(b)(6)

U.S Department of Justice
Immigration and Naturalization Service

Warrant of Removal/Deportation

File No: A [redacted]

Date: June 18, 2008

To any officer of the United States Immigration and Naturalization Service:

John DEMJANJUK, aka: Iwan Demjanjuk
(Full name of alien)

who entered the United States at New York, NY (Place of entry) on or about February 9, 1952 (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☒ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

237 (a)(4)(D) of the Immigration and Nationality Act.
237 (A)(1)(A) of the Immigration and Nationality Act.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of: *appropriation "Salaries and Expenses, Immigration and Naturalization Service,2012, including the expenses of an attendant if necessary.*

(b)(7)(c)

[redacted]
(Signature of INS official)
Field Office Director
(Title of INS official)
6/18/08 Cleveland, OH
(Date and office location)

PLEASE RETURN TO:
DETENTION & REMOVALS
1240 EAST 9TH STREET, SUITE 535
CLEVELAND, OH 44199

Form I-205 (Rev 4-1-97)N

To be completed by Service officer executing the warrant:
Name of alien being removed:

John DEMJANJUK, aka: Iwan Demjanuk A [redacted]

Port, date, and manner of removal: CLE, 5/11/09, Charter Air

Photograph of alien removed

Right index fingerprint of alien removed

John Demjanjuk
(Signature of alien being fingerprinted)

[redacted] D. O.

(b)(7)(c)

PLEASE RETURN TO:
DETENTION & REMOVALS
1240 EAST 9TH STREET, SUITE 535
CLEVELAND, OH 44199

Departure witnessed by: [redacted] SDDO [redacted] DET
(Signature and title of INS Official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____
(Signature and title of INS official)

(b)(6)

U.S. Department of Justice
Immigration and Naturalization Service

Warning to Alien Ordered Removed or Deported

1240 E. 9th Street, Room 535
Cleveland, OH 44199

File No: A [redacted]

Date: June 18. 2009

Alien's full name: John DEMJANJUK, aka: Iwan Demjanjuk

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

☐ For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

☐ For a period of 10 years from the date of your departure from the United States because you have been found:
- ☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.
- ☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
- ☐ deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by an immigration officer, a judge of a United States district court, or a magistrate of a United States magistrate court.

☐ For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:
- ☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ☐ deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.
- ☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
- ☐ to have reentered the United States illegally and have had the prior order reinstated under section 241 (a)(5) of the Act.

☒ At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected you must request and obtain permission from the Attorney General to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or office of the United States Immigration and Naturalization Service. Refer to the above file number when requesting forms or information.

WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States during the period in which he or she is barred from so doing without the Attorney General's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to $250,000.

[redacted] (b)(7)(c)
(Signature of officer serving warning)

SDDO
(Title of officer)

Cleveland, OH
(Location of INS office)

Form I-294 (4-1-97)N

(b)(6)

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Broadley, John H., Esq.
1054 31st Street NW
Suite 200
Washington, DC 20007-0000

ICE Office of Chief Counsel/CLE
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN **A** [redacted]

Date of this notice: 4/15/2009

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Holmes, David B.
Osuna, Juan P.

(b)(6)

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

DEMJANJUK, JOHN
[redacted]

ICE Office of Chief Counsel/CLE
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN **A** [redacted]

Date of this notice: 4/15/2009

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Holmes, David B.
Osuna, Juan P.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A[redacted] Cleveland, OH Date: APR 15 2009

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: John H. Broadley, Esquire

ON BEHALF OF DHS: Eli M. Rosenbaum
Director
Office of Special Investigations
Criminal Division, USDOJ

APPLICATION: Reopening

The Board entered the final administrative order in this case on December 21, 2006, when we dismissed the respondent's appeal from an Immigration Judge's denial of his application for deferral of removal to the Ukraine under the Convention Against Torture. On January 30, 2008, the United States Court of Appeals for the Sixth Circuit affirmed, and the Supreme Court denied the respondent's petition for *certiorari* on May 19, 2008. On April 7, 2009, the respondent filed a motion to reopen seeking an opportunity to apply or reapply for protection under the Convention Against Torture. The Department of Homeland Security opposes the motion. The motion will be denied.

The respondent seeks application of the exception to the general time restrictions on motions to reopen that applies to motions seeking consideration of applications for asylum or withholding of removal based on changed conditions in a country of removal. 8 C.F.R. § 1003.2(c)(3)(ii). *See generally Haddad v. Gonzales*, 437 F.3d 515 (6th Cir. 2006). The respondent, who has been found removable for having participated in Nazi persecution, is ineligible for either asylum or section 241(b)(3) withholding of removal pursuant to sections 208(b)(2)(A)(i) and 241(b)(3)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(2)(A)(i), 1231(b)(3)(B)(i).[1] Further, he is ineligible for withholding of removal under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(d)(2), 1208.17(a). The respondent may only seek deferral of removal under the Convention, a form of protection from removal that is not referenced in the 8 C.F.R. § 1003.2(c)(3)(ii) exception.

[1] The statutory exception based on changed circumstances in the country of removal does not cover applications for protection under the Convention Against Torture. *See* section 240(c)(7)(C)(ii) of the Act.

In any event, even if a motion seeking an opportunity to apply for deferral of removal under the Convention Against Torture may be considered under the exception, we find that the respondent has not persuasively demonstrated that it applies here. Alternatively, we find that the motion fails on the merits.

The respondent's prior application sought deferral of removal solely with respect to Ukraine. He now seeks an opportunity to apply for deferral of his removal to Germany, one of the alternate countries designated for his removal. No objective evidence was provided with the motion to support the respondent's claim that he will arrested, detained, and prosecuted for war crimes upon his arrival in Germany. However, the Government does not contest that an arrest order has been issued by a German judge based on "suspicion of assistance in the murder of at least 29,000 Jews at the Sobibor extermination center during World War II" and that Germany has consented to the respondent's admission to Germany. *See* "Government's Opposition to Respondent's Motions to Reopen and for an Emergency Stay" at p. 4.

It is not clear why the respondent believes that Germany would not have sought to prosecute him if he was returned at the time he last applied for deferral of removal. However, to the extent the recent arrest order can be construed as a "change" in circumstances arising in Germany, it does not, in itself, satisfy the materiality element required for motions generally as well as for motions seeking the application of the §1003.2(c)(3)(ii) exception.

The definition of "torture" at 8 C.F.R. § 1208.18(a)(3) expressly provides that "[t]orture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" including "judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty. . . ." The respondent's argument that Germany's intent in seeking to charge him is to inflict pain and suffering on him that, due to his age and physical condition, would now amount to torture within the meaning of 8 C.F.R. § 1208.18(a) is entirely speculative. The facts determined in the denaturalization proceedings in the federal courts, and established in these administrative removal proceedings by collateral estoppel, do not lend themselves to a conclusion that any pain or suffering the respondent might suffer if he is detained in Germany would be incident to anything other than legitimate law enforcement objectives (BIA Decision dated December 21, 2006, at pp. 2-3, 12-16). *See United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622, 544623 (N.D. Ohio Feb. 21, 2002) (unpublished decisions), *aff'd*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004).

The respondent has provided evidence regarding his medical condition, but has not provided any objective evidence establishing that Germany's criminal justice system does not consider a defendant's physical capacity to stand trial,[2] that he will likely be detained pending trial, or that, if he is detained, appropriate medical care will not be provided or he will otherwise be subjected to conditions that reach the "extreme form of cruel and inhumane treatment" necessary to constitute

[2] Although not a determinative matter, as the burden of proving that reopening is warranted rests with the respondent, we note that the Government's opposition to the motion is supported by a study reporting that the German courts have suspended or dismissed the proceedings against accused Nazi war criminals in cases where they were determined to be medically incompetent to stand trial.

torture. 8 C.F.R. § 1208.18(a)(2). To warrant the reopening of a final order, the respondent must provide evidence showing a likelihood that he would be able to prevail on his application for deferral of removal. The burden of proof is on the respondent "to establish that it is more likely than not that he . . . would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2); *see also* 8 C.F.R. §§ 1208.16(c)(3) and 1208.17(a). This motion is not supported by evidence showing a likelihood that, if his proceedings were reopened, he would be able to meet his burden of proving that it is more likely than not that he will face torture in Germany or that any law enforcement actions would "defeat the object and purpose of the Convention Against Torture." 8 C.F.R. § 1208.18(a)(3). Therefore, separate from the untimeliness issue, the respondent has failed to satisfy the heavy burden required for reopening. *See generally Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992) (a party who files a motion to reopen bears a "heavy burden" of proving that "if proceedings before the Immigration Judge were reopened, with all of the attendant delays, the new evidence would likely change the result in the case").

We have considered the respondent's arguments advanced in his "Motion for Leave to File Reply" to the Government's opposition to the motion. However, the facts supporting the respondent's removal order were determined by the United States District Court for the Northern District of Ohio and affirmed by the United States Court of Appeals for the Sixth Circuit. *See United States v. Demjanjuk, supra.* We do not find the respondent's argument related to the earlier proceedings in Israel relevant to our ruling on the present motion. The sole issue properly before us is whether reopening is warranted to permit the respondent to pursue a claim for deferral of removal to Germany under the Convention Against Torture. *See United States v. Demjanjuk, supra.* Further, we lack jurisdiction in these removal proceedings to address the respondent's argument that Germany will run afoul of the rule against double jeopardy if it prosecutes the respondent in criminal proceedings except to the extent that this argument relates to the issue of deferral of removal; and, we do not find that it provides any meaningful support for the respondent's Convention Against Torture claim. Finally, we have no jurisdiction to review the DHS physician's medical determination regarding the respondent's physical fitness to travel. Accordingly, the motion will be denied. The respondent's motion for a stay pending consideration of this motion was separately denied by order dated March 10, 2009.

ORDER: The respondent's motion is denied.

FOR THE BOARD

(b)(6)

Office of Detention and Removal Operations
Cleveland, Ohio
U.S. Department of Homeland Security
1240 E. 9th Street, Room 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

April 3, 2009

John H. Broadley, Esq.
John H. Broadley & Associates, P.C.
Canal Square
1054 Thirty-First St., N.W.
Washington D.C. 20007

Re: John Demjanjuk, A [redacted]

Dear Mr. Broadley:

This letter is in response to your client's, Mr. John Demjanjuk, A [redacted] submission of ICE Form I-246, Application for a Stay of Deportation or Removal (Application),[1] with U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), on April 1, 2009. The Application requests that ICE stay Mr. Demjanjuk's removal from the United States for one year because it "would not be 'practicable or proper'" under 8 C.F.R. § 241.6 due to his current medical condition. He further claims "urgent humanitarian reasons" under 8 C.F.R. § 212.5 in support of his Application on the ground that his removal, followed by the Federal Republic of Germany (FRG)'s arrest, detention, and confinement pending trial, would be "such stressful events" that would amount to "inhuman and degrading treatment to myself and my family."

As you are aware, Mr. Demjanjuk has exhausted his administrative and judicial remedies to review his removal from the United States under INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D) (inadmissible at time of entry or adjustment of status under INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i) (participated in Nazi persecution); INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under §§ 10 and 13 of the Displaced Persons Act, 62 Stat. at 1013 (1948)); and INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under § 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)). He therefore became subject to removal to Ukraine, Poland, or the FRG. See INA § 241(a), 8 U.S.C. § 1231(a). The FRG has agreed to accept him and on March 10, 2009, issued an arrest warrant for him, alleging that he was an accessory to 29,000 counts of murder as a guard at the Sobibor extermination camp from March to September 1943.

[1] Your March 31, 2009 cover letter requests that ICE waive the requirements that Mr. Demjanjuk file his Application in person and pay the $155 filing fee. Please be advised that the INA regulations prescribe that an applicant "seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, . . . and stating that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay." 8 C.F.R. § 103.7(c)(1). Although your client has not substantiated his inability to pay the fee, the agency agrees to waive his appearance and the prescribed remittance.

On April 2, 2009, an ICE Division of Immigration Health Services (DIHS) physician conducted a physical examination and concluded that Mr. Demjanjuk is medically stable to travel from the United States to the FRG. A DIHS physician and nurse will be available to assist him during the flight. Medical personnel will monitor his medical condition while en route from Cleveland, Ohio, to Munich, FRG.

In summary, after reviewing Mr. Demjanjuk's Application and DIHS's assessment of his ability to travel in light of the factors enumerated in 8 C.F.R. § 212.5 and INA § 241(c)(2)(A), 8 U.S.C. § 1231(c)(2)(A), I have concluded that your client can safely fly from the United States to the FRG. Accordingly, his Application is denied and no stay of removal will be granted. Please note that a denial of a request for a stay is not subject to administrative or judicial review. 8 C.F.R. § 241.6(b) ("[denial . . . of a request for a stay is not appealable"); Moussa v. Jenifer, 389 F.3d 550, 555 (6th Cir. 2004) (field office director's discretionary decision "is thus unreviewable by [the Court of Appeals.]"). Please contact Supervisory Detention and Deportation Officer Charles Winner at (216) 535-0364 if you have any further questions.

Sincerely,

Vincent Clausen
Field Office Director

cc: John Demjanjuk

(b)(6)

ORIGINAL

LAW OFFICES

JOHN H. BROADLEY & ASSOCIATES, P.C.

CANAL SQUARE
1054 THIRTY-FIRST STREET, N.W.
WASHINGTON, D.C.
20007

(202) 333-6025
(301) 942-0676 FAX

INTERNET
JBROADLEY@ALUM.MIT.EDU

JOHN H. BROADLEY

March 31, 2009

Vincent J. Clausen, Field Office Director
Immigration and Customs Enforcement
Office of Detention and Removal Operations
333 Mt. Elliott St.
Detroit, MI 48207

Re: John Demjanjuk, A [redacted] Application for Stay of Deportation or Removal

Dear Mr. Clausen:

Attached please find a Form I-246 completed by Mr. John Demjanjuk seeking a stay of deportation or removal for urgent humanitarian reasons as provided in 8 CFR 212.5(b). Because of Mr. Demjanjuk's serious medical conditions it would not be "practicable or proper" to remove him within the meaning of 8 U.S.C. 1231(c)(2). Removal under such circumstances would constitute inhumane treatment that is specifically prohibited by United States law and by treaties to which the United States is an adherent such as the Convention Against Torture.

We have learned through press reports that ICE is preparing to remove Mr. Demjanjuk to Germany in the near future. As you will see by the medical reports attached to the I-246, Mr. Demjanjuk will be 89 on April 3 and is in poor health suffering from a number of serious conditions outlined in those medical reports.

Mr. Demjanjuk's medical condition as outlined in the reports attached to the I-246 raises serious questions whether he will able to endure the stresses of removal to Germany without further damage to his health. To date, ICE has not arranged for physical examination of Mr. Demjanjuk by a doctor to determine his ability to travel, notwithstanding we have offered to make him available for such an examination in a Cleveland hospital.

Mr. Demjanjuk is not in a condition to travel to Detroit to submit this application in person, indeed, his health is such that it would be difficult for him to travel to Cleveland to file the I-246. ICE knows Mr. Demjanjuk's address and recently installed a GPS ankle band which I understand provides you real time knowledge of his location.

Please waive any requirement that Mr. Demjanjuk submit this form in person. Mr. [redacted] will present this letter and the I-246 and can answer any questions you have concerning Mr. Demjanjuk to which you do not already have answers.

Please waive the $155 filing fee. After 34 years of litigation with the US government and with the Israeli government Mr. Demjanjuk has no financial resources of his own from which to pay such a filing fee.

Please give this matter expedited handling as there is a risk that ICE authorities will undertake the removal in the near future without an adequate medical examination of Mr. Demjanjuk.

Yours very truly,

John Broadley

John Broadley
Attorney for John Demjanjuk

CC: [redacted] (b)(7)(c)
Supervisor Deportations
Immigration and Customs Enforcement
1240 E. 9th Street
Cleveland, OH 44199

(b)(6)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

OMB No. 1653-0021
Expires: 09/30/2009

APPLICATION FOR A STAY OF DEPORTATION OR REMOVAL

For Internal Use Only

☐ Granted ☐ One Year ☐ Six Months ☐ Three Months ☐ Other: _____
☐ Denied ☐ Denial letter attached.
☐ Rejected ☐ Incorrect Fee ☐ Failure to submit in person ☐ Other: _____
☐ Additional information attached.

Date: _____ Decision made by _____
(Printed Name/Title)

Deciding Official Signature: _____ Office: _____

Fee/Date Stamp

File Number	Date	
A [redacted]	03/31/2009	

Last Name	First Name	Middle Name
Demjanjuk	John	

Address (*Number and Street*):	Country of Citizenship:	Passport No:	Expiration Date:
[redacted]	None	None	N/A

Apartment Number:	Length of stay requested: ☒ one year ☐ six months ☐ three months ☐ other

Town/City:	State:	Zip Code:	Arrested by police or other law enforcement agency (other than for immigration reasons) ☐ Yes - Documents attached ☒ No
[redacted]	OH	[redacted]	

Telephone Number:	Cell Telephone Number:	Sections of law for which of ordered deported/removed:
[redacted]	[redacted]	8 USC 1182(a)(3)(E)

REASON(S) FOR REQUESTING A STAY OF DEPORTATION OR REMOVAL:

See attached statement

EVIDENCE SUBMITTED (attached):

☒ Medical ☐ Brief ☐ Other (specify): _____

I certify under penalty of perjury that the information provided and contained herein is true and correct to the best of my knowledge and belief:

JOHN DEMJANJUK
(Printed Name)

x John Demjanjuk
(Signature)

INFORMATION IF FORM PREPARED BY OTHER THAN APPLICANT:

I declare under penalty of law that this document was prepared by me at the request of the applicant and is based on all information of which I have knowledge. I understand that providing false information on behalf of the applicant could result in criminal prosecution and, upon conviction, a fine or imprisonment or both.

John Broadley
(Printed Name)

John Broadley
(Signature)

202-333-6025	1054 31st Street NW, Ste 200	Washington	DC	20007
(Telephone Number)	(Street Address)	(City)	(State)	(Zip Code)

ICE Form I-246 (10/08)

Attachment to ICE Form I-246

Reasons for requesting a Stay of Deportation or Removal:

My removal from the United States would not be "practicable or proper" (8 CFR 241.6). I am not a security risk and am making this request for "urgent humanitarian reasons" (8 CFR 212.5).

Current media reports make clear that ICE is negotiating to deport me to Germany. A Deportation to Germany would require lengthy international transportation which, upon arrival, would be followed by arrest, detention and my confinement in a jail setting with the purpose of being subjected to a lengthy criminal trial. I am now 89 yrs old (DOB 4-3-1920). I have serious medical conditions (see medical notes and reports attached and described below). I am physically very weak, experiencing severe spinal, hip and leg pain which limits mobility and causes me to require assistance to stand up and move about. Given my condition which has been examined and confirmed by doctors in the United States, subjecting me to such stressful events as described would be inappropriate and amount to inhuman and degrading treatment to myself and my family.

Dr. Wei Lin (M.D. at Cleveland Clinic Cancer Center) reports (attached) I am suffering from and being treated for Myelodysplastic Syndrome (MDS), Persistent Anemia and Chronic Renal Failure. Dr. Lin describes me as a "difficult patient to take care of".

Dr. Keuck Chang, M.D., a Diplomate in Nephrology, as of 9/2008 (notes attached) diagnosed me with Chronic Kidney Disease (CKD Stage 3), Anemia associated with MDS and CKD, Hyperoxaluria and Kidney Stones.

Dr. Timmappa Bidari, M.D. reports (attached) I have "Myelodysplastic Syndrome", "Anemia and leucopenia secondary to above" (MDS). He is currently treating me for these conditions on a weekly basis. He has also treated me for acute gouty arthritis as has Dr. Antonelli.

Dr. Giuseppe Antonelli, M.D. (Rheumatology specialist) reports.....arthritis, spinal stenosis, etc. As Dr. Antonelli is currently on vacation and his office closed, his medical report will be submitted by April 7.

Additionally, I was recently in the Parma Hospital Emergency department with severe pains and diagnosed with Nephrolithiasis. I am currently being treated for this condition.

I certify under penalty of perjury that the information provided and contained herein is true and correct to the best of my knowledge and belief.

John Demjanjuk

John Demjanjuk Date: 03/31/2009

CLEVELAND CLINIC CANCER CENTER
AT PARMA COMMUNITY GENERAL HOSPITAL
6525 Powers Blvd., Parma, OH 44129
Ph: 440-743-4747 Fax: 440-743-4715

NAME: DEMJANJUK, John
CLINIC NO: 48648207
DATE OF SERVICE: 07/15/2008

DIAGNOSIS:
1. Myelodysplastic syndrome
2. Persistent anemia secondary to above

John Demjanjuk returned to clinic for follow up with his wife. He stated he is still weak despite receiving 2 units of blood transfusion around a month ago. He has received 2 doses of Procrit injection (every 2 weeks) since last visit. Symptom wise, he does not feel much different. He denies any fever, chills, night sweats or weight loss. His main complaint is weakness and his knee bothers him. His knee problem is pre-existing. He denies any chest pain, shortness of breath at rest or palpitations. No GI or GU complaints. No bleeding at all. No easy bruising.

His past medical history, personal/social history, medications and allergies were all reviewed.

REVIEW OF SYSTEMS: All 10 systems were reviewed. Except what is described above, the rest of the review of systems was completely unremarkable.

PHYSICAL EXAM: GENERAL: Patient appears at his baseline, comfortable, not in distress. He is afebrile with temperature 96, pulse 64, respiratory rate 20, blood pressure 122/64, weight 225 pounds. HEENT: Pale, no jaundice. Normal oropharynx on visual exam. RESPIRATORY SYSTEM: Lungs clear to auscultation bilaterally. No wheezing, rhonchi or crackles. Chest movement symmetrical. Trachea midline. CARDIOVASCULAR SYSTEM: Heart sounds S1, S2 with regular rate and rhythm. No gallops or additional heart sounds. GASTROINTESTINAL SYSTEM: Abdomen is soft, obese and nontender, nondistended. Normal active bowel sounds. No palpable mass or hepatosplenomegaly. MUSCULOSKELETAL SYSTEM: Decreased range of motion in major joints, symmetrical. No asymmetrical muscle weakness. Trace edema in lower extremities.

LABORATORY TESTS: WBC 2.4, hemoglobin 9.5, hematocrit 28.3, platelet count 210,000. Creatinine 1.8, BUN 36, total bilirubin 0.6.

ASSESSMENT/PLAN:
1. Myelodysplasia, responding poorly to Procrit therapy, although he only received 2 doses so far. I will continue the treatment and increase frequency of Procrit injection to every week if possible.
2. Chronic renal failure. I will refer him to nephrologist for nephrology consultation.
3. I advised the patient and his wife to bring his son with him during the next visit in one month. I will discuss chemotherapy with hypermethylating agent with them. Patient does not really understand much English, therefore, I feel that the language barrier is really affecting his informed decision-making ability. He will probably benefit from hypermethylating agent like Vidaza or Dacogen, if he could tolerate. We will discuss more in detail next time.
4. Given his symptomatic anemia, I offered the patient another 2 units of blood transfusion. He understood my recommendation, however, he could not make any decision when I asked him whether he would like to have a blood transfusion, his answer was "I do not know". This is quite frustrating. I advised him and his wife to go home and talk to his son and if he changes his mind on blood transfusion he will call and let me know. I will be happy to schedule it for him.

Total counseling time was about 40 minutes. This apparently is a difficult patient to take care of.

Wei Lin, M.D.

cc:
Date Dictated: 07/15/2008 Date Typed: jlb 07/17/2008 09:00

OFFICE HOURS BY APPOINTMENT

KEUCK CHANG, M.D.
DIPLOMATE IN NEPHROLOGY

6789 RIDGE RD., SUITE 203
PARMA, OHIO 44129

TEL: 440-888-4426
FAX: 440-888-5033

NAME: Demjanjuk, John
Birth date:04/03/1920 Age: 88 Gender: Male

Emergency contact:
Privacy:family Marital status/Occup:
Insurance:
Chart No:8903a 3/=8 727 160-130/70 Prob:

DATE: 09/08/2008 WT 227 BP 152/70 HT 6'9 TEMP
consult office visit with lab, US renal
99214
Follow up with Dr. Goliat for primary care
Follow up with Dr. Lin

X 72 inches / 3131
Body Surface 2.284
72.1 ml/min → 54.6 ml/m/1.73

Entitled of social security → Medicare refused to pay for prevent
→ Had Ford Co. to assume primary provider HMO health Ok
received prevent 4wks ago

130/60 both arms.
JVD ⊖
Heart lungs Clear:
abd. soft, Kidney, Liver not palpable
Pitty ⊖

1. To call result of Vit D Lab
2. Turn one c each meal

1. CKD (Stage 3.) 54.6 ml/min/1.73.
2. Hyperoxaluria
Hyperoxaluria
3. Anemia — MDS, CKD.
4. Kidney stones Hyperoxaluria?
(Turn) ↑ Calcium
4(M) Renal function pl

Wife answered
9/9 Talked to pt
Vit D 400 IU/d

return date: signature:

1-12-09
4:30

TIMMAPPA P. BIDARI, MD., INC.

JANUARY 19, 2009

DEMJANJUK, JOHN

DIAGNOSIS:
1. Myelodysplastic syndrome.
2. Anemia and leukopenia secondary to above.
3. Acute gout in the right big toe and the mid foot.

HISTORY OF PRESENT ILLNESS: He says he was coming along okay he started having severe pain in the right big toe and the middle of the foot since yesterday he has taken Colchicine but has run out of the medication.

