29, (Year) 1899 in (Town or City) Klobuk, (State or Province) Yugoslavia (Country)
 Nationality -- at birth: Austro-Hungarian At present: stateless Other nationalities: Croatian, Yugoslavian

5. If stateless, how did you become stateless?
 I became stateless when the Government of Croatia ceased to exist at the end of World War II, and I had to flee from Croatia as a refugee.

6. Ethnic group: Croatian
 7. Religion: Roman Catholic
 8. Languages spoken: Because of senility, I can speak only Croatian. I used to speak English, Greek, Bulgarian, Italian, French, German, Czech, and Latin.
 9. Address in United States (In care of, C/O, if appropriate): (Number and street) 64B Surfside Colony, (City or town) Surfside, (State) CA (Zip Code) 90743
 10. Telephone number (include area code): 213/592-4756

11. Address abroad prior to coming to the United States
 (Number and street) 6 Zion Road, (City) Rathgar, (Province) Dublin, (Country) Ireland

12. My last arrival in the U.S. occurred on: (Mo/Day/Yr) July 16, 1948
 As a Visitor Student Stowaway Crewman Other (Specify)
 At the port of (City/State) New York, New York Means of arrival (Name of vessel or airline and flight number, etc.) TWA
 I was was not inspected Date authorized stay expires (Mo/Day/Yr) 2/7/49

13. My nonimmigrant visa number is 18, it was issued by the U.S. Consul on 7/7/48 (Mo/Day/Yr)
 at Dublin, Ireland (City, County)

14. Name and location of schools attended	Type of school	From Mo/Yr	To Mo/Yr	Highest grade completed	Title of degree or certification
University of Zagreb, Zagreb, Yugoslavia	Law School	9/1915	6/1925		Doctorate of Law

15. What specific skills do you have?
 Before my retirement I was a government lawyer and a bookkeeper.

16. Social Security No. (if any): 547 44 3340

(b)(6)

Address (Apt. No.) (No. and street) (Town or city) (Province or state) (Country)

RECEIVED	TRANS. IN	RET'D TRANS. OUT	COMPLETED
----------	-----------	------------------	-----------

19. If in the U.S. is your spouse included in your request for asylum? Yes No (If not, explain why)

20. If in the U.S. is spouse making separate application for asylum? Yes No (If not, explain why)

21. If in the U.S. are children included in your request for asylum? Yes No (If not, explain why)

My five children are all (b)(6)

22. I have 5 sons or daughters as follows: (Complete all columns as to each son or daughter. If living with you state "with me" in last column; otherwise give city and state or foreign country of son's or daughter's residence).

Name	Sex	Place of birth	Date of birth	Now living at	
(b)(6)					

23. Relatives in U.S. other than immediate family			
Name	Address	Relationship	Immigration status
(b)(6)			
			(b)(6)

24. Other relatives who are refugees but outside the U.S.		
Name	Relationship	Country where presently located
None		

25. List all travel or identity documents such as national passport, refugee convention travel document or national identity card						
Document type	Document number	Issuing country or authority	Date of issue	Date of expiration	Cost	Obtained by whom
Certificate of Identity	331/48	Ireland	6/18/48	7/16/48	unknown	ALOIS ANICH

26. Why did you obtain a U.S. visa?
To visit my relatives in the United States.

27. If you did not apply for a U.S. visa, explain why not?
N/A

28. Date of departure from your country of nationality (Mo/Day/Yr) May 1945	29. Was exit permission required to leave your country? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If so, did you obtain exit permission <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If not, explain why) I fled as a refugee when the government ceased to exist.
--	--

30. Are you entitled to return to country of issuance of your passport Yes No Travel document Yes No Or other document Yes No (If not, explain why)

I am stateless.

31. What do you think would happen to you if you returned? (Explain)

I would suffer physical persecution in Yugoslavia because of my past political activities and my expressed political opinions.

32. When you left your home country, to what country did you intend to go?

Switzerland

33. Would you return to your home country? Yes No (Explain)

See my answer to number 31.

34. Have you or any member of your immediate family ever belonged to any organization in your home country? Yes No. (If yes, provide the following information relating to each organization: Name of organization, dates of membership or affiliation, purpose of the organization, what, if any, were your official duties or responsibilities, and are you still an active member. (If not, explain)

Yes, please see Memorandum and Findings of S.I.O., Michael F. Leone, dated 5/8/59, and Court opinion including Findings of Fact and Conclusions of Law in U.S. V. Artukovic, F. Supp. 383.

35. Have you taken any action that you believe will result in persecution in your home country? Yes No (If yes, explain)

See my answer to number 34.

36. Have you ever been detained interrogated convicted and sentenced imprisoned in any country? Yes No (If yes, specify for each instance: what occurred and the circumstances, dates, location, duration of the detention or imprisonment, reason for the detention or conviction, what formal charges were placed against you, reason for the release, names and addresses of persons who could verify these statements. Attach documents referring to these incidents, if any).

See my answer to question number 34.

37. If you base your claim for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population? Yes No (If yes, explain)

See my answer to question 34.

38. Have you, or any member of your immediate family, ever been mistreated by the authorities of your home country/country of nationality? Yes No. If yes, was it mistreatment because of Race Religion Nationality Political opinion or Membership of a particular social group? Specify for each instance; what occurred and the circumstances, date, exact location, who took such action against you and what was his/her position in the government, reason why the incident occurred, names and addresses of people who witnessed these actions and who could verify these statements. Attach documents referring to these incidents.

See my answer to question number 34.

39. After leaving your home country, have you traveled through (other than in transit) or resided in any other country before entering the U.S.? Yes No (If yes, identify each country, length of stay, purpose of stay, address, and reason for leaving, and whether you are entitled to return to that country for residence purposes.)

See my Application by Displaced Person Residing in the United States to Adjust Immigration Status, dated May 7, 1951.

40. Why did you continue traveling to the U.S.?

To visit my relatives.

41. Did you apply for asylum in any other country? Yes—Give details No—Explain why not

I applied for asylum in both Switzerland and Ireland and was forced to leave both countries.

42. Have you been recognized as a refugee by another country or by the United Nations High Commissioner for Refugees? Yes No (If yes, where and when)

43. Are you registered with a consulate or any other authority of your home country abroad? Yes—Give details No—Explain why not

44. Is there any additional information not covered by the above questions? (If yes, explain)

There are complete sets of exhibits and transcripts in connection with the extradition case of U.S. v. Artukovic, and all the proceedings before the Immigration and Naturalization Service.

45. Under penalties of perjury, I declare that the above and all accompanying documents are true and correct to the best of my knowledge and belief.

Andrija Artukovic

(Signature of Applicant)



SON

10/17/84

(Date)

(b)(6)

(Interviewing Officer)

ACTION BY ADJUDICATING OFFICER

(Adjudicating Officer)

(Date of Interview)

GRANTED

DENIED

(Date)

Advisory opinion requested

(Date)

APPLICANT

TYPE OR PRINT ALL INFORMATION IN BLACK
LAST NAME NAM FIRST NAME Andrija MIDDLE NAME Marijan

PLACE OF PERSON FINGERPRINTED

ALIASES, AKA

O
R
I

CAINSLAOD

PLACE OF PERSON FINGERPRINTED
64B Surfside Colony
64B Surfside Colony
Surfside, CA 90720

Alois Anich
Alois Anich
David Arnaut

USINS
LOS ANGELES CA

DATE OF BIRTH DOB
Month Day Year
11/29/1899

CITIZENSHIP CIZ
Stateless

SEX RACE HGT. WGT. EYES HAIR PLACE OF BIRTH POB
M cauc 5'8" 130 brn wte Klubuk, Yugoslavia

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS

YOUR NO. OCA

LEAVE BLANK

WORK AND ADDRESS
None/Retired

FBI NO. FBI

CLASS

ARMED FORCES NO. MNU

REF.

OTHER FINGERPRINTED

Immigration

SOCIAL SECURITY NO. SOC

547 44 3340

MISCELLANEOUS NO. MNU



2. R. INDEX

3. R. MIDDLE

4. R. RING

5. R. LITTLE



7. L. INDEX

8. L. MIDDLE

9. L. RING

10. L. LITTLE



LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

U.S. Department of Justice
 Immigration and Naturalization Service

FORM G-325A
BIOGRAPHIC INFORMATION

OMB No. 1115-0066
 Approval expires 4-30-85

(Family name) ARTUKOVIC	(First name) Andrija	(Middle name) Marijan	<input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	BIRTHDATE(Mo.-Day-Yr.) 11/29/1899	NATIONALITY Yugoslavia	FILE NUMBER A 7-095-961
ALL OTHER NAMES USED (including names by previous marriages) Anich, Alois, and Arnaut, David			CITY AND COUNTRY OF BIRTH Klobuk, Yugoslavia		SOCIAL SECURITY NO. (If any) 547-44-3340	
FATHER ARTUKOVIC, Marijan, Klobuk, Yugoslavia Deceased						
MOTHER(Maiden name) RASIC, Ruza, Klobuk, Yugoslavia Deceased						
HUSBAND(If none, so state) OR WIFE (b)(6)						
FORMER HUSBANDS OR WIVES(If none, so state)						
FAMILY NAME (For wife, give maiden name) FIRST NAME BIRTHDATE DATE & PLACE OF MARRIAGE DATE AND PLACE OF TERMINATION OF MARRIAGE						
None						

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM		TO	
				MONTH	YEAR	MONTH	YEAR
64B Surfside Colony	Surfside	CA	USA	7	48	PRESENT TIME	

APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM		TO	
				MONTH	YEAR	MONTH	YEAR
6 Zion Road	Rathgar	Dublin	Ireland	6	'47	7	'48

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE.) LIST PRESENT EMPLOYMENT FIRST

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)	FROM		TO	
		MONTH	YEAR	MONTH	YEAR
None					PRESENT TIME
Employee, Government of Croatia	Lawyer	4	'41	5	'45

Show below last occupation abroad if not shown above. (Include all information requested above.)

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:	SIGNATURE OF APPLICANT	DATE
<input type="checkbox"/> NATURALIZATION <input type="checkbox"/> STATUS AS PERMANENT RESIDENT	<i>Andrija Artukovic</i>	10/17/84
<input checked="" type="checkbox"/> OTHER (SPECIFY): Form I-589	<i>[Redacted]</i>	<i>sq</i>
Are all copies legible? <input checked="" type="checkbox"/> Yes	IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN ALPHABET IN THIS SPACE:	(b)(6)

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
ARTUKOVIC	Andrija	Marijan	A7 095 961

File No. A 7-095-961

**APPLICATION FOR SUSPENSION OF
DEPORTATION**

FEE STAMP

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM)

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my **son and daughters**

(Husband, wife, father, mother, child, children)
who is/are citizen(s) (b)(6) lawful permanent resident(s) of the United States; and I have been physically present in the United States without any absence since July 1948

(2a) My present true name is: (First, Middle, Last) Andrija Marijan Artukovic		(2b) My name given at birth was: Andrija Marijan Artukovic	
(3) I have been known by the additional names: Alois Anich, and Arnaut, David	My sex is Male	(Height) 5'8"	(Color of eyes) brn
(4) I was born at (Place and country) Klobuk, Yugoslavia	on (Month) (Day) (Year) 11/29/1899	(Color of hair) white	(Complexion) fair
(5) I now reside at (Apt. number and/or in care of) 64B Surfside Colony,		(City or town) Surfside,	(State) (ZIP Code) CA 90720
My nationality is (Country of which citizen or subject) Stateless			

(6) I first entered the United States under the name of (First) Alois (Middle) (Last) Anich on (Month) (Day) (Year) 7/16/48 At (seaport, airport, or land border port) New York, New York	
Name of vessel or other means of conveyance TWA	I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other) Visitor
For a period of time to expire (Insert date of period for which admitted) 2/7/49	My last extension of stay in the United States expired on (date) 2/7/49

If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible
Adjustment application was inspected, never departed.

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates: (If you have never departed from the United States since your original date of entry, insert "no departures.")

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Answer Yes or No)
PORT	DATE (Month-Day-Year)	PORT	DATE (Month-Day-Year)	
None		None		

(7) During the last 10 years, I have been in the United States as listed below: (If less than 10 years, set forth the information for the period you have been in the United States.) List present address FIRST, and work back.

STREET AND NUMBER—CITY OR TOWN—STATE (Include number of hotel room, furnished room or apartment in present address.)	FROM—		TO—	
	Month	Year	Month	Year
64B Surfside Colony, Surfside, CA 90720	7	1948	Present	

(Use a separate sheet for additional entries.)

(8) During my residence at the places in the United States named above I was employed by the following named persons or firms: (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified.)

FULL NAME OF EMPLOYER	ADDRESS OF EMPLOYER	EARNINGS PER WEEK (Approximately)	TYPE OF WORK PERFORMED	FROM—		TO—	
				Month	Year	Month	Year
Retired							

(Use a separate sheet for additional entries.)

(9) If self-employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom
N/A

(b)(6)

(10) I AM MARRIED If married, the name of my spouse is _____ We were married on _____ at (City or town) _____ (State or country) _____
 AM NOT MARRIED

(12) I have have not been previously married: (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage)

(13) My present spouse has has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage)

(14) My spouse is is not employed. If employed, give salary and name and address of place of employment

(b)(6)

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse):

Cash, Stocks and Bonds	<u>(b)(6)</u>	Cash, Stocks and Bonds	\$ same as spouse
Real Estate <u>residence</u>		Real Estate	\$
Other (Describe)		Other (Describe)	\$
(b)(6) Total		Total	\$

(16) I have 5 children. Give information requested in each column:

NAME	AGE	PLACE OF BIRTH	NOW RESIDING AT—	CITIZEN OF	LAWFUL PERMANENT RESIDENT OF U.S.
(b)(6)					

(b)(6)

The names, assets, and earnings of my children in the United States who have separate incomes are:
All children have separate incomes.

- (17) I have have not after entry into the United States acquired the status of an exchange alien.
- (18) I have have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 23, 1950, and the Immigration and Nationality Act.
- (19) I have have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received _____

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) _____
 Date and place of entry on duty _____ N/A _____ Date of discharge _____
 Type of discharge (honorable, dishonorable, etc.) _____ I served in active duty status from _____ to _____

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes No .
 If "Yes," give date, Selective Service number, local draft board number and your last draft classification, _____
 Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes No

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes No

(23) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes No

(24) List membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or a foreign country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization:
 See Memorandum and Findings of SIO, Michael F. Leone, dated 5/8/59, and Court opinion including Findings of Fact and Conclusions of Law in U.S. v. Artukovic, F. Supp. 383.

(25) I have have never (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following:
 I have been arrested in extradition proceedings in 1951 but this is my only arrest outside of detention by the Service.

(Use a separate sheet for additional entries.)

(26) I can return to my country of Birth Nationality Last Residence without fear of persecution. If unable to return to any of these countries, give reasons (Check the appropriate block or blocks)
 I applied for asylum in both Switzerland and Ireland and was forced to leave both countries. I cannot return to my country of birth.

(27) I would would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain:
 I am stateless and no country would grant me a visa.

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States; otherwise show only country.

(b)(6)

NAME	RELATIONSHIP TO ME	NOW RESIDING AT:	BIRTHPLACE	CITIZEN OF	LAWFUL PERMANENT RESIDENT OF U.S.?

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country _____
N/A

(30) My father is is not employed. If employed, give salary and place of employment _____

N/A

(31) My mother is is not employed. If employed, give salary and place of employment _____

N/A

(32) The assets of my parents (not including clothing and household necessities) are:

Assets of father consist of the following:

Cash, Stocks and Bonds \$ N/A
Real Estate \$ _____
Other (Describe) \$ _____
Total \$ _____

Assets of mother consist of the following:

Cash, Stocks and Bonds \$ _____
Real Estate \$ _____
Other (Describe) \$ _____
Total \$ _____

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 2 for documents which must be attached.)

Nature of Document

Documentation will be provided for out of the record already on file with the Immigration Court in this matter.

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered () to (), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name.

(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above-named applicant at _____
this _____ day of _____, 19 _____

Immigration Judge

(See instructions on reverse. Please typewrite or print plainly in ink)

FEE STAMP

Alien Registration No.
A7 095 961

Date

(1) I hereby apply for permission to return to the United States under the authority contained in Section 212(c) of the Immigration and Nationality Act.

MY NAME IS: (First) Andrija (Middle) Marijan (Last) ARTUKOVIC

DATE OF BIRTH: (Month, day, year) 11/29/1899 PLACE OF BIRTH: (City, province, country) Klubuk, Yugoslavia I AM A CITIZEN OF: (Country) Stateless

PRESENT ADDRESS: (Street and number, apt. no., city, state, country) 64B Surfside Colony, Surfside, CA 90743 EMPL 22 10/18/84
1000111:R014*15:10

(2) I was lawfully admitted to the United States for permanent residence at:

PORT: New York, New York DATE: (Month, day, year) 7/16/48 NAME OF VESSEL OR OTHER MEANS OF CONVEYANCE: TWA, flight number unknown

(3) Since that admission I have departed from and reentered the United States as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES			PURPOSE OF TRIP
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	
None						

(4) During the past 7 years I have resided at the following places: (List present address first)

(Complete Address - Include Apt. No.)	From -	To -
64B Surfside Colony, Surfside, CA 90743	7/ 19 48	Present time
	19	19
	19	19
	19	19
	19	19

(5) During the past 7 years I have been employed as follows: (List present employment first)

From -	To -	Employer's Name	Address	Occupation or Type of Business
19	19	Retired		
19	19			
19	19			
19	19			

(b)(6) (6) My immediate family consists of the following persons:

Name	Relation	Date and Country of Birth	Citizen of	Present Address

(7) I have not depart(ed) temporarily from the United States on or about ***SEE ATTACHMENT*** and will remain (Intend to or have) (Date)
in (Country) approximately (Length of Time) for the purpose of (Port)
and expect to apply for admission at (Port)

RECEIVED	TRANS. IN	RET'D-TRANS. OUT	COMPLETED

(8) I believe I may be inadmissible to the United States for the following reasons:

I may be excludible under Section 212(A)(33) of the Act.

I understand that the information herein contained may be used in any criminal or civil proceedings, including deportation or exclusion, hereafter instituted against me.

I certify that the statements above are true and correct to the best of my knowledge and belief.

(b)(6)

Indira M. ...