REVIEW OF THE SYSTEMS:
Musculoskeletal System: As above.
General and Constitutional Symptoms: Has moderate degree of fatigue, denies fever and chills, night sweats, or weight loss.
Cardiovascular System: Has shortness of breath on exertion, no leg edema, or chest pain.
Head: Denies pressure or pain.
Eyes: Denies blurred vision.
ENT and Respiratory System: Unremarkable.
Skin: Denies rash, itching, or easy bruising. He has redness of the skin over the right big toe due to gout.
GI System: Denies abdominal pain, nausea, or vomiting.
Hemic and Lymphatic System: Has not felt any lumps under the arms, in the neck, or groins.
GU System: No dysuria or burning micturition has urinary frequency.
CNS: Has occasional lightheadedness.

SOCIAL HISTORY: As recorded previously.

PAST HISTORY: As recorded previously.

FAMILY HISTORY: As recorded previously.

PHYSICAL EXAM: Today reveals a B/P of 140/60; pulse rate is 72, respirations 18, temperature normal. Weight. 218 pounds. Head. Normal. Eyes. Conjunctival pallor noted no jaundice. ENT: Unremarkable. Neck: No lymphadenopathy. Chest: No sternal tenderness. Heart: Sounds normal. Lungs: Clear. Abdomen: No tenderness, no distention. Extremities: No leg edema, redness of the skin noted over the dorsum of the right big toe.

LABORATORY DATA: Today CBC shows hemoglobin of 9.8, hematocrit 29.2, WBC 3,100, and platelets 277,000.

TREATMENT PLANS: Give Procrit 60,000 units subcutaneously today.

I have prescribed him Colchicine 0.6 mg to take 1 daily for gouty arthritis in the right big toe and the foot.

Continue weekly Procrit and CBC, re-exam in two week's time.

TIMMAPPA P. BIDARI
TPB/djk

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 08a0054p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN DEMJANJUK,

Petitioner,

v.

MICHAEL B. MUKASEY,

Respondent.

No. 07-3022

On Review from the Board
of Immigration Appeals.
No. A[redacted]

Argued: November 29, 2007

Decided and Filed: January 30, 2008

Before: ROGERS and SUTTON, Circuit Judges; BERTELSMAN, District Judge.*

COUNSEL

ARGUED: John H. Broadley, JOHN H. BROADLEY & ASSOCIATES, Washington, D.C., for Petitioner. Robert Thomson, UNITED STATES DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, Washington, D.C., for Respondent. **ON BRIEF:** John H. Broadley, JOHN H. BROADLEY & ASSOCIATES, Washington, D.C., for Petitioner. Robert Thomson, Edgar Chen, UNITED STATES DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, Washington, D.C., for Respondent.

OPINION

ROGERS, Circuit Judge. Petitioner John Demjanjuk seeks review of the decision of the Board of Immigration Appeals holding that the Chief Immigration Judge was authorized to preside over Demjanjuk's removal proceeding. Pursuant to 8 U.S.C. § 1229a, a removal proceeding must be conducted by an immigration judge. Demjanjuk contends that the Chief Immigration Judge cannot be considered an immigration judge, and thus lacked authority to order Demjanjuk's removal from the United States. The Chief Immigration Judge, however, clearly meets the statutory definition of "immigration judge." Accordingly, we deny the petition for review.

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* The Honorable William O. Bertelsman, Senior District Judge for the Eastern District of Kentucky, sitting by designation.

Demjanjuk, a native of Ukraine, entered the United States pursuant to an immigrant visa in 1952 and became a naturalized citizen in 1958. Prior to immigrating to this country, Demjanjuk served as an armed guard at three World War II Nazi concentration camps. Proceedings in this court regarding his extradition to Israel, for war crimes of which he was subsequently acquitted, are not relevant to the instant case. *See Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993); *Demjanjuk v. Petrovsky*, 776 F.2d 571 (6th Cir. 1985).

On May 19, 1999, the federal government filed a complaint in district court seeking the revocation of Demjanjuk's citizenship. The government asserted that Demjanjuk had been ineligible for a visa due to his wartime service to Nazi Germany and that Demjanjuk had consequently entered this country illegally. The district court ruled in the government's favor, and this court affirmed. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004).

On December 17, 2004, the Department of Homeland Security served Demjanjuk with a Notice to Appear, charging that he was removable from the United States. Shortly thereafter, the Executive Office for Immigration Review ("EOIR") initiated a removal proceeding pursuant to 8 U.S.C. § 1229a. Then Chief Immigration Judge ("CIJ") Michael J. Creppy assigned himself to preside over the removal proceeding. After learning that Creppy would be conducting the proceeding, Demjanjuk filed a motion to reassign the case to another judge, alleging, among other things, that the CIJ was without statutory authority to conduct removal proceedings. The CIJ denied the motion and, on December 28, 2005, ordered that Demjanjuk be removed from the United States.

Demjanjuk appealed both the denial of his motion to reassign, and the order of removal, to the Board of Immigration Appeals ("BIA"). The BIA, however, affirmed both rulings. Demjanjuk now seeks review of the BIA's decision with respect to CIJ Creppy's authority to conduct removal proceedings.

Because CIJ Creppy was an immigration judge, as that term is statutorily defined, he was empowered to preside over the removal proceedings brought against Demjanjuk. Accordingly, the BIA did not err in declining to vacate the CIJ's order of removal.

Pursuant to 8 U.S.C. § 1229a, proceedings for deciding an alien's admissibility or deportability must be conducted by an "immigration judge." The term "immigration judge" is defined in 8 U.S.C. § 1101(b)(4) to mean "an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title."

CIJ Creepy met all of the elements of this definition. First, it is uncontested that CIJ Creppy was an attorney. Second, it is evident from Creppy's certificate of appointment as CIJ that he was appointed by the Attorney General to serve within the EOIR. The certificate, signed by then Attorney General Janet Reno, provides that Creppy was to serve as CIJ in the "Office of the Chief Immigration Judge, Executive Office for Immigration Review."[1]

Third, Creppy's appointment as CIJ constituted an appointment as an administrative judge. Although the Immigration and Naturalization Act does not define "administrative judge," it is clear

[1]Demjanjuk does not dispute that Creppy was appointed to serve in the EOIR, but contends that this appointment was made by the Director of the EOIR, rather than by the Attorney General. Demjanjuk notes that at one point in its decision, the BIA stated that the CIJ "is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings." This contention overlooks the BIA's clear statement in the same paragraph that the CIJ "is an attorney whom the Attorney General appointed," and the contention is completely contrary to the evidence. While the BIA statement to which Demjanjuk points is not entirely clear, it appears to refer simply to the fact that a position description for Creppy, signed by the Director of the EOIR, stated that one of Creppy's responsibilities as CIJ was to conduct removal proceedings. The BIA took this description as evidence that Creppy was "qualified" to or "able to" preside over removal proceedings.

from the term's ordinary meaning that it encompasses the position of CIJ. This court "read[s] statutes and regulations with an eye to their straightforward and commonsense meanings." *Henry Ford Health Sys. v. Shalala*, 233 F.3d 907, 910 (6th Cir. 2000). In its normal use, the term "administrative judge" is understood to refer to an Article I judge who presides over executive agency proceedings. The CIJ is a judge, by the terms of his title, and was appointed by an executive official, the Attorney General, to serve in an executive agency, the EOIR. Common sense thus advises that CIJ Creppy was an administrative judge.

The designation of "Chief" before "Immigration Judge" in Creppy's job title does not change this understanding. Demjanjuk essentially asks this court to ignore the plain meaning of the words "Immigration Judge" because Creppy's title also included the word "Chief." The latter term, however, denotes merely that the CIJ is the head immigration judge, and, as such, may be responsible for performing duties beyond those performed by other immigration judges. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 387 (2002) (defining "chief" as "accorded highest rank"). The word "Chief" does not somehow alter the fundamental meaning of the words "Immigration Judge" to make this position entirely managerial, as Demjanjuk claims it to be.

Fourth, and finally, CIJ Creppy was qualified to conduct immigration proceedings, including those for removal. As noted, § 1101(b)(4) provides that an "immigration judge" should be "qualified to conduct specified classes of proceedings, including a hearing under section 1229a." The parties dispute the significance of this language, in particular the meaning of the term "qualified." The Attorney General contends that this clause requires simply that the appointee be "capable of" presiding over immigration hearings. Demjanjuk, on the other hand, reads this language to require that the Attorney General have specifically "appointed" a judge to conduct removal proceedings in order for that party to be considered "qualified."

Because CIJ Creppy was "qualified" in both senses of the term, we need not decide which of these interpretations is correct. If "qualified" means "capable of," or "able to," then there is little doubt that Creppy was qualified to preside over removal hearings. Demjanjuk does not suggest that Creppy was unable to conduct immigration proceedings effectively, nor does anything in the record so suggest.

This interpretation moreover represents a reasonable reading of the statutory language. In its normal use, the word "qualified" means "competent" or "fit," as the Attorney General contends. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1858 (2002). It is also significant that Congress chose to use the term "appoint" elsewhere in § 1101(b)(4), but not in the clause at issue. If Congress had wanted, it could have said that an immigration judge is an attorney "whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review to conduct [removal proceedings.]" Instead, Congress chose to discuss removal proceedings in a separate clause and use the word "qualified" instead of "appoint."

However, even assuming that the term "qualified" somehow means "appointed" or "delegated," as Demjanjuk suggests, the Attorney General has specifically delegated the power to conduct removal proceedings to all immigration judges. At the time that Creppy presided over Demjanjuk's removal hearing, the pertinent regulation, 8 C.F.R. § 1003.10 (2005),[2] stated that

[2]When Creppy was appointed in 1994, § 1003.10 similarly provided that

> Immigration judges shall exercise the powers and duties in this chapter regarding the conduct of exclusion and deportation hearings and such other proceedings which the Attorney General may assign them to conduct.

> Immigration Judges . . . shall exercise the powers and duties in this chapter regarding the conduct of exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

The CIJ is undoubtedly an immigration judge, and thus was explicitly empowered by the Attorney General to preside over removal hearings.

Demjanjuk argues that § 1003.10 did not grant removal authority to Creppy, since this section does not specifically mention the position of CIJ. This argument is unpersuasive. As discussed, the term "Chief" does not change the basic meaning of the words "Immigration Judge." Because any reasonable person would assume that the position of Chief Immigration Judge is a mere subcategory of immigration judge, the absence of any mention of the CIJ in § 1003.10 is not significant. Nor is it telling that § 1003.9, which describes the CIJ's duties, did not, at the time, list presiding over immigration hearings as one of the position's responsibilities.[3] Although that section only mentioned certain supervisory functions, it made explicit that the position "[was] not limited" to such duties.

This analysis is supported by recent amendments to § 1003.9, the language of which now clearly states that "[t]he Chief Immigration Judge shall have the authority to . . . [a]djudicate cases as an immigration judge." § 1003.9(b)(5). The amended regulation then goes on to provide that "[t]he Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to *another* immigration judge." § 1003.9(c) (emphasis added). While these amendments do not have retroactive effect, they confirm the previously implicit understanding that the CIJ is an immigration judge. Indeed, the comments to the current version of § 1003.9 state that the regulation was amended in part to clear up "apparent confusion . . . among some observers regarding the role and status of the immigration judges." Authorities Delegated to the Director of the Executive Office for Immigration Review, and the Chief Immigration Judge, 72 Fed. Reg. 53673, 53673 (Sept. 20, 2007).

Moreover, the case that Demjanjuk relies upon for the proposition that a delegation of authority must always be perfectly unequivocal and unambiguous, *San Pedro v. United States*, 79 F.3d 1065 (11th Cir. 1996), is distinguishable. *San Pedro* involved a situation where the Immigration and Naturalization Service ("INS") initiated deportation proceedings against a party despite a plea agreement, approved by the U.S. Attorney and several Assistant U.S. Attorneys ("AUSAs"), which purported to shield the party from deportation. *Id.* at 1067. The Eleventh Circuit held that the U.S. Attorney and AUSAs could not bind the INS, which had been delegated authority over deportation, since the Attorney General had not also granted such power to the U.S. Attorney by an "explicit and affirmative" delegation. *Id.* at 1070-71 (emphasis omitted).

The instant case differs from *San Pedro* in key respects. In *San Pedro*, the document claimed to have given U.S. Attorneys deportation authority, the United States Attorney's Manual, explicitly

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[3] In full, the regulation provided that

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9 (2005).

limited the power of U.S. Attorneys to negotiate concerning deportation orders and stated that U.S. Attorneys should "be cognizant of the sensitive areas where plea agreements involve . . . deportation." *Id.* at 1070 n.4. Here, the regulations describing the powers of the CIJ used broad rather than restrictive language, stating that the CIJ's powers "include, but are not limited to" certain enumerated duties. 8 C.F.R. § 1003.9 (2005). Further, in *San Pedro*, it would have been problematic for U.S. Attorneys to have been delegated deportation power, since that power had already been delegated to a different government entity. Here, on the other hand, there is no risk of opposing government entities' holding the same power and creating conflicting pronouncements. The CIJ and immigration judges operate within the same entity, the EOIR, and have aligned, rather than potentially adverse, interests. Because it would not be problematic or illogical for both the CIJ and the remaining immigration judges to conduct removal proceedings, there is not the same need for exact precision in a delegation that existed in *San Pedro*.

Officials must consider a multitude of issues in delegating authority and drafting regulations. Although they should make their best efforts to do so, they simply cannot anticipate every scenario that may arise or challenge that will be made. It is understandable that an official might take for granted something that is abundantly clear and that has long been understood to be the case. To hold that a delegation will always be ineffective where it does not spell out the obvious would place too onerous a burden on these officials and encourage parties to seek out the slightest of ambiguities in order to evade the law.

For the foregoing reasons, we deny the petition for review.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

2006 DEC 26 AM 10:03

Broadley, John, Esquire
1054 31st Street NW, Suite 200
Washington, DC 20007-0000

✓ **ICE Office of Chief Counsel/CLE**
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN **A** [redacted]

Date of this notice: 12/21/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
HURWITZ, GERALD S.
MILLER, NEIL P.
OSUNA, JUAN P.

gilmorec

File: A [redacted] - Cleveland (b)(6) Date:

DEC 21 2006

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] - Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] - Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

APPLICATION: Deferral of removal under the Convention Against Torture

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec."). By decision dated December 28, 2005, the Immigration Judge denied the respondent's application for deferral of removal under the Convention Against Torture, and ordered him

removed from the United States to Ukraine, or in the alternative to Germany or Poland ("CIJ Deferral Dec."). On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. The Chief Immigration Judge also held that, as an alien who assisted in Nazi persecution, the respondent was barred as a matter of law from all forms of relief from removal other than deferral of removal under the Convention Against Torture. Exh. 20.

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[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

Thereafter, the respondent filed an application for deferral of removal. Exh. 31. On December 28, 2005, the Chief Immigration Judge denied the respondent's application for deferral of removal on the ground that he failed to meet his burden of proving: 1) that he was likely to be prosecuted if removed to Ukraine; 2) that if prosecuted he was likely to be detained; and 3) that if prosecuted and detained, he was likely to be tortured. The Chief Immigration Judge ordered the respondent removed to Ukraine, with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

C. The Immigration Judge's December 28, 2005, Decision Regarding Relief from Removal

The Immigration Judge noted that the respondent's application for deferral of removal is based on three underlying premises: 1) prisoners in Ukraine are frequently subjected to serious abuse or torture, 2) persons who are potentially embarrassing to the Ukranian government are at risk of physical harm and death, and 3) he is uniquely at risk of torture if he is removed to Ukraine. The Immigration Judge found that the evidence of record did not support a finding that the respondent would be prosecuted in Ukraine because of his Nazi past. In reaching this decision, the Immigration Judge noted that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany. The Immigration Judge also found that the evidence of record did not support a finding that the respondent would likely be detained while awaiting trial or as a result of conviction. Finally, the Immigration Judge found the respondent's assertion that he would likely be tortured if taken into custody in Ukraine to be speculative and not supported by the record. For these reasons, the Immigration Judge denied the respondent's application for deferral of removal because he found that he had not established that he was more likely than not to be tortured if removed to Ukraine.

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

relevant to the removability issue had been established by collateral estoppel; and 5) the Chief Immigration Judge erroneously found that the respondent was not eligible for deferral of removal pursuant to the Convention Against Torture. Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(l), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd, Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himelf to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal,' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hammer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as "'issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived....'" *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112; NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

appeals," 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko, supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

E. Deferral of Removal under the Convention Against Torture

Finally, the respondent argues that the Chief Immigration Judge erred in denying his application for deferral of removal under the Convention Against Torture. A person seeking deferral of removal must prove that it is more likely than not that he or she would be tortured if removed to a particular country. 8 C.F.R. §§ 208.16(c)(2) and 208.17(a). It is not sufficient for an applicant to claim a subjective fear of torture, rather, the applicant must prove, through objective evidence, that he or she is likely to be tortured in a particular country. *Matter of J-E-*, 23 I&N Dec. 291, 302 (BIA 2002). For purposes of the Convention Against Torture, "torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for a specific purpose, such as extracting a confession or punishing the victim. 8 C.F.R. § 208.18(a)(1). To qualify as torture, the act must also be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," at a time when the victim is in the offender's "custody or physical control." 8 C.F.R. §§ 208.18(a)(1) and (6). "Torture is an extreme form of cruel and inhumane treatment and does not include lesser forms of cruel, inhumane, or degrading treatment or punishment. . . ." 8 C.F.R. § 208.18(a)(2). Moreover, "[a]n act that results in unanticipated or unintended severity of pain and suffering is not torture." 8 C.F.R. § 208.18(a)(5).

The thrust of the respondent's claim for deferral is that: 1) the United States Government created a widespread public perception that he is responsible for crimes committed against Jewish prisoners by "Ivan the Terrible" at the Treblinka death camp; 2) the United States will encourage Ukraine to arrest, detain, and prosecute him if he is removed to Ukraine; 3) it is "irrational" to believe that the Ukranian government will not comply with such requests; 4) many prisoners in Ukraine are subjected to mistreatment and/or torture; and 5) the respondent is especially "vulnerable" to mistreatment and torture because of his age. In denying the respondent's application, the Chief Immigration Judge concluded that the respondent failed to prove three key facts: 1) that as a result of the government's previous assertion that he was "Ivan the Terrible" (an assertion that the government has not made in more than a decade), he is likely to be prosecuted if removed to Ukraine; 2) that if prosecuted, he is likely to be detained; and 3) that if prosecuted and detained, he is likely to be tortured.

The Chief Immigration Judge relied on numerous exhibits showing that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. CIJ Deferral Dec. at 10 (citing Exhibits 35 at 1-2, 36, 37A at 15-22, 37C, 37G, 37H). Moreover, we note that the respondent stipulated that several Ukranian nationals who assisted in Nazi persecution had not been indicted or prosecuted, nor had Ukraine requested their extradition, despite the U.S. government's efforts to encourage Ukraine to do so. Exh. 35 §§ 1-20. We reject the respondent's speculation that because of his notoriety , his case is markedly different from others who have been returned to Ukraine. Instead, the State Department's advisory opinion letter[7] rebuts this claim by expressing the opposite opinion: that the government of Ukraine is "very unlikely" to mistreat a "high-profile individual[]" such as the respondent. Exhs. 39A and 45. For these reasons, and given the absence of *any* evidence of a Nazi war criminal facing prosecution in Ukraine, the respondent's speculative argument is not persuasive. Therefore, we agree with the Chief Immigration Judge that the respondent failed to establish that he is likely to be prosecuted if removed to Ukraine.

We also agree with the Chief Immigration Judge's finding that the respondent has not established that he is likely to be detained even in the unlikely event that he is prosecuted in Ukraine. As set forth in the stipulations between the parties, Ukranian law allows for pre-trial release of criminal defendants, and large numbers of Ukranian criminal defendants are released from custody while awaiting trial. CIJ Deferral Dec. at 11 (citing Exh. 35).

---

[7] We reject the respondent's argument that the State Department's advisory opinion is inadmissible. In this regard, we note that the Federal Rules of Evidence do not apply in immigration court proceedings. Because the letter from the State Department is probative and its use is not unfair to the respondent, we find no error in the Chief Immigration Judge's consideration of the letter. *See Matter of K-S-*, 20 I&N Dec. 715, 722 (BIA 1993) (relying on State department advisory opinion letter as "expert" evidence); *Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785 (BIA 1999) (noting that the test for admissibility of evidence is whether the evidence is probative and whether its use is fundamentally fair so as to not deprive the alien of due process); 8 C.F.R. §§ 1208.11(a) and (b) (the State Department may provide an assessment of the accuracy of an applicant's claims, information about the treatment of similarly-situated persons or "[s]uch other information as it deems relevant").

Finally, we agree with the Chief Immigration Judge's finding that although conditions in Ukranian prisons may be harsh, it is unlikely that the respondent would be tortured if detained. In this context we note that the evidence of record indicates that the government of Ukraine has permitted international monitoring of its prisons and has engaged in improvement efforts. CIJ Deferral Dec. at 12 (citing Exhs. 39A and 45). Moreover, we note that even if the respondent were to face harsh prison conditions in the unlikely event that he faces detention, generally harsh prison conditions do not constitute torture. *See Matter of J-E-*, 23 I&N Dec. at 301-04; *see generally, Alemu v. Gonzales*, 403 F.3d 572, 576 (8th Cir. 2005) (noting that substandard prison conditions are not a basis for relief under the Convention Against Torture unless they are intentionally and deliberately created and maintained in order to inflict torture); *Auguste v. Ridge*, 395 F.3d 123, 152-53 (3rd Cir. 2005).

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). Simply put, the respondent's arguments regarding the likelihood of torture are speculative and not based on evidence in the record. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006) (applicant fails to carry burden of proof if evidence is speculative or inconclusive). Therefore, we reject the respondent's arguments, and conclude that the Chief Immigration Judge correctly decided that the respondent failed to prove that he is likely to be prosecuted in Ukraine; that if prosecuted, he is likely to be detained either prior to trial or as a result of a conviction; and, that if prosecuted and detained, he is more likely than not to be tortured.

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

OFFICIAL RAP SHEET COVER SHEET

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CURRENT TCN	: A0[redacted]00510061225
DISTRICT ORI	: OHINSCV00
FBI NAME	: DEMJANJUK,JOHN
FBI NUMBER	: [redacted] (b)(6)
DATE OF BIRTH	: 04/03/1920
ALIEN NUMBER	:
SOCIAL SECURITY NUMBER	: [redacted]
ZIP CODE	:
REASON FINGERPRINTED (FORM NUMBER)	: I589

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DEMJANJUK,JOHN	[redacted]	2005/10/06

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	W	1920/04/03	602	230	BLU	BLN	UKRAINE

PATTERN CLASS
LS UC WU UC LS UC WU UC UC UC
WU LS WU
RS

CITIZENSHIP
UKRAINE

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PART 2

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1-ARRESTED OR RECEIVED 2004/12/20
AGENCY-USINS CLEVELAND (OHINSCV00)
AGENCY CASE-122020041100
CHARGE 1-8 USC 1227 - DEPORTATION PROCESSING

2-DATE OF APPLICATION 2005/10/06R (DATE FP)
AGENCY-USCIS-NSC LINCOLN (NBINSWANZ)
AGENCY CASE-200510061225
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Broadley, John
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suite 200
Washington, DC 20007-0000

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1240 E. 9th St., Suite 519
Cleveland, OH 44199

(b)(6)

Name: DEMJANJUK, JOHN **A** [redacted]

Type of Proceeding: Removal

Date of this notice: 07/17/2006

Type of Appeal: Case Appeal

Appeal filed by: Alien

Date of Appeal: 01/23/2006

NOTICE -- BRIEFING EXTENSION REQUEST GRANTED

Alien's original due date: 06/09/2006 DHS' original due date: 06/30/2006

- The request by the DHS for an additional amount of time to submit a brief, which was received on 07/14/2006, is GRANTED.
- The alien's brief must be **received** at the Board of Immigration Appeals on or before 09/01/2006.
- The DHS' brief must be **received** at the Board of Immigration Appeals on or before 08/11/2006.

PLEASE NOTE

WARNING: If you indicated on the Notice of Appeal (Form EOIR-26) that you will file a brief or statement, you are expected to file a brief or statement in support of your appeal. If you fail to file the brief or statement within the time set for filing, the Board may summarily dismiss your appeal. *See* 8 C.F.R. § 1003.1(d)(2)(i)(E).

The Board generally does not grant extensions for more than 21 days. Each party's current due date is stated above.

The Board rarely grants more than one briefing extension to each party. Therefore, if you have been granted an extension, you should assume that you will not be granted any further extensions.

GRAVES L

If you file your brief late, you must file it along with a motion for consideration of your late-filed brief. There is no fee for such a motion. The motion must set forth in detail the reasons that prevented you from filing your brief on time. You should support the motion with affidavits, declarations, or other evidence. Only one such motion will be considered by the Board.

FILING INSTRUCTIONS

IMPORTANT: The Board of Immigration Appeals has included two copies of this notice. Please attach one copy of this notice to the front of your brief when you mail or deliver it to the Board, and keep one for records. Thank you for your cooperation.

Use of an over-night courier service is strongly encouraged to ensure timely filing.

If you have any questions about how to file something at the Board, you should review the Board's Practice Manual and Questions and Answers at www.usdoj.gov/eoir.

Proof of service on the opposing party at the address above is required for ALL submissions to the Board of Immigration Appeals -- including correspondence, forms, briefs, motions, and other documents. If you are the Respondent or Applicant, the "Opposing Party" is the District Counsel for the DHS at the address shown above. Your certificate of service must clearly identify the document sent to the opposing party, the opposing party's name and address, and the date it was sent to them. Any submission filed with the Board without a certificate of service on the opposing party will be rejected.