(Signature of Applicant)

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

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

[Signature]

12011 San Vicente Bl., 2nd Flr.
Los Angeles, CA 90049

OCT 18 1984

(Signature)

(Address)

(Date)

Decision:

Application granted upon the following terms and conditions:

DATE
OF
ACTION
DD

DISTRICT

INSTRUCTIONS TO THE APPLICANT

READ INSTRUCTIONS CAREFULLY - FEE WILL NOT BE REFUNDED

- (1) This form when completely executed, should be submitted to the District Director of the Immigration office having jurisdiction over your place of permanent residence.
- (2) A fee of fifty dollars (\$50) must be paid for filing this application. It cannot be refunded regardless of the action taken on the application. DO NOT PAY IN CASH. ALL FEES MUST BE SUBMITTED IN THE EXACT AMOUNT. Payment by check or money order must be drawn on a bank or other financial institution located in the United States and be payable in United States currency. If applicant resides in Guam, check or money order must be payable to the "Treasury, Guam." If Applicant resides in the Virgin Islands, check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." All other applicants must make the check or money order payable to the "Immigration and Naturalization Service." When check is drawn on account of a person other than the applicant, the name of the applicant must be entered on the face of the check. If application is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Immigration and Naturalization Service in United States currency. Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any document issued pursuant thereto invalid. A charge of \$5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.
- (3) If the space provided in the form is insufficient to answer a question fully, you should attach a sheet of paper containing your answer which should be numbered to correspond with the question.
- (4) In Part (3) where absences have been numerous as a resident alien border crosser or as a seaman it will be sufficient to give the approximate number of such absences and the years covered thereby.
- (5) List specifically and in detail your reasons for possible inadmissibility. For example, if application is made because the applicant may be inadmissible due to conviction of crime, the designation of the crime, the date and place of its commission and of conviction therefor, and the sentence or other judgement of the court shall be stated in the application. In the case of disease, mental or physical defect or other disability, give exact description, duration thereof and date and place last treated.
- (6) If applicant is mentally incompetent or is under 14 years of age, the application shall be executed by his parent or guardian.

The authority for collection of the information requested on this form is contained in 8 U.S.C. 1103(a). Submission of the information is voluntary. The principal purpose for which the information is solicited is for use by a District Director of the Immigration and Naturalization Service to determine whether the applicant is eligible for advance permission to return to an unrelinquished domicile pursuant to the provisions of section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c). The information solicited may also, as a matter of routine use, be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies, the Department of Defense including any component thereof (if the applicant has served, or is serving in the Armed Forces of the United States), the Department of State, Central Intelligence Agency, Interpol, and individuals and organizations, during the course of investigation to elicit further information required by the Service to carry out its functions. Failure to provide any or all of the solicited information may result in the denial of the application.

ATTACHMENT TO FORM I-191

Number 6, My immediate family consists of the following persons: Continued...

(b)(6)

APPLICATION FOR STATUS AS PERMANENT RESIDENT

FEE STAMP

File No.

APPLICATION FOR THE BENEFITS OF SECTION:

Sec. 209(b), I&N Act Sec. 245, I&N Act

Sec. 214(d), I&N Act Sec. 249, I&N Act

Sec. 13, Act of 9/11/57

(DO NOT WRITE ABOVE THIS LINE.) (SEE INSTRUCTIONS BEFORE FILLING IN APPLICATION. IF YOU NEED MORE SPACE TO ANSWER FULLY ANY QUESTION ON THIS FORM, USE A SEPARATE SHEET AND IDENTIFY EACH ANSWER WITH THE NUMBER OF THE CORRESPONDING QUESTION. FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

1. I hereby apply for the status of a lawful permanent resident alien on the following basis: (Check one of the boxes below.)

A. As a person granted asylum under Section 207(a) to whom an immigrant visa is immediately available (Section 209(b), I&N Act). (No fee required.)

B. As a person who entered the U.S. with a visa issued to me as the fiancée or fiancé of a U.S. citizen whom I married within 90 days after my entry, or as a child of such fiancée or fiancé (Sec. 214(d), I&N Act).

C. As a former government official, or as a member of the immediate family of such official (Section 13, Act of September 11, 1957).

D. As a person to whom an immigrant visa is immediately available, other than one described above (Section 245, I&N Act).

E. As a person who has resided in the United States continuously since prior to July 1, 1924 (Section 249, I&N Act).

F. As a person who has resided in the United States continuously since a date on or after July 1, 1924, but before June 30, 1948 (Section 249, I&N Act).

G. As a motion to reopen or to reconsider my case in deportation proceedings before an immigration judge. (The fee for this request is \$50.00.)

2. My name is (family in capital letters) (First Given) (Middle)

ARTUKOVIC Andrija Marijan

3. Sex Male Female

Phone Number 213/592-4756

4. I reside in the United States at: (c/o) (Apt. No.) (No. and Street)

64B Surfside Colony,

(City) (State) (ZIP Code)

Surfside, CA 90743

5. Have you ever applied before for permanent resident status in the U.S.? No Yes

(If "Yes", give the date and place of filing and final disposition.)

6. My file number is A- 7-095-961

7. I am a citizen of (Country) Stateless

8. Date of Birth (Month/Day/Year) 11/29/1899

9. Place of Birth (City or Town) (County, Province, or State) (Country)

Klobuk, Yugoslavia

10. Name as appears on nonimmigrant document (Form I-94)

Alois Anich

I last arrived in the United States at the port of (City and State) New York, New York

on (Month) (Day) (Year) 7/16/48

by (Name of vessel or other means of travel) TWA

as a (visitor, student, crewman, parolee, etc.) Visitor

I was was not inspected.

11. My nonimmigrant visa, number 18 was issued by the United States Consul at (City) (Country) Dublin, Ireland

on (Month) (Day) (Year) 7/7/48

12. I am single married divorced widowed

13. I have been married _____ times, including my present marriage, if now married. (If you are now married give the following:)

a. Number of times my husband or wife has been married 1

b. Name of husband or wife (last name) (b)(6)

c. My husband or wife resides with me apart from me at Address (Apt. No.) No. & Street (Town or City) (Province or State) (Country)

14. a. I have 5 sons or daughters as follows: (Complete all columns as to each son or daughter; if living with you state "with me" in last column; otherwise give city and state or country of son's or daughter's residence.) (b)(6)

Name	Sex	Place of Birth	Date of Birth	Now living at

b. The following members of my family are also applying for permanent resident status:

none

RECEIVED	TRANS. IN	RETD. TRANS. OUT	COMPLETED

15. I list below all organizations, societies, clubs, and associations past or present, in which I have held membership in the United States or a foreign country, and the periods and places of such membership. (If you have never been a member of any organization, state "None".)

See Memorandum and Findings of S.I.O., Michael F. Leone, dated 5/8/59, and Court opinion including Findings of Fact and Conclusions of Law in U.S. v. Artukovic,

F. Supp. 383.

16. I have not have been treated for a mental disorder, drug addiction or alcoholism. (If you have been, explain.)

17. I have not have been arrested, convicted or confined in a prison. (If you have been, explain.)

I have been arrested in extradition proceedings in 1951, but this is my only arrest outside of detention by the Service.

18. I have not have been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action. (If you have been, explain.)

19. APPLICANTS FOR STATUS AS PERMANENT RESIDENTS MUST ESTABLISH THAT THEY ARE ADMISSIBLE TO THE UNITED STATES. EXCEPT AS OTHERWISE PROVIDED BY LAW, ALIENS WITHIN ANY OF THE FOLLOWING CLASSES ARE NOT ADMISSIBLE TO THE UNITED STATES AND ARE THEREFORE INELIGIBLE FOR STATUS AS PERMANENT RESIDENTS:

Aliens who have committed or who have been convicted of a crime involving moral turpitude (does not include minor traffic violations); aliens who have been engaged in or who intend to engage in any commercialized sexual activity; aliens who are or at any time have been, anarchists, or members of or affiliated with any Communist or other totalitarian party, including any subdivision or affiliate thereof; aliens who have advocated or taught, either by personal utterance, or by means of any written or printed matter, or through affiliation with an organization, (i) opposition to organized government, (ii) the overthrow of government by force or violence, (iii) the assaulting or killing of government officials because of their official character, (iv) the unlawful destruction of property, (v) sabotage, or (vi) the doctrines of world communism, or the establishment of a totalitarian dictatorship in the United States; aliens who intend to engage in prejudicial activities or unlawful activities of a subversive nature; aliens who have been convicted of violation of any law or regulation relating to narcotic drugs or marihuana, or who have been illicit traffickers in narcotic drugs or marihuana; aliens who have been involved in assisting any other aliens to enter the United States in violation of law; aliens who have applied for exemption or discharge from training or service in the Armed Forces of the United States on the ground of alienage and who have been relieved or discharged from such training or service; medical graduates (other than those for whom Relative petitions have been approved) coming principally to perform services as members of the medical profession, unless they have passed Parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of the Department of Health and Human Services) and who are competent in oral and written English.

Do any of the foregoing classes apply to you? No Yes (If answer is Yes, explain)

20. (COMPLETE THIS BLOCK ONLY IF YOU CHECKED BOX "A", "B", "C", or "D" OF BLOCK 1)

APPLICANTS WHO CHECKED BOX "A" "B" "C" OR "D" OF BLOCK 1 IN ADDITION TO ESTABLISHING THAT THEY ARE NOT MEMBERS OF ANY OF THE INADMISSIBLE CLASSES DESCRIBED IN BLOCK 10 ABOVE MUST, EXCEPT AS OTHERWISE PROVIDED BY LAW, ALSO ESTABLISH THAT THEY ARE NOT WITHIN ANY OF THE FOLLOWING INADMISSIBLE CLASSES:

Aliens who are mentally retarded, insane, or have suffered one or more attacks of insanity; aliens afflicted with psychopathic personality, sexual deviation, mental defect, narcotic drug addiction, chronic alcoholism or any dangerous contagious disease; aliens who have a physical defect, disease or disability affecting their ability to earn a living; aliens who are paupers, professional beggars or vagrants; aliens who are polygamists or advocate polygamy; aliens who intend to perform skilled or unskilled labor and who have not been certified by the Secretary of Labor (see Instruction 10); aliens likely to become a public charge; aliens who have been excluded from the United States within the past year, or who at any time have been deported from the United States, or who at any time have been removed from the United States at Government expenses; aliens who have procured or have attempted to procure a visa by fraud or misrepresentation; aliens who have departed from or remained outside the United States to avoid military service in time of war or national emergency; aliens who are former exchange visitors who are subject to but have not complied with the two year foreign residence requirement.

Do any of the foregoing classes apply to you? No Yes (If answer is Yes, explain)

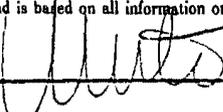
21. I do not do intend to seek gainful employment in the United States. If you intend to seek gainful employment in the United States, state the occupation you intend to follow. retired

22. (Complete this block only if you checked box D of block 1)

- a. I have a priority on the consular waiting list at the American Consulate at _____ as of _____ (City) _____ (Date)
- b. A visa petition according me immediate relative preference status was approved by the district director at Los Angeles, CA (City and State) on Submitted herewith (Date)
- c. A visa petition has not been approved in my behalf but I claim eligibility for preference status because my spouse my parent is the beneficiary of a visa petition approved by the district director at _____ on _____ (City and State) _____ (Date)
- d. A visa petition in my behalf accompanies this application.
- e. Other (Explain)

23. (Complete this box only if you checked Box E or F of Block 1)

- A. I first arrived in the United States at (Port) _____ on (Date) _____ by means of (Name of vessel or other means of travel) _____
- I was was not inspected by an immigration officer _____
- B. I entered the U.S. under the name (Name at time of entry) _____ and I was destined to (City and State) _____ I was coming to join (Name and relationship) _____
- C. Since my first entry I have not have been absent from the United States. (If you have been absent, attach a separate statement listing the port, date and means of each departure from and return to the U.S.)

24. <input checked="" type="checkbox"/> Completed Form G-325A (Biographic Information) is attached as part of this application.	<input type="checkbox"/> Completed Form G-325A (Biographic Information) is not attached as applicant is under 14 years of age.
25. IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS, WRITE YOUR NAME IN YOUR NATIVE ALPHABET BELOW:	Signature of Applicant: <u>Andrijalita...</u> (b)(6) Date of Signature: <u>October 17, 1984</u> (b)(6)
26. (SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT.) I declare that This document was prepared by me at the request of the applicant and is based on all information on which I have any knowledge. <div style="text-align: center;">  Date: <u>10/17/84</u> </div>	Address of person preparing form, if other than applicant: <u>12011 San Vicente Bl., 2nd Floor</u> <u>Los Angeles, CA 90049</u> Occupation: <u>Attorney at Law</u>

(Application not to be signed below until applicant appears before an officer of the Immigration and Naturalization Service for examination)

I, _____, do swear (affirm) that I know the contents of this application subscribed by me including the attached documents, that the same are true to the best of my knowledge, and that corrections numbered () to () were made by me or at my request, and that this application was signed by me with my full, true name:

(Complete and true signature of applicant)

Subscribed and sworn to before me by the above-named applicant at _____ on _____ (Month) _____ (Day) _____ (Year)

(Signature and title of officer)

U.S. Department of Justice
 Immigration and Naturalization Service

FORM G-325A
BIOGRAPHIC INFORMATION

OMB No. 1115-0066
 Approval expires 4-30-85

(Family name) ARTUKOVIC	(First name) Andrija	(Middle name) Marijan	<input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	BIRTHDATE(Mo.-Day-Yr.) 11/29/1899	NATIONALITY Yugoslavia	FILE NUMBER A 7-095-961
ALL OTHER NAMES USED (Including names by previous marriages) Anich, Alois, and Arnaut, David			CITY AND COUNTRY OF BIRTH Klobuk, Yugoslavia		SOCIAL SECURITY NO. (847) 44 3340	
FATHER: ARTUKOVIC, Marijan, Klobuk, Yugoslavia Deceased						
MOTHER(Maiden name): BASIC, Ruza, Klobuk, Yugoslavia Deceased						
HUSBAND(if none, so state) OR WIFE (b)(6)	FAMILY NAME (for wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
None						
FORMER HUSBANDS OR WIVES(if none, so state)						
FAMILY NAME (for wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE		
None						
APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.						
STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	TO YEAR	PRESENT TIME
64B Surfside Colony	Surfside	CA	USA	7	'48	
APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR						
STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	TO YEAR	PRESENT TIME
6 Zion Road	Rathgar	Dublin	Ireland	6	'47	7 '48
APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE.) LIST PRESENT EMPLOYMENT FIRST						
FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION(SPECIFY)	FROM MONTH	TO YEAR	PRESENT TIME		
none/Retired						
Employee, Government of Croatia	Lawyer	4	'41	5 '45		
Show below last occupation abroad if not shown above. (Include all information requested above.)						
THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:			SIGNATURE OF APPLICANT		DATE	
<input type="checkbox"/> NATURALIZATION			<i>Andrija Artukovic</i>		10/17/84	
<input checked="" type="checkbox"/> STATUS AS PERMANENT RESIDENT						
<input type="checkbox"/> OTHER (SPECIFY):						
Are all copies legible? <input checked="" type="checkbox"/> Yes			IF YOUR NATIVE ALPHABET IS IN OTHER THAN		ALPHABET IN THIS SPACE: (b)(6)	

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
ARTUKOVIC	Andrija	Marijan	A7-095-961

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Processing Sheet

Application of
Petition Form No.

I-485

File No. A7 095 961

DATA COLLECTION FOR ALIEN DOCUMENTATION,
IDENTIFICATION & TELECOMMUNICATION SYSTEM (ADIT)

Please print or type information requested below:

COMPLETE NAME Andrija Marijan Artukovic

COMPLETE MAILING ADDRESS 64B Surfside Colony, Surfside, CA 90720

MOTHER'S FIRST NAME Ruza

FATHER'S FIRST NAME Marijan

CITY/TOWN/VILLAGE OF BIRTH Klobuk, Yugoslavia

CITY OF RESIDENCE WHEN APPLYING
FOR A VISA OR IMMIGRANT STATUS Surfside, CA

CITY OF DESTINATION AT TIME OF
ORIGINAL ADMISSION New York, New York

LOCATION OF CONSULATE WHERE IMMIGRANT
VISA OBTAINED (OR IMMIGRATION OFFICE
WHERE ADJUSTED) Los Angeles, CA

DATE OF BIRTH 11/29/1899

PORT OF ENTRY WHEN ADMITTED AS IMMIGRANT
OR OFFICE WHERE ADJUSTED TO LAWFUL
PERMANENT RESIDENT Los Angeles, CA

SYMBOL ADMITTED UNDER (CLASSIFICATION) _____

DATE ADMITTED OR ADJUSTED TO LAWFUL PERMANENT RESIDENT _____

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

Keep this sheet on top of all material in file until initial decision is made

U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Memorandum of Creation of Record
of Lawful Permanent Residence

Place
File No. A7 095 961

Status as a lawful permanent resident of the United States is accorded:

Name In Care Of Street Address Apt. No. City, State, Zip	Andrija Marijan Artukovic			Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Date of Birth (Month/Day/Year) 11/29/1899	
	64B Surfside Colony Surfside, CA 90720			City of Birth Klobuk	Country of Birth Yugoslavia	
				Country of Nationality Stateless	Country of Last Residence Ireland	
				Occupation Retired	N/I Class at time of Adj.	Year Adm. to U.S. or Year of Change to Present NI Class (whichever most recent) 1948
Marital Status	<input type="checkbox"/> Single <input checked="" type="checkbox"/> Married	<input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Separated	Priority Date (Month/Day/Year)	Preference (If any)	Country to Which Chargeable (If any)	
Section 212 (a) (14) Labor Certification	<input type="checkbox"/> Applicable-Submitted <input checked="" type="checkbox"/> Not Applicable		Mother's First Name Ruza		Father's First Name Marijan	
Last NIV Issued at (U.S. Consulate Post) Dublin, Ireland		Date of Issuance of Last NIV 7/7/48	Number of Last NIV 18		Classification A1B1A0R	
Under the following provision of law						
<input type="checkbox"/> Public Law 95-412		<input type="checkbox"/> Sec. 209 (a) of the I & N Act	<input type="checkbox"/> Sec. 249 of the I & N Act		<input type="checkbox"/> Other law (Specify)	
<input type="checkbox"/> Public Law 96-212		<input type="checkbox"/> Sec. 209 (b) of the I & N Act	<input type="checkbox"/> Sec. 1 of the Act of 11/2/66			
<input type="checkbox"/> Private Law No. _____ of the _____ Congress _____ Session		<input type="checkbox"/> Sec. 244 () () of the I & N Act	<input type="checkbox"/> Sec. 13 of the Act of 9/11/57			
		<input type="checkbox"/> Sec. 245 of the I & N Act	<input type="checkbox"/> Sec. 214 (d) of the I & N Act			
As of _____ at _____			PORT OF ENTRY FOR PERMANENT RESIDENCE			
Class of admission (Insert Symbol) _____						
REMARKS						
RECOMMENDED BY: (Immigration Officer) _____ (Date) _____			DATE OF ACTION DD DISTRICT			
FOR USE BY VISA CONTROL OFFICE						
Date _____						
Foreign State _____						
Preference Category _____						
Number _____						
Month of Issuance _____						
Signed _____ (Visa Office, Dept. of State)						

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: I-485 Andrija Artukovic	DATE <hr/> FILE No.
-----------------------------------	------------------------

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME Andrija Marijan Artukovic	<input type="checkbox"/> Petitioner <input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Beneficiary <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code) 64B Surfside Colony, Surfside, CA 90743	
NAME _____	<input type="checkbox"/> Petitioner <input type="checkbox"/> Applicant <input type="checkbox"/> Beneficiary <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)	

Check Applicable Item(s) below:

1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia
California Supreme Court and am not under a
(Name of Court)
 court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.

2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

3. I am associated with _____, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)

4. Others (Explain fully.)

SIGNATURE 	COMPLETE ADDRESS 12011 San Vicente Boulevard, 2nd Fl. Los Angeles, California 90049
NAME (Type or Print) RONALD H. BONAPARTE/ OLIVIA T. IBARRA/JOHN J. O'KANE/ MARIA PILAR LUNA	TELEPHONE NUMBER (213) 471-3481

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: RONALD H. BONAPARTE
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:
 Form I-485 (b)(6)

NAME OF PERSON CONSENTING ANDRIJA MARIJAN ARTUKOVIC	SIGNATURE OF PERSON 	DATE OCT 18 1984
--	-------------------------	---------------------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0054

Approval expires 4-83

**PETITION TO CLASSIFY STATUS OF ALIEN RELATIVE
FOR ISSUANCE OF IMMIGRANT VISA**

Fee Stamp

*(PLEASE NOTE - YOU ARE THE PETITIONER AND
YOUR RELATIVE IS THE BENEFICIARY)*

TO THE SECRETARY OF STATE:

The petition was filed on -----
The petition is approved for status under
section:

- SPOUSE,
201 (b) CHILD 203 (a) (2)
- 201 (b) PARENT 203 (a) (4)
- 203 (a) (1) 203 (a) (5)

DATE
OF
ACTION

DD

DISTRICT

REMARKS

- PERSONAL INTERVIEW CONDUCTED
- DOCUMENT CHECK ONLY
- FIELD INVESTIGATION COMPLETED
- APPROVAL PREVIOUSLY FORWARDED

EMPL 22 10/ 8/84

(PETITIONER IS NOT TO WRITE ABOVE THIS LINE)

1. Name of beneficiary (Last, in CAPS) (First) (Middle) ARTUKOVIC Andrija Marijan		2. Do Not Write in This Space	3. Beneficiary's marital status: <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Single
4. Other names used by beneficiary (including maiden name if married) Anich, Alois, and Arnaut, David			5. Has this beneficiary ever been in the U.S.? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
6. Country of beneficiary's birth (b)(6) Yugoslavia	7. Date of beneficiary's birth (Month, day, year) 11/29/1899		8. Are beneficiary and petitioner related by adoption? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

16. Check the appropriate box below and furnish the information required for the box checked:

Beneficiary will apply for a visa abroad at the American Consulate in _____
(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

Beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at _____
Los Angeles, California
(CITY) (STATE)

If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in _____
(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

17. Address in the United States where beneficiary will reside _____
64B Surfside Colony, Surfside, CA 90743
(City) (State)

18. Address at which beneficiary is presently residing (Apt. No.) (Number and street) (Town or city) (Province or State) (ZIP Code)
same as number 17, above

19. (a) Beneficiary's address abroad (if any) is: _____
N/A
(Number and Street) (Town or City) (Province) (Country)

(b) If the beneficiary's native alphabet is other than Roman letters, write his/her name and address in the native alphabet:
(Name) (Number and Street) (Town or City) (Province) (Country)

OVER

If beneficiary is in the United States, give the following information concerning beneficiary:

(a) Last arrived in U.S. as Visitor
(Visitor, student, exchange alien, crewman, stowaway, etc.) on
(Month) (Day) (Year)
7/16/48

(b) Date beneficiary's stay expired or will
expire as shown on his Form I-94 or I-95.
(Month) (Day) (Year)
2/7/49

(c) Beneficiary's File number
if any
A-7 095 961

(d) Name and address of beneficiary's present employer

Retired

(b)(6)

(e) Date beneficiary began this
employment

1965

CERTIFICATION OF PETITIONER

I certify, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

OCT 18 1984

Dated on (date)

Signature

(b)(6)

SIGNATURE OF PERSON PREPARING FORM IF OTHER THAN PETITIONER

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

OCT 18 1984

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: I-130 (b)(6) Petitioner- Beneficiary-Andrija M. Artukovic	DATE FILE No.
---	----------------------

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s): (b)(6)

NAME Andrija Marijan Artukovic	<input type="checkbox"/> Petitioner <input type="checkbox"/> Applicant <input checked="" type="checkbox"/> Beneficiary <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code) 64B Surfside Colony, Surfside, CA 90743	

Check Applicable Item(s) below:

1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia
California Supreme Court and am not under a
(Name of Court)
 court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.

2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

3. I am associated with _____ the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)

4. Others (Explain fully.)

SIGNATURE	COMPLETE ADDRESS 12011 San Vicente Boulevard, 2nd Fl. Los Angeles, California 90049
-----------	---

NAME (Type or Print) RONALD H. BONAPARTE/ OLIVIA T. IBARRA/JOHN J. O'KANE/ MARIA PILAR LUNA	TELEPHONE NUMBER (213) 471-3481
---	------------------------------------

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: Ronald H. Bonaparte
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:
 Form I-130

M 	(b)(6)	DATE OCT 18 1984
--	--------	---------------------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

(See instructions on reverse. Please typewrite or print plainly in ink)	FEE STAMP
Alien Registration No. <div style="text-align: center; font-weight: bold;">A7 095 961</div>	
Date	

(1) I hereby apply for permission to return to the United States under the authority contained in Section 212(c) of the Immigration and Nationality Act.

MY NAME IS: ^(First) Andrija ^(Middle) Marijan ^(Last) ARTUKOVIC		
DATE OF BIRTH: <i>(Month, day, year)</i> 11/29/1899	PLACE OF BIRTH: <i>(City, province, country)</i> Klubuk, Yugoslavia	I AM A CITIZEN OF: <i>(Country)</i> Stateless
PRESENT ADDRESS: <i>(Street and number, apt. no., city, state, country)</i> 64B Surfside Colony, Surfside, CA 90743		

(2) I was lawfully admitted to the United States for permanent residence at:

PORT: New York, New York	DATE: <i>(Month, day, year)</i> 7/16/48	NAME OF VESSEL OR OTHER MEANS OF CONVEYANCE: TWA, flight number unknown
-----------------------------	--	--

(3) Since that admission I have departed from and reentered the United States as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES			PURPOSE OF TRIP
Port	Date <i>(Month, day, year)</i>	Vessel or Other Means of Conveyance	Port	Date <i>(Month, day, year)</i>	Vessel or Other Means of Conveyance	
None						

(4) During the past 7 years I have resided at the following places: *(List present address first)*

(Complete Address - Include Apt. No.)	From -	To -
64B Surfside Colony, Surfside, CA 90743	7/ 19 48	Present time
	19	19
	19	19
	19	19
	19	19

(5) During the past 7 years I have been employed as follows: *(List present employment first)*

From -	To -	Employer's Name	Address	Occupation or Type of Business
19	19	Retired		
19	19			
19	19			
19	19			

(b)(6) (c) My immediate family consists of the following persons:

Name	Relation	Date and Country of Birth	Citizen of	Present Address

(7) I have not depart(ed) temporarily from the United States on or about ***SEE ATTACHMENT*** and will remain (Intend to or have) (Date) in (Country) approximately (Length of Time) for the purpose of (Port); and expect to apply for admission at (Port)

RECEIVED	TRANS. IN	RET'D-TRANS. OUT	COMPLETED

(8) I believe I may be inadmissible to the United States for the following reasons:

~~I may be excludible under Section 212(A) (33) of the Act.~~

I understand that the information herein contained may be used in any criminal or civil proceedings, including deportation or exclusion, hereafter instituted against me.

(b)(6)

I certify that the statements above are true and correct to the best of my knowledge and belief.

Andrzej Patek by *sw*

(Signature of Applicant)

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

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

[Signature]

(Signature)

12011 San Vicente Bl., 2nd Flr.
Los Angeles, CA 90049

(Address)

OCT 18 1984

(Date)

Decision:

Application granted upon the following terms and conditions:

DATE
OF
ACTION
DD

DISTRICT

INSTRUCTIONS TO THE APPLICANT

READ INSTRUCTIONS CAREFULLY - FEE WILL NOT BE REFUNDED

- (A) This form when completely executed, should be submitted to the District Director of the Immigration office having jurisdiction over your place of permanent residence.
- (B) A fee of fifty dollars (\$50) must be paid for filing this application. It cannot be refunded regardless of the action taken on the application. **DO NOT MAIL CASH. ALL FEES MUST BE SUBMITTED IN THE EXACT AMOUNT.** Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. If applicant resides in Guam, check or money order must be payable to the "Treasurer, Guam." If Applicant resides in the Virgin Islands, check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." All other applicants must make the check or money order payable to the "Immigration and Naturalization Service." When check is drawn on account of a person other than the applicant, the name of the applicant must be entered on the face of the check. If application is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Immigration and Naturalization Service in United States currency. Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any document issued pursuant thereto invalid. A charge of \$5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.
- (C) If the space provided in the form is insufficient to answer a question fully, you should attach a sheet of paper containing your answer which should be numbered to correspond with the question.
- (D) In Part (3) where absences have been numerous as a resident alien border crosser or as a seaman it will be sufficient to give the approximate number of such absences and the years covered thereby.
- (E) List specifically and in detail your reasons for possible inadmissibility. For example, if application is made because the applicant may be inadmissible due to conviction of crime, the designation of the crime, the date and place of its commission and of conviction therefor, and the sentence or other judgement of the court shall be stated in the application. In the case of disease, mental or physical defect or other disability, give exact description, duration thereof and date and place last treated.
- (F) If applicant is mentally incompetent or is under 14 years of age, the application shall be executed by his parent or guardian.

The authority for collection of the information requested on this form is contained in 8 U.S.C. 1103(a). Submission of the information is voluntary. The principal purpose for which the information is solicited is for use by a District Director of the Immigration and Naturalization Service to determine whether the applicant is eligible for advance permission to return to an unrelinquished domicile pursuant to the provisions of section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c). The information solicited may also, as a matter of routine use, be disclosed to other federal, state, local, and foreign law-enforcement and regulatory agencies, the Department of Defense including any component thereof (if the applicant has served, or is serving in the Armed Forces of the United States), the Department of State, Central Intelligence Agency, Interpol, and individuals and organizations, during the course of investigation to elicit further information required by the Service to carry out its functions. Failure to provide any or all of the solicited information may result in the denial of the application.

ATTACHMENT TO FORM I-191

Number 6, My immediate family consists of the following persons: Continued...

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

CERTIFICATE OF SERVICE BY MAIL

This is to certify that a copy of the foregoing letter to The Honorable Reece B. Robertson, Immigration Judge, United States Department of Justice, Immigration and Naturalization Service, with copies of the following attachments:

1. Asylum petition;
2. Application for Suspension of Deportation;
3. Immediate Relative Application;
4. Adjustment of Status Application;
5. Motion to Terminate Under 212(c) of the Immigration Act, together with the Application for Advance Permission to Return to Unrelinquished Domicile,

was served by Express Mail, return receipt requested, postage prepaid, upon Jovi Tenev, Trial Attorney, Office of Special Investigations, Criminal Division, U.S. Department of Justice, P. O. Box 26803, Washington, D. C. 20005-0603, Attorney for Respondent, United States Department of Justice, on this 18th day of October 1984.

I declare under penalty of perjury that the foregoing is true and correct.



JOHN J. O'KANE, III
Attorney for Petitioner
Bonaparte, Ibarra & O'Kane
12011 San Vicente Boulevard
Second Floor
Los Angeles, California 90049

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Andrija Artukovic,

Petitioner,

v.

United States Immigration
and Naturalization Service,

Respondent.

No. 84-7428

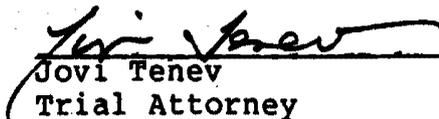
Respondent's Motion For Permission To File
For An Award of Costs Out Of Time

Respondent, the United States, by its undersigned counsel, moves, pursuant to local Rule 14(e), for permission to file out of time for good cause, the attached motion for an award of costs. Respondent did not receive timely notice of the entry of judgment against petitioner, pursuant to Rule 36, Fed.R.Civ.P. As the prevailing litigant on appeal, respondent should be allowed to recover costs. Rule 39, Fed.R.App.P.; 8 U.S.C. §1920.

In support of this motion, respondent's counsel represents that he first learned that the Court had granted his motion to dismiss Artukovic's petition for review on September 17, 1984. On that day he telephoned the Clerk's office and inquired of the case's status. When advised of the dismissal, he requested a copy of the Court's order. The Court's order was first received at counsel's offices on September 20, 1984, as shown by the date stamp on the attached copy.

Accordingly, for good cause shown, respondent requests permission to file the attached motion for an award of costs.

Respectfully submitted,



Jovi Tenev
Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005
(202) 633-5031

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Andrija Artukovic,)	
)	
Petitioner,)	
)	
v.)	No. 84-7428
)	
United States Immigration)	
and Naturalization Service,)	
)	
Respondent.)	

Respondent's Motion For An Award of Costs

Respondent, the United States, the prevailing party in this appeal, moves, pursuant to Rule 39, Fed.R.App.P. and 8 U.S.C. §§1920, 1927 for an order requiring petitioner, Artukovic and/or his counsel to pay the United States costs in the amount of \$662.34, which were incurred in copying the typewritten certified administrative record.

History of the Case

Petitioner Artukovic is admittedly a former cabinet-level official of a Nazi-puppet state which pursued genocidal policies against Jews and Serbs. He entered the United States in 1948 on a tourist visa under a false name.

Subsequently, Artukovic conceded his deportability, but applied for permanent resident status and suspension of deportation. Those applications were denied because of his

wartime activities and Artukovic was ordered deported to his native Yugoslavia. He continues to remain in this country, however, solely by reason of a 1956 temporary stay of deportation granted under 8 U.S.C. §1253(h), which bars the government from deporting him to Yugoslavia.

In 1982, relying on an intervening change in the law and its own prior unappealed findings of fact, the Board of Immigration Appeals (BIA) revoked the stay and reinstated the order of deportation. Artukovic petitioned for review of that decision. On December 22, 1982, this Court vacated the BIA decision and ruled that Artukovic's temporary stay of deportation under 8 U.S.C. §1253(h) could be revoked only following a hearing before an immigration judge. Artukovic v. INS, 693 F.2d 894, 899 (9th Cir. 1982).

In accordance with this Court's mandate, the government sought and obtained from the BIA an order, dated May 21, 1984, (copy attached) reopening the proceedings before the immigration court for the purpose of revoking the temporary stay of deportation Artukovic enjoys under 8 U.S.C. §1253(h). Under recent amendments to that section, the government contends, Artukovic is ineligible for a stay because he was a prime movant in a Nazi-puppet regime which pursued genocidal policies against Jews and Serbs. The BIA order specifically gave Artukovic the opportunity

to make applications at the immigration court hearing for the various forms of relief available to deportable aliens.¹

Nevertheless, Artukovic petitioned for review of that order, claiming that the BIA had "limit[ed] the scope of proceedings before the Immigration Law Judge in violation of this Court['s decision]." (Petition for review, copy attached.) He asserted that the BIA order denied him the right to apply for discretionary relief at the reopened immigration court hearing. (Civil appeals docketing statement, "J. Issues to be raised on appeal," copy attached.)

On July 23, 1984, the government filed a motion to dismiss this case (copy attached) on the grounds that (1) this Court lacked jurisdiction under 8 U.S.C. §1105(a), and (2) the BIA decision granted Artukovic the very relief he sought from this Court, viz. the right to apply for relief from deportation at the reopened immigration court hearing. Artukovic submitted an opposition (copy attached), which misled this Court by stating that these proceedings should be stayed pending review by the Second Circuit Court of Appeals of Matter of Fedorenko, BIA Int. Dec. 2963 (April 17, 1984), which, he claimed, would decide issues critical in this case. In fact, although a petition for

¹ At a hearing on September 18, 1984, the immigration judge, in accordance with the plain language of the BIA's order, invited Artukovic to make whatever applications he wished. Immigration Judge Robertson gave Artukovic until October 17, 1984 to submit his applications.

review had been filed in the Third Circuit, Fedorenko v. INS, No. 84-3334, (3rd Cir. May 30, 1984), neither briefs nor a statement of issues had been filed in that case.² Artukovic's claims, although sheer fabrication, necessitated the filing of a reply by the government.

On August 30, 1984 this Court granted the government's motion and dismissed Artukovic's case for lack of jurisdiction (copy attached).

Costs Should Be Awarded To The United States

Under Rule 39(a), (c) Fed.R.App.P. and 8 U.S.C. §§1920, 1924, the United States, the prevailing litigant, should be awarded costs on appeal actually and necessarily incurred for copies of the typewritten record. See Acevado v. INS, 538 F.2d 918 (2d Cir. 1976) (per curiam) ; Chour v. INS, 578 F.2d 464 (2d Cir. 1978), cert. den. 440 U.S. 980 (1979); Oum v. INS, 613 F.2d 51, 53 (4th Cir. 1980).

As shown by the attached affidavit of Mr. Jovi Tenev, the government's counsel, costs in the amount of \$662.34 were incurred by the government for copying the typewritten certified administrative record. As required by Rule 17, Fed.R.App.P., Local Rule 4(f) and the practice of this Court, the United States filed an original and three copies of the six-volume typewritten

² Indeed, on August 17, 1984 Fedorenko withdrew his appeal and the case was dismissed (copies attached).

certified administrative record³ on July 31, 1984 (notice of filing attached). One copy of the record was served of respondent's counsel; two copies were retained for use by the government.

There is no reason in law or logic why these costs should not be borne by Artukovic, whose case was dismissed. Plainly, there is no justification why an alien, who is unsuccessful in his appeal to this Court, should not pay costs as do all other unsuccessful appellants.