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GRAVESL

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

BROADLEY, JOHN H., ESQ
1054 31ST STREET, N.W., SUITE 200
WASHINGTON, DC 20007

(b)(6)

IN THE MATTER OF
DEMJANJUK, JOHN

FILE A [redacted]

DATE: Dec 28, 2005

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

✓ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

__ OTHER: _____

COURT CLERK
IMMIGRATION COURT

FF

CC:

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# [redacted]
	)	(b)(6)
RESPONDENT	)	
	)	

CHARGES: Section 237(a)(4)(D) of the Immigration and Nationality Act (INA or Act), as amended, as an alien described in INA § 212(a)(3)(E)(i) (the "Holtzman Amendment"), who ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany;

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of Section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948); and

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: alien immigrants who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of Section 10 of the DPA, 62 Stat. at 1013 (1948); and

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by Section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

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[1] Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

APPLICATION: Deferral of Removal under the Convention Against Torture

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DECISION AND ORDER OF THE CHIEF IMMIGRATION JUDGE

I. STATEMENT OF THE CASE

The respondent is an eighty-five year old former citizen of the United States and national of the Ukraine. He was born on April 3, 1920, at Dubovye Makharintsy, Ukraine. He was first admitted to the United States at New York, New York, on or about February 9, 1952, on an immigrant visa issued under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch.647, 62 Stat. 1009 (*amended* June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219).[1] He became a naturalized citizen of the United States in 1958. *See* Exhibit 5.

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. Exhibit 5B. The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. Exhibit 5E.[2] While that appeal was pending, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b) in the district court on February 12, 2003. *U.S. v. Demjanjuk*, 128 Fed. App. 496, 2005 WL 910738 (6th Cir. 2005) (unpublished decision). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *See id.*

The Office of Special Investigations, U.S. Department of Justice, (*hereinafter,* the government) commenced these removal proceedings against the respondent by filing a Notice to Appear (NTA), dated December 17, 2004, with this Court. Exhibit 1.

On February 25, 2005, the government filed a motion for the application of collateral estoppel and judgment as a matter of law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA had been litigated and decided during the respondent's denaturalization proceedings and that, with the exception of allegation #22, the respondent should be precluded from relitigating those issues in these removal proceedings. *See* Exhibit 5.

On February 28, 2005, the Court conducted a Master Calendar hearing in this matter. The Court issued an Order, instructing the respondent to file written pleadings and opposition to the government's motion for collateral estoppel and judgment as a matter of law by May 31, 2005. In addition, the respondent was requested to submit any applications for relief by June 30, 2005.

On May 31, 2005, the respondent filed his written pleadings to the allegations of fact and

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[1] The DPA was enacted to assist in alleviating the problem of World War II refugees. The DPA permitted the admission into the United States of over 400,000 displaced persons by 1951.

[2] The United States Court of Appeals for the Sixth Circuit discussed the six decisions issued in matters related to Respondent's citizenship prior to the denaturalization proceedings. *Id.* at 627.

charges of removability, as set forth in the NTA, and his opposition to the government's motion for application of collateral estoppel and judgment as a matter of law, and moved the Court to terminate the proceedings. Exhibit 14. The respondent denied all four charges of removability, and argued that the government's motion should be denied because he did not have "a full and fair opportunity to litigate substantive issues that go to the heart of these removal proceedings." *See id.*

On June 10, 2005, the Government filed its reply brief in support of its motion for the application of collateral estoppel and judgment as a matter of law.

On June 16, 2005, the Court issued an Order granting the government's motion for application of collateral estoppel and judgment as a matter of law and denying the respondent's motion to terminate proceedings, which is incorporated into this decision by reference. Exhibit 20. The Court sustained all four charges contained in the NTA, and found the respondent removable from the United States. *See id.* Further, the Court found that the respondent was not eligible to apply for any form of relief other than deferral of removal pursuant to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter* CAT). *See* Exhibit 20.

On June 23, 2005, the Court issued an Interim Order, canceling the June 30, 2005 hearing and granting the respondent until July 20, 2005 to comply with the Department of Homeland Security's (*hereinafter*, DHS) biometrics requirements. In addition, the Court granted the respondent until September 7, 2005 to submit any applications for relief, and required that the parties file a joint pre-hearing statement by September 21, 2005. *See* Exhibit 23. On July 5, 2005, the Court amended its June 23, 2005 order and granted the parties until October 5, 2005 to submit the joint pre-hearing statement and designated the Ukraine, or in the alternative Germany or Poland, as the country of removal. *See* Exhibit 28.

On September 7, 2005, the respondent submitted his application for deferral of removal and proof of compliance with instructions for providing biometrics. Exhibit 31.

On September 14, 2005, the Court conducted a status conference with the parties. The Court admitted Exhibits 1 - 32. The Court reaffirmed that the parties must submit the joint pre-hearing statement on or before October 5, 2005.

On October 4, 2005, the Court issued an Order granting the respondent's September 29, 2005 motion for an enlargement of time to file the joint pre-hearing statement and ordered the parties to file the joint pre-hearing statement on or before October 12, 2005. *See* Exhibit 34.

On October 12, 2005, the parties jointly filed a statement of stipulated facts not at issue and each party submitted an individual pre-hearing statement. *See* Exhibits 35 - 37ZZ. The respondent submitted nineteen exhibits in support of his pre-hearing statement. *See* Exhibits 36A - 36X. The government submitted fifty-two exhibits in support of its pre-hearing statement. *See* Exhibits 37A - 37ZZ.

On October 18, 2005, the Court issued an Order requiring each party to submit a supplemental memorandum addressing the exhibits submitted on October 12, 2005. *See* Exhibit 38. The Court

ordered that, in the supplemental memorandum, each party must address each proposed exhibit and specify which portion of that exhibit is relevant to the adjudication of the respondent's application for deferral of removal under CAT. *Id.* The Court advised that failure to comply with this order with respect to any exhibit would result in that exhibit not being considered. *Id.*

On October 27, 2005, the Court issued an Order requesting objections or rebuttal evidence regarding the admission of the Department of State opinion dated October 13, 2005 addressing the likelihood that the respondent will be tortured if removed to the Ukraine. *See* Exhibit 39 and 39A.

On November 1, 2005, both parties submitted their supplemental memoranda addressing the exhibits submitted on October 12, 2005. Exhibits 40 and 41.

On November 3, 2005, both parties submitted arguments regarding the admission of the October 13, 2005 Department of State opinion. The respondent filed an opposition to the admission of the Department of State opinion. Exhibit 42. The respondent objected on both procedural and substantive grounds, arguing that the letter was not properly authenticated and that the conclusory assertions contained in the opinion were not support by the Department of State's Country Report dated February 28, 2005. *See* Exhibit 42; *but see* Exhibit 31C. The government filed a position statement supporting the admission of the October 13, 2005 Department of State opinion, stating that it was properly submitted to the Court, it was highly relevant and highly probative, and its use would not be fundamentally unfair. *See* Exhibit 43.

On November 16, 2005, the Court issued an Order regarding the admission of proposed exhibits. Exhibit 44. The Court, based on the explanations provided by each party regarding the relevance of the proposed exhibits and having duly considered the parties' objections, admitted all proposed exhibits submitted by the parties. Exhibits 36A - 36X and Exhibits 37A - 37ZZ. The Court also, upon careful consideration of the arguments made by the parties, admitted into evidence the Department of State opinion dated October 13, 2005. Exhibit 39A. The Court also provided a full list of the exhibits admitted into evidence. Exhibit 44A.

On November 29, 2005, the Court conducted a merits hearing. The respondent, through his attorney, appeared before the Immigration Court in Cleveland, Ohio. The Court stated that the respondent had been found removable by the Court in an earlier written Order and sought relief from removal in the form of deferral of removal under CAT. *See* Exhibit 20. The respondent reviewed his application for relief, having it read to him through the Court's interpreter in his native language of Ukrainian. The respondent then swore or affirmed that he knew the contents of his application and that those contents were true to the best of his knowledge. *See* Exhibit 31 at 9. The Court, after duly considering the respondent's renewed objection to the October 13, 2005 Department of State opinion, admitted into evidence, without objection, the supplementary Department of State letter and certificate of authenticity submitted on November 22, 2005. *See* Exhibits 45.

Neither the respondent nor the government called any witnesses in this case. However, each side submitted a brief closing argument and the Court took the matter under advisement.

II. STATEMENT OF THE FACTS

A. The Respondent's Argument in Support of his Application for Deferral of Removal

Although the respondent was given an opportunity to present testimony at the merits hearing on November 29, 2005, he presented no testimony but relied on his written application and supporting documents. The respondent has stated in his application that the Ukrainian government will likely prosecute him as Ivan the Terrible of Treblinka. Although not clearly laid out in Respondent's application, he implies that he will at some point be imprisoned as a result of prosecution, where he will be subjected to harsh prison conditions and likely abuse. He claims that because of the Ukraine's perception of him as Ivan the Terrible, or simply as a Nazi war criminal, he will be singled out for torture in the Ukraine. The respondent supports his position by stating in his application that the government previously stated its intent to encourage the country of removal to arrest and prosecute him. He further states that, based upon information allegedly obtained in a Freedom of Information Act request, the government has been in contact with the Ukrainian government. He also bases this argument on his past treatment in Israel during his detention and trial there. *See* Exhibit 31.

In support of his application for deferral of removal the respondent relies solely on the documentary evidence submitted. *See* Exhibits 31, 31A - 31G, 36, 36A - 36X, and 40. The respondent bases his application for relief on three underlying premises: (1) prisoners in the Ukraine are frequently subjected to serious abuse or torture, (2) persons who are potentially embarrassing to the Ukrainian government are at risk of physical harm and death, and (3) he is uniquely at risk of torture if he is removed to the Ukraine. *See* Exhibit 36.

First, the respondent asserts that prisoners in the Ukraine are frequently subjected to serious abuse and torture. *See* Exhibits 31 and 36. To support this contention, the respondent references the 2005 Department of State Country Report on Human Rights Practices in the Ukraine, the Amnesty International 2005 Annual Report on the Ukraine and subsequent press releases and articles published in 2005, and a December 1, 2004 report by the European Committee for the Prevention of Torture (*hereinafter*, CPT). The respondent cites the 2005 Department of State report, which quotes the Ukrainian Human Rights Ombudsman as stating "that during her nearly 7 year tenure, she has received approximately 12,000 complaints from persons who asserted that they were tortured while in police custody." Exhibit 31C at 21. The respondent notes that the Department of State report also states that a television program, "Fifth Channel," reported that "police officers frequently beat detainees with rubber batons, hung them upside down and doused them with cold water" and "tortured individuals in order to extract confessions or simply to get money." *Id.* Finally, the respondent notes that the Department of State report states that "an October 2002 report by the CPT stated that individuals in detention ran a significant risk of physical mistreatment, including beating, electric shock, pistol whipping, and asphyxiation." *Id.* The respondent quotes the article "Ukraine- Time for Action: Torture and Ill-treatment in Police Detention," in which Amnesty International expresses concern that "despite promising words allegations of torture and ill-treatment in police detention persist" and that such allegations have been received under the new government that came to power in January 2005. *See* Exhibit 36B.

The respondent also cites the CPT report from December 1, 2004, which states that people deprived of liberty by the Militia were at "significant risk of physical ill-treatment" during apprehension and while in custody, "particularly when being questioned," and that, "on occasion, resort may be had to severe ill-treatment/ torture." *See* Exhibit 36A at 72.

Second, the respondent avers that people who are potentially embarrassing to the Ukrainian government are at risk of physical harm or death. *See* Exhibit 36 at 10. The respondent cites the 2005 Department of State Report, which lists numerous journalists who have suffered physical attacks and/or unexplained deaths in recent years. *See* Exhibit 31C at 30-36. The respondent details the investigation of the death of a prominent journalist, Heorthiy Gongadze, whose kidnapping and subsequent death were instigated by then President Kuchma and other high-ranking officials in the Ukrainian government. *See* Exhibit 31C at 20-21.

Third, the respondent contends that he is uniquely at risk of torture if he is removed to the Ukraine. *See* Exhibit 36, page 12. The respondent asserts that the government has "painted a target on his back" identifying him as Ivan the Terrible of Treblinka. *Id.* at 12-13. Further, the respondent argues that the government has maintained this target by withholding exculpatory evidence from his trial in Israel, and by refusing to acknowledge the falsity of its previous allegations that he was Ivan the Terrible. *Id.* at 15. The respondent claims that, as a direct result of the government's misconduct, the government has created a worldwide hatred for him, which will likely lead the Ukrainian authorities to take action against him if he is removed. *Id.* Further, the respondent argues that the government has taken steps to encourage the Ukraine to prosecute him, which substantially increases the risk of his arrest and prosecution. *Id.* at 29. He also claims that, as a result of his age and health, any detention would constitute torture.

The respondent asserts that, in light of these facts and circumstances, it is more likely than not that he will be tortured if removed to the Ukraine.

B. Government's Opposition to the Respondent's Application for Deferral of Removal

First, the government asserts that the respondent has not shown that it is more likely than not that he will be charged or prosecuted in the Ukraine, either on the basis of his activities as set forth in the 2002 denaturalization decision, or on the basis of allegations that he was Ivan the Terrible of Treblinka. Exhibit 37 at 5. The government argues that evidence submitted in this case, to which the respondent has stipulated, indisputably demonstrates that the Ukraine has not prosecuted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. *Id.*; *see also* Exhibit 37A at 15-22, 34, and 36. Further, the government argues that the respondent's claim must fail because the respondent has argued that he will be "detained and tortured if - and only if - he is investigated and prosecuted as Ivan the Terrible." Exhibit 37 at 6.

Second, the government avers that the respondent has not established that it is more likely than not that, if charged or prosecuted in the Ukraine, he will be held in custody, either prior to trial or after a conviction. Exhibit 37 at 7-8. The government contends that the evidence submitted shows that (1) Ukrainian law favors release rather than pre-trial detention, (2) the majority of

criminal suspects in the Ukraine are released pending trial, and (3) the statutory factors concerning release would work in the respondent's favor. *Id.* at 7. The government argues that there is "no evidence whatsoever as to how the Ukrainian government treats persons convicted of Nazi-related war crimes, because no person has been tried, much less convicted, of such a crime in post-independence Ukraine." *Id.* at 8.

Third, the government asserts that the respondent has not shown that it is more likely than not that, if taken into custody in the Ukraine, he will be intentionally subjected to mistreatment sufficiently severe to qualify as "torture" for the purposes of deferral of removal under CAT. *Id.* at 8, 12-13.

The government argues that the respondent's application for deferral of removal under CAT depends "entirely on a chain of speculative claims, each of which must be proven in order to establish his eligibility." Exhibit 37 at 3. The government then asserts that the respondent's application should be denied "because he cannot meet his burden of proof with respect to even a single link in this chain." *Id.*

Fourth, the government contends that the respondent has not established that it is more likely than not that a typical inmate in a Ukrainian jail or prison will be subjected to "torture" as defined under CAT. *Id.* at 8. The government states that the evidence submitted regarding ill-treatment of prisoners in the Ukraine falls into three categories: (1) general substandard conditions, such as overcrowding and inadequate food and medical care; (2) incidents involving beatings and other intentional abuse that are not sufficient to qualify as torture; and (3) torture. *Id.* at 9-10. The government contends that the general substandard conditions do not amount to torture because there is no evidence that these conditions have been created and maintained with the necessary intent. *Id.* at 10. The government further contends that, while the record contains considerable evidence concerning beatings and other ill-treatment, "most such incidents are not sufficiently severe to qualify as torture." Exhibit 37 at 10.

The government notes that the Ukrainian government has permitted international monitoring of the conditions in its jails and prisons. *Id.* at 10. Further, the government argues that, although materials from the Department of State and Amnesty International provided specific examples of persons who allegedly suffered torture in the Ukraine, those examples were few in number and anecdotal and the record in this matter does not support a conclusion that torture was more likely than not for the average prisoner. Exhibit 37 at 10. According to the government, the October 13, 2005 Department of State Opinion supports its contention that the respondent has no basis to believe that he would be tortured if removed to the Ukraine. *See* Exhibits 39A and 45. The October 13, 2005 Department of State Opinion specified that, despite the "widespread nature" of police regularly beating detainees and prisoners in the Ukraine, the "Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union." *See* Exhibits 39A and 45. The Department of State further opined that "such mistreatment would be very unlikely in cases involving high profile individuals such as this one," and noted that this view was "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." *Id.*

The government asserts that the respondent "cannot show that he possesses any trait or characteristic that would cause Ukrainian authorities to single him out for mistreatment" nor can he show that the Ukraine "uses torture pervasively as a matter of government policy." Exhibit 37 at 13.

The government argues that, for those reasons, the respondent cannot establish that it is more likely than not that, if removed to the Ukraine, he will be prosecuted, detained, or subjected to torture, and that his application for deferral of removal under CAT should be denied.

C. Stipulated Facts Not At Issue

In conjunction with their submission of pre-trial statements, the parties stipulated to numerous facts not at issue. *See* Exhibit 35.

First, the parties stipulated to facts relating to the Ukraine's record concerning the investigation and prosecution of alleged Nazi war criminals. *Id.* at 1-4. The parties agreed that, since the Ukraine's independence in 1991, the Ukraine has not charged, indicted, prosecuted, or convicted any person for any crime that was committed under the direction of or in association with the Nazi government of Germany. Exhibit 37A at 34. The parties stipulated that Wasyl Lytwyn, an admitted Nazi war criminal who was denaturalized by the United States in 1995, has resided in the Ukraine since 1996 and, in spite of the United States offers of assistance, has not been charged, indicted, prosecuted, or convicted for any crime committed under the direction of or in association with the Nazi government of Germany. *See* Exhibit 35 at 1-2; *see also* Exhibits 37M - 37T. The parties stipulated that Bohdan Koziy, a Nazi war criminal who was denaturalized by the United States and fled to Costa Rica, was made known to the Ukraine as a Nazi war criminal, and the Ukraine took no steps from 1982 until his death in 2003 to extradite Koziy or initiate prosecution. *See* Exhibit 35 at 2-3; *see also* Exhibits 37D - 37H. The parties stipulated that the Ukraine has not agreed to admit Mykola Wasylyk, a Nazi war criminal denaturalized by the United States in 2001, nor has the Ukraine charged, indicted, prosecuted, or convicted him for any crime that he committed under the direction of or in association with the Nazi government. *See* Exhibit 35 at 3-4; *see also* Exhibits 37I - 37L.

The parties also stipulated to facts concerning pre-trial detention in the Ukraine. Exhibit 35 at 5. The parties agreed that Ukrainian law allows for pre-trial release of individuals awaiting trial, and that in 1996, the Ukrainian Parliament passed an amendment to the Code of Criminal Procedure allowing individuals awaiting trial to seek release on bail. *Id.* The parties stipulated that Ukrainian prosecutors, in determining whether pre-trial release is warranted, have a statutory obligation to consider whether there is sufficient reason to believe a criminal defendant will evade investigation or trial, interfere with investigation, or continue engaging in criminal conduct. *Id.* Further, the parties stipulated to reports that, in practice, large numbers of Ukrainian criminal defendants are released from custody while awaiting trial at the initiative of prosecutors, and that the defendants are only required to sign a promise to return. *Id.*

The parties further stipulated to facts concerning the detention of Nazi war criminals in countries other than the Ukraine. *Id.* at 5-6. The parties agreed that, in Lithuania, a ninety-three year old man convicted of war crimes was not sentenced to a term of incarceration because of his poor health. *Id.* at 5. The parties stipulated that another Nazi war criminal in Lithuania died prior to trial,

but was not detained while his case was pending. *Id.* The parties agreed that, after Germany vacated the conviction of a ninety-three year old man accused of Nazi war crimes, the German government ruled that the case be suspended because of his age. *Id.* at 6.

The parties also stipulated to facts concerning the conditions for prisoners in the Ukraine and the international monitoring of those conditions. *Id.* at 6-8. The parties stipulated that the Ukraine was a member of the European Convention Against Torture, which established the CPT. *Id.* at 6. The parties agreed that CPT conducts periodic visits of prison facilities, for which governments have no more than three days notice, during which the CPT examines conditions, conducts interviews of detainees and prison officials, and then publishes those findings. *Id.* at 6-7. The parties stipulated that the CPT visited the Ukraine in 1998, 1999, 2000, and 2002, and issued reports for each visit and that a visit was planned in 2005. *Id.* at 7. The parties stipulated to information contained in the CPT report from December 1, 2004, which states that people deprived of liberty by the Militia were at "significant risk of physical ill-treatment" during apprehension and while in custody, "particularly when being questioned," and that, "on occasion, resort may be had to severe ill-treatment/ torture." *Id.* at 7; *see also* Exhibit 36A at 72. The parties stipulated that a September 2005 Amnesty International Report stated that the problem of ill-treatment and torture in the Ukraine is "most acute" at the pre-trial detention phase. Exhibit 35 at 8.

Finally, the parties stipulated to specific facts regarding the respondent's case. The parties agreed that, since the respondent's conviction by the Supreme Court of Israel was overturned, the United States government has not asserted that the respondent is Ivan the Terrible of Treblinka and no allegation of such facts were made during the denaturalization proceedings instituted in 1999. *Id.* at 8. The parties stipulated that it is the government's position that perpetrators of Nazi war crimes should be prosecuted, whenever possible, by countries with jurisdiction over such offenses and that, if the respondent is removed to the Ukraine, it is likely that the government will encourage the Ukraine to prosecute him. *Id.* Finally, the parties agreed that the denaturalization proceedings that ended in 2002 and these removal proceedings are high profile cases, and that, if the respondent is removed to the Ukraine, his case may well be a high profile matter for the Ukrainian government and attract considerable public interest. *Id.* 8-9; *see also* Exhibit 36.

III. STATEMENT OF THE LAW: DEFERRAL OF REMOVAL UNDER CAT

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or CAT) and its implementing regulations at 8 C.F.R. Part 1208, particularly sections 1208.16, 1208.17, and 1208.18, sets forth the legal basis for adjudicating a request for deferral of removal under the CAT. *See* 64 Fed. Reg. 42247 (1999). "An alien who is in exclusion, deportation, or removal proceedings on or after March 22, 1999, may apply for withholding of removal under section 1208.16(c), and, if applicable, may be considered for deferral of removal under section 1208.17(a)." 8 C.F.R. §1208.18(b)(1).

A. Burden of Proof for Deferral of Removal under CAT

An applicant for relief bears the burden of proving that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2).

In assessing whether it is "more likely than not" that an applicant would be tortured upon removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: evidence of past torture inflicted on applicant; evidence that applicant could relocate to a part of the country where he or she is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information on country conditions. 8 C.F.R. § 1208.16(c)(3)(i) - (iv).

B. Elements of Deferral of Removal under CAT

In *Ali v. Reno*, the Sixth Circuit addressed CAT relief, and used the definitions and elements found in 8 C.F.R. § 1208.18(a) verbatim. 237 F. 3d 591, 596-97 (6th Cir. 2001); *cf. Zheng v. Ashcroft*, 332 F.3d 1186, 1195 (9th Cir. 2003). Thus, the definitions articulated in the regulations govern these proceedings.

Torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... ." 8 C.F.R. § 1208.18(a)(1). Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture. *Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002).

For an act to constitute "torture," it must satisfy each of the following five elements set forth at 8 C.F.R. § 1208.18(a). *See Matter of J-E-*, at 297-299 (BIA 2002). First, the act must cause severe physical or mental pain and suffering. 8 C.F.R. § 1208.18(a)(1). Second, the act must be specifically intended to inflict severe physical or mental pain and suffering. 8 C.F.R.1208.18(a)(5). An act that results in unanticipated or unintended severity is not torture. *Id.* Third, the act must be inflicted for a proscribed purpose. 8 C.F.R. § 1208.18(a)(1). Examples of such purposes include: obtaining information or a confession; punishing for an act committed or suspected of having been committed; intimidating or coercing; or for any reason based on discrimination of any kind. *Id.* Fourth, the act must be inflicted at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim. 8 C.F.R. § 1208.18(a)(7). The term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity. *Id.* Fifth, the torture cannot arise from suffering inherent in or incidental to lawful sanctions. 8 C.F.R. § 1208.18(a)(3). "Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture." *Id.* Noncompliance with applicable legal procedural standards does not *per se* constitute torture. 8 C.F.R. § 1208.18(a)(8).

IV. APPLICATION OF THE LAW TO THE FACTS

Regarding the issue of credibility, while the respondent's application for deferral of removal is internally consistent, as will be discussed, the evidence submitted in this case does not support a finding that the respondent would more likely than not be tortured, as defined under the CAT, if he is returned to the Ukraine.

In order for the respondent to meet his burden and succeed in his claim for deferral under the CAT given his assertions, he must show that he (1) would likely be prosecuted upon his removal to the Ukraine, (2) would likely be taken into custody while standing trial or imprisoned as a result of a conviction; and (3) would likely be tortured while in custody or prison. All of the elements enunciated in 8 C.F.R. § 1208.18(a) must be established as more likely than not in order for the respondent to be eligible for relief.

A. Likelihood that the Respondent Will Be Subject to Prosecution In The Ukraine

The respondent asserts that he is likely to be prosecuted if removed to the Ukraine because the United States government would pressure the Ukrainian government to prosecute, the matter would be a high profile case, and people still believe that he is Ivan the Terrible of Treblinka and would try him as "Ivan the Terrible."

While the evidence established that if the respondent is removed to the Ukraine his case may well be a high profile case, *see* Exhibits 35 at 8-9 and 36, the Court does not find the remainder of his argument, that he would be prosecuted because of this and other reasons aforementioned, to be supported by the evidence in the record.

The evidence establishes that since the Ukraine's independence in 1991, the Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so, and despite the United States offers of assistance for such prosecutions. Exhibits 34, 35 at 1 - 2, 36, 37A at 15-22, 37C, and 37G-37H.