Indeed, given the complete lack of merit of Artukovic's petition for review, one can only conclude that it was not brought in good faith, but was filed solely as a delaying tactic.⁴ Thus, the Court would be acting well within the bounds of discretion if costs were assessed against both Artukovic and his lawyer, who filed this frivolous appeal. 28 U.S.C. §1927; Acevado v. INS, 538 F.2d at 921; Chour v. INS, 578 F.2d at 467-69; Muigai v. INS, 682 F.2d 334, 337 (2d Cir. 1982); see also, Renken v. Harvey Aluminum, Inc., 475 F.2d 766 (9th Cir. 1973) (per curiam). As the Fourth Circuit Court of Appeals said in the Oum case, costs should be assessed against both petitioner and counsel because, "The filing of the petition [for review] in

³ The record was not printed.

⁴ When the immigration court scheduled a hearing in the case, Artukovic, predictably, requested adjournment, claiming the immigration judge had no jurisdiction until this Court had passed on the merits of his pending petition for review. (Letter, Ronald Bonaparte to the Honorable Reece Robertson, dated August 29, 1984, copy attached.)

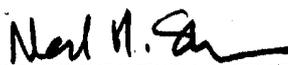
these circumstances amounted to an abuse of process and a dereliction of the duty owed * * * to this court." 613 F.2d at 53.

The Court, at a minimum, should allow the government to recover costs. To do less would only serve to crowd this Court's busy docket by fostering the filing of meritless immigration claims underwritten by the fisc; moreover, it would deny the United States recovery of costs to which all other successful litigants are legally entitled.

Conclusion

The government's motion should be granted. The Court should order Artukovic and/or his lawyer to pay the United States costs in the amount of \$662.34.

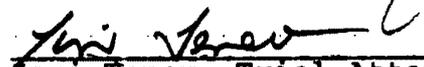
Respectfully submitted,



Neal M. Sher, Director



Michael Wolf, Deputy Director



Jovi Tenev, Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005
(202) 633-2502

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Andrija Artukovic,

Petitioner,

v.

United States Immigration
and Naturalization Service,

Respondent.

No. 84-7428

AFFIDAVIT IN SUPPORT OF AWARD OF COSTS

Jovi Tenev, being duly sworn, deposes and says:

1. I am counsel for respondent, United States of America in this action and submit this affidavit pursuant to 28 U.S.C. §1924 and local Rule 14 in support of respondent's application for an award of costs.

2. On August 30, 1984 this Court dismissed Artukovic's petition for lack of jurisdiction.

3. As the prevailing party in this litigation, the United States is entitled to costs pursuant to Rule 39, Fed.R.App.P. and 28 U.S.C. §1920.

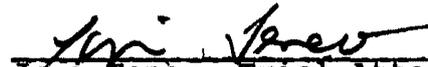
4. I have reviewed the records of the United States' expenditures in the defense of this appeal and I hereby certify that costs in the amount of \$662.34 were necessarily and actually incurred by the United States, as follows:

The typewritten certified administrative record, with index, in this case consists of 2576 pages in six volumes. As required by Rule 17, Fed.R.App.P., Local Rule 9(f) and the practice of this Court, four copies of the record (10,304 pages) were filed with the Clerk; one copy (2576 pages) was served on respondent's counsel; two copies (5152 pages) were retained by the government, one for use in litigation, one for the files. The record was copied at an actual cost of .0367313 cents per page. In sum, seven copies of the record were made (18,032 pages), at a total cost of \$662.34.

DECLARATION IN LIEU OF JURAT
(28 U.S.C. Section 1746)

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 2 October, 1984.


Jovi Tenev, Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Andrija Artukovic,

Petitioner,

v.

United States Immigration
and Naturalization Service,

Respondent.

No. 84-7428

Schedule of Attachments To Respondent's
Motion For An Award Of Costs

1. Board of Immigration Appeals order, May 21, 1984.
2. Artukovic's petition for review, filed June 25, 1984.
3. Artukovic's civil appeals docketing statement,
dated July 5, 1984.
4. United States' motion to dismiss Artukovic's petition for
review, dated July 19, 1984.
5. United States' notice of filing certified administrative
record and certificate of service, dated July 31, 1984.
6. Artukovic's opposition to respondent's motion to dismiss,
dated August 1, 1984.
7. Fedorenko, Petitioner v. United States, No. 84-3334 (3rd
Cir.), Petitioner's withdrawal of appeal (August 17,
1984) and notice of dismissal (August 23, 1984).
8. Letter, Ronald Bonaparte to Hon. Reece Robertson, dated
August 29, 1984.
9. Order granting United States' motion and dismissing
Artukovic's petition for review, filed August 30, 1984.

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Andrija Artukovic,

Petitioner,

v.

United States Immigration
and Naturalization Service,

Respondent.

No. 84-7428

ORDER

Respondent's motion for an award of costs is granted. Respondent Artukovic and his attorney, Ronald H. Bonaparte, Esquire, are ordered to pay the United States costs in the amount of \$662.34.

Dated _____

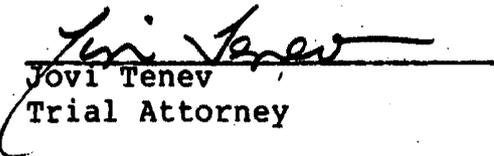
United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Respondent's Motion for Permission to File Out of Time, Motion For An Award of Costs, Affidavit of Jovi Tenev, Schedule of Attachments and draft Order were mailed, postage prepaid, returned receipt requested to:

Ronald H. Bonaparte
12011 San Vincente Blvd.
Second Floor
Los Angeles, California 90049

attorney for respondent, this 2nd day of October, 1984.



Jovi Tenev
Trial Attorney



BY EXPRESS MAIL

JTenev:smf
146-2-47-8

Washington, D.C. 20530

September 14, 1984

Honorable Reece B. Robertson
United States Immigration Judge
Executive Office for Immigration Review
United States Department of Justice
P.O. Box 711
Los Angeles, California 90053

Re: Matter of Andrija Artukovic
File No. A7 095 961

RECEIVED
U.S. IMMIGRATION &
NATURALIZATION
SERVICE
SEP 18 1 49 PM '84
LOS DIATY

Dear Judge Robertson:

By letter dated September 11, 1984, Ronald Bonaparte, respondent's lawyer, moved to adjourn the proceedings indefinitely on the basis of his client's alleged incompetence. The government opposes respondent's motion.

The regulations and case law, which respondent failed to cite, specifically allow the deportation of incompetent aliens. 8 C.F.R. §242.11 provides:

Incompetent respondents

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

The Ninth Circuit Court of Appeals has upheld deportation proceedings against incompetent aliens and rejected arguments that such proceedings be postponed until the respondent could participate intelligently. Wong v. I.N.S., 550 F.2d 521 (9th Cir. 1977). The Court of Appeals held that the Immigration and Nationality Act, 8 U.S.C. §1252(b) contemplates the deportation of incompetents and that the regulation quoted above comports with the Act's mandate. Thus, the Court upheld the Immigration Judge's conduct of a deportation hearing against an incompetent

alien, who was represented by counsel and a conservator. 550 F.2d at 523. Likewise, the Board of Immigration Appeals has upheld deportation proceedings against incompetents. Matter of H., 6 I.&N. 358 (1954); see also, Matter of Stoytcheff, 11 I.&N. 329 (1965).

The statute, regulations and case law leave no doubt that this Court should proceed hearing the merits of this case, notwithstanding respondent's alleged incompetence. As a matter of law, whether respondent is competent is irrelevant to this Court's hearing of this case. Respondent has been represented by his present counsel since at least 1977. There is no reason why this Court should not proceed with this matter with a designated custodian appearing on respondent's behalf. 8 C.F.R. §242.11. In this regard, the respondent's attorney has advised government counsel that respondent's son, Rod Artukovic, has been managing respondent's affairs and is respondent's guardian ad litem in a related civil damage action based on respondent's role in persecuting and killing civilians during World War II. (In that lawsuit, there has been no judicial finding that respondent is incompetent.) The government would not oppose Artukovic's son participating in this deportation hearing as respondent's guardian.¹

Respondent has cited no authority supporting his contention that these proceedings should be adjourned until he regains competence. The only authorities he relied upon are inapposite. Carter v. Kubler, 320 U.S. 243 (1943) relates to the determination of valuation under a bankruptcy statute. Greene v. McElroy, 360 U.S. 474 (1959) invalidated the government's revocation of a contractor's security clearance, and subsequent job loss, because of the lack of specific Presidential or Congressional authorization.

Respondent's due process claims are improperly raised in this forum, which is without jurisdiction to hear or decide such matters. It is an axiom of immigration law that, ". . . it is within the power and capacity only of the United States court to declare [laws] unconstitutional." Matter of L., 4 I.&N. Dec. 556, 557 (1951). The Board of Immigration Appeals has rejected, as well, arguments such as respondent's which attempt ". . . to distinguish the question of the constitutionality of the statute from its constitutionality as applied to the respondent." Matter of H., 3 I.&N. Dec. 411, 456 (1949). The Board has held that ". . . this argument embodies another attack upon the constitutionality of the statute . . ." and, consequently, it is one for courts to hear. Id.

¹ In so doing, the government does not concede that, in fact, Artukovic is incompetent.

This Court should decline respondent's invitation to exceed the bounds of its authority by entertaining due process claims. Plainly, the Court is bound by the pertinent immigration law and regulations, cited above, which require proceeding with a hearing regardless of competence.

Sincerely,



Jovi Tenev
Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005
(202) 633-5031

cc: ✓ Alan Youstler, Esq.
I.N.S., L.A.
Ronald Bonaparte, Esq.

**BONAPARTE,
IBARRA & O'KANE**
A Professional Law Corp.

Ronald H. Bonaparte
Olivia T. Ibarra
John J. O'Kane
Maria Pilar Luna

Of Counsel
George Yamasaki, Jr.

Administrative Supervisors
D. W. Burgoon
Audrey Leighton
Monica M. Stolze

September 11, 1984

Our Case No.
Reply To
Attention.

The Honorable Reece Robertson
Immigration Judge
United States Department of Justice
Immigration and Naturalization Service
300 North Los Angeles Street
Los Angeles, California 90012

Re: Andrija Artukovic
File No. A7 095 961 — File

12011 San Vicente Blvd.
Second Floor
Los Angeles
California 90049
(213) 471-3481
Telex No. 297380

111 Pine Street
Thirteenth Floor
San Francisco
California 94111
(415) 543-5401
Telex No. 470276

5030 Campus Drive
Newport Beach
California 92660
(714) 955-2012

125 High Holborn
London, WC1V 6QF
England
01-242-9477
Telex No. 299085

National
Correspondents In:
New York
Washington, D.C.
Chicago
Houston

International
Correspondents:
Hong Kong
Tokyo

Dear Judge Robertson:

This letter constitutes a motion to have you make a finding as to the present physical and/or mental competency of Respondent (1) to testify in his own behalf; and/or (2) confront and rebut evidence to be introduced against him by the Government; and if such findings indicate physical and/or mental incompetency, make an order placing the present proceedings off calendar.

The Board of Immigration Appeals has granted a motion to reopen the respondent's deportation case of 35 years pending, for the purpose of introducing evidence that the Respondent's withholding of deportation under §243(h) of the Act should be revoked. The motion is based upon the 1978 amendments to §243(h), the so-called "anti-nazi" amendments.

In Artukovic v. INS, 693 F2d 894 (9th Cir. 1982), the Court held that the Government could not rescind the §243(h) order unless it proved by clear and convincing evidence that the alien possessed the PERSONAL CULPABILITY that would bring him within the provisions of the law [emphasis added]. The requirements of burden of proof demanded by the Ninth Circuit on the issue of culpability cannot be satisfied without the testimony of Respondent.

The problem is that at this time Respondent is neither physically nor mentally able to testify in his own behalf, let alone confront and rebut witnesses and evidence to be introduced as part of the Government's case in chief. Letter opinions of four medical doctors who have recently examined Respondent are attached hereto. They are as follows:

George F. Mikulicich, M.D., who states that Respondent "may be approaching his terminal state (at age 84) as the brain damage and the advanced vascular insufficiency of

many organs and mostly of the brain may further deteriorate. . ." He points out that Respondent suffers from arteriosclerotic vascular disease; an aortic aneurysm in his right upper abdomen that is nonoperable; and disorientation, confused with delusions and paranoid symptoms treated with daily high doses of Haldol.

Eric Speare, M.D., psychiatrist, who concludes: "Given the patient's fluctuating and generally poor mental functioning, both with respect to the disorientation and poor memory which is part of his organic mental impairment and the functional component including paranoid delusional and self-referential ideation, I don't feel that he could adequately understand the nature of the charges against him or adequately participate in the preparation of a defense."

Yossi Sidikaro, M.D., who testifies that Respondent is legally blind.

Marvin J. Gordon, M.D., who states that Respondent has a nonoperable large abdominal aortic aneurysm and that any stressful situation would involve a high risk of bleeding, ending in death.

Respondent contends that the above are accurate descriptions of his present physical and mental condition and consents to verification of these opinions through examinations by any doctors that the Government wishes to choose.

Legal Argument

The deportation hearing, although a civil action, can deprive Respondent of liberty and property. As a result, even allowing for broad legislative powers permitted to the Congress and the exemptions from provisions of the Administrative Procedures Act, 5 USC et seq., the requirements of due process must be satisfied.

The Immigration Law Court is under an obligation to conduct its hearings in compliance with principles of due process, both procedurally and substantively. One of the principle elements of that requirement is that Respondent be able to understand the charges against him and to assist in his own defense. In Carter v. Kubler, 320 US 243, the court stated that: "[t]he basic elements of such a hearing include the right of each party to be apprised of all the evidence upon which a factual adjudication rests, plus the right to examine, explain or rebut all such evidence." [at 247]

In the present case, the Government is prepared to submit volumes of evidence created at and centering around the

years 1940 through 1944. The evidence has been amassed from sources outside the United States, which was created under wartime conditions.

The preparation for defense, for rebuttal, for impeachment, for mitigation under ideal circumstances is difficult. It is impossible, unless Respondent can assist counsel in review of documents and identification of witnesses. It is also impossible unless Respondent can testify in his own defense.

In the 1950s when Respondent was physically and mentally able to testify in his own defense, he successfully won his extradition case [U.S. v. Artukovic, 170 F.Supp. 383 (Southern District California 1959)], and was also able to obtain a favorable ruling on an application for a stay of deportation under §243(h) of the Immigration Act, which is the subject now of this proceeding. Without a mentally and physically competent Respondent, there is no way that an adequate defense to the Government's charges could be presented.

Nature of the Proceeding

In order to make its case for deportation, the Government is required to establish a prima facie case that Respondent falls within the class of persons contemplated by §212(a)(33) of the Act. By virtue of the order of the United States Court of Appeals for the Ninth Circuit, INS v. Artukovic, supra, the facts are in dispute and a full evidentiary hearing must take place. Even if the Government meets its burden to produce evidence sufficient to establish a prima facie case, Respondent, nevertheless, has the right to present a defense to the evidence produced. The Supreme Court has always recognized the due process clause of the Fifth and Fourteenth Amendments of the Constitution guaranteeing this right to a defense:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important in the case where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and

cross-examination. They have ancient roots. Green v. McElroy, 360 U.S. 474, 496.

In that case the Court reviewed the nature of an administrative fact finding hearing and overturned the administrative result where the right of confrontation had been denied to the respondent. The same principle applies here.

Clearly, if the nature of the present proceeding was criminal in nature, the Sixth Amendment would demand confrontation. But even though the nature of a deportation action is civil, the mirror image of a criminal-judicial proceeding requires that the strictest adherence to due process principles in civil procedure be applied. Most commentators look to the deportation standard of clear, convincing and unequivocal evidence as the civil equivalent of the reasonable doubt criminal standard.

Under the provisions of §242(b), the Attorney General is directed to safeguard a mentally incompetent alien in deportation proceedings. Certainly this suggests that the due process clause of the Fifth Amendment to the Constitution safeguards the rights of any alien who is in the mental and physical state of incompetency, as the Respondent is here.

Conclusion and Prayer

Respondent asks that the Court make a finding as to the present physical and/or mental competency (1) to testify in his own behalf; and/or (2) to confront and rebut evidence to be introduced against him by the Government. For the purpose of this finding, the court should allow to be introduced as evidence the letter opinions of doctors Mikulicich, Speare, Sidikaro and Gordon. The court can also order such other mental and physical examinations as it deems proper. If such findings verify the opinions of doctors Mikulicich, Speare, Sidikaro and Gordon to be correct, Respondent asks for an order that the present proceedings be placed off calendar indefinitely until such time as Respondent is mentally and physically able to assist in the preparation and presentation of this own defense.

Respectfully submitted,

BONAPARTE, IBARRA & O'KANE

RONALD H. BONAPARTE

RHB:ejt

Enclosures

cc: Mr. Tom Fong, Chief Trial Attorney

Mr. Neal M. Sher, Director, Ofc. of Special Investigations

Re.: Mr Andrew Artukovich
Surfside, Calif.

Medical Report:

Mr A. Artukovich has been under my medical care off and on for over 25 years. His main problem in the past was and still is the arteriosclerotic vascular disease involving especially the 4 neck arteries left more than right resulting cerebral infarction (CVA) about 7 years ago for which he was hospitalized in Hog Community Hosp./New-Port Beach.- Until last year the patient was moderate to severe hypertensive between 180 to 240 systolic and 90 to 120 diastolic under therapy with 150 mg/daily + reserpine and later minipress.

The patient was frequently under strong psychologic-emotional stress agravating his hypertensive vascular disease and making him less responsive to the combined medication. About 15 years ago he suffered from a protracted pleuro-pneumonitis treated in the S.C.M.C. (So. Coast Med. Center in So. Laguna in association with a chronic mild anemia of unknown etiology.

A year ago he become disoriented, confused with delusions and paranoid symptoms during my absence and was treated by a psychiatrist Dr. E. Speare first in Hog Hosp., than in S.C.M.C. with Haldol in high doses of 30-40 mg/daily with gradual improvement, but manifested some iatrogenic parkinson symptoms with stiff gate in association with depression, general weakness with loss of weight necessitating 24 hrs., nursing care at home. Since over 2 years he developed a rapidly expanding aortic aneurysm in the right upper abdom., region, which is not surgically treated because of the very poor general conditions due to advanced vascular disease with cerebral damage and subsequent organic brain syndrom with psychotic periods recurring ever again inspite of anti-psychotic medication.

I examined Mr. Artukovich last time on 8/16/84 at his home and had the impression that he may be approaching his terminal state as the brain damage and the advanced vascular insufficiency of many organs and mostly of the brain may further deteriorate considering his advanced age of 84 years.

Mr. Artukovich is therefore not in a state to participate personally in any court proceedings or hearing neither psychically nor physically because any emotionally induced hyper-adrenergic state could become fatal.

Sincerely



Laguna Niguel 8/24/84. George F. Mikulicich M.D. F.A.C.A.

ERIC SPEARE, M. D.
PSYCHIATRIST

RECEIVED

MAR 14 1984

OUR FILE # _____

March 8, 1984

Mr. Ron Bonaparte
12011 San Vincente
Los Angeles, CA 90049

Dear Mr. Bonaparte:

I am writing to detail my contact with Andrew Artukovic, as his consulting and treating psychiatrist, as you let me know that there have been some proceedings initiated against him.

I first saw Mr. Artukovic in consultation when he was hospitalized at Hoag Hospital in Newport Beach in October, 1983. I saw the patient at the request of Dr. Jessen, the neurologist who admitted him after an episode at home wherein he became delusional and combative, including breaking a window with a shovel. He believed there were agents who were after him and struck out imagining they were on the other side of the window. In the hospital, Mr. Artukovic required round the clock one to one special nursing supervision for his safety and the safety of others, especially after he attacked the woman in the room next to him, thinking that she was an agent lying in wait.

The patient had a frank paranoid psychosis which may have been related in part to prior cerebral infarction and in part to the underlying propensity to develop such psychoses. The latter thought was based on the fact that upon closer examination of the history there had been episodes in the past of severe depression and that the present illness might represent the other side of bipolar affective disorder.

The patient was transferred to Southcoast Medical Center Mental Health Unit, where he remained for about two weeks receiving relatively high doses (30-40 mg. daily) of the antipsychotic medication Haldol. As the patient's admitting physician, I was able to note that while he tried to hide his suspiciousness and delusional ideation that occasionally he was not able to do so and one could come to understand the degree to which his thought content included grandiose, self-referential, and persecutory ideation. There was prominent religiosity, including specific delusions about his special contact with the Pope. Upon discharge, it was clear that there was still a hypervigilence and that delusional ideation still existed, but there was not the urgency to act in accordance with these delusions. It was felt that it

EXHIBIT B

RE: Andrew Artukovic

would probably be safe for the patient to live at home rather than in an extended care facility, as long as adequate supervision was available.

I have continued to follow Mr. Artukovic in the office about twice monthly and also saw him once again at Southcoast Hospital in January, 1984, when he was admitted because of complications of his many medical problems.

During these months, there has been fluctuation in the patient's mental state from virtual obtundation and complete disorientation to moments of being able to make reasonable contact and to respond appropriately. Those moments are brief and frequent adjustment of his many medications is necessary for optimal function. Optimal function is that he still requires live-in, 24 hour a day, special nursing supervision for his safety and for the safety of others. His attention span is quite limited and there is frequent confabulation. That is, when he is asked a question, and doesn't know the answer, he makes up a plausible answer so that to the casual observer it would appear that he knows what he is talking about, when actually he doesn't.

Given the patient's fluctuating and generally poor mental functioning, both with respect to the disorientation and poor memory which is part of his organic mental impairment and the "functional" component including paranoid delusional and self-referential ideation, I don't feel that he could adequately understand the nature of charges against him nor adequately participate in the preparation of a defense. In addition, my concern is that any legal proceedings, even as innocuous as small claims court, would be a stress on Mr. Artukovic which would be likely to exacerbate his mental and physical condition. The patient continues at this time to take 35 mg. of Haldol daily, which as noted above helped to decrease the likelihood that he would act on his paranoid ideation, but his thought disorder is still present.

If further information is required, let me know.

Sincerely,



Eric Speare, M.D.

ES:ns

JULES STEIN EYE INSTITUTE

UCLA SCHOOL OF MEDICINE
LOS ANGELES, CALIFORNIA 90024

YOSSI SIDIKARO, M.D., PH.D.
(213) 628-5720

DISEASES AND SURGERY OF THE
RETINA AND VITREOUS

October 25, 1983

TO WHOM IT MAY CONCERN:

Mr. Andrew Artukovich is my patient and was last seen here on September 30, 1983. At that time, his visual acuity with correction was 20/200, O.U., slowly. He has large central scotomas in both eyes.

Mr. Artukovich's visual acuity qualifies him to be considered legally blind. Please extend any courtesies and considerations to him. If more information is required, please feel free to contact our office.

Sincerely,


Yossi Sidikaro, M.D., Ph.D.

YS/pw

EXHIBIT C

MARVIN J. GORDON, M.D.
DIPLOMATE OF THE
AMERICAN BOARD OF INTERNAL MEDICINE AND GASTROENTEROLOGY
31872 COAST HIGHWAY, SUITE 300
SOUTH LAGUNA, CALIFORNIA 92677
(714) 499-4322

March 20, 1984

Mrs. Ana Artukovic
64 B Surfside Colony
Surfside, CA 90743

Re: Artukovic, Andrew

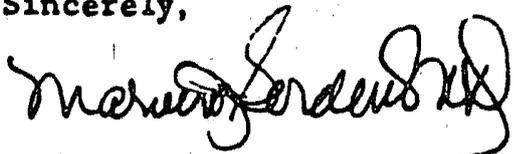
Dear Mrs. Artukovic

Mr. Artukovic was under my care during his hospitalization at South Coast Medical Center on January 2, 1984.

On a previous admission, the patient had been diagnosed as involuntional paranoia and has been on high doses of Haldol since that time. Due to these two factors and the observed intermittent confusion that he has exhibited, it is my opinion that he is incapable of transacting important business and that he needs the services of a conservator or guardian. Also, during that admission, an abdominal scan confirmed the presence of a large abdominal aortic aneurysm. The risk of this bleeding which would probably be a catastrophic event ending in death is always possible; it is felt the patient was not a candidate for surgery. However, any stressful situation which would probably raise the patient's blood pressure would increase the risk of this bleeding, with the result I have noted above.

If there are any futher questions, please feel free to contact me.

Sincerely,



Marvin J. Gordon, M.D.

MJG:r

EXHIBIT 1)

**ONAPARTE,
ARRA & O'KANE**
Professional Law Corp.

Donald H. Bonaparte
Livia T. Ibarra
John J. O'Kane
Maria Pilar Luna

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George Yamasaki, Jr.

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International
Correspondents In:
New York
Washington, D.C.
Chicago
Boston

International
Correspondents:
Hong Kong
Tokyo

Our Case No.
Reply To
Attention:

August 29, 1984

The Honorable Reece B. Robertson,
Immigration Judge
United States Department of Justice
Immigration and Naturalization Service
300 North Los Angeles Street
Los Angeles, California 90012

Re: Andrija Artukovic
A7 095 961

Dear Judge Robertson:

This is in reply to the August 21st, 1984, letter of Ms. Tenev, Trial Attorney of the OSI.

We filed a petition for Review under section 106 of the Immigration Act from the Decision of the Board of Immigration Appeals to reopen the Artukovic matter. The petition was limited to the single ground of whether or not Respondent Artukovic could file an Application for Suspension of Deportation prior to a decision of whether or not the Anti-Nazi Amendments of sections 241, 243, and 244, of the Immigration Act were applicable to him.

The relevance of this position is clear. If we can immediately file an Application for Suspension of Deportation and have it ruled on, two years of litigation on the Anti-Nazi Amendments would be eliminated. Clearly Artukovic is eligible for Suspension, he has been in the United States without absence since 1948, and has four [redacted] (b)(6) daughters and one [redacted] son. Also at the age of 85, he is in incredibly bad health. (b)(6)

The OSI filed a Motion to Dismiss the appeal, a copy of which is enclosed. The jurisdictional arguments which they have made, were enclosed in this Motion to Dismiss. Our office in turn filed an Answer to the Motion to Dismiss, a copy of which is enclosed.

The Honorable Reece B. Robertson,
Immigration Judge
United States Department of Justice
Immigration and Naturalization Service
August 29, 1984

Page Two

The matter is now pending before the Ninth Circuit. While it is pending, the Ninth Circuit has jurisdiction, and you do not. If the Ninth Circuit rules against the OSI and asks that briefs be filed and Oral Argument be held on the issues involved, then of course you would not have jurisdiction until a final decision is made. If the Ninth Circuit rules in favor of the OSI and against Respondent, you could then immediately start proceedings.

Under these circumstances, we request that you place the September 18th, 1984 hearing date off calendar pending a decision by the Ninth Circuit on this matter.

I would appreciate an answer in writing. If your answer is to go ahead with the hearing, I would have no choice except to go back to the Ninth Circuit with the appropriate request for a Motion and Order Vacating Jurisdiction of your Court.

Very truly yours,



RONALD H. BONAPARTE

RHB:jtp

Enclosures

cc: Alan Youster, General Attorney
Ronnie L. Edelman, Trial Attorney, OSI
Jovi Tenev, Trial Attorney, OSI

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

August 27, 1984

Ronald H. Bonaparte, Esq.
12011 San Vicente Blvd. 2nd. Flr.
Los Angeles, California 90049

Jovi Tenev, Trial Attorney
Office of Special Investigations
1377 K Street, N.W., Suite 195
Washington, D.C. 20005

Re: A7 095 961
Andrija Artukovic

Dear Sir:

There will be no change in the hearing date scheduled for September 18, 1984.

Very truly yours,

Reece B. Robertson,
Immigration Judge



BY EXPRESS MAIL

JTenev:smf
146-2-47-8

Washington, D.C. 20530

August 21, 1984

RECEIVED
U.S. IMMIGRATION &
NATURALIZATION
SERVICE
AUG 27 10 12 AM '84
LOS DIABTY

Honorable Reece B. Robertson
United States Immigration Judge
Executive Office for Immigration Review
United States Department of Justice
P.O. Box 711
Los Angeles, California 90053

Re: Matter of Andrija Artukovic
File No. A7 095 961

Dear Judge Robertson:

Please be advised that the government is represented by the Office of Special Investigations, Criminal Division, United States Department of Justice in this case. We are in receipt of a notice of hearing scheduled for September 18, 1984.

Counsel for the respondent have filed in the United States Court of Appeals for the Ninth Circuit a petition for review of the May 21, 1984, decision of the Board of Immigration Appeals. Subsequently, the government filed a motion to dismiss the petition for review. A decision on the government's motion is pending. For the Court's convenience copies of papers filed by the parties with the Ninth Circuit are attached.

We respectfully urge the Court to proceed with hearing this matter. The respondent has failed to obtain an order from the Court of Appeals or the Board of Immigration Appeals staying the commencement of hearings before this Court. We are aware of no authority which would preclude proceeding with the case in the Immigration Court at this time as ordered by the Board.

Accordingly, the government believes the Court should commence the reopened hearing on the motion to revoke respondent's stay of deportation under 8 U.S.C. §1253(h).

Sincerely,



Jovi Tenev
Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005
(202) 633-5031

cc: Alan Youstler, General Attorney, INS, LA
Ronald Bonaparte, Esquire



RECORDING
U.S. IMMIGRATION &
NATURALIZATION
SERVICE

AUG 8 11 22 AM '84
LOS ANGELES

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

P. O. Box 711
Los Angeles, California 90053

IN THE MATTER OF:)

Andrija ARTUKOVIC)

IN DEPORTATION PROCEEDINGS)

Date: **August 6, 1984**

File #: **A7 095 961**

NOTICE OF HEARING

TO: **Andrija Artukovic**
© Ronald E. Bonaparte, Esquire
12011 San Vicente Blvd., 2nd Floor
Los Angeles, California 90049

Please take notice that the above captioned case will be heard by an Immigration Judge on **Tuesday, September 18, 1984**

at 8:00am

at the Office of the Immigration Judge, **Reese B. Robertson**

8th floor, Room 8112 300 North Los Angeles Street, L. A. CA 90012.

OFFICE OF THE IMMIGRATION JUDGE

By: **Rose E. Humbles**
Clerk

cc: **Alan Youstler, General Attorney, Los Angeles, California 90012**
Ronnie L. Edelman, Trial Attorney, U. S. D.O.J./O.O.S.I.
Criminal Division, Suite 195, 1377 K Street, N.W.
Washington, D. C. 20005

File



RLEdelman:smf
146-2-47-8

Washington, D.C. 20530

May 6, 1985

Honorable Reece B. Robertson
United States Immigration Judge
Executive Office for Immigration Review
United States Department of Justice
P.O. Box 711
Los Angeles, California 90053

RECEIVED
DEPARTMENT OF JUSTICE
1985 MAY -9 PM 1:30

Re: Andrija Artukovic
A7 095 961

Dear Judge Robertson:

At the suggestion of Magistrate Volney V. Brown, Jr., United States District Court for the Central District of California, I am requesting that the deportation hearing in the Matter of Andrija Artukovic, A7 095 961, now scheduled for July 30, 1985, be taken off calendar. The respondent's attorney, Ronald Bonaparte, requested that the government stipulate that the matter be removed from the calendar. At the Magistrate's urging, during respondent's extradition hearing on May 1, 1985, we agreed to seek such action on your part rather than have respondent released on bond.

It is our understanding that we will be able to have the deportation hearing put back on calendar by motion at such time as it is appropriate to proceed.

Sincerely,

Ronnie L. Edelman
Trial Attorney
Office of Special Investigations
U.S. Department of Justice
1377 K Street, N.W., Suite 195
Washington, D.C. 20005
(202) 633-5043

cc: Magistrate Volney V. Brown, Jr.
Ronald Bonaparte, Esq.
Gary Fleishman, Esq.
AUSA David Nimmer

**BONAPARTE,
IBARRA & O'KANE**
A Professional Law Corp.

Ronald H. Bonaparte
Olivia T. Ibarra
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Maria Pilar Luna

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London, WC1V 6QF
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Telex No. 299085

National
Correspondents In
New York
Washington, D.C.
Chicago
Houston

International
Correspondents
Hong Kong
Tokyo

RECEIVED
IMMIG. & NATZ. SVC
Our Case No.
Reply To
Attention.

MAR 29 1 42 PM '85

LOS ANGELES
DISTRICT OFFICE

March 27, 1985

The Honorable Reece B. Robertson,
Immigration Judge
Executive Office for Immigration Review
United States Department of Justice
Post Office Box 711
Los Angeles, California 90053

Re: Andrija Artukovic
A7 095 691

Dear Judge Robertson:

This is in answer to the letter and Motion to Continue the deportation proceedings in the above matter made by Ronnie L. Edelman, Trial Attorney, Office of Special Investigations, by the letter of March 19th, 1985.

The present case is one where parallel deportation and extradition proceedings are pending. It has always been the position of the Attorney General, the Board of Immigration Appeals, and the Immigration and Naturalization Service that deportation proceedings should be held in abeyance during the pendency of extradition proceedings because further deportation proceedings would serve no useful purpose and an outstanding order of deportation might unnecessarily and improperly complicate the extradition proceedings. See Matter of Perez-Jimenez, 10 I & N Dec., 309, Gordon & Rosenfeld, Immigration Law and Procedure, Sec. 5.1, p. 5-12, and 5-13.

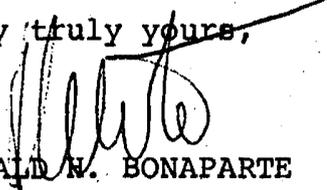
Respondent believes that the procedure always followed in the past with parallel extradition and deportation proceedings, to give the extradition proceedings priority, should be followed in this case. Respondent requests that the Court make an order placing the present deportation proceedings off calendar, to be reset by a motion by the Office of Special Investigations, if and when respondent is successful in overturning the present order of extradition, as he was in 1959. If he is not successful, and is extradited, or dies while in custody of the Attorney General, these proceedings would be moot.

The Honorable Reece B. Robertson,
Immigration Judge
Executive Office for Immigration Review
United States Department of Justice
March 27, 1985

Page Two

It is Respondent's position that going ahead with extensive deportation proceedings, while extradition proceedings are pending, would not only violate all previous authority in Immigration Court procedure but also serve no useful purpose for either the Government or Respondent. It wastes both the Court's time, the Government's time; and it would also be a needless expense to all parties.

Very truly yours,


RONALD N. BONAPARTE

RHB:jtp

DELIVERED BY HAND

cc: Ronnie L. Edelman
Trial Attorney
Office of Special Investigations
David Nimmer, Esquire
U.S. Attorney's Office
Allan Younstler ✓
Trial Attorney
Immigration and Naturalization Service

OFFICE OF THE CLERK
United States Court of Appeals for the Ninth Circuit
U.S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

DATE June 25, 1984

U.S. Court of Appeals Docket Number: 84-7428

ANDRIJA ARTUKOVIC, Petitioner, vs. IMMIGRATION & NATURALIZATION SERVICE, Respondent.

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number when corresponding with this office relative to your case. Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this Court.

If the U.S. Court of Appeals docket fee has not yet been paid and you have not been exempted by law from paying the fee, please make arrangements to do so as quickly as possible. THIS U.S. COURT OF APPEALS DOCKET FEE MUST BE PAID TO THE U.S. DISTRICT COURT IF THE CASE ORIGINATED FROM A U.S. DISTRICT COURT OR TO THE U.S. TAX COURT IF THE CASE ORIGINATED THERE. The fee is payable to the U.S. Court of Appeals if the case originated in a U.S. administrative agency, or if the case is an original proceeding in this court. No papers may be filed with the Court until the docket fee requirement has been satisfied. If the docket fee is not paid within ten days of the filing of the notice of appeal, dismissal proceedings will be commenced.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist which may be attached to your case file as an aid in monitoring case progress.

The following information is being provided to ensure that your case proceeds through our Court as efficiently as possible. Please review this information very carefully. It is provided in an attempt to answer the most frequently asked questions with regard to processing an appeal which are not directly covered by the Rules of the United States Court of Appeals for the Ninth Circuit (Local Rules)* or the Federal Rules of Appellate Procedure (FRAP)*. Copies of this letter have been furnished to all known lead counsel.

*For convenience, the terms "Local Rules" and "FRAP" will be used throughout this document in lieu of the formal abbreviations.

**WHAT EVERY AMERICAN SHOULD KNOW ABOUT THE CASE OF DR. ANDRIJA
ARTUKOVIC**

1945 - Dr. Artukovic joins mass exodus of Croatian populace as Communist forces take over Yugoslavia. 500,000 Croatian civilians and unarmed Croatian soldiers die at the hands of Tito's Communists in the "Bleiburg massacres" after having been handed over by the British. The British clear Artukovic of war crimes charges after a two month internment and investigation at Spital Drau.

1947 - Artukovic legally changes his name in Switzerland to avoid Communist hit squads.