Moreover, the evidence does not support the respondent's contention that he will be prosecuted as Ivan the Terrible in the Ukraine. At the height of the publicity following his trial in Israel, the respondent applied for and was granted a visa to the Ukraine in 1993, a time when prison conditions were demonstrably worse in the Ukraine and the death penalty was still a form of punishment. Exhibits 37VV - 37WW. At that time, there was a Ukrainian Demjanjuk Defense Committee working on his behalf. Exhibit 37WW. This committee issued the following statement upon conferral of a Ukrainian visa to the respondent: "We consider that until Demjanjuk goes to the United States, he should be accepted as a Ukrainian citizen in his Ukrainian homeland and thank the hundreds of people who struggled for his freedom." *Id.* Moreover, the committee called on Kiev citizens to welcome Demjanjuk upon his arrival at the Ukrainian airport. *Id.* Upon his acquittal as Ivan the Terrible of Treblinka in Israel, the aforementioned actions taken by the Ukrainian government and Ukrainian citizens vitiate the respondent's argument that he will be prosecuted as Ivan the Terrible. This is especially true, in light of the fact that the Ukraine has never charged, indicted,

prosecuted or convicted a single person as a Nazi war criminal despite the United States government's encouragement and willingness to assist.

B. Likelihood that the Respondent Will Be Detained Awaiting Trial or as a Result of Conviction

The respondent contends that he will likely be taken into custody while standing trial or imprisoned as a result of a conviction. This Court finds that this argument is speculative, not supported by the record and without merit.

The Court acknowledges that there are harsh conditions in Ukrainian pre-trial detention facilities. *See* Exhibits 31C and 36A. However, evidence of harsh prison conditions does not establish a likelihood of detention. The respondent presented no evidence to show that he would likely be detained.

The parties stipulated to numerous facts concerning pre-trial detention in the Ukraine. Exhibit 35 at 5. The parties agreed that Ukrainian law allows for pre-trial release of individuals awaiting trial, and that in 1996, the Ukrainian Parliament passed an amendment to the Code of Criminal Procedure allowing individuals awaiting trial to seek release on bail. *Id.* The parties stipulated that Ukrainian prosecutors, in determining whether pre-trial release is warranted, have a statutory obligation to consider whether there is sufficient reason to believe a criminal defendant will evade investigation or trial, interfere with investigation, or continue engaging in criminal conduct. *Id.* Further, the parties stipulated to reports that, in practice, large numbers of Ukrainian criminal defendants are released from custody while awaiting trial at the initiative of prosecutors, and that the defendants are only required to sign a promise to return. *Id.*

The respondent attempts to liken his situation to that of a journalist who embarrassed the Ukrainian government and was subsequently killed. *See* Exhibit 31C at 20-21 and Exhibit 36 at 10-12. This analogy is not persuasive, because the respondent is not akin to a journalist who has published unflattering or inflammatory remarks regarding the Ukrainian government. The respondent is one who has been found by the United States to have participated in persecution at the direction of the Nazi party. There is no evidence in the record that the Ukrainian government has expressed embarrassment regarding those proven to have participated in persecution through activities at the direction of the Nazi party of Germany. To the contrary, such individuals have been brought to the attention of the Ukrainian government, and no action has been taken to arrest, detain, or prosecute these known persecutors of others. *See* Exhibit 37A at 15-22, 34, and 36.

C. Likelihood that the Respondent Will Be Tortured While in Custody or Prison

The respondent also asserts that, once taken into custody in the Ukraine, he will likely be tortured. The Court finds that this assertion is speculative, not supported by the record, and without merit.

The Board examined prison conditions in the context of CAT claims in *Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002) and *Matter of G-A-*, 23 I. & N. Dec. 366 (BIA 2002). In *Matter of J-E-*,

the Board denied the respondent's CAT claim holding that: the indefinite detention of criminal deportees by Haitian authorities does not constitute torture where there is no evidence that the authorities intentionally and deliberately detain deportees in order to inflict torture; substandard prison conditions in Haiti do not constitute torture where there is no evidence that the authorities intentionally create such conditions in order to inflict torture; and evidence of occurrence in Haitian prisons of isolated instances of mistreatment that may rise to the level of torture is insufficient to establish that it is more likely than not that the respondent will be tortured if returned to Haiti. *Matter of J-E-, supra* at 304. In so holding, the Board found no evidence that (1) deliberately inflicted acts of torture were pervasive and widespread; (2) the Haitian authorities use torture as a matter of policy; or (3) meaningful international oversight or intervention was lacking. *Id.* at 303. The Board further concluded that the Haitian government was attempting to improve its prison system, preventing the respondent from demonstrating a likelihood of torture in prison in Haiti. *Id.* at 301.

In contrast, in *Matter of G-A-, supra*, the Board granted CAT relief to the respondent, a native of Iran, where the respondent established that deliberate acts of torture were pervasive and widespread in Iranian prisons, that the authorities use torture as a matter of policy, that meaningful international oversight or intervention was lacking, and that a detainee with the respondent's specific characteristics (his religion, ethnicity, duration of his residence in the United States, and his drug-related convictions in the United States) would likely to be subject to torture, as opposed to other acts of cruel, inhuman, or degrading punishment or treatment. *Matter of G-A-, supra,* at 372.

In assessing the respondent's claims of torture in the instant case, the Court finds his claims more closely resemble those in *Matter of J-E-* rather than *Matter of G-A-*. The harsh conditions in Ukrainian prisons has been established. However, like Haiti in *Matter of J-E-*, the Ukraine has permitted international monitoring of its prison facilities and has engaged in improvement efforts. *Matter of J-E-, supra* at 301. The Department of State opinion submitted in this matter specifies that, while there was a "widespread nature" of police regularly beating detainees and prisoners in the Ukraine, "Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union." *See* Exhibits 39A and 45. The respondent, unlike the respondent in *Matter of G-A-*, has not established that he possesses specific characteristics that would make him likely be subject to torture. *Matter of G-A-, supra,* at 372. The respondent's claim of vulnerability to torture based upon age and alleged poor health is wholly unsubstantiated, as no evidence was submitted to such facts, and counsel's self serving statements during closing argument are not considered part of the evidentiary record. *See Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). The Department of State stated that "such mistreatment would be very unlikely in cases involving high profile individuals such as this one" and that this view was "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." *See* Exhibits 39A and 45.

V. DECISION AND ORDER

The Court finds that the respondent has not established a likelihood of prosecution, let alone a likelihood of torture as defined for purposes of deferral of removal under CAT. As clearly evinced

by the evidence in the record, the respondent has not sustained his burden of proof. The respondent has not shown that he will be subjected to an act, intentionally inflicted at the instigation of, or with the consent or acquiescence of a public official who has custody or physical control of the respondent, for a proscribed purpose, that would result in severe physical or mental pain or suffering, not arising from suffering inherent in or incidental to lawful sanctions. *See* 8 C.F.R. § 1208.18(a).

In view of the foregoing, the Court finds that the respondent has not established that it is more likely than not that he will be tortured if removed to the Ukraine. Therefore, the respondent's application for deferral of removal under CAT is denied.

ORDER

IT IS HEREBY ORDERED that the respondent's application for deferral of removal under CAT is **DENIED**.

IT IS FURTHER ORDERED that the respondent be removed from the United States to the Ukraine, or in the alternative to Germany or Poland, on the charges contained in the Notice to Appear.

MICHAEL J. CREPPY
CHIEF IMMIGRATION JUDGE

DATE: 12/28/05

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

BROADLEY, JOHN H., ESQ
1054 31ST STREET, N.W., SUITE 200
WASHINGTON, DC 20007

Date: Nov 1, 2005

File A [redacted] (b)(6)

In the Matter of:
DEMJANJUK, JOHN

_____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee ($110.00).

_____ Enclosed is a copy of the oral decision.

_____ Enclosed is a transcript of the testimony of record.

_____ You are granted until _____ to submit a brief to this office in support of your appeal.

_____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

__X__ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Phyllis C. Eddy
Immigration Court Clerk

UL

cc:

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# [redacted] (b)(6)
	)	
RESPONDENT	)	
	)	

APPEARANCES

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Office of Special Investigations
Criminal Division, USDOJ
10th St. and Constitution Avenue, N.W.
John C. Keeney Building, Suite 200
Washington, DC 20530

ORDER OF THE CHIEF IMMIGRATION JUDGE

On October 25, 2005, the Court received a letter from the United States Department of State, Office of Country Reports and Asylum Affairs in which the Department of State expressed an opinion on whether Respondent, John Demjanjuk, would likely face torture if deported to Ukraine. The Court acknowledges receipt of this letter, and is attaching a copy of the letter to this order to ensure that both parties have an opportunity to review the letter. The Court orders that objections to admitting this document into evidence or any offer of rebuttal evidence be filed on or before November 3, 2005.

Accordingly, the Court will enter the following orders:

ORDER

It is ordered that: Any objection to this letter or any rebuttal evidence must be party must filed on or before November 3, 2005.

---

[1] Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

It is further ordered that: If no objection or rebuttal evidence is submitted by November 3,2005, the letter from the Department of State will be entered as a full exhibit into the record of proceeding.

10/27/05
Date

Michael J. Creppy
Chief Immigration Judge

HS 11/29

UNITED STATES STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

ELLIOT, THOMAS A.
1629 K STREET, N.W., STE 1250
WASHINGTON, DC 20006

(b)(6)

IN THE MATTER OF
DEMJANJUK, JOHN

FILE A [redacted]

DATE: Jun 16, 2005

RECEIVED
DHS-MAIL
CLEVELAND
2005 JUN 23 AM 9 14

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

__ OTHER: _____

_____

AMD
COURT CLERK
IMMIGRATION COURT

FF

CC: STEPHEN PASKEY ESQ. OSI
10TH & CONSTITUTION AVE, N.W.
WASHINGTON, DC 20530

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# [redacted] (b)(6)
	)	
RESPONDENT	)	
	)	

APPLICATION: Respondent's Motion to Reassign to Arlington Immigration Judge

APPEARANCES

ON BEHALF OF RESPONDENT
Thomas A. Elliot, Fabienne Chatain,
& Thomas K. Ragland, Esqs.
Elliot & Mayock
1629 K Street, N.W. Suite 1250
Washington, DC 20006

ON BEHALF OF THE GOVERNMENT
Stephen Paskey
Senior Trial Attorney
Office of Special Investigations
Criminal Division, USDOJ
10th St. and Constitution Ave., N.W.
John C. Keeney Building, Suite 200
Washington, DC 20530

ORDER OF THE CHIEF IMMIGRATION JUDGE

On April 26, 2005, Respondent filed a Motion to Reassign to Arlington Immigration Judge. Respondent raises three issues in support of his motion: 1) that the Chief Immigration Judge lacks the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge. In opposition to this motion, the government filed a brief with the Court on May 10, 2005. Subsequently, on May 17, 2005, Respondent filed a Motion for Brief Period to Respond to Government's Opposition. The Court granted the motion on May 18, 2005, and Respondent filed his Response to the Government's Opposition on May 20, 2005.

For the following reasons, the Court will deny Respondent's motion.

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[1]Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

I. The Chief Immigration Judge Has Authority to Conduct Removal Proceedings[2]

The Attorney General is vested with the power to establish regulations and to delegate his authority to make determinations in immigration proceedings under the Immigration and Nationality Act (INA or Act). *See* INA § 103(g) (2005). In accordance with this delegation authority, the Attorney General created the Executive Office for Immigration Review (EOIR) as the adjudicative component to determine removability, deportability, inadmissibility or excludability of aliens, as well as eligibility for relief therefrom. 48 Fed. Reg. 8038 (Feb. 25, 1983). The Attorney General established the jurisdiction of the Immigration Judges to conduct removal proceedings in Part 3, Chapter 1 of Title 8 of the Code of Federal Regulations. *See* 8 C.F.R. § 1003.10 (2005).

The term "immigration judge" is defined under the regulations at 8 C.F.R. § 1001.1(l), which provides:

> The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

Thus, all Immigration Judges are attorneys who are qualified to conduct removal proceedings and

---

[2]It is beyond cavil that the Chief Immigration Judge is an Immigration Judge. The designation as Chief simply adds additional duties and responsibilities. In other judicial situations, no one would argue that the Chief Judge of a federal district, state, or municipal court is not a judge. Indeed, Respondent did not question the authority of Chief Judge Matia of the U.S. District Court of the Northern District of Ohio, Eastern Division, who rendered the decision in Respondent's denaturalization proceeding. *See* U.S. v. Demjanjuk, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002). Citations to authority is unnecessary; common sense is all that is needed.

In his motion and Response to Government's Opposition, Respondent actually argues that the Chief Immigration Judge lacks subject matter jurisdiction to conduct removal proceedings. The term "subject matter jurisdiction" refers to a court's competence to hear and determine cases of the general class to which the proceedings in question belong. *See* Black's Law Dictionary, 6th Ed., 1990. The Arlington Immigration Court has subject matter jurisdiction to conduct removal proceedings. Respondent's argument is that the Chief Immigration Judge lacks authority to sit as a judge presiding over an Arlington Immigration Court case. Respondent overlooks the fact that the Chief Immigration Judge is an Immigration Judge appointed by the Attorney General, and sits in the same posture as an Arlington Immigration Court Immigration Judge for purposes of this case.

who are appointed as administrative judges within EOIR.

The Attorney General also established the position of the Chief Immigration Judge and gave additional authority to that office. 8 C.F.R. § 1003.9 (2005). The Chief Immigration Judge is charged with "the general supervision, direction, and scheduling of the Immigration Judges" and is to be assisted by Deputy and Assistant Chief Immigration Judges in the performance of his duties. 8 C.F.R. § 1003.9. The regulation further states:

> These [duties] shall include, *but are not limited to*:
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

Id. (emphasis added). The plain language of this regulation demonstrates that the particular duties described do not provide a comprehensive list of the duties and authority of the Chief Immigration Judge, Deputy Chief Immigration Judges or Assistant Chief Immigration Judges. Moreover, that this provision was amended in 1997 to include, *inter alia*, the "but are not limited to" language further demonstrates that such duties are not, and were not intended to be, limited by the express regulatory language. *See* 62 Fed. Reg. 10331 (March 6, 1997).

Likewise, the position description (OF-8) for the Chief Immigration Judge defines the scope of the Chief Immigration Judge's duties and authority. In addition to describing various managerial and supervisory duties, the position description requires that the Chief Immigration Judge must:

> When called upon, perform the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, rescission of adjustment of status, custody determinations, and departure control.

See Appendix A, OF-8 Position Description for Chief Immigration Judge.

The Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges handle cases when necessary and have done so for years. For example, Respondent has submitted a list of cases that the Chief Immigration Judge has handled over the years. *See* Attachment to Respondent's Response to Government's Opposition. Additionally, cases decided by the Chief Immigration Judge and Assistant Chief Immigration Judge in immigration proceedings have been reported by the Board of Immigration Appeals (BIA or Board) and the U.S. Court of Appeals for the Sixth Circuit. *See* Hammer v. INS, 195 F.3d 836 (6th Cir. 1999) (affirming the Chief Immigration Judge's decision ordering Ferdinand Hammer removed under the Holtzman Amendment as an alien who assisted in Nazi persecution during World War II); Matter of Sparrow, 20 I&N Dec. 920 (BIA 1994) (affirming the Assistant Chief Immigration Judge's decision in an attorney discipline matter); and Matter of Walsh & Pollard, 20 I&N Dec. 60 (BIA 1988) (affirming the Chief Immigration Judge's decision to terminate

exclusion proceedings).

Both Matter of Walsh & Pollard and Matter of Sparrow were decided by the Board prior to the 1997 amendments to the Chief Immigration Judge regulation, adding the "but are not limited to" language. These cases clearly recognized the authority of the Chief Immigration Judge and the Assistant Chief Immigration Judges to preside over cases. The 1997 amendment to the regulations made clear that the Chief Immigration Judge's duties were more than administrative and implicitly recognized, as in the past, the authority of the Chief Immigration Judge to conduct removal proceedings.

For all of these reasons, the Court finds that the Chief Immigration Judge has authority to preside over Immigration Court proceedings.

II. There is no Showing of Bias

Respondent's second argument in moving to have his case reassigned is that the Chief Immigration Judge's recusal is required because his impartiality might reasonably be questioned. The Court finds that recusal is not warranted in this case because a reasonable person, knowing all of the relevant facts, would not reasonably question the impartiality of the Judge.

A. Respondent's Allegations

Respondent asserts two grounds on which to base his allegation that the Chief Immigration Judge is biased and required to recuse himself. His first contention is that the Chief Immigration Judge's publication and expressed opinions on a legal issue in a law review article demonstrates a lack of impartiality.

Respondent's second argument is that because the Chief Immigration Judge has adjudicated only three cases since 1996, including Respondent's, and because two of these cases have involved allegations of removability relating to participation in Nazi persecution, the Chief Immigration Judge's decision to preside over Respondent's case demonstrates his lack of impartiality.

B. Legal Standards for Recusal

The federal standard for recusal of federal judges is codified at Section 455(a) under Title 28 of the United States Code. This regulation provides that:

> Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his partiality might reasonably be questioned.

28 U.S.C. § 455. In interpreting whether recusal is warranted under this provision, the Supreme Court established that the test is whether it would appear to a reasonable person, knowing all the

relevant facts, that the judge's impartiality might reasonably be questioned. *See* Liteky v. U.S. 510 U.S. 540, 548 (1994); Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847 (1988); *see also* U.S. v. Sammons, 918 F.2d 592, 599 (6th Cir. 1990).

Since 1997, the same standard has applied to recusal questions in Immigration Court. *See* Operating Policies and Procedures Memorandum 05-02: Procedures for Issuing Recusal Orders in Immigration Proceedings (OPPM 05-02). This OPPM provides guidance to Immigration Judges on the regulation governing recusal in Immigration Court proceedings. The regulation states:

> The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified

8 C.F.R. § 1240.1(b) (2005). The OPPM explains that:

> **the test for determining whether recusal is an appropriate remedy is an objective one**. Under this standard, a judge should recuse him or herself when it would appear to a reasonable person, knowing all the relevant facts, that a judge's impartiality might reasonably be questioned.

OPPM 05-02 (emphasis in original). The Sixth Circuit held that "th[is] standard is an objective one; hence, the judge need not recuse himself based on the 'subjective view of a party' no matter how strongly that view is held." U.S. v. Sammons at 599; *see also* U.S. v. Cooley, 1 F.3d 985 (10th Cir. 1993); U.S. v. Winston, 613 F.2d 221 (9th Cir. 1980); and Davis v. Board of Sch. Comm'rs of Mobile County, 517 F.2d 1044 (5th Cir. 1975) (all stating the general proposition that the standard for analyzing the federal recusal statute is an objective one).

The Supreme Court, Sixth Circuit and BIA have addressed certain circumstances, which they have rejected as insufficient to necessitate recusal, that are of particular relevance to this case. The Supreme Court has held that recusal is not warranted when a judge has formulated an understanding or an opinion on a legal issue through his or her previous exposure to it. In Liteky, the court held that "*some* opinions [held by a judge] acquired outside the context of judicial proceedings (for example, the judge's view of the law acquired in scholarly reading) will not suffice" for bias or prejudice recusal. Liteky, *supra*, at 1157; *see also* Laird v. Tatum, 409 U.S. 824 (1972).

Morever, the Supreme Court has held that publicly expressing such understandings or opinions on a legal issue is not a sufficient basis for recusal. *See* Laird, *supra*, at 830 (finding no bias of a Supreme Court Justice where he had previously expressed in public, prior to taking office, an understanding of the law, what the law is and what the law ought to be); and Leamann v. Ohio Dep't of Mental Retardation, 825 F.2d 946, 949 n.1 (6th Cir. 1987).

The Sixth Circuit has specifically held that the fact that a judge has written previous law review

articles or opinions in a certain field does not indicate bias or warrant recusal. *See* U.S. v. Bonds, 18 F.3d 1327, 1331 (6th Cir. 1994); A.V. Goodpasture v. Tennessee Valley Authority, 434 F.2d 760 (6th Cir. 1970). Furthermore, the Sixth Circuit has held that "a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," does not necessitate recusal. Buell v. Mitchell 274 F.3d 337, 345 (6th Cir. 2001).

In Matter of Exame, 18 I&N Dec. 303 (BIA 1982) the Board determined whether the alien was deprived of a constitutionally fair proceeding by an Immigration Judge's failure to recuse himself. The Board held that:

> [A]n immigration judge's rulings in the same or similar cases do not ordinarily form a basis upon which to allege bias. Moreover, an applicant is not denied a fair hearing merely because the immigration judge has a point of view about a question of law or policy. Nor does the fact that the immigration judge may have previously participated in investigative or prosecuting functions in similar proceedings prior to becoming an immigration judge provide a basis upon which to establish a disqualifying basis.

Matter of Exame at 306.

C. *No Reasonable Person Would Question the Chief Immigration Judge's Impartiality*

Respondent takes particular aim at the following portion of Chief Immigration Judge Creppy's law review article:

> [G]overnment efforts will or should turn to targeting the removal of other war criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted to the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the emphasis of removing Nazi War Criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As longs as we persist in taking action against them, then we continue to triumph against them.

Michael J. Creppy, 12 Geo.Immigr. L.J. 443, 467 (1998). These paragraphs clearly express the

Chief Immigration Judge's opinion that any war criminals discovered within U.S. borders should be removed as our laws mandate. The statement refers to prosecuting individuals who are in fact war criminals. Thus, it is noteworthy that Respondent alleges that these statements in the article indicate the Chief Immigration Judge's bias "toward aggressive prosecution *of individuals such as Mr. Demjanjuk* under U.S. immigration law," given that Respondent so adamantly contests that he is a Nazi War Criminal. *See* Respondent's Motion at 6 (emphasis added).

The Chief Immigration Judge's express opinions on a legal issue, that all war criminals, including Nazi War Criminals, should be removed under our immigration laws, is merely a statement that our government should apply and uphold its own laws. Such statements do not indicate bias or necessitate recusal. *See* Buell, Liteky, Bonds, Laird, and A.V. Goodpasture, *supra*.

Furthermore, Respondent's contention that the Chief Immigration Judge has demonstrated bias in deciding to preside over his case lacks merit. The previous case that the Chief Immigration Judge adjudicated was in 1999 and did not involve allegations relating to war criminals, genocide or Nazi persecution. *See* Attachment to Respondent's Response to Government's Opposition to Respondent's Motion to Reassign to Arlington Immigration Judge. In 1996, the Chief Immigration Judge presided over his only other case involving allegations of Nazi Persecution, notwithstanding the fact that the government has filed a total of nineteen such cases since the current Chief Immigration Judge's appointment, as recognized by Respondent. *See* Respondent's Response to Government's Opposition, at 11.

Yet, there are further facts to be considered here. The Chief Immigration Judge, along with the Deputy and Assistant Chief Immigration Judges serve as backup immigration judges when the caseload calls for such assistance. This is not only a function of our managerial and supervisory duties, but also of our titles and appointments. *See* Section I, *supra*. Thus, when a particular court is overburdened, the Chief, Deputy and Assistant Chief Immigration Judges will preside over particular cases or even an entire docket depending on the gravity of the situation. The latter situation occurred in 1995 at the Los Angeles Immigration Court, requiring the Chief Immigration Judge to conduct proceedings in a number of cases. *See* Attachment to Respondent's Response to Government's Opposition to Respondent's Motion to Reassign to Arlington Immigration Judge. The former situation is exemplified by the three cases highlighted by Respondent, over which the Chief Immigration Judge has presided since 1996. *See* Respondent's Motion at 6. Moreover, the authority to preside over any immigration matter within the Immigration Court is reposited in the sole discretion of the Chief Immigration Judge.

Therefore, the Court finds that no reasonable person, knowing all of the relevant facts, would reasonably question the Chief Immigration Judge's impartiality.

III. Due Process Does Not Require Random Assignment of Respondent's Removal

Proceedings[3]

The Fifth Amendment right to due process requires that Respondent be afforded a full and fair hearing on the merits of his case. Matter of Exilus, 18 I&N Dec. 276 (BIA 1982) ("[Removal] proceedings are civil, rather than criminal, in nature, and the constitutional requirements of due process are satisfied by a full and fair hearing."). Bias and partiality of a judge can suffice to show that a respondent was deprived of a constitutionally fair hearing. *See* Matter of Exame, *supra*, at 306. However, as discussed in Section II, C, *supra*, the Court has found that an objectively reasonable person would not question the Chief Immigration Judge's impartiality. Therefore, Respondent has not been, and will not be, deprived of due process by the Chief Immigration Judge's decision to decline to recuse himself based on Respondent's allegations of bias and impartiality.

Respondent also alleges that the Chief Immigration Judge's decision to preside over Respondent's case, rather than to randomly assign the case to one of the Arlington Immigration Court Judges, violates Respondent's right to due process. As the Court has just mentioned, Respondent's due process rights in removal proceedings are fully met so long as he is provided with a full and fair hearing. Nowhere in the INA or in Title 8, Chapter V of the Code of Federal Regulations is there a requirement that a respondent's case be randomly assigned. Respondent's counsel overlooks the fact that the Chief Immigration Judge has the authority to assign cases to any Immigration Judge, including himself.

Moreover, and also as previously discussed in Section I, *supra*, the Chief Immigration Judge has been charged with having the qualifications and ability to preside over removal proceedings. This duty clearly contemplates situations where cases will not be randomly assigned to an Immigration Judge seated in the Immigration Court of jurisdiction.

Finally, as the government noted in its opposition brief, the courts, including the Sixth Circuit, have found that in the context of criminal proceedings, "a defendant does not have the right to have his judge selected by a random draw." *See* Government's Opposition to Respondent's Motion to Reassign to Arlington Immigration Judge, p. 16 (*citing* Sinito v. United States, 750 F.2d 512, 515 (6th Cir. 1984) (other citations omitted)). The court recognized that the procedures for case assignment "are not meant to confer rights on litigants," but rather exist as internal rules "to promote efficient operation." *See id.*

Accordingly, the Court finds that Respondent is not, and will not be, deprived of due process by not having his case randomly assigned to an Arlington Immigration Court Judge.

ORDER

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[3]Despite Respondent's unsupported allegations, his case was assigned in the same manner as other similarly situated cases. *See* 8 C.F.R. § 1003.9.

After considering the contentions raised by Respondent in his Motion to Reassign to Arlington Immigration Judge, to wit:

> 1) that the Chief Immigration Judge lacks the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge,

it is ADJUDGED and ORDERED that Respondent's motion be and is hereby DENIED.