1948 - Artukovic and his family arrive in the U. S. on a valid visitor's visa made out in his new name.

1949 - Artukovic receives extension of his visitor's visa having fully disclosed his identity to INS.

1951 - Yugoslavia discovers Artukovic's presence in U.S., asks for his extradition, brands him a war criminal. INS moves to deport Artukovic instead of acting on a visa extension request.

1959 - U.S. District Court denies Yugoslav extradition request citing "no probable cause to believe any of the charges". INS grants Artukovic a Section 243 (h) stay of deportation which precludes his deportation to a country that would persecute him.

1974 - Representative Elizabeth Holtzman pressures INS into reopening the Artukovic case.

1975 - Representative Holtzman travels to Yugoslavia to urge new Yugoslav Communist action against Artukovic.

1976 - INS attempts to deport Artukovic without a hearing. U.S. District court in Los Angeles grants an injunction against such activity.

1979 - The Office of Special Investigations (OSI) is formed in the Justice Department. The OSI makes the Artukovic case its no. 1 priority. The OSI attempts to deport Artukovic without a hearing.

1982 - The U.S. 9th Circuit Court of Appeals revokes a deportation order issued by the INS against Artukovic and orders the OSI to give him a hearing where the OSI would have to prove its case by "clear and convincing" evidence.

1983 - OSI chief travels to Yugoslavia to urge the Yugoslavs to try a new extradition attempt. The OSI offers full U.S. support to Yugoslavia and guarantees no interference from other U.S. agencies.

1984 - The OSI opens new deportation effort against Artukovic. Yugoslavia makes a new extradition request. Artukovic is arrested and denied bail.

1985 - Extradition hearings are held where Artukovic defense counsel is denied the right to introduce any evidence that would contradict the Communist charges. Extradition is ordered. Deportation hearings are taken off calendar by the OSI to "avoid his release on bond."

1986 - Artukovic is extradited to Yugoslavia at the age of 86.

While the Communist charges against Dr. Artukovic are tremendous, it is also a fact that everytime that he was given the opportunity to defend himself against those charges, he did so successfully. The last extradition proceeding occurred when he physically and mentally incompetent to help himself, and when the U.S. government denied his attorneys the right to challenge the Communist accusations.

With regards to the extradition of Dr. Andrija Artukovic to Communist Yugoslavia it would be good to remember the following: 1) the extradition was accomplished only after defense attorneys were prevented from introducing any evidence that would contradict the Communist charges, and after the defense was denied the opportunity to show that the OSI knew that the extraditable allegations were false and the result of a fabricated affidavit.

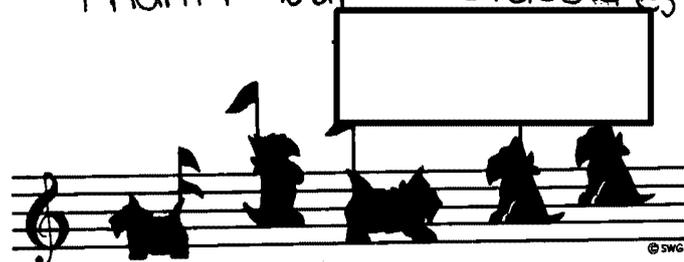
In denying a stay of extradition pending appeal, the U.S. 9th Circuit Court of Appeals stated that the 87 year-old incompetent and blind Croatian would be able "to defend" himself in Yugoslavia.

The true lesson of the Artukovic case is that the OSI-Communist partnership allows for the substitution of Communist methods for American due process in U.S. courts.

DOGGE THE NOTES

Here are some important papers about my grandfather.

Thank You, 12 enclosures



Methods questioned in war-crimes extradition

Attorneys say US orchestrated procedures with Yugoslavia

By Warren Richey

Staff writer of The Christian Science Monitor

Washington

The extradition of Andrija Artukovic from the United States to face war-crime charges in Yugoslavia has left in its wake a string of unanswered questions. Among them: Is Andrija Artukovic a war criminal?

The elderly and ailing former Interior and Justice minister for the Nazi puppet state of Croatia, was quietly turned over to the Yugoslav government to stand trial on charges that he ordered the murders of thousands of civilian Jews, Serbs, gypsies, and others in Croatia during World War II. Federal prosecutors proclaimed in headlines nationwide that Artukovic was the highest-ranking Nazi war criminal living in the US.

According to the Yugoslav extradition request, Artukovic was ordered to stand trial specifically on charges related to some 5,000 killings and atrocities committed in Croatia between 1941 and 1942. The evidence submitted to the US against Artukovic by Yugoslavia comprises an affidavit by Avdic Vajro, a Yugoslav citizen, who claims to have been a chauffeur for high-ranking members of the Croatian puppet government under the Nazis. Mr. Vajro asserts that, in this capacity, he witnessed Artukovic's involvement in the killing of numerous civilians.

According to Artukovic's lawyers, who were not present when the affidavit was taken, those allegations have never been proved in court. Gary Fleischman and Ronald Bonaparte argue that their client was the target of a eight-year US Justice Department campaign to kick him out of the country.

Artukovic's Feb. 12 extradition — carried out swiftly and in secrecy without the knowledge of his attorneys or family — was greeted with celebration at the US Justice Department's Office of Special Investigations (OSI) and with disbelief within the exiled Croatian community.

"We believe he is innocent and that this is strictly a political plot," says Petar Kadielovic, director of the Croatian Information Service in Los Angeles.

Neal Sher, who heads the OSI, said the case was handled in a standard manner. "This man had so many bites at the apple and he just came to the end of the trail."

Former US Congresswoman Elizabeth Holtzman, now district attorney of Brooklyn, issued a press release following the Artukovic extradition. "This is really good news. I have worked for his expulsion from the United States since 1974."



Andrija Artukovic, alleged Yugoslav war criminal

Nazi war-crimes allegations were not new to Artukovic. For more than 10 years in the 1940s and '50s, the former Croatian cabinet minister and lawyer had fought repeated attempts to have him extradited to Yugoslavia or deported from the US. He denied involvement in the killings, arguing that the charges were trumped up by the newly established communist government in Yugoslavia in an effort to discredit the anticommunist Artukovic in his homeland. In 1959, he received a favorable ruling in the US: There was not enough evidence to tie Artukovic to atrocities carried out in Croatia in the early 1940s. He stayed in the US.

The matter might have faded from public view in 1959 were it not for the efforts of a dedicated cadre of American Nazi-hunters who were convinced of Artukovic's guilt. The case was reopened in 1977.

Artukovic's attorneys argue that federal prosecutors seemed more interested in expelling Artukovic from the US than in searching for and establishing the truth of his involvement or noninvolvement in atrocities.

Mr. Bonaparte says that when the OSI was confronted with having to prove Artukovic's complicity in war crimes, federal prosecutors shifted their strategy. The effort to deport Artukovic was placed on hold, Bonaparte charges, while OSI attorneys took the unpre-

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NATIONAL

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edented step of asking the Yugoslav government to file an extradition request.

The significance of this, according to Bonaparte and Mr. Fleischman, is that the burden of proof in foreign extradition requests is much lower than that required in US deportation hearings. Fleischman notes that deportation cases require the government present "a preponderance of evidence," while extradition cases require only "a strong suspicion" of guilt.

"This was deportation by other means," Fleischman charges.

OSI director Sher has repeatedly denied that US officials asked the Yugoslav government to enter the Artukovic case. While acknowledging that there were contacts between the OSI and Yugoslavia on the extradition matter, he has stressed that the contacts were all proper.

According to a book published last year in Belgrade by a Yugoslav author, a US Justice Department official traveled to Belgrade in July 1983, and "it was emphasized that the Justice Department wishes to actualize anew the extradition proceeding of Andrija Artukovic."

The statement, attributed to Dr. Gojko Prodanic of the Yugoslav Republic Secretary for Justice and General Administration, adds, "Representatives of that American ministry proposed that the Yugoslav side submit a new request for the extradition of Artukovic. . . . They of-

fered specialists from that ministry to help draw up a new request for extradition, also to help with the selection of evidentiary materials which would conform to the criteria and practice of their court organs."

Fleischman says his plans for further appeals in both the Ninth Circuit and at the Supreme Court were rendered moot when he received a telephone call from an Associated Press reporter Feb. 12 and learned for the first time that his client was already in Yugoslavia. "I have never seen anything like this in 26 years of civil rights practice," says Fleischman.

A former federal prosecutor, Fleischman charges that the evidence against Artukovic subsequently submitted by the Yugoslav government in the extradition case is inaccurate and distorted. But he says he has never been given an opportunity to challenge the veracity of Yugoslavia's evidence in US court.

"We don't challenge their papers, and they don't challenge ours," says Murray Stein, the associate director of the Justice Department's Office of International Affairs. "We are required by treaty to accept their papers." Stein adds, "You can't have relations with other governments if you don't trust them."

US officials say they are confident that Artukovic will receive a fair trial.

"It is going to be a pathetic charade of a show trial," says Radoslav Artukovic. "There is no doubt in my mind that they are going to find my dad guilty."

OPINION

LETTERS

Stand on Artukovic case presumes that he's guilty

To the Editor:

The Pilot on Feb. 14 entitled an editorial, "World demands that Artukovic face charges." That is quite a statement! I think the Pilot ought to recheck its source of that demand. They may discover that "world" is a non-de-plume for "communist world."

It should be recognized that Artukovic, the individual, held out against the combined efforts of the communist world and a branch of the U.S. government to win, for 34 years, a 35-year battle for his very life.

The editorial goes on to answer an alleged position that advocates' forgiveness of Artukovic is due to his age and infirmity. That is just a slick way to slip over a presumption of guilt on the uncaredful reader of this editorial statement.

The problem of the prosecutors of Artukovic for 35 years has been producing evidence to convince the U.S. justice system that he should even be charged! It is awful that now that Artukovic is entirely under the communist system for his trial, the

issue of his actual guilt must now be given up. Artukovic, having lost any presumption of his innocence, is now faced with: Will they shot him to death or just let him die somewhere?

But then, who in hell did Artukovic think he was, anyway? How could he believe his possible individual innocence should have any significance against the desires of the omnipotent state, as expressed by the communist prosecutors and a couple of career U.S. prosecutors?

Then there is that nagging feeling that Artukovic may have been an unpublicized pawn in the spy swap that coincided with Artukovic's sudden departure to the communist world before his appeals were exhausted.

We should not forget the lament in the story that tells of a man not protesting as "they" came for his different neighbors, because it did not directly affect him. And then, when "they" came for him, there was no one left to protest.

ROGER BLOXHAM
Newport Beach

OPINION/CLEARINGHOUSE

ARTUKOVIC:

His deportation sets a dangerous precedent

It's difficult to understand why the United States government has spent time, money and effort to free a Russian, Anatoly Shcharansky, from communist persecution and abuse of human rights, then at the same time deports an 86-year-old invalid, Andrija Artukovic, who has been jailed without trial, to face "trial" in a country, which, as reported, denies under communism all rights.

Are human rights selective? Are these rights reserved for a few while denied to others? Apparently the U.S. Justice Department Human Rights Division is demanding rights for people in Russia but ignoring people in the United States. This so-called justice, based on hatred and vengeance, poses an extremely dangerous precedent, not unlike what is reportedly transpiring under communism now.

Bill Aronsen
Buena Park

The Feb. 13 editorial, "An American show trial," correctly points out that it is a sad day for American justice relative to the extradition of Andrija Artukovic, who was swiftly whisked out of this country and flown to Yugoslavia to stand trial for alleged war crimes of over 40 years ago.

The "Gestapo-like" tactics used by the Justice

Are human rights selective? Are these rights reserved for a few while denied to others?

Department's OSI division in removing Artukovic in the late-night hours from his prison cell without giving him the simple human decency to say goodbye to his family, does not speak well of the conduct of constitutional rights for "this greatest of alleged Nazi war criminals."

The *Register* stated the important fact that the 9th Circuit Court of Appeals dealt the final straw when Judges Pregerson and Kozinski did not grant a routine stay of extradition until it heard an appeal, and without even seeing a full brief decided an appeal would not be successful, and refused to grant the stay that, in effect, negated the defendant's right to appeal. This action differs greatly from the case of an accused killer in our justice system who gets more than his fair share of appeals, as we all know.

Artukovic was certainly denied true due process and it certainly appears that the OSI conspired with the Yugoslav officials to circumvent U.S. laws. One has to wonder why Artukovic's

attorneys were denied the right to present evidence that certain affidavits from the Yugoslav officials were false.

The American justice system did, as the editorial states, run roughshod over Artukovic's civil rights in attempting to create the stance of being tough on former Nazis. One wonders how long and at how much taxpayer expense this type of OSI activity can be allowed to continue. No alleged criminal should have his civil rights violated as did Andrija Artukovic here in the United States.

J. Sandru
Santa Ana

ARTUKOVIC CHRONOLOGY

THE FINAL HOURS

The following is a chronology of the events leading up to the extradition of Andrija Artukovic. East Coast times are listed as EST and are three hours ahead of Pacific Standard Time:

Tuesday, Feb. 11:

12:15 p.m. The 9th U.S. Circuit Court of Appeals declines to block Artukovic's extradition. The U.S. Attorney's Office notifies the U.S. marshal and the criminal division in the State Department's Office of International Affairs.

1 p.m. One of Artukovic's daughters tries to see him at the federal prison at Terminal Island. She is told he can't have visitors because he needs his rest.

2 p.m. U.S. Marshal Julio Gonzales, Chief Deputy Marshal Sam Cicchino, two inspectors and a Bureau of Prisons doctor accompany Artukovic from the federal prison at Terminal Island.

3:30 p.m. The wheelchair-bound Artukovic, accompanied by the two inspectors and the physician, board American Airlines Flight 22 at Los Angeles International Airport for a flight to

New York's John F. Kennedy International Airport.

5 p.m. Artukovic's attorneys send a telegram to U.S. Supreme Court Justice William Rehnquist, seeking an emergency stay blocking the extradition.

8 p.m. Michael Dacquisto, one of Artukovic's lawyers, calls Terminal Island asking if his client is there.

8:30 p.m. Dacquisto believes Artukovic has been moved when prison officials tell him they can't say if his client is there.

11:20 p.m. EST Flight 22 lands in New York.

Wednesday, Feb. 12:

12:20 a.m. EST Rehnquist denies an emergency appeal.

1 a.m. EST Artukovic is turned over to Yugoslav authorities. He, the two inspectors and the physician leave on a Yugoslav Airlines flight that has been waiting since 6 p.m.

9 a.m. EST The plane lands in Zagreb and Artukovic is taken to Simunski Hospital.

Source: The Register

Following is a chronology of significant dates in the life of Andrija Artukovic, accused of Nazi war crimes, who was extradited to Yugoslavia to face charges he was responsible for the slaughter of thousands of people during World War II:

1899: Andrija Artukovic is born in Klobuk, Croatian Herzegovina.

1948: Artukovic enters the United States on a visitor's visa under the name of Alois Anich.

1951: Artukovic is ordered deported and Yugoslavia files an extradition complaint.

1953: The deportation order is upheld, but not acted upon because of Yugoslavian extradition request.

1959: Extradition is denied by a U.S. commissioner, who says there is insufficient evidence that Artukovic committed the crimes charged.

1959: The Immigration and Naturalization Service grants a stay of deportation on grounds that Artukovic would face persecution in Yugoslavia because of his political beliefs.

1977: INS attempts to revoke stay. Artukovic obtains court order preventing that.

1978: Act of Congress amends law, removing Artukovic's protection from deportation because of the possibility of political persecution.

1979: Allan Ryan assumes control of Justice Department's Office of Special Investigations. The United States moves to revoke deportation stay, but Artukovic fights it. Complex legal wrangling continues.

1982: 9th U.S. Circuit Court of Appeals rules Artukovic is entitled to a full evidentiary hearing before an immigration judge to determine whether he is ineligible for a stay of deportation under the 1978 amended immigration law.

February 1984: The Department of Justice requests a new deportation hearing.

March 1984: Five survivors of Croatian concentration camps sue Artukovic for damages resulting from his alleged acts and their loss of loved ones and property.

November 1984: Artukovic arrested at his Seal Beach home in response to new Yugoslavian request for extradition and is lodged for a time at Long Beach Naval Hospital.

March 15, 1985: An ailing Artukovic is moved from Long Beach Naval Hospital to a federal prison hospital in Missouri.

April 11, 1985: Yugoslavia, at the suggestion of U.S. Magistrate Volney Brown in Los Angeles, amends its war-crimes indictment against Artukovic so he can be tried for more than a single murder.

May 1, 1985: A federal magistrate orders Artukovic extradited to Yugoslavia to stand trial for the murders of thousands of people during World War II. Deportation is delayed pending appeals.

July 2, 1985: Artukovic's attorneys sue the Justice Department, alleging violation of his constitutional rights for conspiring with Yugoslavia to have him expelled illegally from the United States.

July 9, 1985: A federal magistrate who had been expected to grant bail for Artukovic is removed from the case.

July 16, 1985: Artukovic is returned to Terminal Island federal prison in Long Beach after a four-month stay in a federal prison hospital in Missouri.

Dec. 16, 1985: A federal judge rejects bail for Artukovic.

January 1986: Artukovic's attorneys ask a federal judge to reconsider extradition order.

Feb. 6: A federal judge in Los Angeles upholds magistrate's order that Artukovic be sent to Yugoslavia to stand trial for murder.

Feb. 11: U.S. Supreme Court Justice William Rehnquist denies a last-gasp application to delay extradition. Earlier, the 9th U.S. Circuit Court of Appeals in San Francisco refuses to block the extradition.

Feb. 12: Artukovic is flown to Yugoslavia aboard a commercial airliner, ending his 35-year struggle to avoid extradition.

Source: The Register

Court's dismissal of suit against Artukovic upheld

A federal appeals court has refused to reinstate a damage suit filed by five Yugoslavian immigrants against Andrija Artukovic, former high official of a Nazi puppet state who faces deportation as an alleged war criminal.

In an order released Tuesday, a three-member panel of the 9th U.S. Circuit Court of Appeals upheld a ruling by U.S. District Judge Pamela Rymer of Los Angeles dismissing the suit.

"The lawsuit itself was a sham and was designed for publicity," said Artukovic's son, Rad, 37. He said his father's mental condition in prison has deteriorated to the point that most of the time he thinks he is in a German prison in 1936.

Andrija Artukovic, 85, of Surf-

side, was minister of the interior in the wartime puppet government of Croatia, part of modern Yugoslavia. Prosecutors in his extradition proceedings say he took part in formulating policies that killed 750,000 Serbs, Jews and Gypsies.