6/16/05
Date

Michael J. Creppy
Chief Immigration Judge

POSITION DESCRIPTION (Read Instructions on the Back)

1. Agency Position No.

2. Reason for Submission: [XX] Redescription [ ] Reestablishment [ ] New [ ] Other
Explanation (Show any positions replaced)

3. Service: [X] Hdqtrs. [ ] Field

4. Employing Office Location: FALLS CHURCH, VA

5. Duty Station: FALLS CHURCH, VA

6. OPM Certification No.

7. Fair Labor Standards Act: [X] Exempt [ ] Nonexempt

8. Financial Statements Required: [XX] Executive Personnel Financial Disclosure [ ] Employment and Financial Interests

9. Subject to IA Action: [ ] Yes [X] No

10. Position Status: [ ] Competitive [ ] Excepted (Specify in Remarks) [ ] SES (Gen.) [X] SES (CR)

11. Position Is: [ ] Supervisory [XX] Managerial [ ] Neither

12. Sensitivity: [ ] 1—Non-Sensitive [ ] 2—Noncritical Sensitive [ ] 3—Critical Sensitive [XX] 4—Special Sensitive

13. Competitive Level Code

14. Agency Use

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. U.S. Office of Personnel Management						
b. Department, Agency or Establishment	CHIEF IMMIGRATION JUDGE	ES	905			
c. Second Level Review						
d. First Level Review						
e. Recommended by Supervisor or Initiating Office						

16. Organizational Title of Position (If different from official title)

17. Name of Employee (If vacant, specify)

18. Department, Agency, or Establishment: U.S. Department of Justice
a. First Subdivision: Executive Office for Immigration Review
b. Second Subdivision: Office of the Chief Immigration Judge
c. Third Subdivision
d. Fourth Subdivision
e. Fifth Subdivision

19. Employee Review—This is an accurate description of the major duties and responsibilities of my position.
Signature of Employee (optional)

20. **Supervisory Certification.** *I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.*

a. Typed Name and Title of Immediate Supervisor: ANTHONY C. MOSCATO, DIRECTOR
Signature: Anthony C. Moscato Date:
b. Typed Name and Title of Higher-Level Supervisor or Manager (optional)
Signature: Date:

21. **Classification/Job Grading Certification.** *I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the U.S. Office of Personnel Management or, if no published standards apply directly, consistently with the most applicable published standards.*
Typed Name and Title of Official Taking Action
Signature: Valerie M Willis Date: 5/18/95

22. Position Classification Standards Used in Classifying/Grading Position

Information for Employees. The standards, and information on their application, are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the U.S. Office of Personnel Management. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the U.S. Office of Personnel Management.

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (optional)										
b. Supervisor										
c. Classifier										

24. Remarks

Description of Major Duties and Responsibilities (See Attached)

Chief Immigration Judge
ES-905

INTRODUCTION

The Executive Office for Immigration Review (EOIR) was created January 1, 1983, through an internal Department of Justice reorganization which combined the immigration judge function previously performed by employees of the Immigration and Naturalization Service (INS), with the Board of Immigration Appeals (BIA). With the passage of the Immigration Reform and Control Act of 1986 (IRCA), the Attorney General placed responsibility for administrative law judge adjudication of employer sanctions and certain discrimination cases within EOIR. As a result, EOIR is comprised of five major components: the Office of the Director, the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer and the Office of Management and Administration.

The Chief Immigration Judge is responsible for providing overall program direction and establishing priorities for the immigration judges and their support staff located in numerous field offices throughout the United States. The incumbent also functions as the key advisor to the Director of EOIR on all legal and administrative matters for the immediate program area.

DUTIES AND RESPONSIBILITIES

Responsible for managing and coordinating the operational activities of immigration judges and their support staff. Develops policies and procedures for the operation of the program, determining and accounting for resource needs; determining need for and proposing changes in organizational structure and delegation of authority; and establishing effective internal and external communication channels. On the basis of continuing analysis of program operations, initiates and recommends adoption of new and alternative policy and procedures designed to establish more effective operations.

Monitors and evaluates the utilization of resources in program operations. Proposes cost saving measures, develops alternative approaches for achieving cost savings, and makes personnel and material realignments that result in greater productivity and cost efficiency.

Designs, develops and conducts continuing legal education programs for immigration judges.

Reviews and keeps informed of the nature and status of administrative and judicial decisions bearing upon activities of immigration judges. Reviews and provides advice on changes and developments in laws, legislative history, procedures, and regulations.

Provides policy on the general legal practice and procedures of the immigration judge program. Confers with immigration judges as to various aspects of the manner in which work is conducted, discussing closed cases as appropriate.

Provides legal counsel and advice to the Director of EOIR, Assistant Chief Immigration Judges (ACIJs) and immigration judges on matters pertaining to the Immigration and Nationality Act and all other law. Reviews and finalizes legal memoranda and legal opinions.

When called upon, performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, rescission of adjustment of status, custody determinations, and departure control.

Responsible for the implementation and administration of the various personnel and equal opportunity programs within areas of responsibility, including assuring that selection, training, promotion, performance appraisal, discipline, and other personnel and EEO functions are performed within Federal and agency guidelines and procedures. Provides the Director of EOIR with recommendations and assistance on the appointment of immigration judges.

Provides general supervision and guidance to the ACIJs and keeps them informed of changes in administrative policies, court decisions, developments in law, legislative history, procedures and regulations, and any other changes which may impact on the ACIJs' ability to perform assigned duties.

Personally complies with and ensures the compliance of subordinates with integrity standards and all applicable laws, regulations, and instructions governing employee standards of conduct.

Fully supports and implements the Director's, Department's and EOIR's affirmative action efforts with respect to all positions under his/her supervision.

SUPERVISION AND GUIDANCE RECEIVED

Works under the general supervision of the Director with wide latitude for judgment and policy development in accordance with relevant laws, regulations, and the priorities of the Director. Program, administrative, and managerial work is evaluated in terms of overall results achieved. Decisions rendered in formal proceedings are not subject to prior review or control.

RE: DEMJANJUK, JOHN

File: A [redacted] (b)(6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) P OSI

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [P] ALIEN's ATT/REP [M] INS

DATE: 6/16/05 BY: COURT STAFF mmb

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

X

C1

AMD

Court is requested to rule. *See* 8 C.F.R. § 1003.23(a) (2004) (requiring that all pre-decision motions shall state, with particularity, the grounds therefore, the relief sought, and the jurisdiction).

Finally, the Court notes that it previously ordered Respondent orally and in writing on February 28, 2005, to file his written pleadings to the Notice to Appear and written opposition to the Government's Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law on or before May 31, 2005. Failure to comply with this order will result in the Court deeming the Government's motion and the charges of removability as contained in the Notice to Appear unopposed. 8 C.F.R. §§ 1003.21(b) & (c) (2004).

Accordingly, the Court enters the following Order:

ORDER

The Court hereby rejects Respondent's written inquiry as defectively filed.

3-11-05
Date

Michael J. Creppy
Chief Immigration Judge

RECEIVED
EOIR
CLEVELAND
2005 OCT 20 AM 9:22

BOS
RC00004
(L)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

BROADLEY, JOHN H., ESQ
1054 31ST STREET, N.W., SUITE 200
WASHINGTON, DC 20007

Date: Oct 17, 2005

File A [redacted] (b)(6)

In the Matter of:
DEMJANJUK, JOHN

_____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee ($110.00).

_____ Enclosed is a copy of the oral decision.

_____ Enclosed is a transcript of the testimony of record.

_____ You are granted until _____ to submit a brief to this office in support of your appeal.

_____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

X Enclosed is a copy of the ~~order/decision~~ Notice of Hearing of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Phyllis C. Caddy
Immigration Court Clerk

UL

cc:

203680
08-237-417
53754
No 53782
BU 6562

ACTION COMPLETED
APPROVED FOR FILING
Initials: JK Date: 27-04
FCO/Unit Cle/Core

NRC

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

RE: DEMJANJUK, JOHN
FILE: A [redacted] (b)(6)

DATE: Oct 17, 2005

TO: BROADLEY, JOHN H., ESQ
1054 31ST STREET, N.W., SUITE 200
WASHINGTON, DC 20007

Please take notice that the above captioned case has been scheduled for a INDIVIDUAL hearing before the Immigration Court on Nov 29, 2005 at 09:00 A.M. at:

U.S. DISTRICT COURT, NORTHERN DISTRICT OF OHIO
801 WEST SUPERIOR AVE., COURTROOM 9A
CLEVELAND, OH. 44113

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Immigration and Naturalization Service and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Naturalization Service established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT ARLINGTON, VA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: (MAIL (M)) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN's ATT/REP [X] INS
DATE: 10/17/05 BY: COURT STAFF Phyllis C. Caddy
V3
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

RECEIVED
DHS-MAIL
CLEVELAND
2005 JUN 23 AM 9:29

Elliot, Thomas A. Esquire
1629 K Street N.W., Ste 1250
Washington, DC 20006

ICE Office of Chief Counsel/CLE
1240 E. 9 St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN **A[redacted]** (b)(6)

Type of Proceeding: Removal **Date of this notice: 06/21/2005**

Type of Appeal: Interlocutory Appeal **Filed by: Alien**

FILING RECEIPT FOR APPEAL

The Board of Immigration Appeals acknowledges receipt of your appeal and fee or fee waiver request (where applicable) on 06/20/2005 in the above-referenced case.

PLEASE NOTE:

In all future correspondence or filings with the Board, please list the name and alien registration number ("A" number) of the case (as indicated above), as well as all of the names and "A" numbers for every family member who is included in this appeal.

If you have any questions about how to file something at the Board, you should review the Board's Practice Manual and Questions and Answers at www.usdoj.gov/eoir.

Proof of service on the opposing party at the address above is required for ALL submissions to the Board of Immigration Appeals -- including correspondence, forms, briefs, motions, and other documents. If you are the Respondent or Applicant, the "Opposing Party" is the District Counsel for the DHS at the address shown above. Your certificate of service must clearly identify the document sent to the opposing party, the opposing party's name and address, and the date it was sent to them. Any submission filed with the Board without a certificate of service on the opposing party will be rejected.

WARNING: If you leave the United States after filing this appeal but before the Board isssues a decision, your appeal will be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. section 1001.1(q)).

MITCHNET

RECEIVED
DHS-MAIL
CLEVELAND
2005 JUN 28 AM 9:14

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

RE: DEMJANJUK, JOHN
FILE: A[redacted] (b)(6)

DATE: Jun 23, 2005

TO: ELLIOT, THOMAS A.
1629 K STREET, N.W., STE 1250
WASHINGTON, DC 20006

Please take notice that the above captioned case has been scheduled for a INDIVIDUAL hearing before the Immigration Court on Nov 21, 2005 at 09:00 A.M. at:

1240 EAST 9TH ST., 29TH FLOOR
CLEVELAND, OH 44199

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Immigration and Naturalization Service and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Naturalization Service established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

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A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: (MAIL (M)) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN's ATT/REP [X] INS
DATE: 6/23/05 BY: COURT STAFF Phyllis C. Eaddy V3
Attachments: [ ] EOIR-33 [ ] EOIR-28 [X] Legal Services List [ ] Other

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# [redacted] (b)(6)
	)	
RESPONDENT	)	
	)	

APPEARANCES

ON BEHALF OF RESPONDENT
Thomas A. Elliot, Fabienne Chatain,
& Thomas K. Ragland, Esqs.
Elliot & Mayock
1629 K Street, N.W. Suite 1250
Washington, DC 20006

ON BEHALF OF THE GOVERNMENT
Stephen Paskey
Senior Trial Attorney
Office of Special Investigations
Criminal Division, USDOJ
10th St. and Constitution Ave., N.W.
John C. Keeney Building, Suite 200
Washington, DC 20530

INTERIM ORDER OF THE CHIEF IMMIGRATION JUDGE

On June 20, 2005, the Court issued an Order granting Respondent's request for a continuance, scheduling dates by which the parties must file particular documents relating to Respondent's application for deferral of removal under the Convention Against Torture, and scheduling a merits hearing on the application for November 21, 2005.

On June 21, 2005, the government filed its Opposition to Respondent's Motion for a Continuance. In its opposition, the government stated that it would seek to remove Respondent to Ukraine, and alternatively, to Germany and Poland.

In light of the government's subsequent submission, the Court will order Respondent to designate, or decline to designate, a country of removal by June 29, 2005. Accordingly, the Court amends its June 20, 2005, Order in the following manner.

---

[1]Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

ORDER

It is Ordered that: The June 30, 2005, hearing is hereby cancelled.

It is Further Ordered that: Respondent must file his designation of or refusal to designate a country of removal with the Court on or before **June 29, 2005.**

It is Further Ordered that: Respondent must comply with Section A of the attached "Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services" on or before **July 20, 2005**.

It is Further Ordered that: Failure to comply with these instructions on or before July 20, 2005, will constitute abandonment of the application unless Respondent demonstrates that such failure was the result of good cause. 8 C.F.R. § 1003.47(c).

It is Further Ordered that: Respondent must file with the Court his application for deferral of removal with proof of compliance with the "Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services" on or before **September 7, 2005**.

It is Further Ordered that: Respondent and the government must file a Joint Pre-Hearing Statement with the Court on or before **September 21, 2005.** The Joint Pre-Hearing Statement must include

1) a statement of stipulated facts not at issue;

2) a statement of material facts which are at issue;

3) a list of all witnesses the parties intend to call and whether an interpreter will be needed along with the language and dialect;

4) a proffer as to the issue each witness will address and a brief summary of their anticipated testimony;

5) a summary of each party's argument, including cites to main authorities relied upon; and

6) a paginated, indexed, and fully legible list of all exhibits each party intends to introduce and the basis for opposing the introduction of any exhibit.

It is Further Ordered that: The merits hearing on Respondent's application for deferral of removal is hereby scheduled for November 21, 2005, at 9:00 AM.

It is Further Ordered that: Respondent be advised that,

1) failure to appear at his hearing except for exceptional circumstances may result in Respondent being taken into custody by the Department of Homeland Security and/or Respondent's hearing being held in his absence under INA § 240(b)(5), and an order of removal may be entered against Respondent; and

2) Respondent is under a continuing obligation to inform the Court and the government of any change of address. INA § 239(a)(1)(F); 8 C.F.R. § 1003.15(d)(2).

6/23/05
Date

Michael J. Creppy
Chief Immigration Judge

INSTRUCTIONS FOR SUBMITTING CERTAIN APPLICATIONS IN IMMIGRATION COURT AND FOR PROVIDING BIOMETRIC AND BIOGRAPHIC INFORMATION TO U. S. CITIZENSHIP AND IMMIGRATION SERVICES

** If you are filing both an I-589 Form and any additional forms (such as I-485, EOIR-40, EOIR-42A, EOIR-42B, or I-881), you must follow BOTH INSTRUCTIONS A & B.*

❑ A. Instructions for Form I-589 (Asylum and for Withholding of Removal)*

In addition to filing your application for asylum and supporting documents with the Immigration Court, you **must complete the following requirements** before the Immigration Judge can grant relief or protection in your case:

SEND these 3 items to the address below:

(1) A clear copy of the **first three pages** of your completed Form I-589 (Application for Asylum and for Withholding of Removal) that you will be filing or have filed with the Immigration Court, which must include your **full name, your current mailing address, and your alien number (A number)**. (Do Not submit any documents other than the first three pages of the completed I-589),

(2) A copy of Form EOIR–28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) if you are represented, and

(3) A copy of these instructions.

USCIS Nebraska Service Center
Defensive Asylum Application With Immigration Court
P.O. Box 87589
Lincoln, NE 68501-7589

Please note that there is **no filing fee required** for your asylum application.

After the 3 items are received at USCIS Nebraska Service Center, **you will receive**:

- A **USCIS receipt notice** in the mail indicating that USCIS has received your asylum application, and
- An **ASC notice** for you, and separate Application Support Center (ASC) notices for each dependent included in your application. Each ASC notice will indicate the individual's unique receipt number and will provide instructions for each person to appear for an appointment at a nearby ASC for collection of biometrics (such as your photograph, fingerprints, and signature). If you do not receive this notice in 3 weeks, call (800) 375-5283. If you also mail applications under Instructions B, you will receive 2 notices with different receipt numbers. You must wait for and take both scheduling notices to your ASC appointment.

You (and your dependents) must then:

- **Attend** the biometrics appointment at the ASC, and obtain a **biometrics confirmation** document before leaving the ASC, and
- **Retain** your **ASC biometrics confirmation** as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

❑ B. Instructions for Form(s) I-485, EOIR-40, EOIR-42A, EOIR-42B, or I-881*

You **must complete the following requirements** before the Immigration Judge can grant relief in your case:

SEND these 5 items to the address below:

(1) A clear copy of the entire application form that you will be filing or have filed with the Immigration Court. (Do not submit any documents other than the completed form itself),

(2) The appropriate application fee. (The fee can be found in the instructions with the application, the regulations, and at www.uscis.gov or for the EOIR forms, at www.usdoj.gov/eoir),

(3) The $70 USCIS biometrics fee,

(4) A copy of Form EOIR–28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) if you are represented, and

(5) A copy of these instructions.

USCIS Texas Service Center
P.O. Box 852463
Mesquite, Texas 75185-2463

Both fees must be submitted in the form of a check or a money order (or 2 separate checks/money orders) and be made out to: "Department of Homeland Security."

After the 5 items are received at the USCIS Texas Service Center, **you will receive:**

- A **USCIS notice** with your USCIS receipt number and **with instructions** to appear for an appointment at a nearby Application Support Center (ASC) for collection of your biometrics (such as your photographs, fingerprints, and signature). Your dependents will receive separate notices if they are required to provide biometrics. If you do not receive this notice in 3 weeks, call (800) 375-5283. If you also apply for asylum, take both scheduling notices to your ASC appointment (*see* side A).

You (and your dependents) must then:

- **Attend** this biometrics appointment at the ASC, and obtain a **biometrics confirmation** document from the ASC,
- **File** the following with the Immigration Court within the time period directed by the Immigration Judge: (1) the original **application Form**, (2) all **supporting documentation**, and (3) the **USCIS notice** that instructs you to appear for an appointment at the ASC, and serves as a receipt for your filing fees, and
- **Retain** your **ASC biometrics confirmation** as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

IMPORTANT: Failure to complete these actions and to follow any additional instructions that the Immigration Judge has given you could result in a delay in deciding your application or in your application being deemed abandoned and dismissed by the court.

(Eff. Date 4/1/05)

RECEIVED
DHS-MAIL
CLEVELAND
2005 JUN 21 AM 10: 20

UNITED STATES STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

ELLIOT, THOMAS A.
1629 K STREET, N.W., STE 1250
WASHINGTON, DC 20006

Date: Jun 21, 2005

File A [redacted] (b)(6)

In the Matter of:
DEMJANJUK, JOHN

_____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee ($110.00).

_____ Enclosed is a copy of the oral decision.

_____ Enclosed is a transcript of the testimony of record.

_____ You are granted until _____ to submit a brief to this office in support of your appeal.

_____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

X Enclosed is a copy of the order decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Phyllis C. Faddis
Immigration Court Clerk

UL

cc: VICTORIA I. CHRISTIAN
1240 EAST 9TH STREET, SUITE 519
CLEVELAND, OHIO 44199

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# (b)(6) [redacted]
	)	
RESPONDENT	)	
	)	

APPLICATION: Respondent's Motion for Continuance to Submit Applications for Relief from Removal

APPEARANCES

ON BEHALF OF RESPONDENT
Thomas A. Elliot, Fabienne Chatain,
& Thomas K. Ragland, Esqs.
Elliot & Mayock
1629 K Street, N.W. Suite 1250
Washington, DC 20006

ON BEHALF OF THE GOVERNMENT
Stephen Paskey
Senior Trial Attorney
Office of Special Investigations
Criminal Division, USDOJ
10th St. and Constitution Ave., N.W.
John C. Keeney Building, Suite 200
Washington, DC 20530

ORDER OF THE CHIEF IMMIGRATION JUDGE

On June 15, 2005, Respondent filed a motion for a continuance of the June 30, 2005, deadline to file his applications for relief from removal with the Court. Respondent contends that he does not have adequate time to prepare his applications for relief because he has been awaiting the Court's decisions on his pending motion to reassign the case to an Arlington Immigration Judge and the government's motion for the application of collateral estoppel and judgment as a matter of law. He further states that a continuance is warranted because he is still awaiting information pursuant to his April 29, 2005, Freedom of Information Act (FOIA) request.

On June 16, 2005, the Court denied Respondent's motion to reassign his case to an Arlington Immigration Court Judge and granted the government's motion for application of collateral estoppel and judgment as a matter of law. In its Order granting the government's motion, the

[1]Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

Court found that collateral estoppel precluded Respondent from re-litigating any of the allegations of fact or charges of removability as contained in the Notice to Appear (NTA). As such, Respondent was found removable under all four charges as a matter of law. The Court further found that based on his removabilty under these charges, Respondent is statutorily ineligible for all of the requested forms of relief from removal except deferral of removal under the Convention Against Torture (CAT), pursuant to 8 C.F.R. § 1208.17(a) (2005).

On April 1, 2005, the interim rule *"Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals,"* became effective. *See* Fed. Reg. Vol. 70, No. 19. This rule, adding § 1003.47 to Title 8 of the Code of Federal Regulations, sets forth particular biometrics and biographical requirements that must be met before a respondent's applications for relief or protection from removal may be granted by the Court. Accordingly, Respondent will be granted a continuance to comply with the requirements to provide biometrics and other biographical information and to file his application for deferral of removal with the Court pursuant to the instructions contained in this Order.

The Court notes, however, that Respondent did not submit his FOIA request until April 29, 2005. The Court ordered Respondent, orally and in writing, on February 28, 2005, that he must file any applications for relief on or before the June 30, 2005. Thus, Respondent waited two months after the Court set a deadline for filing applications before initiating his FOIA request. The Court has provided Respondent with ample time to prepare his application for relief. Therefore, Respondent should not expect any further continuances in these proceedings.

ORDER

It is Ordered that: The June 30, 2005, hearing is hereby cancelled.

It is Further Ordered that: Respondent must comply with Section A of the attached "Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration Services" on or before **July 20, 2005**.

It is Further Ordered that: Failure to comply with these instructions on or before July 20, 2005, will constitute abandonment of the application unless Respondent demonstrates that such failure was the result of good cause. 8 C.F.R. § 1003.47(c).

It is Further Ordered that: Respondent must file his application for deferral of removal with proof of compliance with the "Instructions for Submitting Certain Applications in Immigration Court and for Providing Biometric and Biographic Information to U.S. Citizenship and Immigration

Services" and this Order on or before **September 7, 2005**.

It is Further Ordered that: Respondent must provide the Court with a pre-hearing statement, including designation of or refusal to designate a country of removal, and proffer of all evidence and witnesses on or before **October 7, 2005.**

It is Further Ordered that: The government must provide the Court with a pre-hearing statement, including designation of a country of removal, and proffer of all evidence and witnesses on or before **October 21, 2005.**

It is Further Ordered that: The merits hearing on Respondent's application for deferral of removal is hereby scheduled for November 21, 2005, at 9:00 AM.

It is Further Ordered that: Respondent be advised that,

1) failure to appear at your hearing except for exceptional circumstances may result in his being taken into custody by the Department of Homeland Security and/or Respondent's hearing being held in his absence under INA § 240(b)(5) and an order of removal may be entered against you; and

2) Respondent is under a continuing obligation to inform the Court and the government of any change of address. INA § 239(a)(1)(F); 8 C.F.R. § 1003.15(d)(2).

6/20/05
Date

Michael J. Creppy
Chief Immigration Judge

INSTRUCTIONS FOR SUBMITTING CERTAIN APPLICATIONS IN IMMIGRATION COURT AND FOR PROVIDING BIOMETRIC AND BIOGRAPHIC INFORMATION TO U. S. CITIZENSHIP AND IMMIGRATION SERVICES

** If you are filing both an I-589 Form and any additional forms (such as I-485, EOIR-40, EOIR-42A, EOIR-42B, or I-881), you must follow BOTH INSTRUCTIONS A & B.*

☐ A. Instructions for Form I-589 (Asylum and for Withholding of Removal)*

In addition to filing your application for asylum and supporting documents with the Immigration Court, you **must complete the following requirements** before the Immigration Judge can grant relief or protection in your case:

SEND these 3 items to the address below:

(1) A clear copy of the **first three pages** of your completed Form I-589 (Application for Asylum and for Withholding of Removal) that you will be filing or have filed with the Immigration Court, which must include your **full name, your current mailing address, and your alien number (A number).** (Do Not submit any documents other than the first three pages of the completed I-589),

(2) A copy of Form EOIR–28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) if you are represented, and

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USCIS Nebraska Service Center
Defensive Asylum Application With Immigration Court
P.O. Box 87589
Lincoln, NE 68501-7589

Please note that there is **no filing fee required** for your asylum application.

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- A **USCIS receipt notice** in the mail indicating that USCIS has received your asylum application, and
- An **ASC notice** for you, and separate Application Support Center (ASC) notices for each dependent included in your application. Each ASC notice will indicate the individual's unique receipt number and will provide instructions for each person to appear for an appointment at a nearby ASC for collection of biometrics (such as your photograph, fingerprints, and signature). If you do not receive this notice in 3 weeks, call (800) 375-5283. If you also mail applications under Instructions B, you will receive 2 notices with different receipt numbers. You must wait for and take both scheduling notices to your ASC appointment.

You (and your dependents) must then:

- **Attend** the biometrics appointment at the ASC, and obtain a **biometrics confirmation** document before leaving the ASC, and
- **Retain** your **ASC biometrics confirmation** as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

☐ B. Instructions for Form(s) I-485, EOIR-40, EOIR-42A, EOIR-42B, or I-881*

You **must complete the following requirements** before the Immigration Judge can grant relief in your case:

SEND these 5 items to the address below:

(1) A clear copy of the entire application form that you will be filing or have filed with the Immigration Court. (Do not submit any documents other than the completed form itself),

(2) The appropriate application fee. (The fee can be found in the instructions with the application, the regulations, and at www.uscis.gov or for the EOIR forms, at www.usdoj.gov/eoir),

(3) The $70 USCIS biometrics fee,

(4) A copy of Form EOIR–28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) if you are represented, and

(5) A copy of these instructions.

USCIS Texas Service Center
P.O. Box 852463
Mesquite, Texas 75185-2463

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- **File** the following with the Immigration Court within the time period directed by the Immigration Judge: (1) the original **application Form**, (2) all **supporting documentation**, and (3) the **USCIS notice** that instructs you to appear for an appointment at the ASC, and serves as a receipt for your filing fees, and
- **Retain** your **ASC biometrics confirmation** as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

IMPORTANT: Failure to complete these actions and to follow any additional instructions that the Immigration Judge has given you could result in a delay in deciding your application or in your application being deemed abandoned and dismissed by the court.

(Eff. Date 4/1/05)

RECEIVED
DHS-MAIL
CLEVELAND
2005 JUN -9 PM 12:08

UNITED STATES STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

ELLIOT, THOMAS A.
1629 K STREET, N.W., STE 1250
WASHINGTON, DC 20006

Date: Jun 6, 2005

File A [redacted] (b)(6)

In the Matter of:
DEMJANJUK, JOHN

_____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee ($110.00).

_____ Enclosed is a copy of the oral decision.

_____ Enclosed is a transcript of the testimony of record.

_____ You are granted until _____ to submit a brief to this office in support of your appeal.

_____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

__X__ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Phyllis C. Eaddy
Immigration Court Clerk

UL

cc: STEPHEN PASKEY, OSI
1001 G STREET, N.W. SUITE 1000
WASHINGTON, DC 205300000

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# [redacted] (b)(6)
	)	
RESPONDENT	)	
	)	

APPEARANCES

ON BEHALF OF RESPONDENT
Thomas A. Elliot, Fabienne Chatain,
& Thomas K. Ragland, Esqs.
Elliot & Mayock
1629 K Street, N.W. Suite 1250
Washington, DC 20006

ON BEHALF OF THE GOVERNMENT
Stephen Paskey
Senior Trial Attorney
Office of Special Investigations
Criminal Division, USDOJ
10th St. and Constitution Ave., N.W.
John C. Keeney Building, Suite 200
Washington, DC 20530

ORDER OF THE CHIEF IMMIGRATION JUDGE

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law. Respondent timely filed his response to this motion on May 31, 2005.

On June 2, 2005, the government moved for a Brief Period to Reply to Respondent's Brief Opposing Collateral Estoppel. The government requested until June 14, 2005, to file this reply. The Court will grant the government's motion for a brief period to file their response. However, the Court will require that the government file their response by June 10, 2005.

Accordingly, the Court enters the following Order:

---

[1]Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

ORDER

It is Ordered that: The government's Motion for Brief Period to Reply to Respondent's Brief Opposing Collateral Estoppel **GRANTED**. Respondent must file this response with the Court on or before June 10, 2005.

4/3/05
Date

Michael J. Creppy
Chief Immigration Judge

CLEVELAND

2005 MAR 21 AM 9:51

UNITED STATES STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

ELLIOT, THOMAS A.
1629 K STREET, N.W., STE 1250
WASHINGTON, DC 20006

Date: Mar 16, 2005

File A [redacted] (b)(6)

In the Matter of:
DEMJANJUK, JOHN

_____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee ($110.00).

_____ Enclosed is a copy of the oral decision.

___ Enclosed is a transcript of the testimony of record.

_____ You are granted until _____ to submit a brief to this office in support of your appeal.

_____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

_X_ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Phyllis C. Caddy
Immigration Court Clerk

UL

cc: STEPHEN PASKEY
10TH ST. AND CONSTITUTION AVE., N.W.
WASHINGTON, DC 20530

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

2005 MAR 21 AM 9:51

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.:** A# [redacted] (b)(6)
	)	
RESPONDENT	)	
	)	

APPEARANCES

ON BEHALF OF RESPONDENT
Thomas A. Elliot, Esq.
Elliot & Mayock
1629 K Street, N.W. Suite 1250
Washington, DC 20006

ON BEHALF OF THE GOVERNMENT
Stephen Paskey
Senior Trial Attorney
Office of Special Investigations
Criminal Division, USDOJ
10th St. and Constitution Ave., N.W.
John C. Keeney Building, Suite 200
Washington, DC 20530

ORDER OF THE CHIEF IMMIGRATION JUDGE

On March 9, 2005, Respondent, through counsel, Mr. Thomas Elliot, attempted to file a written "inquiry" in the Office of the Chief Immigration Judge, located at 5107 Leesburg Pike, Suite 2500, Falls Church, Virginia 22041. The immigration regulations require that all correspondence and documents pertaining to a Record of Proceeding must be filed with the administrative control court. 8 C.F.R. § 1003.11 (2004). The Court has issued two interim Orders in these proceedings, dated February 28, 2005, and January 26, 2005, both instructing the parties to file all correspondence and documents pertaining to this case at the Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203. As counsel has improperly filed his correspondence, the Court will reject the filing as defective.

Moreover, assuming *arguendo* that counsel had properly filed his correspondence, the Court declines to respond to the "inquiry." There is no motion pending before the Court on which the

[1]Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

(b)(6)

File No: [redacted]

In the Matter of:

Respondent: John (a.k.a. Iwan) DEMJANJUK

[redacted] (b)(6)

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

SEE ATTACHED CONTINUATION PAGES.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions(s) of law:

SEE ATTACHED CONTINUATION PAGES.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

A date, place, and time to be set by the Immigration Court

(Complete Address of Immigration Court, including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: DEC 16 2004

Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice

Department of Homeland Security

See reverse for important information

Form I-862 (Rev. 4-1-97)

See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you with to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☐ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

_____
(Signature and Title of Officer)

U.S. Department of Justice
Immigration and Naturalization Service — Continuation Page for Form I-862

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	[redacted]	DEC 16 2004

Upon inquiry conducted by the Office of Special Investigations (OSI) of the U.S. Department of Justice, OSI and the Department of Homeland Security allege that:

1. You are not a citizen or national of the United States.

2. You were born on April 3, 1920, in Dubovye Makharintsy, Ukraine.

3. Not much later than July 19, 1942, you arrived at the Trawniki Training Camp.

4. Upon your arrival at Trawniki Training Camp, you entered service in the Guard Forces of the SS and Police Leader in Lublin District.

5. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland.

6. By January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were serving as an armed guard at the concentration camp located near Lublin, commonly known as Majdanek.

7. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

8. While assigned to Majdanek, you served as an armed guard of prisoners, whom you prevented from escaping.

9. You returned from Majdanek to Trawniki Training Camp by March 26, 1943.

10. In Sobibor, Poland, the Germans constructed one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard.

11. On or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were assigned to the "SS Special Detachment Sobibor." You began serving at the Sobibor extermination camp no later than March 27, 1943.

12. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide.

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/92)
*U.S. GPO: 1992-342-483/72348

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name		File Number	Date
John (a.k.a. Iwan) DEMJANJUK	(b)(6)	A [redacted]	DEC 16 2004

13. In serving at Sobibor, you contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

14. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these prisoners to work, and prevented them from escaping.

15. While assigned to Sobibor, you guarded Jewish forced laborers, compelled them to work, and prevented them from escaping.

16. You returned from Sobibor to Trawniki by October 1, 1943.

17. On or about October 1, 1943, you were transferred from Trawniki to Flossenbürg Concentration Camp, where you became a member of the SS Death's Head Battalion Flossenbürg.

18. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin.

19. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

20. While a member of the SS Death's Head Battalion Flossenbürg, you served as an armed guard of prisoners, whom you prevented from escaping.

21. You remained a member of the SS Death's Head Battalion at Flossenbürg Concentration Camp until at least December 1944.

22. Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing.

23. In October 1950, you sought a determination from the Displaced Persons Commission (DPC) that you were a displaced person as defined in the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 (DPA), and therefore eligible to immigrate to the United States under the DPA.

24. In seeking a determination that you were an eligible displaced person, you misrepresented your employment and residences from 1942 to 1944, stating that you worked on a farm in Sobibor, Poland, from 1936 to September 1943, that you worked at the harbor at Danzig from September 1943 until May 1944, and that you were a railway worker in Munich, Germany, from May 1944 to May 1945. In addition, you concealed that you served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Majdanek, and Sobibor, and the SS Death's Head Battalion at Flossenbürg Concentration Camp from 1942 to 1944.

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice
	Title Immigration and Customs Enforcement, Dept. of Homeland Security

*U.S. GPO: 1992-342-483/72348

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name		File Number	Date
Iwan DEMJANJUK	(b)(6)	A [redacted]	DEC 16 2004

25. On December 27, 1951, you filed an Application for Immigration Visa and Alien Registration with the American consulate at Stuttgart, Germany, to obtain a non-quota immigrant visa to the United States under the DPA. In connection with your visa application, you were interviewed by a U.S. vice consul.

26. On your visa application, you swore that you resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. Your sworn statements on your visa application about your residences and occupations from 1942 to 1945 were not true.

27. On your visa application, you concealed that you were a member of the Guard Forces at Trawniki, Majdanek, and Sobibor, and of the SS Death's Head Battalion at Flossenbürg, from 1942 to 1944.

28. You were issued a DPA visa. Pursuant to that visa, you were admitted to the United States as an immigrant at New York, New York, on or about February 9, 1952.

AND on the basis of the foregoing allegations, it is charged that you are subject to removal pursuant to the following provisions of law:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. 1227(a)(4)(D), in that you are an alien described in Section 212(a)(3)(E)(i) of the INA, 8 U.S.C. 1182(a)(3)(E)(i), as you ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany.

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/92)
*U.S. GPO: 1992-342-483/72348

[redacted]

(b)(7)(c)

Fed Ex To

IS 12-17-04

[redacted]

U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

Office of Chief Counsel
1240 E. 9 Street, Suite 519
Cleveland, OH 44199

12/17/04

FACSIMILE OUTGOING TRANSMISSION COVER SHEET

(b)(7)(c)

TO: JOE EGOZCUE
TITLE: COURT ADMINISTRATOR
ORGANIZATION: EOIR
FAX NO.: [redacted]
DATE: 12/17/04
NO. OF PAGES: 6

FROM: [redacted]
TITLE: GROUP SUPERVISOR, ICE
(b)(7)(c)
ICE FAX NO.: [redacted]
ICE PHONE NO.: [redacted]

COMMENTS:

JOE, (b)(7)(c)

THIS IS THE NTA DONE BY OSI/ICE ON JOHN DEMJANJUK (b)(6) (A [redacted], [redacted] SAID SHE LEFT YOU A MESSAGE ABOUT THIS CASE YESTERDAY. SHE TOLD ME IT SHOULD BE FORWARDED AND SERVED ON THE COURT ASAP. WE WILL FORWARD THE ORIGINAL TO YOU VIA FED-EX, IF YOU HAVE ANY QUESTIONS, YOU CAN REACH ME ON MY CELL AT [redacted] OR [redacted] ON HER CELL AT [redacted]

(b)(7)(c)

CONFIDENTIAL U.S. DEPT. OF HOMELAND SECURITY FACSIMILE COMMUNICATION

The information contained in this facsimile message, and any and all accompanying documents constitutes confidential information. This information is the property of the U.S. Department of Homeland Security. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is strictly prohibited. If you received this message in error, please notify us immediately at the above number to make arrangements for its return to us.

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	0159
CONNECTION TEL	9[redacted] (b)(7)(c)
SUBADDRESS	
CONNECTION ID	
ST. TIME	12/17 12:12
USAGE T	01'26
PGS. SENT	6
RESULT	OK

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A [redacted] (b)(6)

In the Matter of:

Respondent: John (a.k.a. Iwan) DEMJANJUK

[redacted] (b)(6)
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

SEE ATTACHED CONTINUATION PAGES.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions(s) of law:

SEE ATTACHED CONTINUATION PAGES.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

A date, place, and time to be set by the Immigration Court
(Complete Address of Immigration Court, including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: DEC 16 2004
DEC 17 2004

[redacted]
See reverse for important information
Group Supervisor

Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice

Department of Homeland Security
Immigration and Customs Enforcement

Form I-862 (Rev. 4-1-97)

(b)(7)(c)

(b)(7)(c) See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you with to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

Before: _____

_____
(Signature of Respondent)

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on 12/17/04, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☒ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

REFUSED TO SIGN
(Signature of Respondent if Personally Served)

[redacted] Group Supervisor

WITNESS: [redacted] Special Agent

(b)(7)(c)

U.S. Department of Justice
Immigration and Naturalization Se[redacted] (b)(7)(c)

Continuation Page for Form I-862

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	A[redacted]	DEC 16 2004

Upon inquiry conducted by the Office of Special Investigations (OSI) of the U.S. Department of Justice, OSI and the Department of Homeland Security allege that:

1. You are not a citizen or national of the United States.

2. You were born on April 3, 1920, in Dubovye Makharintsy, Ukraine.

3. Not much later than July 19, 1942, you arrived at the Trawniki Training Camp.

4. Upon your arrival at Trawniki Training Camp, you entered service in the Guard Forces of the SS and Police Leader in Lublin District.

5. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland.

6. By January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were serving as an armed guard at the concentration camp located near Lublin, commonly known as Majdanek.

7. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

8. While assigned to Majdanek, you served as an armed guard of prisoners, whom you prevented from escaping.

9. You returned from Majdanek to Trawniki Training Camp by March 26, 1943.

10. In Sobibor, Poland, the Germans constructed one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard.

11. On or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were assigned to the "SS Special Detachment Sobibor." You began serving at the Sobibor extermination camp no later than March 27, 1943.

12. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide.

Signature [redacted]
Signature [redacted]
(b)(7)(c)

Title Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice
Title Group Supervisor 12/13/04
Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/92)
*U.S. GPO: 1992-342-483/72348

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

13. In serving at Sobibor, you contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

14. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these prisoners to work, and prevented them from escaping.

15. While assigned to Sobibor, you guarded Jewish forced laborers, compelled them to work, and prevented them from escaping.

16. You returned from Sobibor to Trawniki by October 1, 1943.

17. On or about October 1, 1943, you were transferred from Trawniki to Flossenbürg Concentration Camp, where you became a member of the SS Death's Head Battalion Flossenbürg.

18. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin.

19. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

20. While a member of the SS Death's Head Battalion Flossenbürg, you served as an armed guard of prisoners, whom you prevented from escaping.

21. You remained a member of the SS Death's Head Battalion at Flossenbürg Concentration Camp until at least December 1944.

22. Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing.

23. In October 1950, you sought a determination from the Displaced Persons Commission (DPC) that you were a displaced person as defined in the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 (DPA), and therefore eligible to immigrate to the United States under the DPA.

24. In seeking a determination that you were an eligible displaced person, you misrepresented your employment and residences from 1942 to 1944, stating that you worked on a farm in Sobibor, Poland, from 1936 to September 1943, that you worked at the harbor at Danzig from September 1943 until May 1944, and that you were a railway worker in Munich, Germany, from May 1944 to May 1945. In addition, you concealed that you served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Majdanek, and Sobibor, and the SS Death's Head Battalion at Flossenbürg Concentration Camp from 1942 to 1944.

Signature	Title
Signatur [redacted] (b)(7)(c)	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Group Supervisor 12/17/04 Immigration and Customs Enforcement, Dept. of Homeland Security

U.S. Department of Justice
Immigration and Naturalization Service

(b)(7)(c)

Continuation Page for Form I-862

Alien's Name	File Number	Date
Iwan DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

25. On December 27, 1951, you filed an Application for Immigration Visa and Alien Registration with the American consulate at Stuttgart, Germany, to obtain a non-quota immigrant visa to the United States under the DPA. In connection with your visa application, you were interviewed by a U.S. vice consul.

26. On your visa application, you swore that you resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. Your sworn statements on your visa application about your residences and occupations from 1942 to 1945 were not true.

27. On your visa application, you concealed that you were a member of the Guard Forces at Trawniki, Majdanek, and Sobibor, and of the SS Death's Head Battalion at Flossenbürg, from 1942 to 1944.

28. You were issued a DPA visa. Pursuant to that visa, you were admitted to the United States as an immigrant at New York, New York, on or about February 9, 1952.

AND on the basis of the foregoing allegations, it is charged that you are subject to removal pursuant to the following provisions of law:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. 1227(a)(4)(D), in that you are an alien described in Section 212(a)(3)(E)(i) of the INA, 8 U.S.C. 1182(a)(3)(E)(i), as you ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany.

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Signature	Title
[signature]	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice
Signature [redacted]	Title Group Supervisor 12/17/04 Immigration and Customs Enforcement, Dept. of Homeland Security

(b)(7)(c)

Form I-831 Continuation Page (Rev. 6/12/92)

*U.S. GPO: 1992-342-483/72348

U.S. Department of Justice
Immigration and Naturalization Service (b)(7)(c)

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A [redacted]

(b)(6)

In the Matter of:

Respondent: John (a.k.a. Iwan) DEMJANJUK

(b)(6) [redacted]
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

SEE ATTACHED CONTINUATION PAGES.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions(s) of law:

SEE ATTACHED CONTINUATION PAGES.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

A date, place, and time to be set by the Immigration Court
(Complete Address of Immigration Court, including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: DEC 16 2004
DEC 17 2004

Eli M. Rosenbaum
Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice

[redacted]
Department of Homeland Security
Immigration and Customs Enforcement

[redacted] Group Supervisor

Form I-862 (Rev. 4-1-97)

(b)(7)(c)

See reverse for important information.

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you with to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on 12/17/04, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☒ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

REFUSED TO SIGN
(Signature of Respondent if Personally Served)

(b)(7)(c) [redacted] Group Supervisor
(Signature and Title of Officer)

WITNESS: [redacted] Special Agent

U.S. Department of Justice
Immigration and Naturalization Servic (b)(7)(c)

Continuation Page for Form I-862

Alien's Name		File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)		[redacted]	DEC 16 2004

Upon inquiry conducted by the Office of Special Investigations (OSI) of the U.S. Department of Justice, OSI and the Department of Homeland Security allege that:

1. You are not a citizen or national of the United States.

2. You were born on April 3, 1920, in Dubovye Makharintsy, Ukraine.

3. Not much later than July 19, 1942, you arrived at the Trawniki Training Camp.

4. Upon your arrival at Trawniki Training Camp, you entered service in the Guard Forces of the SS and Police Leader in Lublin District.

5. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland.

6. By January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were serving as an armed guard at the concentration camp located near Lublin, commonly known as Majdanek.

7. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

8. While assigned to Majdanek, you served as an armed guard of prisoners, whom you prevented from escaping.

9. You returned from Majdanek to Trawniki Training Camp by March 26, 1943.

10. In Sobibor, Poland, the Germans constructed one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard.

11. On or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were assigned to the "SS Special Detachment Sobibor." You began serving at the Sobibor extermination camp no later than March 27, 1943.

12. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide.

Signature	Title
[signature]	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice
Signature [redacted] (b)(7)(c)	Title Group Supervisor 12/13/04 Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/92)
*U.S. GPO: 1992-342-483/72348

U.S. Department of Justice
Immigration and Naturalization Servi... (b)(7)(c)

Continuation Page for Form I-862

Alien's Name		File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)		A [redacted]	DEC 16 2004

13. In serving at Sobibor, you contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

14. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these prisoners to work, and prevented them from escaping.

15. While assigned to Sobibor, you guarded Jewish forced laborers, compelled them to work, and prevented them from escaping.

16. You returned from Sobibor to Trawniki by October 1, 1943.

17. On or about October 1, 1943, you were transferred from Trawniki to Flossenbürg Concentration Camp, where you became a member of the SS Death's Head Battalion Flossenbürg.

18. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin.

19. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

20. While a member of the SS Death's Head Battalion Flossenbürg, you served as an armed guard of prisoners, whom you prevented from escaping.

21. You remained a member of the SS Death's Head Battalion at Flossenbürg Concentration Camp until at least December 1944.

22. Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing.

23. In October 1950, you sought a determination from the Displaced Persons Commission (DPC) that you were a displaced person as defined in the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 (DPA), and therefore eligible to immigrate to the United States under the DPA.

24. In seeking a determination that you were an eligible displaced person, you misrepresented your employment and residences from 1942 to 1944, stating that you worked on a farm in Sobibor, Poland, from 1936 to September 1943, that you worked at the harbor at Danzig from September 1943 until May 1944, and that you were a railway worker in Munich, Germany, from May 1944 to May 1945. In addition, you concealed that you served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Majdanek, and Sobibor, and the SS Death's Head Battalion at Flossenbürg Concentration Camp from 1942 to 1944.

Signature [redacted]

Signature [redacted]

Title Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice
Title Group Supervisor 12/17/04
Immigration and Customs Enforcement, Dept. of Homeland Security

*U.S. GPO: 1992-342-483/72348

Form I-831 Continuation Page (Rev. 6/12/92) (b)(7)(c)

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name		File Number	Date
Iwan DEMJANJUK	(b)(6)	A [redacted]	DEC 16 2004

25. On December 27, 1951, you filed an Application for Immigration Visa and Alien Registration with the American consulate at Stuttgart, Germany, to obtain a non-quota immigrant visa to the United States under the DPA. In connection with your visa application, you were interviewed by a U.S. vice consul.

26. On your visa application, you swore that you resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. Your sworn statements on your visa application about your residences and occupations from 1942 to 1945 were not true.

27. On your visa application, you concealed that you were a member of the Guard Forces at Trawniki, Majdanek, and Sobibor, and of the SS Death's Head Battalion at Flossenbürg, from 1942 to 1944.

28. You were issued a DPA visa. Pursuant to that visa, you were admitted to the United States as an immigrant at New York, New York, on or about February 9, 1952.

AND on the basis of the foregoing allegations, it is charged that you are subject to removal pursuant to the following provisions of law:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. 1227(a)(4)(D), in that you are an alien described in Section 212(a)(3)(E)(i) of the INA, 8 U.S.C. 1182(a)(3)(E)(i), as you ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany.

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Signature [signature]	Title Director, Office of Special Investigations Criminal Division, U.S. Department of Justice
Signature [redacted]	Title Group Supervisor 12/17/04 Immigration and Customs Enforcement, Dept. of Homeland Security

(b)(7)(c)

Form I-831 Continuation Page (Rev. 6/12/92)

*U.S. GPO: 1992-342-483/72348

TOTAL P.06

U.S. Department of Justice

Immigration and Naturalization Service

Warrant for Arrest of Alien

Case No: VCO0512000066

(b)(6) File No. A[redacted]

Date: December 17, 2004

To any officer of the Immigration and Naturalization Service delegated authority pursuant to section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

John DEMJANJUK
(Full name of alien)

an alien who entered the United States at or near NEW YORK, NEW YORK (Port) on February 9, 1952 (Date) is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(7)(c) [redacted]

[redacted]
(Print name of official)

GROUP SUPERVISOR
(Title)

Certificate of Service

Served by me at [redacted] 12/17/04 at 0955 Hrs.

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

[redacted]
(Signature of officer serving warrant)

(b)(7)(c)

Group Supervisor
(Title of officer serving warrant)

Form I-200 (Rev. 4-1-97)N

U.S. Department of Justice
Immigration and Naturalization Service

Order of Release on Recognizance

(b)(6) File No: A [redacted]
Date: December 17, 2004

Name: John DEMJANJUK AKA: Iwan Demjanjuk

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Immigration and Naturalization Service or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered. (b)(7)(c)

☒ You must report in (~~writing~~) (~~per~~on) to ADT by phone to [redacted] in the MSR Program
(Name and Title of Case Officer)

at Cleveland, OH (Location of INS Office) on every Monday (Day of each week or month) at anytime (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the officer listed above.

☒ You must not violate any local, State, or Federal laws or ordinances.

☒ You must assist the Immigration and Naturalization Service in obtaining any necessary travel documents. (b)(7)(c)

☒ Other. Detention and Removal Office is located at 1240 E. 9th Street, Suite 535 Cleveland, OH 44199 [redacted]

☒ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Immigration and Naturalization Service.

[redacted]
(b)(7)(c)
[redacted] SDDO
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the N/A language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Immigration and Naturalization Service may revoke my release without further notice.

[redacted]
(b)(7)(c)

John Demjanjuk
(Signature of Alien)

12/20/04
(Date)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.

☐ The alien was taken into custody for removal.

(Signature of INS Official Canceling Order) (Date)

Form I-220A (Rev 4-1-97) N

MINIMUM SUPERVISION REPORTING PROCEDURES (MSR)

(b)(7)(c)

1) DIAL 1-[redacted] TO ACCESS AUTOMATED SYSTEM OF THE MSR PROGRAM.
2) ENTER DEPARTMENT: 68#
3) PRESS #1 FOR ENROLLEE WHEN ASKED BY SYSTEM.
4) ENROLLEE IDENTIFICATION NUMBER: ENTER YOUR ALIEN REGISTRATION NUMBER. DO NOT INCLUDE THE "A" IN THIS ENTRY. EXAMPLE (12345678).
5) ANSWER ALL QUESTIONS WHEN ASKED BY THE MSR SYTEM.
6) THIS PROGRAM IS A PRIVILEGE AND IT MAY BE REVOKED AT ANY TIME IF YOU ARE FOUND TO BE NON-COMPLIANT IN YOUR REPORTING BY TELEPHONE.

DEPORTATION OFFICE: [redacted] (b)(7)(c)

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Custody Determination

Case No: VCO0512000066
File No: A[redacted]
Date: 12/17/2004

John DEMJANJUK

847 MEADOWLANE ROAD
SEVEN HILLS, OH 44131

(b)(6)

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be:

- ☐ detained in the custody of this Service.
- ☐ released under bond in the amount of $_____.
- ☒ released on your own recognizance.