A U.S. magistrate in Los Angeles has ordered Artukovic's extradition, requested by the Yugoslav government, but has stayed the order during his current appeal. Artukovic, who has been fighting extradition for 30 years, is in Terminal Island federal prison.

The civil suit is sponsored by the Simon Wiesenthal Center, an organization supporting the pursuit of Nazi fugitives. It was filed by five Yugoslavian immigrants who say their parents and other

relatives were murdered in Croatia. They sought damages on behalf of all Croatian victims of the Holocaust.

The suit said Artukovic "oversaw and implemented Croatia's solution to the 'Jewish problem'" and should have to pay damages for the deaths, injuries and property losses caused by the policies he carried out, allegedly in violation of international law.

In dismissing the suit, Judge Rymer said a federal court has no authority to decide private claims for damages based on international law. She said that even if the court could hear the suit, the time for collecting damages for 40-year-old events had long since passed.

The appeals court panel of Judges Eugene Wright, Arthur

Alarcon and Alfred Goodwin upheld the dismissal without further proceedings, citing standards that call for summary rejection of appeals presenting questions "so unsubstantial as to need no further argument."



"We may elevate ourselves, but we should never reach so high that we would ever forget those who helped us get there."

Will Rogers

R. David Threshie Jr., publisher
Alan W. Bock, editorial page editor
N. Christian Anderson, editor

R.C. Hoiles, co-publisher 1935-1970
C.H. Hoiles, co-publisher 1935-1979
Harry Hoiles, co-publisher 1975-1979

An American 'show trial'

One has to suppose that the Justice Department's Office of Special Investigations is pleased with itself. It managed to whisk Andrija Artukovic, an 86-year-old invalid, out of the country to stand trial in Yugoslavia for war crimes alleged to have been committed more than 40 years ago. His chances of getting a fair trial there are virtually nil; the only two lawyers in Yugoslavia who might take such a case, according to Artukovic's U.S. lawyer, Gary Fleischman, are in jail for the offense of taking a dissident client.

At that, whatever faces Artukovic in Yugoslavia, while perhaps physically harsher, could hardly be more one-sided or less concerned to see that justice is done than what has faced him in the United States. The OSI, inverting the usual presumption of innocence, has been determined to "get" Artukovic from the beginning, at whatever cost to the dignity of the U.S. judicial system.

The attitude of vengefulness and deception has been consistent from beginning to end. The first hint that Tuesday might be the day Artukovic was deported came that afternoon, when his daughter was denied permission to see him, being told that he needed his rest. When U.S. Assistant Attorney David Nimmer was told that defense attorney Fleischman had criticized the government for not letting Artukovic say goodbye to his family before he left, he responded with typical callousness: "He had 15 months to say goodbye to his family."

That, however, is consistent with the way U.S. government officials have approached Artukovic's case since U.S. marshals burst into his Seal Beach house to arrest him on Nov. 14, 1984.

Although there was no reason to suspect that he would try to flee or otherwise avoid showing up in court, Artukovic was cruelly denied bail for the entirety of his ordeal. Although a court-appointed psychiatrist raised serious questions about his competence to understand the proceedings and actually recommended that he be declared incompetent to participate in proceedings, a magistrate overruled his own expert and ordered the hearings to proceed.

Some news accounts have suggested that the Yugoslav government has been seeking extradition of Artukovic since 1951. That is a little misleading. There was a 1951 request that was dismissed — after a full hearing that gave both sides an opportunity to present their best evidence — in 1959. The judge found that there was no credible evidence that the man had participated in war crimes. There matters stood for 25 years.

In 1984 Yugoslavia renewed its request for extradition. Given such a re-

quest, U.S. courts assume that the requesting government is acting in good faith, with respect for due process, and has not offered demonstrably false affidavits to support the request. Thus the standard of proof is quite low. A judge has the discretion to prevent a defense attorney from presenting evidence that statements offered by the government requesting extradition are false or faulty, though he may accept such evidence if he chooses.

In the Artukovic case, the magistrate chose not to accept anything from the defense that questioned the accuracy of Yugoslav affidavits. Even then, although there were dozens of affidavits containing various charges, the decision to deport was based on only two affidavits, the only ones to offer supposed eyewitness testimony (as opposed to hearsay or third-hand rumors) that Artukovic had himself participated in war crimes.

The defense team then researched official Yugoslav archives and Italian and German records regarding the period and came up with a strong case that the person who gave the primary affidavit could not have been where he said he was with Artukovic at the time the atrocities took place. U.S. courts never allowed this evidence to be introduced.

To be fair, the courts had the right not to let defense lawyers challenge the Yugoslav affidavits. But you would think, in a highly publicized case regarding an alleged Nazi-era war criminal who has all along maintained his innocence and trusted the U.S. judicial system to be fair, that they would have taken special care to avoid criticism — to dot every "i" and cross every "t" so the case would be ironclad.

Instead, the courts frustrated every defense effort to challenge the accuracy of the affidavits. Thus the extradition will be forever tainted, subject to the suspicion that the judicial system simply ran roughshod over Artukovic's civil rights in its determination to create the appearance of being tough on former Nazis. The result is thus not dissimilar to the kind of "show trials" more typical of totalitarian regimes.

The final straw came from the 9th U.S. Circuit Court of Appeals. When this court receives notice of an extradition appeal, it usually grants a routine stay of extradition until it can hear the appeal. Yet Judges Harry Pregerson and Alex Kozinski — without seeing a full brief — decided that an appeal would not be successful, and refused to grant the stay, thus effectively negating the right to appeal. Within hours, Artukovic was on his way to Yugoslavia;

It is a sad day for American justice

PRESS-TELEGRAM

letters

The Andrija Artukovic case

It has now been over five weeks since I requested permission from the Yugoslavs to go over there. The Yugoslav consulate in San Francisco sent a Telex request to Belgrade the same day I made my first request to them.

The U.S. State Department stayed out of it for three weeks. Two weeks ago, they requested the U.S. Embassy in Belgrade to look into it. The embassy has tried several times to get a reply out of the Yugoslavs, but to no avail.

I call both the Yugoslav consulate in San Francisco and the State Department each work day.

I do not believe that my father will get a fair trial over there. Our lawyers have told me that the decision is already made. I have also been told, ahead of time, by certain persons in the Communist Party how things would go. It is vital to me to get into Yugoslavia so I can get a first-hand look at what the 50 or so proposed witnesses have to say.

The Yugoslavs will probably let me in the day before the trial, but recent indications are that they might not even do that. I gave a televised interview to the Australian broadcasting network and they are not pleased with some of the comments I made.

At all costs, they do not want me in the country before the trial because I was not born in Yugoslavia and therefore am not subject to the dual national interpretation of their laws that applied to Yugoslav-born naturalized American citizens.

My father was extradited in part on the theory that he would receive a fair trial and that Yugoslavia is a free country. Despite the overwhelming situation facing us, I intend to interact freely with the press if I am allowed in Yugoslavia, especially when the trial proper starts. I do not intend to engage in polemics but in reasoned advocacy, much as I did in Los Angeles during the proceedings of the last year.

By so far refusing to act on my request for a visa, the Yugoslav government has hampered our defense efforts. The telephones of our attorneys are under 24-hour monitoring by the Yugoslav secret police. During my most recent trip to Germany, I was tailed by two teams of Yugoslav agents. The Yugoslav government is withholding prior statement by their chief witness that would fatally damage their case.

In violation of Yugoslav law, the Yugoslavs intend to present at trial the irrelevant testimony of some 50 witnesses on concentration camps.

Both the United States and Yugoslavia are signatories to the Helsinki Accords. That alone is reason enough to allow me to enter Yugoslavia to visit my father.

I have also asked the State Department to send an official observer to the trial and have asked that the department prepare a report on the trial. Their latest comment on that request was that

"the idea is being kicked around."

For Yugoslavia, this is not a war crimes trial as Americans might interpret it. After 40 years of existence, Yugoslavia is still in a precarious state. The public reaction to my father's extradition is one of yawns. Privately, people are stunned that the United States did this. The Communist Party is officially pleased, and some party veterans are ecstatic. Croats inside Yugoslavia feel betrayal and contempt for the extradition (feelings shared by Croats in exile).

A demonstration in Toronto the week after the extradition numbered some 3,000 and a man set himself on fire in protest. A week later in front of the U.S. Embassy in Canberra, some 8,000 Croats massed in protest. These manifestations were ignored by the U.S. media. They are indicative of a story that is being ignored.

Just as the American media did not report on the Toronto and Canberra manifestations, or the one before the United Nations last Sunday, the Yugoslav press has not reported on the manifestations inside Yugoslavia, such as the arrest of 15 high school students in Vukovar for taking down Tito's picture in school and putting up my father's or the consternation of Zagreb police at finding "Long live Andrija Artukovic" painted on the walls of classrooms at the University of Zagreb.

Radoslav A. Artukovic
Long Beach

PRESS-TELEGRAM

editorials

For a fair, open trial

Yugoslavs should grant visa to Rad Artukovic.

Radoslav "Rad" Artukovic, the son of accused war criminal Andrija Artukovic, reports in a letter published on this page today that Yugoslav authorities have not yet granted a visa so he can attend his father's trial in Yugoslavia.

Human considerations should surely influence the Yugoslav government to grant that visa promptly. Andrija Artukovic should have the comfort his son's presence could provide at a time when the sick old man is on trial for the most serious of crimes committed when he was a member of the Nazi puppet govern-

ment in Croatia.

Plainly, Rad Artukovic proposes to battle the Yugoslav government in the press. That may be the greatest concern of the Yugoslav bureaucrats who have so far not issued him a visa (while they have issued one to a Press-Telegram reporter who will cover the trial). But keeping Rad Artukovic out of Yugoslavia can only add weight to his criticisms of the trial.

The most important case the Yugoslavs must want the trial to make is not to the judges in the courtroom but to the world. That case can be made effectively only by a fair and open trial in which critics can sit in the courtroom and have access to journalists.

LONG BEACH, CALIFORNIA/THURSDAY, FEBRUARY 13, 1986

Artukovic's family vows to keep on fighting

By Larry Keller
Staff writer

Extradition Wednesday of accused Nazi war criminal Andrija Artukovic to Yugoslavia will not end the 13-year effort of his son and steadfast supporter, Rad, to clear his father's name.

Rad Artukovic, a 37-year-old Los Angeles stockbroker, said at a news conference Wednesday that he plans to appeal his father's extradition to the U.S. 9th Circuit Court of Appeals whose decision not to grant a stay of extradition, pending that

"I think it's a poor show for the United States of America."

—Lucille Artukovich,
accused Nazi war criminal's sister-in-law

appeal, cleared the way for Artukovic's removal.

And the younger Artukovic also said he intends to press on with a lawsuit filed last July in federal court in Washington, D.C., alleging that the Justice

Department conspired with Yugoslavia to deprive his father of his civil and constitutional rights.

Even if he wins either case, Rad Artukovic conceded it is unrealistic to think the Yugoslav

government will return his father to the United States. "But it's important for me and my family to see this thing through."

Since 1973, Rad Artukovic has devoted much of his time to trying to prove his father's innocence of the war crimes with which he is charged. Several rooms of his house are crammed with books, notes and documents related to the Nazi puppet government established in the "Independent State of Croatia" during World War II. Andrija Artukovic served in the Cabinet

of that government.

Rad Artukovic and his four sisters grew up in Surfside, a tiny beachfront community near Seal Beach, where the family settled in 1948 after entering the United States. Andrija Artukovic's wife, Anna, still lives there, in the same house provided the family by Andrija's brother and benefactor, contractor John Artukovich.

John Artukovich, who spells his name differently than his brother, also still lives in Surf-

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Rad Artukovic
"Like a death in the family"

LONG BEACH, CALIFORNIA/THURSDAY, FEBRUARY 13, 1986

Artukovic's family vows to keep on fighting to clear his name

FROM/AT
 side. His wife, Lucille, said Wednesday that he would have no comment on the extradition of his brother.

"He's really upset about it," she said. "Especially the way it was done. We weren't even allowed to say goodbye to him. I think it's a poor show for the United States of America. It's a city, not a country."
 Artukovic's extradition to

Yugoslavia has been "very tough" on his family, Rad Artukovic said. "It's probably like going through a death in the family."

Remaining in the background at Wednesday's news conference were Rad's mother and his youngest sister, Nada. They declined to speak to the press.

"We're going into seclusion after the news conference," said Nada. "It's just too personal" to

discuss. Rad Artukovic said his mother definitely would not travel to Yugoslavia in an attempt to see her husband, and he said he is undecided whether he will go there. He said he doubts he could have much impact on the outcome of the case against his father.

Since extradition efforts against Artukovic were renewed in November 1984, Rad Artuko-

vic has been a calm, articulate spokesman for his father, stressing legal arguments and research that he says prove his father innocent of any war crimes.

On Wednesday he showed for the first time the strain of the long ordeal when he recalled the last lucid conversation he had with his father. He said he told his father, "We have to be thankful that a lot of people didn't

survive the war, and he did." "I also told him that even though he's in the last years of his life and not healthy," said Rad Artukovic, pausing to collect himself, his eyes misting, "he can serve as a unifying point for the Croatian people."

"I'm very proud of him," he said of his father. "I'm proud of the man he was, not the myth. He always expressed a wish to die in Croatia, (but) probably not

like this." Although Artukovic is 82 and in frail health, his son noted that he is from "strong peasant stock. He'll last a lot longer than people think."

So far, the younger Artukovic has spent "in multiples of six figures" on his father's defense. "We're going to look for every (legal) thing we can do," he said. "We're not going to give up as long as Dad is alive."

PISMA ČITATELJA

PISMO DRA MEŠTROVIĆA G. SHULTZA U VEZI IZRUČENJA DRA ARTUKOVIĆA

March 4, 1986

Mr. George P. Shultz
Secretary of State
U.S. State Department
Washington, D.C. 20520

Dear Secretary Shultz,

I am writing in the matter of the State Department's extradition of Dr. Andrija Artukovic to Yugoslavia. I have no illusions that what I have to say will impact the thinking of official Washington in the Artukovic case, and do so only out of decent respect for public opinion and as a matter of record.

Dr. Artukovic, his wife, and American-born family would not have objected to his being brought before a fair and impartial court to answer for the crimes imputed to him while Minister of the Interior of the wartime Independent State of Croatia. Dr. Artukovic, in fact, would have welcomed such an opportunity for vindication since he always denied any wrongdoing and was convinced of his own innocence.

As far as the Croatian people are concerned, they too would have approved of an objective and impartial court inquest into the past actions of Dr. Artukovic and the government he served, so that once and for all the true facts could be established concerning Croatia's wartime regime and Dr. Artukovic's individual responsibility for killings and other wrongdoings that occurred in Croatia during the war.

But no right thinking person can compliment the U.S. Government for turning over Dr. Artukovic for trial to a brutal and totalitarian regime which even by its own admission committed far greater wrongdoings than the regime that Dr. Artukovic served.

Communist Yugoslavia's shameful record of politically inspired trials of opponents testifies to the fact that neither Dr. Artukovic nor any other enemy of the present regime can hope to receive a fair and impartial trial in that country.

Dr. Artukovic's trial in Yugoslavia for alleged crimes will not so much seek to prove his individual guilt or that of the regime he served, as to put on trial and condemn the just and legitimate struggle of the Croatian people, in the past and now as well, for self-determination and state independence. For this reason the overwhelming majority of Croatians, whether they are apologists of Croatia's wartime regime or its strong critics, feel deeply offended and injured by the U.S. Government's decision to hand over Dr. Artukovic for trial to Communist Yugoslavia.

During the war, and since then as well, Yugoslavia's Communists have put to death with, and mostly without any semblance of justice, literally hundreds of thousands of

political opponents, including clergymen, Ustasas, Chetniks, Slovene nationalists, Albanian "irredentists" and others.

As far back as 1950, when he was Tito's top lieutenant, Milovan Djilas told my late father when they met in New York, that Tito's Partisans had caused more deaths than the Ustasas, Chetniks, Italians and Germans together. After war's end they put to death countless prisoners of war handed over to them by the British in Austria, without any semblance of justice or any attempt to ascertain individual responsibility. These victims fill mass graves at Bleiburg in Austria, in Slovenia, and elsewhere across Yugoslavia.

The massacres and killings did not end in peacetime. All that changed were the labels tagged to the victims. The Yugoslav press, for instance, recently wrote extensively about the so-called "Dachau trials" of Communists who had survived Nazi death camps and had returned to Yugoslavia only to be falsely accused as Nazi collaborators. They were "tried", found guilty, and a number were executed. Now, decades later, the regime even concedes that these men were victims of judicial murder.

After the 1948 Tito-Stalin break, according to Zagreb's weekly Danas, about 54,000 suspected "Cominformists" were rounded up, horribly tortured and brutalized. Thousands were beaten to death or butchered on the Adriatic death islands of Goli otok and Sveti Grgur. The litany of horrors committed by the Belgrade regime would fill volumes, but the instances cited should suffice to show that as Djilas wrote, Yugoslavia is a land without justice, a land where no perceived political opponent can count on obtaining a fair hearing or justice in court, least of all Dr. Artukovic. And yet, this is the regime to which the U.S. Government handed Dr. Artukovic for trial and judgement.

Having lived almost my entire life in the U.S., having been educated here, and having taught at American universities, I was convinced that the American system of democracy differs from totalitarian government in its insistence on due process, on its insistence that just ends must be attained by decent means. Irrespective of the magnitude of a man's alleged crime, he is entitled to presumption of innocence until found guilty beyond reasonable doubt by an impartial tribunal. To hand over an accused to a lynch mob, is to become part of it.

There are other troubling aspects to the way in which Dr. Artukovic was handed over to Yugoslavia, hastily and in secret, without notifying his family or lawyers. Why was Fr. Artukovic's family not allowed to take leave of him? These are ultimately little concerns in the global play of politics, but nonetheless important, for they are a measure, so to speak, of man's humanity.

Why was this 88-year-old man, sick, senile and legally

blind, extradited after being allowed to live in this country 38 years, under his known identity, and after earlier extradition attempts had been turned down by U.S. courts? No new "evidence" against Dr. Artukovic was uncovered in all the years he lived in this country. And yet, now, he was extradited on essentially the same evidence that was earlier determined by U.S. courts to be insufficient and highly suspect.

Finally, Mr. Secretary of State, allow me to speak of the impact Dr. Artukovic's extradition and trial is likely to have on the already highly charged internal national question in Yugoslavia. It will inflame national passions and hatreds that are threatening Yugoslavia with disaster. As far as the Croatian people are concerned, reports reaching us through the numerous workers "temporarily employed" in the West, is that they perceive Dr. Artukovic's extradition to the Communist dictatorship, as yet another calculated U.S. move to humiliate them as a people and to put on trial before the world their legitimate aspirations for freedom and national independence.