☒ You may request a review of this determination by an immigration judge.
☐ You may not request a review of this determination by an immigration judge because the Immigration and Nationality Act prohibits your release from custody.

[redacted] (b)(7)(c)
(Signature of authorized officer)

GROUP SUPERVISOR
(Title of authorized officer)

CLEVELAND, OHIO
(INS office location)

☐ I do ☒ do not request a redetermination of this custody decision by an immigration judge.
☒ I acknowledge receipt of this notification.

Refused to Sign
(Signature of respondent)

12/17/04
(Date)

RESULT OF CUSTODY REDETERMINATION

On _____, custody status/conditions for release were reconsidered by:

☐ Immigration Judge ☐ District Director ☐ Board of Immigration Appeals

The results of the redetermination/reconsideration are:

☐ No change - Original determination upheld.
☐ Detain in custody of this Service.
☐ Bond amount reset to _____
☐ Release-Order of Recognizance
☐ Release-Personal Recognizance
☐ Other: _____

_____
(Signature of officer)

Form I-286 (Rev. 4-1-97)N

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Rights and Request for Disposition

(b)(6) File No: A [redacted]

Name: John (a.k.a. Ivan) Demjanjuk

NOTICE OF RIGHTS

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. If you request a hearing, you may be detained in custody or you may be eligible to be released on bond, until your hearing date. In the alternative, you may request to return to your country as soon as possible, without a hearing.

You have the right to contact an attorney or other legal representative to represent you at your hearing, or to answer any questions regarding your legal rights in the United States. Upon your request, the officer who gave you this notice will provide you with a list of legal organizations that may represent you for free or for a small fee. You have the right to communicate with the consular or diplomatic officers from your country. You may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to your departure from the United States.

REQUEST FOR DISPOSITION

_____ ☐ I request a hearing before the Immigration Court to determine whether or not I may remain in the United States.
Initials

_____ ☐ I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.
Initials

_____ ☐ I admit that I am in the United States illegally, and I believe I do not face harm if I return to my country. I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made to effect my departure. I understand that I may be held in detention until my departure.
Initials

Refused
Signature of Subject

12/17/04
Date

Refused by subject

CERTIFICATION OF SERVICE

☐ Notice read by subject

☐ Notice read to subject by _____, in the English language.

_____
Name of Service Officer (Print)

_____
Name of Interpreter (Print)

_____
Signature of Officer

_____
Date and Time of Service

Form I-826 (4/1/96) N

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

(b)(6)

File No: A [redacted]

In the Matter of:

Respondent: John (a.k.a. Iwan) DEMJANJUK

[redacted] (b)(6)

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

SEE ATTACHED CONTINUATION PAGES.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions(s) of law:

SEE ATTACHED CONTINUATION PAGES.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

A date, place, and time to be set by the Immigration Court

(Complete Address of Immigration Court, including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: DEC 16 2004

Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice

Department of Homeland Security

See reverse for important information

Form I-862 (Rev. 4-1-97)

See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you with to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☐ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

_____
(Signature and Title of Officer)

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

Upon inquiry conducted by the Office of Special Investigations (OSI) of the U.S. Department of Justice, OSI and the Department of Homeland Security allege that:

1. You are not a citizen or national of the United States.

2. You were born on April 3, 1920, in Dubovye Makharintsy, Ukraine.

3. Not much later than July 19, 1942, you arrived at the Trawniki Training Camp.

4. Upon your arrival at Trawniki Training Camp, you entered service in the Guard Forces of the SS and Police Leader in Lublin District.

5. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland.

6. By January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were serving as an armed guard at the concentration camp located near Lublin, commonly known as Majdanek.

7. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

8. While assigned to Majdanek, you served as an armed guard of prisoners, whom you prevented from escaping.

9. You returned from Majdanek to Trawniki Training Camp by March 26, 1943.

10. In Sobibor, Poland, the Germans constructed one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard.

11. On or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were assigned to the "SS Special Detachment Sobibor." You began serving at the Sobibor extermination camp no later than March 27, 1943.

12. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide.

Signature	Title
Signature	Title Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title _____ Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/92)

*U.S. GPO: 1992-342-483/72348

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

13. In serving at Sobibor, you contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

14. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these prisoners to work, and prevented them from escaping.

15. While assigned to Sobibor, you guarded Jewish forced laborers, compelled them to work, and prevented them from escaping.

16. You returned from Sobibor to Trawniki by October 1, 1943.

17. On or about October 1, 1943, you were transferred from Trawniki to Flossenbürg Concentration Camp, where you became a member of the SS Death's Head Battalion Flossenbürg.

18. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin.

19. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

20. While a member of the SS Death's Head Battalion Flossenbürg, you served as an armed guard of prisoners, whom you prevented from escaping.

21. You remained a member of the SS Death's Head Battalion at Flossenbürg Concentration Camp until at least December 1944.

22. Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing.

23. In October 1950, you sought a determination from the Displaced Persons Commission (DPC) that you were a displaced person as defined in the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 (DPA), and therefore eligible to immigrate to the United States under the DPA.

24. In seeking a determination that you were an eligible displaced person, you misrepresented your employment and residences from 1942 to 1944, stating that you worked on a farm in Sobibor, Poland, from 1936 to September 1943, that you worked at the harbor at Danzig from September 1943 until May 1944, and that you were a railway worker in Munich, Germany, from May 1944 to May 1945. In addition, you concealed that you served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Majdanek, and Sobibor, and the SS Death's Head Battalion at Flossenbürg Concentration Camp from 1942 to 1944.

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice
	Title Immigration and Customs Enforcement, Dept. of Homeland Security

*U.S. GPO: 1992-342-483/72348

Alien's Name		File Number	Date
Iwan DEMJANJUK	(b)(6)	A [redacted]	DEC 16 2004

25. On December 27, 1951, you filed an Application for Immigration Visa and Alien Registration with the American consulate at Stuttgart, Germany, to obtain a non-quota immigrant visa to the United States under the DPA. In connection with your visa application, you were interviewed by a U.S. vice consul.

26. On your visa application, you swore that you resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. Your sworn statements on your visa application about your residences and occupations from 1942 to 1945 were not true.

27. On your visa application, you concealed that you were a member of the Guard Forces at Trawniki, Majdanek, and Sobibor, and of the SS Death's Head Battalion at Flossenbürg, from 1942 to 1944.

28. You were issued a DPA visa. Pursuant to that visa, you were admitted to the United States as an immigrant at New York, New York, on or about February 9, 1952.

AND on the basis of the foregoing allegations, it is charged that you are subject to removal pursuant to the following provisions of law:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. 1227(a)(4)(D), in that you are an alien described in Section 212(a)(3)(E)(i) of the INA, 8 U.S.C. 1182(a)(3)(E)(i), as you ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany.

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

*U.S. GPO: 1992-342-483/72348

R-84 (Rev. 08-31-1999)

FINAL DISPOSITION REPORT

Leave Blank

Note: This vital report must be prepared on each individual whose arrest fingerprints have been forwarded to the FBI Criminal Justice Information Services Division without final disposition noted thereon. If no final disposition is available to arresting agency, complete left side and forward the form when case referred to prosecutor and/or courts. Agency on notice as to final disposition should complete this form and submit to: **FBI, CJIS Division, Clarksburg, WV 26306.**

(See instructions on **reverse side**)

FBI No.

Name on fingerprint Card Submitted to FBI
Last First Middle

DEMJANJUK, JOHN

Date of Birth 04-03-20 Sex M

Henry Fingerprint Classification

From FBI 1-B Response

State Bureau No. (SID)

Social Security No. (SOC)

Contributor of Fingerprints (Include **complete** name and location of agency together with ORI number.)

OHINSCV00
USINS
CLEVELAND, OH

Final Disposition & Date
(If convicted or subject pleaded guilty to lesser charge, include this modification with disposition.)

This Form Submitted By:
(Name, Title, Agency, ORI No., City & State)

OHINSCV00
USINS
CLEVELAND, OH

Signature Date

Deportation Officer
Title

Arrest No. (OCA)

AR [redacted]

Date Arrested or Received

12-20-2004

☐ COURT ORDERED EXPUNGEMENT:

Certified or Authenticated Copy of Court Order Attached.

Offenses Charged at Arrest

8 USC 1227 - DEPORTATION PROCESSING

(b)(6)

INSTRUCTIONS

1. The purpose of this report is to record the initial data of an individual's arrest and thereafter secure the final disposition of the arrest at the earliest possible time from either the arresting agency, the prosecutor or the court having jurisdiction. (INTERIM DISPOSITION INFORMATION, e.g. RELEASED ON BOND, SHOULD NOT BE SUBMITTED.) The SUBJECT'S NAME, CONTRIBUTOR AND ARREST NUMBER should be exactly the same as they appear on the fingerprint card IN THE FILES OF THE FBI. The FBI number should be indicated, if known. Agency ultimately making final disposition will complete and mail form to: FBI Criminal Justice Information Services Division, Clarksburg, WV 26306.

2. The arresting agency should fill in all arrest data on left side of form. If the arrest is disposed of by the arresting agency, as where the arrestee is released without charge, the arresting agency should fill in this final disposition and mail form to FBI Criminal Justice Information Services Division. Of course, if the final disposition is known when the arrest fingerprint card is submitted it should be noted thereon and this form is then unnecessary. In the event the case goes to the prosecutor, this form should be forwarded to the prosecutor with arrestee's case file.

3. The prosecutor should complete the form to show final disposition at the prosecution level if the matter is not being referred for court action and thereafter submit form directly to FBI Criminal Justice Information Services Division. If court action required, the prosecutor should forward form with case file to court having jurisdiction.

4. The court should complete this form as to final court disposition such as when arrested person is acquitted, case is dismissed, on conviction and when sentence imposed or sentence suspended and person placed on probation.

5. When arrested person convicted or enters guilty to lesser or different offense that charged when originally arrested, this information should be clearly indicated.

6. If subsequent action taken to seal or expunge record, attach certified or authenticated copy of court order to this form.

7. It is vitally important for completion of subject's record in the FBI Criminal Justice Information Services Division files that Final Disposition Report be submitted in every instance where fingerprints previously forwarded without final disposition noted there on.

*U.S. Government Printing Office: 2001— 481-019/59122

TED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

SENT REGISTERED MAIL - RETURN RECEIPT REQUESTE

DOCUMENT RECEIPT

(Office) (Address)
District Director
U.S. Immigration & Naturalization Service
Anthony J. Celebrezze Federal Building
1240 East 9th Street, Rm. 1917 - Cleveland, Ohio 44199

Date:
January 28, 1977

DESCRIPTION OF DOCUMENT *

SUBJECT	DOCUMENT DATE	DOCUMENT NO. (IF ANY)	CLASSIFICATION	FILE NUMBER	NO. OF COPIES	NO. OF ATTACHMENTS
John Demjanjuk	**----**	**----**	**UNCL.**	**A** [redacted] (b)(6)	**ENTIRE "A" FILE**	**-----**

*When file containing multiple parts is transmitted state in subject block each part included.

SIGN AND RETURN IMMEDIATELY TO:

Immigration and Naturalization Service
Assistant Regional Commissioner, Inv.
U.S. Immigration & Naturalization Service
Federal Building
Burlington, Vermont 05401

Receipt is acknowledged of the classified material bearing the identifying information listed above.

SIGNATURE:

OFFICE:

DATE OF RECEIPT:

Form G-84 (Rev. 5-1-73)N

GPO 861-094

NYC 50/40.378

MEMORANDUM OF FACTS

IMMIGRATION HISTORY:

Name: DEMJANJUK, Iwan [redacted] (b)(6)

Date & Place of Birth: 4/3/20, Dub Macharenzi, Ukraine

Entry Date: 2/9/52, NYC

Immigration Status: Naturalized a United States citizen on 11/14/58, at Cleveland, Ohio

Residence: Cleveland, OH

ALLEGATION:

The following allegation was contained on a list furnished by Michael Hanusiak, President of the UKRAINIAN NEWS in October, 1975: "DEMJANUK, Ivan Nikolayevich, born 1920 in village of Dubovoye Maharintsy, Kazatinsky District, Vinnitsa Region. Volunteered for the German "SS" troops and Security Police. Underwent training in the German training camp in town of Travniki, Poland. In this camp those trained became masters in the art of hanging and the torturing of civilians. From March, 1943, served as a Wachmann with the "SS" unit in the town of Sobibor, Poland and later (from October, 1943) served as a guardsman in the concentration camp in the town of Flossenburg, Germany. Personally participated in the mass executions of the Jewish population in the death camp "Sobibor" in Poland."

SUMMARY OF CONTENTS OF DOSSIER:

1. Copy of visa and supporting documents.

Embassy
of the Federal Republic of Germany
Washington

To Whom It May Concern:

The Federal Republic of Germany hereby allows John Demjanjuk (stateless), birth name Iwan Nikolaj Demjanjuk, born April 3, 1920, Ukraine, to enter the territory of the Federal Republic of Germany.

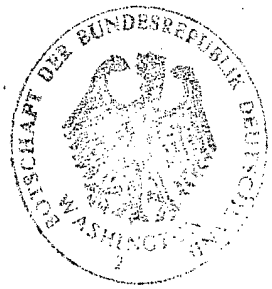
The United States of America shall remove (deport) John Demjanjuk from the U.S. to Munich in the Federal Republic of Germany until May 31, 2009. He will be accompanied by officers from U.S. Immigration and Customs Enforcement of the Department of Homeland Security in addition to, if necessary, U.S. medical personnel. The U.S. must provide names of these individuals and notice of travel in a timely manner prior to the removal (deportation).

The local court in Munich has issued an arrest warrant for John Demjanjuk on March 10, 2009.

This is to certify that the German authorities will allow Mr. Demjanjuk to enter the territory of the Federal Republic of Germany if he is not in possession of a visa for Germany, provided he carries a document issued by U.S. authorities that proves his identity. The German Border Police is informed accordingly.

John Demjanjuk will be taken into custody by German police officers immediately upon his arrival at the airport in Munich.

Washington, D.C., April 24, 2009



United States Department of Homeland Security
Immigration and Customs Enforcement
1240 E. 9th Street, Suite 535
Cleveland, OH 44199

John Demjanjuk

[redacted] (b)(6)

File No. A[redacted] (b)(6)

Date: May 08, 2009

As you know, following a hearing in your case you were found removable and the hearing officer has entered an order of removal. A review of your file indicates there is no administrative relief which may be extended to you, and it is now incumbent upon Immigration and Customs Enforcement to enforce your departure from the United States.

Arrangements have been made for your departure to **Germany**

on May 11, 2009 on a charter air flight.

You should report to the basement of 1240 E. 9th St.

Cleveland, Ohio at:

2:00 PM (time) on **May 11, 2009** (date)

completely ready for removal. At the time of your departure from Cleveland, Ohio you will be limited to 40 pounds of baggage. Should you have personal effects in excess of this amount, you must immediately contact [redacted] at [redacted] or call in person at the address noted above, and appropriate disposition of your excess baggage will be discussed with you.

(b)(7)(c)

Very truly yours,

Vincent J. Clauss

Field Office Director

I-166 Personal service by me at above residence at 2:05pm..

GPO 873-570

[redacted] 15000 5/8/09

[redacted] D.O. 5/8/09 (b)(7)(c)

U.S. Department of Homeland Security
Immigration and Customs Enforcement

DETROIT DISTRICT
DETENTION AND REMOVALS OFFICE
Cleveland, Ohio

FAX # [redacted] ***TEL#*** [redacted] (b)(7)(c)

CLE DRO

FACSIMILIE COVER SHEET

DATE: **4/1/09**

TO: [redacted]

OFFICE: **DIHS** (b)(7)(c)

FROM: [redacted] **SDDO**
Cleveland, OH

SUBJECT: **Demjanjuk Meds**

NUMBER OF PAGES: 1
(Including cover sheet)

JOHN DEMJANJUK
- PROCRIT
  60,000 UNITS/WEEKLY
- TRAMADOL
  50MG AS NEEDED
- VICODIN 500 5MG
  4-6 HOURS AS NEEDED
- COLCHICINE .6MG 1/DAY
- ALLOPURINOL 300MG 1/DAY

Namenda
memantine HCl ™

The document being faxed is intended only for the use of t
information that is privileged, confidential, and exempt fr
communication in error, please notify us immediately by t a
the U.S. Postal Service.

YOU ARE HEREBY NOTIFIED THAT ANY UNAUT OF
THIS COMMUNICATION IS STRICTLY PROHIBIT

REMARKS:

U.S. Department of Homeland Security
Immigration and Customs Enforcement

DETROIT DISTRICT
DETENTION AND REMOVALS OFFICE
Cleveland, Ohio

FAX # [redacted] ***TEL#*** [redacted] (b)(7)(c)

CLE DRO

FACSIMILIE COVER SHEET

DATE: **4/1/09**

TO: [redacted]

OFFICE: **DIHS**

FROM: [redacted] **SDDO** (b)(7)(c)
Cleveland, OH

SUBJECT: **Demjanjuk Meds**

NUMBER OF PAGES: 1
(Including cover sheet)

NOTICE

The document being faxed is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the address above via the U.S. Postal Service.

YOU ARE HEREBY NOTIFIED THAT ANY UNAUTHORIZED DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

REMARKS:

JOHN DEMJANJUK

- PROCRIT
  60,000 UNITS/WEEKLY
- TRAMADOL
  50MG AS NEEDED
- VICODIN 500 5MG
  4-6 HOURS AS NEEDED
- COLCHICINE .6MG 1/DAY
- ALLOPURINOL 300MG 1/DAY

Namenda
memantine HCl ™

TRANSMISSION VERIFICATION REPORT

TIME : 04/03/2009 14:42
NAME :
FAX :
TEL :
SER.# : BROH6J516939

DATE,TIME	04/03 14:41
FAX NO./NAME	913019420676
DURATION	00:00:33
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

Department of Homeland Security
U.S. Immigration and Customs Enforcement
[illegible] Mt. Elliot
[illegible] MI 48207

Fed Ex Tracking # 7974 7757 1423

[illegible]S. Immigration [illegible]d Customs [illegible]nforcement

Facsimile Tra[illegible]

Date: April 3, 2009

To: John H. Broadley [illegible]

Fax: 301-942-0676

From: Vincent J. Clausen, Field Office [illegible]

Office: [redacted] (b)(7)(c)
Fax:

☐ Urgent ☐ Action ☐ Concurrence ☐ FYI

Number of pages including cover: 3

Please see attached response to I-246 Application for Stay of Deportation or Removal

Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 04/03/2009 14:42
NAME :
FAX :
TEL :)
SER.# : BROH6J516939

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FAX NO./NAME	913019420676
DURATION	00:00:33
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

Department of Homeland Security
U.S. Immigration and Customs Enforcement
333 Mt. Elliot
Detroit, MI 48207

U.S. Immigration and Customs Enforcement

Facsimile Transmission

Date: April 3, 2009

To: John H. Broadley and Associates

Fax: 301-942-0676

From: Vincent J. Clausen, Field Office Director

Office [redacted] (b)(7)(c)
Fax:

☐ Urgent ☐ Action ☐ Concurrence ☐ FYI

Number of pages including cover: 3

Please see attached response to I-246 Application for Stay of Deportation or Removal

Thank you.

Fed Ex Tracking #

7974 7757 1423

Office of Detention and Removal Operations
Cleveland, Ohio
U.S. Department of Homeland Security
1240 E. 9th Street, Room 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

April 3, 2009

John H. Broadley, Esq.
John H. Broadley & Associates, P.C.
Canal Square
1054 Thirty-First St., N.W.
Washington D.C. 20007

Re: John Demjanjuk, A[redacted] (b)(6)

Dear Mr. Broadley:

This letter is in response to your client's, Mr. John Demjanjuk, A[redacted] submission of ICE Form I-246, Application for a Stay of Deportation or Removal (Application),[1] with U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), on April 1, 2009. The Application requests that ICE stay Mr. Demjanjuk's removal from the United States for one year because it "would not be 'practicable or proper'" under 8 C.F.R. § 241.6 due to his current medical condition. He further claims "urgent humanitarian reasons" under 8 C.F.R. § 212.5 in support of his Application on the ground that his removal, followed by the Federal Republic of Germany (FRG)'s arrest, detention, and confinement pending trial, would be "such stressful events" that would amount to "inhuman and degrading treatment to myself and my family."

As you are aware, Mr. Demjanjuk has exhausted his administrative and judicial remedies to review his removal from the United States under INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D) (inadmissible at time of entry or adjustment of status under INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i) (participated in Nazi persecution); INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under §§ 10 and 13 of the Displaced Persons Act, 62 Stat. at 1013 (1948)); and INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under § 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)). He therefore became subject to removal to Ukraine, Poland, or the FRG. See INA § 241(a), 8 U.S.C. § 1231(a). The FRG has agreed to accept him and on March 10, 2009, issued an arrest warrant for him, alleging that he was an accessory to 29,000 counts of murder as a guard at the Sobibor extermination camp from March to September 1943.

---

[1] Your March 31, 2009 cover letter requests that ICE waive the requirements that Mr. Demjanjuk file his Application in person and pay the $155 filing fee. Please be advised that the INA regulations prescribe that an applicant "seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, . . . and stating that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay." 8 C.F.R. § 103.7(c)(1). Although your client has not substantiated his inability to pay the fee, the agency agrees to waive his appearance and the prescribed remittance.

On April 2, 2009, an ICE Division of Immigration Health Services (DIHS) physician conducted a physical examination and concluded that Mr. Demjanjuk is medically stable to travel from the United States to the FRG. A DIHS physician and nurse will be available to assist him during the flight. Medical personnel will monitor his medical condition while en route from Cleveland, Ohio, to Munich, FRG.

In summary, after reviewing Mr. Demjanjuk's Application and DIHS's assessment of his ability to travel in light of the factors enumerated in 8 C.F.R. § 212.5 and INA § 241(c)(2)(A), 8 U.S.C. § 1231(c)(2)(A), I have concluded that your client can safely fly from the United States to the FRG. Accordingly, his Application is denied and no stay of removal will be granted. Please note that a denial of a request for a stay is not subject to administrative or judicial review. 8 C.F.R. § 241.6(b) ("[denial . . . of a request for a stay is not appealable"); Moussa v. Jenifer, 389 F.3d 550, 555 (6th Cir. 2004) (field office director's discretionary decision "is thus unreviewable by [the Court of Appeals.]"). Please contact Supervisory Detention and Deportation Officer Charles Winner at (216) 535-0364 if you have any further questions.

Sincerely,

Vincent Clausen
Field Office Director

cc: John Demjanjuk

Office of Detention and Removal Operations
Cleveland, Ohio
U.S. Department of Homeland Security
1240 E. 9th Street, Room 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

April 3, 2009

John H. Broadley, Esq.
John H. Broadley & Associates, P.C.
Canal Square
1054 Thirty-First St., N.W.
Washington D.C. 20007

Re: John Demjanjuk, A [redacted] (b)(6)

Dear Mr. Broadley:

This letter is in response to your client's, Mr. John Demjanjuk, A [redacted] submission of ICE Form I-246, Application for a Stay of Deportation or Removal (Application), [1] with U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), on April 1, 2009. The Application requests that ICE stay Mr. Demjanjuk's removal from the United States for one year because it "would not be 'practicable or proper'" under 8 C.F.R. § 241.6 due to his current medical condition. He further claims "urgent humanitarian reasons" under 8 C.F.R. § 212.5 in support of his Application on the ground that his removal, followed by the Federal Republic of Germany (FRG)'s arrest, detention, and confinement pending trial, would be "such stressful events" that would amount to "inhuman and degrading treatment to myself and my family."

As you are aware, Mr. Demjanjuk has exhausted his administrative and judicial remedies to review his removal from the United States under INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D) (inadmissible at time of entry or adjustment of status under INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i) (participated in Nazi persecution); INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under §§ 10 and 13 of the Displaced Persons Act, 62 Stat. at 1013 (1948)); and INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under § 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)). He therefore became subject to removal to Ukraine, Poland, or the FRG. See INA § 241(a), 8 U.S.C. § 1231(a). The FRG has agreed to accept him and on March 10, 2009, issued an arrest warrant for him, alleging that he was an accessory to 29,000 counts of murder as a guard at the Sobibor extermination camp from March to September 1943.

[1] Your March 31, 2009 cover letter requests that ICE waive the requirements that Mr. Demjanjuk file his Application in person and pay the $155 filing fee. Please be advised that the INA regulations prescribe that an applicant "seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, . . . and stating that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay." 8 C.F.R. § 103.7(c)(1). Although your client has not substantiated his inability to pay the fee, the agency agrees to waive his appearance and the prescribed remittance.

On April 2, 2009, an ICE Division of Immigration Health Services (DIHS) physician conducted a physical examination and concluded that Mr. Demjanjuk is medically stable to travel from the United States to the FRG. A DIHS physician and nurse will be available to assist him during the flight. Medical personnel will monitor his medical condition while en route from Cleveland, Ohio, to Munich, FRG.

In summary, after reviewing Mr. Demjanjuk's Application and DIHS's assessment of his ability to travel in light of the factors enumerated in 8 C.F.R. § 212.5 and INA § 241(c)(2)(A), 8 U.S.C. § 1231(c)(2)(A), I have concluded that your client can safely fly from the United States to the FRG. Accordingly, his Application is denied and no stay of removal will be granted. Please note that a denial of a request for a stay is not subject to administrative or judicial review. 8 C.F.R. § 241.6(b) ("[denial . . . of a request for a stay is not appealable"); Moussa v. Jenifer, 389 F.3d 550, 555 (6th Cir. 2004) (field office director's discretionary decision "is thus unreviewable by [the Court of Appeals.]"). Please contact Supervisory Detention and Deportation Officer Charles Winner at (216) 535-0364 if you have any further questions.