Artukovic's trial is likely to strengthen centrifugal forces tearing Yugoslavia apart and will reinforce Croatian resolve to break away. Rightly or wrongly, their mass psychology is such, that they feel deeply wronged and injured, and attribute their humiliation to the fact that unlike other nations they have so far been denied full state sovereignty.

All of this, I fear, has spiritually traumatized the Croatian people and they are likely to turn away from the West and its values and may seek more sympathetic hearing elsewhere, for even a small nation's aspirations for freedom will not forever be denied no matter how great is the power of those that stand in its way.

Sincerely your,

Dr. Matthew Mestrovic
President,
Croatian National Congress
Saddle River, N.J.

Artukovic son vows crusade

Associated Press

With tears in his eyes, the son of alleged Nazi war criminal Andrija Artukovic conceded defeat in the long court battle to save his father from extradition, but said he won't drop the crusade to prove his innocence.

Rad Artukovic accused the U.S. government of collaborating with the communist regime in Yugoslavia to press charges against his father based on fraudulent evidence.

"It's like going through a death in the family," Artukovic told a news conference Wednesday hours after his 86-year-old father was whisked secretly out of the country and flown to Yugoslavia to face trial on war crimes charges.

His lawyers had exhausted all legal routes to stop his extradition when U.S. Supreme Court Justice William Rhenquist refused to grant a stay Tuesday night.

The onetime interior minister of the Nazi puppet state of Croatia is accused of being the notorious "Butcher of the Balkans," overseeing the deaths of some 700,000 Serbs, Jews and Gypsies during World War II.

The younger Artukovic, who has been his father's most ardent supporter during 15 months of extradition hearings, said his father was in "a hallucinatory state" when he last visited him and probably does not understand what's happening to him.

He said sources in Yugoslavia told him the aged prisoner, suffering from heart problems, blindness and senility, was being held in the Simunski Bolnica, a hospital in Zagreb.

Family attorney Gary Fleischman said Artukovic is unable to comprehend the charges against him.

"He's been thinking he's in Yugoslavia for months," Fleischman said. "They've moved his body but his soul has been back and forth for a long time. He doesn't know if he's there or not there."

Both Fleischman and Artukovic said they would continue with a federal court appeal here and a civil suit against the U.S. Justice Department and the Yugoslavian government in Washington.

"It's important for me and my family to pursue this," Artukovic said. But he said it was unlikely he would go to Yugoslavia because he feels any effort to help his father there would be futile.

The 36-year-old stockbroker bitterly denounced the Justice Department's Nazi-hunting Office of Special Investigations, accusing it of attempting to win favor with the Yugoslav government by returning an opponent of that regime for trial.

"In Croatia, my father would be a hero," the son said. "He's a martyr to the Croatian people."

He claimed that the office knew the key piece of evidence supporting extradition — an affidavit from a survivor of the war — was perjured and said he would ultimately prove that.

"I find it disgraceful," Fleischman said of his client's departure. "He was whisked out of the country without the opportunity to say goodbye to his wife, children and grandchildren he will probably never see again. Why? For what reason?"

"He had 15 months to say goodbye to his family," countered Assistant U.S. Attorney David Nimmer, who handled the extradition.

"The United States government is gratified and feels vindicated in the position we have taken from the outset," Nimmer said. "This country has offered Artukovic 15 months worth of hearings. Four levels of courts have reviewed his claims and each concluded he must face trial in Yugoslavia for thousands of acts of murder."

For Artukovic's son, it was the end of an extraordinary battle which consumed him since his father's arrest Nov. 14, 1984.

He wept as he recalled his father's last coherent conversation with him in prison.

"When he was lucid, I told him we have to be thankful," Artukovic said, "that a lot of people didn't survive the war and he did. I also told him that God has been good to him — that even though he's in the last years of his life and not healthy he can serve as a unifying point for the Croatian people."

"He always expressed a wish to die in Croatia, but not for the reasons it's happening," he added. "He's of strong peasant stock. I think he will survive a lot longer than people think."

ARTUKOVIC'S HOMELAND



Andrija Artukovic, accused of Nazi war crimes, was extradited Wednesday to Zagreb, Yugoslavia. During World War II, Artukovic was the minister of the interior in the Nazi-controlled state of Croatia, of which Zagreb was the capital. The current Yugoslavian government blames him for thousands of deaths during the fascist regime.

AT A GLANCE

The Socialist Federal Republic of Yugoslavia, a mountainous Eastern European country about the size of Wyoming, is an independent Communist nation of about 23 million people.

Its residents are farmers, miners and industrial workers with three official languages, three major religions and a mix of ethnic backgrounds.

Most are Slavic. Serbs and Croats dominate the population: 36 percent are Serbs, who are Eastern Orthodox, and 20 percent Croats, who are Roman Catholic. About a tenth of the population is Muslim.

Croats migrated to the area in the seventh century but through most of their history were dominated by others.

The modern borders of Yugoslavia date from the end of World War I. But when the Italians and Germans invaded during World War II, fascist Croats seized the opportunity and created the state of Croatia in 1941. The Nazi-influenced regime lasted until 1945, when Yugoslavia was reunited.

Yugoslavia became a federated republic in 1946 but as a communist nation, it retained close ties with the U.S.S.R. and other Soviet Bloc countries. It is friendly with the United States and trades extensively with the West.

Source: Encyclopedia Britannica, World Fact Book, The Register.

THE
PETITION
OF A
CRUCIFIED NATION



- TO THE PEOPLE OF GOOD WILL
- TO THE STATESMEN
- TO THE WORLD



Presented
by
AMERICAN CROATIANS

I am an ancient nation, one of the few nations which have outlived long centuries in Europe, for already by the 7th century of the Christian era I had been organized into an autonomous state.

*I introduce
myself to you,
O World.*

In the south the Adriatic sea caresses my coast, in the east the River Drina surrounds me and in the north the River Drava is my boundary.

That was my country from long ago and so it is today. In this country still live my Croatian people. If I had not been placed at the fateful crossroad of the European east and west; if in my country, and for my country, there had not been fought many wars, I would have, at the present time, a population of over twenty-five millions. But, in spite of a relentless struggle for my existence, I am still alive with more than five millions of my children.

In the name of these millions of Croatian children I submit to you, O World, my fervent petition.

It is short and truthful; clear and sincere, it is a manifestation of my will and of my eternal pledge; an oath to God and men, from which I shall never, under any circumstances, withdraw.

Through fourteen centuries of my life I held to the concept of an independent nation. Nobody challenged my desire until recently.

I am a nation.

Through past centuries, against repeated attacks on my country, I have defended myself and remained alive. The invasion of Asiatic hordes I often have withstood and repulsed, not only for myself but also for other countries of western Europe. Therefore I was named

by the Popes of Rome "Antemurale Christianitatis" (Bulwark of Christianity).

May I, O Christian and civilized world, at least remind you of the favors I did you and your predecessors?

I am a cultured nation.

Though small in numbers, I gave you, O World, geniuses of a creative culture of the first order. Rudger Bošković, the forerunner and first discoverer of atomic energy back in the 18th century, is my child. Ivan Meštrović, the war fugitive of my tattered wing, is another of my sons. You called him the "Michelangelo of the 20th century." And, truly, he is. Still another of my artists, a painter, also world famous, Joža Kljaković, lives far from my motherly protection. Again Archbishop Stepinac, the first fighter for the freedom of the human soul in these tragic days, is of my family. At the present time he is in the prison of the tyrant. You, O World, admire him and erect in the honor of his name ineffaceable monuments.

But are you, O World, aware of the fact that I, his whole nation, am in the same foul prison of the inhuman tyrant?

I am able to live.

My land is splendidly rich. It is bigger than some other countries which enjoy independence. My geographical situation favors the best development and the highest well-being. Please, O World, look only for a moment at any geographical map.

It is a common error to believe that I am forced, on account of my poverty, to be deprived of my independence. And the second world war has just shown the opposite.

For my independence, since I lost it by the death of

my national rulers, I have always craved and have always fought.

By force of circumstances I found myself in the fold of the Austro-Hungarian monarchy. Yet, I was assured somewhat of a cultural development. But when this state structure began to deteriorate in the course of the first world war, my people grasped the opportunity and, by its own free will, proclaimed its independence on the 29th of October 1918. Unfortunately, through the machinations of ill-advised diplomats and the belief of some idealists, this national proclamation was condemned. My Croatian people, without being consulted, against their will, and by brute force, were compelled to enter into an artificial state structure labeled "Yugoslavia".

*A terrible
historical blunder
ruined me.*

I solemnly affirm, O World, that this act was among the greatest blunders in the history of mankind. Never did I suffer more through all the long centuries than through the twenty-three years of the existence of the so-called "Kingdom of Yugoslavia". And although peace reigned at that time, my children were persecuted and killed; while I, extorted and impoverished, became a beggar-nation.

Why did you allow that, O World? What wrong had I done? Is it wrong to be oneself and free? Do you thus pay my debts?

You were surprised, O World, that I did not defend that "Yugoslavia" when the war storm broke out in 1941.

And who is obliged to defend his prison, even when

it has been fiendishly invaded? Who wishes to be born and to die in prison?

Not any one. And so I do not want it either. I have helped to overthrow this "Yugoslavia", and with titanic strength I have strained to raise myself on my own feet.

***I was falsely
accused.***

A great many of your leaders, O World, are mistaken when they think that, on the 10th of April 1941, the troops of Hitler and Mussolini created the "Independent State of Croatia". There is nothing farther from the truth. My own people proclaimed and organized their own state; my own people died for its preservation against the will of Hitler and Mussolini. Evidence to this effect is found in the statement of my greatest son, Dr. Stepinac, which he made at the trial at Tito's court in Zagreb on the 3rd of October 1946. He said:

"The Croatian people have declared by plebiscite their own State of Croatia, and I would be a blackguard if I would not feel the pulse of the Croatian people who were slaves in the former Yugoslavia."

He gave this statement at the moment when the sword was hanging over his head.

Are not these circumstances sufficient to restrain anyone from questioning for a moment the sincerity, of this great man?

It was only an accidental event that my people found themselves on the side of the axis. What could I have done to prevent it?

***In spite of force,
tried to contact
the West.***

I tried by all means to find myself on the side of the western allies from the first day of the creation of my own state. The commander-in-chief of my armed forces appealed to you to disembark on my Adriatic coast.

- 4 -

Even to this day there exists a written order of the General staff to my soldiers not to fire on the Anglo-Americans.

Why, my western world, are not you, at least, just towards me?

Yes, I have fought heroically and unafraid through four years; never, however, against you, free World, but against those of whom you, yourself, are afraid to-day.

I wonder if I have been farseeing?

And when, O World, the deceitful war propaganda led you to the blunder of helping my enemies, who were, and are, at the present, also yours, nevertheless almost a fifth of my people went over to you, hoping that you would understand me in this tragic moment.

I was greatly mistaken. You turned my children over to be slaughtered. Bleiburg and the massacre along the Austrian border I shall never forget.

Thus was enacted my newest tragedy.

And why did you allow that, O World?

*I lost all
but faith!*

To-day I have no state; thousands upon thousands of my children are scattered all over the world, lost and forlorn. Some of them they brand as war criminals. But they sinned against the world only by their limitless love for their nation.

The plain people who still live under my loving care are choking in a death rattle. Hundreds, yes even thousands were butchered yesterday in the name of God. Other thousands spend their life in my deep forests, living like hunted beasts.

And you, O World, look at all this as if that did not concern you at all, although you also wear the stain of guilt for my misery.

In what way did I offend you that you should create for me such a bitter destiny?

Nevertheless, I hope that, some day, my wounds will heal and that I shall again stand on my own feet and with you, a free country, play a brotherly "kolo", my native dance, and be respected as a human being.

Yet now I ask you to listen to me. For I am in pain. I am robbed. I am crucified. The communist tyrants, whom you helped to climb upon my back, drench me with a deadly poison to choke me and kill me. But I will not give up; I shall keep on withstanding them.

Although I am in my death rattle, I still see clearly a conflict in the making one, which will, in the near future, engage Freedom and Slavery. I should like to use my own words and call it the struggle between the East and the West.

My suffering is increased by rumors that new shackles are being prepared for me. They tell me that I shall again be crammed into some "Yugoslavia"; they tell me that even some of my children have left me and favor a renewed so-called third Yugoslavia, my third prison.

Do you earnestly, O World, intend to scorn the thousand year old wish of a nation which has done nothing wrong to you?

I do not know as yet, O World, what your intentions are; but, in any event, I recommend you the following:

***This is my
only petition.***

I do not want any "Yugoslavia" in any form; against her I shall always fight with all my strength and with all my faithful children.

I let you know this in time and on my word of honor. Therefore, if you wish any peace in these lands, let me live my own life in my own sovereign and democratic state of Croatia. Otherwise we cannot have peace.

I do not want anything else; I crave for nothing more than to own my State. And there are no powers that could break my firm will; there is no power that could, in peace-time, support any other state structure on my territory.

I do not exclude myself from any general plan which will bring settled conditions to this old and sinful continent; but let all the people enter into it, including my Croatian people, on an equal basis. For I shall be satisfied and happy if, in the reunion with all other free peoples, I can contribute my share to the progress and peace of humanity.

***Will you
grant it?***

The guarantee for the keeping of my promise you can find in my long book of history, in my superhuman effort in the past and in the bitter struggle which I fight to-day for my freedom.

After all, do I ask too much? Do I ask your pity?

No, I ask for my right. To this I am entitled.

Will you see that I obtain it?

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 12 1985

ANDRIJA ARTUKOVIC,)
Petitioner,)
vs.)
IMMIGRATION & NATURALIZATION SERVICE,)
Respondent.)

PHILLIP B. WINBERRY
No. 84-9428 U.S. COURT OF APPEALS
CV# A7 095 961

ORDER

Before: WRIGHT, Circuit Judge

Upon due consideration of Respondent's motion to file a late cost bill and Petitioner's objection thereto, the court finds that Respondent has not shown good cause for filing a late cost bill. See Mollura v. Miller, 621 F.2d 334, 336, (9th Cir.), cert. denied, 446 U.S. 918 (1980). The motion is therefore denied.

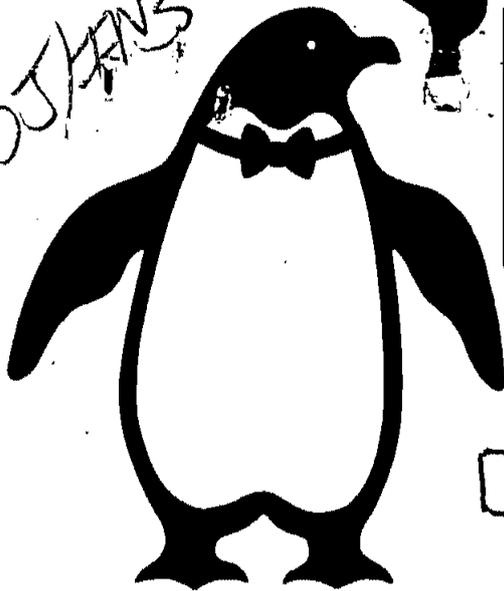
Phillip B. Winberry
United States Circuit Judge

LOS DIARY

JUN 17 10 32 AM '85

RECEIVED
U.S. IMMIGRATION &
NATURALIZATION
SERVICE

DOJ/INS



(b)(6)

3/1/86

INS

WAC

many

Dear Mrs. Reagan,

My name is



(b)(6)

I live in



(b)(6)

My Grandfather, Andrija Antakovic, is the person from Surfside, California.

He was taken from his home when I was in third grade and now I am in fourth grade.

Some people think he was a Nazi, but he never was one, and now they want to kill him.

I miss him very much.

I wish he was home where he belongs.

Sincerely,



(b)(6)

P-465031092
CERTIFIED

~~REGISTERED~~ write back to me because I want to know if you really got the letter.
INSURED

RECEIVED

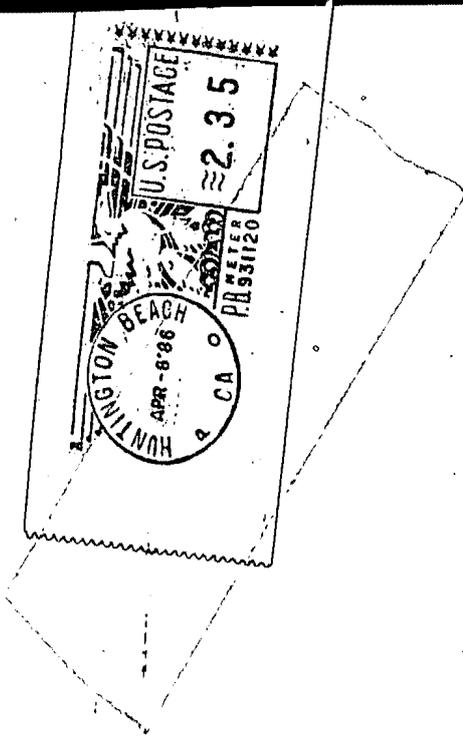
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DOJ MAIL
REFERRAL UNIT
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Date		
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Initials	Date	
Note and Return		

(b)(6)



11 4 APR 1986

Mrs. Nancy Reagan
Washington D.C. 20082-0001

**RETURN RECEIPT
REQUESTED**

Place all time over top of envelope to the right
of the return address

CERTIFIED

P 465 031 092

MAIL

(b)(7)(e)

CIMDTL
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX SYSTEM - PERSONAL DESCRIPTION DISPLAY

04/12/13
17:20:01

A#: 007095961 NAME: ARTUKOVIC

ANDRIJA

DOB: 11291899

LAST: ARTUKOVIC
FIRST: ANDRIJA
MIDDLE:
ALIASES:

NATZ DATE:
COURT:
LOCATION:

SEX: M POE: COB: YUGOS DOE: 00000000
FCO: LOS COA: COC: FTI: 09121995 FATHER:
PFCO: LOS SFCO: DFO: 03261992 BIN: MOTHER:

SSN:

CONSOLIDATED A-NOS

--OTHER INFORMATION--

I-94 ADM #:
PASSPORT #:
FBI #:
DRIVER LIC:
FINGER CD#:

OVER-KEY A# TO DISPLAY NEW PERSON. PRESS ENTER. CLEAR EXIT PF1 NEXT CONS A#
PF2 PRIOR CONS A# PF4 RETURN PF5 HELP PF6 MAIN MENU PF8 HISTORY PF11 EOIR