Sincerely,

Vincent Clausen
Field Office Director

cc: John Demjanjuk

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
1240 E. 9th Street, Suite 535
Cleveland, OH 44199

(b)(6)

File No. A [redacted]
Date: April 3, 2009

John Demjanjuk
[redacted] (b)(6)

As you know, following a hearing in your case you were found deportable and the hearing officer has entered an order of deportation. A review of your file indicates there is no administrative relief which may be extended to you, and it is now incumbent upon this Service to enforce your departure from the United States.

Arrangements have been made for your departure to Germany (country) on April 5, 2009 (date) from Cleveland, OH (port of departure) on the via charter aircraft (name of vessel, airline, or other transportation)

You should report to a United States Immigration Officer at Room 535 (No.) 1240 E. 9th Street, Cleveland OH (address) at 12:00 PM, on April 5, 2009 (hour and date) completely ready for deportation. At the time of your departure from Cleveland OH (place of surrender) you will be limited to 40 pounds of baggage.

Should you have personal effects in excess of this amount you must immediately contact [redacted] (name of officer) at [redacted] (phone no. and ext.), or (b)(7)(c) call in person at the address noted above, and appropriate disposition of your excess baggage will be discussed with you.

Very truly yours,

Vincent Clausen
Field Office Director

Form I-166
(Rev. 4-1-69)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
1240 E. 9th Street, Suite 535
Cleveland, OH 44199

(b)(6)

File No. A [redacted]
Date: April 3, 2009

John Demjanjuk
[redacted] (b)(6)

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(b)(7)(c)

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Very truly yours,

Vincent Clausen
Field Office Director

Form I-166
(Rev. 4-1-69)

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

(b)(7)(c)

Attn: [redacted]

Denjanjuk, A [redacted]

(b)(6)

REUTERS UK

Print | Close this window

Suspected Nazi guard to be deported to Germany

Thu Apr 2, 2009 11:00pm BST

By Dave Graham

BERLIN (Reuters) - Suspected Nazi death camp guard John Demjanjuk is likely to arrive in Germany on Monday to face charges of complicity in the murder of 29,000 Jews despite a last ditch effort to block his extradition, his German lawyer said.

"If nothing else happens between now and then that's how it will be," Munich-based lawyer Guenther Maull said on Thursday.

A petition filed by Demjanjuk to prevent his deportation from the United States was unlikely to change this. "This attempt seems to have failed," Maull said.

However, Demjanjuk's American lawyers filed two appeals on Thursday for the U.S. government to stay his deportation and to reopen his case, saying Germany had changed its standards and was seeking to try him for "guilt by association."

"Given the amount of suffering and death that was meted out by Nazi Germany, it seems inconceivable that the Germans, who nearly killed my father in combat and again later in POW camps, now want to take him -- so elderly and weak he is unable to care for himself," his son, John Demjanjuk Jr., said in a statement issued in Ohio.

He said Demjanjuk was examined by a U.S. immigration doctor to determine if he "could survive the transportation" and results are pending.

Prosecutors in Munich have accused Demjanjuk of being an accessory in the killings of Jews between March and September 1943 at the Sobibor death camp, now in Poland.

Born in Ukraine, Demjanjuk denies any involvement in war crimes. He has said he was in the Soviet army and a prisoner of war in 1942. He later went to the United States.

Maull said he expected Demjanjuk, who turns 89 on Friday, to be taken from his home in Cleveland to New York, and then on to Munich in the company of a doctor, a nurse and a police officer.

Demjanjuk's son has said the retired car worker is suffering from a bone disease, kidney failure and other ailments, and would likely die before the

case is resolved.

If he arrives, Demjanjuk is unlikely to be able to return home before the case is concluded, Maull said, noting it was still open as to how fit to stand trial his client was.

"The Americans will be pleased to get rid of him as they've already ordered his deportation," he said. "The only reason it hasn't happened yet is because no country would take him."

Given Demjanjuk's age, Maull said authorities ought to accelerate proceedings if they want a result, noting it was not clear how quickly his client could be brought to trial.

"In terms of the case, he must first be given the right to respond to the accusations. I will advise him to say nothing," Maull said. "Then he'll have had a right to a hearing, and that's when he can be formally charged."

As a rule, it took four or five months for trials to begin in the Munich court once charges had been made, Maull said. The case itself was unlikely to be over quickly, he added.

Maull said prosecutors argued that irrespective of how Demjanjuk had behaved individually, he was automatically complicit in the murder of Jews if he had worked in a detail that oversaw their removal from trains to the gas chambers.

"Whether this argument will suffice right up to the Federal Court of Justice (Germany's court of last resort on matters of criminal law) as proof of guilt ... is questionable. We've not had this before, so we'd be entering new legal terrain."

Demjanjuk was stripped of his U.S. citizenship after he was accused in the 1970s of being "Ivan the Terrible," a notoriously sadistic guard at the Treblinka death camp.

He was extradited to Israel in 1986, and sentenced to death in 1988 after Holocaust survivors identified him as a Treblinka guard. But Israel's Supreme Court overturned his conviction when new evidence showed another man was probably "Ivan."

He regained his citizenship in 1998, but the U.S. Justice Department refilled its case against him in 1999, arguing he had worked for the Nazis as a guard at three other death camps and hid the facts. His U.S. citizenship was stripped again in 2002.

(Editing by Chris Wilson)

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[redacted]

From: [redacted] (b)(7)(c)
Sent: Thursday, April 02, 2009 4:49 PM
To: [redacted]
Subject: John Demjanjuk

Medical evaluation performed as requested on John Demjanjuk:

Findings:
1) Myelodysplastic syndrome (bone marrow failure)
2) Gout
3) Kidney Stone
4) Osteoarthritis
5) Right hip sacroiliac joint severe pain 9/10
6) History of allergy to bee stings

Current Medications:
1) Colchicine 0.6 mg one tablet daily
2) Allopurinol 300 mg one tablet daily
3) Tramadol HCL 50 mg one tablet every 4-6 hours as needed for pain
4) Hydrocodone/APAP one tablet every 4-6 hours as needed for pain
5) Procrit 60,000 units every Monday (weekly)

Physical Examination:
BP: 154/93 P: 73 R: 18 Pulse O2 95-97%
General appearance: Patient complaining of severe pain in his right sacroiliac joint
HEENT: No jaundice conjunctival pallor noted. Pain with cervical lateral rotation. No lymphadenopathy
Chest: Symmetric expansion, no sternal tenderness.
Heart: Heart: systolic aortic murmur that radiates to the left sternal border
Lungs: Clear to auscultation
Abdomen: mild tenderness right upper quadrant on palpation, no organomegaly
Extremities: No edema
Spine: Marked tenderness right sacroiliac joint. Patient mourning when moving from the laying down to upright position.
Mental Status: The patient was dressed in pajamas. Eye contact normal. Normal psychomotor activity. His speech was coherent. His thought process was logical and he was preoccupied with his legal situation and worried that he might have to go back to his country. There was no evidence of loosening of association or flight of ideas. There was no evidense of delusions, hallucinations or illusions. He described his mood as depressed and hopeless. His affect was congruent with his thoughts. He was oriented X 4 to person, time, place and situation. His attention and concentration are fair. His intelligence seems to be above average. His insight and judgment was fair.

Blood drawn for CBC and complete metabolic panel

Assessment: Patient is cardiovascular, respiratory, mentally and neurologically stable for aircraft transportation. Pulse oximeter at room air is adequate. Awaiting for laboratory results to determine if there are a significant anemia that would affect transportation but I do not expected it (results would be available in 4 hours).

Patient cleared for air transport.

Recommendations:

1) Provide pain management during transportation with current Ultram regimen.
2) Recommend patient transportation to airport via ambulance for comfort and pain management
3) Patient must flight with seat reclined avoiding prolonged pressure upon his right sacroiliac joint.
4) Allow the patient to stands and mobilized extremities to avoid blood clots formation in lower extremities
4) Provide 2-3 liter of oxygen during transport to prevent hypoxia

---

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April 2, 2009

John Demjanjuk extradited on charges over Sobibor Nazi death camp

John Demjanjuk, one of the most wanted Nazi war crimes suspects, faces charges that he helped to murder 29,000 Jews

Fran Yeoman, Berlin

One of the world's most wanted Nazi war crimes suspects is expected to arrive in Germany on Monday to face charges that he assisted in the murder of 29,000 Jews at a World War Two death camp.

John Demjanjuk, who was once accused of being the notorious SS guard Ivan the Terrible, will be extradited from America on April 5 and arrive in Munich the following morning, the German Justice Ministry said today.

He will be arrested and taken either to prison or a prison hospital to await trial as an alleged accessory to mass murder at the Sobibor camp in Nazi-occupied Poland.

The move will open what must be the last chapter in a case that has spanned almost three decades.

(ZST Ludwigsburg/EPA)

The service certificate of Ivan John Demjanjuk

IMAGE 1 of 2

RELATED LINKS

Austria refuses to charge deported Nazi guard
The man who volunteered to go into Auschwitz
Six decades on - 'SS war criminal' faces trial

Mr Demjanjuk, who is 89 tomorrow, was convicted of war crimes by an Israeli court in 1988 after witnesses identified him as being the infamous Ivan the Terrible, a sadistic figure who operated the gas chambers at Treblinka.

He was sentenced to death by an Israeli court before the verdict was overturned five years later.

At that point Mr Demjanjuk, who was born in Ukraine and changed his first name from Ivan to John when he moved to the US in 1952, returned to his family life in the suburbs of Cleveland, Ohio.

However, he has been stripped of his US citizenship and last year remained number two on the Simon Wiesenthal Centre's most wanted list behind Aribert Heim who, according to a recent investigation, might have died in 1992.

Last mont prosecutors in Munich – who have led the German investigation into Mr Demjanjuk because he lived in Bavaria between the end of the war and 1952 – filed charges against him on more than 29,000 counts of being an accessory to murder during 1943.

Prosecutors said that most of those who died were women, children and the elderly. The oldest victim during the months that Mr Demjanjuk allegedly worked at Sobibor was 99; the youngest were babies. The US Office for Special Investigations described the camp as "as close an approximation of Hell as has ever been created on this planet".

Mr Demjanjuk has always maintained his innocence, claiming that he fought in the Red Army before being taken prisoner by the Nazis in 1942. His family and American lawyer have repeatedly said that he is too frail and unwell to travel, and on Wednesday Mr Demjanjuk filed a petition to US Immigration and Customs Enforcement (ICE) claiming that his extradition would be inhumane.

"He can't get up out of a chair on his own. He can't walk on his own. He can't get up out of bed without gasping in pain," said his son John Demjanjuk, who added that his father had chronic kidney disease.

However Günther Maull, Mr Demjanjuk's German court-appointed lawyer, said that the attempt to stop the extradition had failed and Mr Demjanjuk would board a plane to Munich via New York on Sunday. In the meantime, he has been fitted with an electronic ankle tag so that ICE can monitor his whereabouts.

Dr Efraim Zuroff, the Simon Wiesenthal Centre's chief Nazi-hunter who has followed Mr Demjanjuk's case since before the trial in Israel, said that he would be delighted to see him face a court in Germany: "This is the most judicially complex case that there has ever been," he said. "It is unique."

However, he said that there were still "stumbling blocks" on the road to a trial, including the "well-known tactic" of claiming illness, employed by many suspected Nazis. "I don't want to count my chickens before they have hatched," he said.

Dr Zuroff rejected the often-repeated suggestion that Mr Demjanjuk's could be the last major Nazi war crimes trial, pointing out that similar claims were made after Josef Schwammberger, the former SS officer, was arrested in Argentina in 1987. Nevertheless, he said: "It will be a very symbolic trial and one which reinforces the necessity and the validity of efforts to bring Nazis to trial at this time. I want to be there. For me, this has a special significance. I have followed this from the very beginning."

RUN DATE: 03/24/09
RUN TIME: 1235
RUN USER: [redacted]

Parma Comm. Gen. Hosp Mock Lab **LIVE**
Summary Location Report
PCI User: [redacted] Lab Database: LAB.MOCK.PCG

PAGE 1

(b)(6)

LOCATION
EMERGENCY DEPARTMENT A

PATIENT: [redacted] ACCT #: V00124483173 LOC: [illegible] U #: M303[redacted]
AGE/SEX: 88/M ROOM: REG: 03/21/09
REG DR: Goodrich Alan DO STATUS: DEP ER BED: DIS:

Test	Day	Date	Time	Result	Reference	Units	
WBC	1	MAR 21	1444	[illegible]	(4.0-11.0)	K/UL	2.5
RBC	1	MAR 21	1444	[illegible]	(4.5-6.0)	M/UL	3.13
HGB	1	MAR 21	1444	[illegible]	(14.0-18.0)	GM/DL	10.8
HCT	1	MAR 21	1444	[illegible]	(42-52)	%	31.8
MCV	1	MAR 21	1444	[illegible]	(80-100)	FL	101.8
MCH	1	MAR 21	1444	[illegible]	(27-34)	PG	34.6
MCHC	1	MAR 21	1444	34.0	(33-37)	G/DL	34.0
RDW	1	MAR 21	1444	[illegible]	(11.5-14.5)	%	13.5
PLT	1	MAR 21	1444	319	(150-400)	K/UL	319
MPV	1	MAR 21	1444	8.1	(7.4-10.4)	FL	8.1
DIFF	1	MAR 21	1444	AUTOMATED	(())		
LYMP	1	MAR 21	1444	33	(24-44)	%	14
MONO	1	MAR 21	1444	[illegible]	(1-8)	%	
NEUT	1	MAR 21	1444	51	(41.5-75.5)	%	
EOS	1	MAR 21	1444	1	(0-3)	%	
BASC	1	MAR 21	1444	1	(0-2)	%	
COLOR	1	MAR 21	1446	YELLOW	(())		
URINE CLARITY	1	MAR 21	1446	CLEAR	(())		
UR.SP.GRAVITY	1	MAR 21	1446	1.010	(1.000-1.030)		
URINE pH	1	MAR 21	1446	5.0	(5.0-9.0)		
UR.PROTEIN	1	MAR 21	1446	NEGATIVE	(NEG)		
URINE GLUCOSE	1	MAR 21	1446	NEGATIVE	(NEG)		
UR.KETONE	1	MAR 21	1446	NEGATIVE	(NEG)		
UR.BILIRUBIN	1	MAR 21	1446	NEGATIVE	(NEG)		
UR.BLOOD	1	MAR 21	1446	NEGATIVE	(NEG)		
UR.NITRITE	1	MAR 21	1446	NEGATIVE	(NEG)		
UR.UROBILINOGEN	1	MAR 21	1446	NORMAL	(<2.0)		
URINE LEUKOCYTE	1	MAR 21	1446	NEGATIVE	(NEG)		
EPITHELIAL CELL	1	MAR 21	1446	RARE	(0-5)	/HPF	
URINE WBC'S	1	MAR 21	1446	0-5	(0-2)	/HPF	
URINE RBC'S	1	MAR 21	1446	0-5	(0)	/HPF	
URINE MUCOUS	1	MAR 21	1446	RARE	(0)	/HPF	
URINE BACTERIA	1	MAR 21	1446	0	(0)	/HPF	
SODIUM	1	MAR 21	1444	143	(134-147)	MEQ/L	
POTASSIUM	1	MAR 21	1444	4.8	(3.4-5.2)	MEQ/L	4.8
CHLORIDE	1	MAR 21	1444	[illegible]	(97-109)	MEQ/L	111
CO2	1	MAR 21	1444	27	(24-30)	MEQ/L	27
BUN	1	MAR 21	1444	[illegible]	(6-19)	MG/DL	29
CREATININE	1	MAR 21	1444	[illegible]	(0.6-1.1)	MG/DL	1.9
GLUCOSE/FBS	1	MAR 21	1444	106	(80-110)	MG/DL	106
CALCIUM	1	MAR 21	1444	[illegible]	(8.8-10.6)	MG/DL	8.7

Patient: DEMIANJUK JOHN Age/Sex: 88/M Acct#V00124483173 Unit#M303365[illegible]

RUN DATE: 03/24/09 —Parma Comm. Gen. Hosp Mock Lab —*LIVE** — PAGE 2
RUN TIME: 1235 Summary Location Report
RUN USER: [redacted] PCI User: [redacted] Lab Database: LAB.MOCK.PCG

(b)(6)

LOCATION
EMERGENCY DEPARTMENT A

Patient: DEMOANDER, JOHN [redacted] Continued

Test	Day	Date	Time	Result	Reference	Units
GFR ESTIMATED	[redacted]			35		

NOTES: (a) eGFR Units of measure: mL/min/1.73 m^2
If the patient is African American, multiply the eGFR reported by 1.21
eGFR is derived from the 4 variable MDRD equation for glomerular filtration rate (GFR) based on a stable serum creatinine, gender and age.

Patient: DEMOANDER, JOHN [redacted] Age/Sex: 28/M [redacted]

09/17/2008
09:13

PARMA COMMUNITY GENERAL HOSPITAL AUTO RESULT REPORT
7007 POWERS BLVD., PARMA, OH. 44129
(440)743-4017

PAGE 1

SEP 18 2008

NAME: DEMJANJUK, JOHN
H# :
HOSP. ID: [illegible]
ACCT: 0012330

LOC: ONC-MEDROOM:
DR: LIN, M.D. WEI

AGE: 88Y SEX: M
CODE: LINWE

W8143 COLL: 09/17/2008 08:00 REC: 09/17/2008 09:05 PHYS: LIN, M.D WEI

AUTOMATED BLOOD COUNT				STAT
WBC COUNT	L2.4	(4.0-11.0)	K/UL	
RBC COUNT	L2.19	(4.5-6.0)	M/UL	
HEMOGLOBIN	P7.5	(14.0-18.0)	GM/DL	
HEMATOCRIT	P21.8	(42 52)	%	
	RESULT CHECKED AND VERIFIED			
	RESULTS CALLED, READ BACK AND VERIFIED TO:			
	K RIDZY LPN AT 0925/VG 091708			
MCV	99.6	(80-100)	FL	
MCH	H34.1	(27-34)	PG	
MCHC	34.3	(33-37)	G/DL	
RDW	H15.5	(11.5-14.5)	%	
PLATELET COUNT	254	(150-400)	K/U	
MPV	7.4	(7.4-10.4)	FL	
DIFFERENTIAL				STAT
DIF	AUTOMATED			
NEUTROPHIL	55	(41.5-75.5)	%	
LYMPH	24	(24-44)	%	
MONOCYTE	H14	(1-8)	%	
EOSINOPHIL	H6	(0-3)	%	
BASOPHIL	1	(0-2)	%	
RETIC COUNT	0.8	(0.5-1.5)	%	STAT

ML

9/18/08 referred to Dr. Bidari

To: Officer [redacted], ICE

Date: 3/24/09
Pages: 2
By Fax: [redacted] (b)(7)(c)

[redacted]

I'm sending you lab reports as I receive them. Following is one from 9/18.

[redacted] (b)(6)

To: Officer [redacted], ICE
From: [redacted]
(b)(6)

Date: 3/19/09
Pages: 5
By Fax: [redacted] (b)(7)(c)

[redacted]

Per our telephone call today, following are medical notes on one page from Dr. Keuck Chang, the Nephrologist that Dr. Lin referred my father to in the prior report which you already have. These are the notes from his last visit. According to the nurse at his office the lower left corner indicates the diagnosis of:

1. CKD (Chronic Kidney Disease), Stage 3
2. Hyperoxaluria
3. Anemia associated with MDS and CKD
4. Kidney Stones

I have requested a clearer report from Dr. Chang and will forward it to you when I get it.

Also included, is the most detailed report I have from Dr. Timmappa Bidari, who is currently providing my dad with weekly Prokrit therapy. It provides a clinical diagnosis of:

1. "Anemia and granulocytopenia probably secondary to myelodysplastic syndrome."

Finally, there is a recent report from Dr. Bidari with diagnosis of:

1. "Myelodysplastic syndrome"
2. "Anemia and leucopenia secondary to above."
3. "Acute gout in the right big toe and the mid foot."

Should the US or German government wish to have my father submit to a medical examination at this time, we would accommodate the request as long as it were to take place at a local Cleveland hospital.

TO:

[redacted]

(b)(7)(c)

3 PAGES

FROM: [redacted] (b)(6)

3-23-09

Parma Community General Hospital
7007 Powers Blvd,
Parma, OH 44129
4407433000

Patient: DEMJANJUK, JOHN
Physician: Alan Goodrich, DO

MR:
Account: 001244
DOB: 4/3/1920

General Emergency Department Discharge Instructions

The exam and treatment you received in the Emergency Department were for an urgent problem and are not intended as complete care. It is important that you follow up with a doctor, nurse practitioner, or physician's assistant for ongoing care. If your symptoms become worse or you do not improve as expected and you are unable to reach your usual health care provider, you should return to the Emergency Department. We are available 24 hours a day.

You were treated in the Emergency Department by:
Alan Goodrich, DO

Your diagnosis: Pain - flank, -Back Pain,
Nephrolithiasis

What to do:

- Follow the instructions on the additional sheets you were given.
  Patient Specific Instructions for Discharge
  Work Restrictions:
  Changes in Routine Medications: NONE
  Specific Instructions/Codes:
  back pain; kidney stone; narcotic precautions
- Please call as soon as possible to make an appointment for follow-up care:
  Steven Goliat, DO (216) 524-8883
  Follow up timeframe: 2-4 day(s), sooner if worse.
- Bring these instructions and your medications to your follow-up visit.
- **X rays:** If applicable please arrange to obtain your x-rays from the Radiology department. Please Call 440-743-4812 **at least 4 hours before you plan to pick them up.** You will need to show a Photo ID and sign a release form for the films. If someone other than yourself will be picking up Your x-rays, that person will need to bring an authorization form signed by you or provide Power Of Attorney papers. The person will also need to show a photo ID and sign for the films..
- **Culture** results take 48-72 hours. Your results will be given to the follow-up doctor. The Emergency Department will contact you if the results require a change in your treatment.
- If you have difficulty scheduling an appointment with the physician to whom you have been referred, PLEASE CONTACT PARMA HOSPITAL PHYSICIAN REFERRAL SERVICE AT 440-743-4900 for a list of physicians in your area. You may also contact MetroHealth Outpatient Clinics at 216-778-4700.
- Take medications as directed.

Date/Time: 21-Mar-2009 19:22

Parma Community General Hospital
7007 Powers Blvd,
Parma, OH 44129
4407433000

Patient: DEMJANJUK, JOHN
Physician: Alan Goodrich, DO

MR:
Account: 001244
DOB: 4/3/1920

Studies done in the Emergency Department:

LAB CBC With Auto Diff; . ERGRP,
LAB Basic Metabolic Profile; . ERGRP,
LAB Urinalysis; CVMS; . ERGRP,

CAT Abdomen Without Contrast Renal colic*; . ERGRP,
CAT Pelvis Without Contrast Pelvic pain*; . ERGRP,

IV; NS; 125ml/hr

Additional information or instructions:

MEDICATIONS GIVEN IN THE EMERGENCY DEPARTMENT:

Toradol (Ketorolac Tromethamine) 30mg IVP
Dilaudid (hydromorphone) 0.5mg IVP

PRESCRIPTIONS GIVEN IN THE EMERGENCY DEPARTMENT:

Cipro 500mg by mouth twice a day until gone. No Refills. Dispense # 14 (fourteen)
Vicodin 5/500mg (Hydrocodone/Acetaminophen) Sig: one tablet by mouth every 4 - 6 hours as needed for severe pain. No Refills. Dispense # 15 (fifteen)

** If side effects develop, such as a rash, difficulty breathing, or a severe upset stomach, stop the medication and call your doctor or the Emergency Department.*

24 Hour Pharmacies closest to Parma Community General Hospital:

Walgreens
5400 Pearl Road
Cleveland, OH 44129
(corner of Ridge and Pearl Roads)
[440] 886-6228

CVS
2007 Brookpark Road
Cleveland, OH 44109
(Brookpark at Broadview)
[216] 351-2944

The emergency physician provided an on-the-spot interpretation of your x-rays and/or EKG. A specialist will do a final interpretation of these tests. If a change in your diagnosis or treatment is needed, we will contact you. It is critical that we have a current phone number for you. In addition due to new Federal Privacy Laws you will be asked to provide your account number. Without it we will not be able to discuss your care.

Date/Time: 21-Mar-2009 19:22

TIMMAPPA P. BIDARI, MD., INC.

SEPTEMBER 29, 2008

DEMJANJUK, JOHN

This 88 year old male patient has been referred to me by Dr. Goliat to be seen consultation. He is somewhat of a poor historian he is accompanied to my office by his son.

He is has history of weakness a couple of years ago he was found to be anemic when a blood test was done. He had a primary care physician at that time who had sent him to S. W. General Hospital it appears that he had a bone marrow aspiration and biopsy done at that time and it showed according to the patient a myelodysplastic syndrome Procrit injections were recommended and he was receiving the Procrit once weekly initially; subsequently it was once every two weeks. Later on because of change in his insurance coverage he transferred his care to Parma Hospital and to Dr. Lin hematologist. His treatment program was continued till a couple of months ago when apparently his insurance coverage lapsed and he had received blood transfusions a couple months ago or at least six weeks ago then a second transfusion about a week or ten days ago. First time he received blood transfusion he was still receiving the Procrit therapy on a regular basis and he had two units of blood transfusion. Then for about six weeks he had no insurance coverage and he was not on Procrit and he received blood transfusion a few days ago. I have the copy of the recent CBC report from Parma Hospital done on September 17, 2008 and it showed hemoglobin of 7.5, hematocrit 21.8, WBC count of 2,400, and platelet count of 254,000; MCV 99.6, MCH 34.1, and MCHC 34.3. Differential WBC count appears to be unremarkable. basic metabolic panel showed evidence of azotemia with a BUN of 24, creatinine of 2. He had reticulocyte of 0.8% on September 17th, also had liver function test which were unremarkable I believe. His serum billirubin was 0.6, percentage saturation of iron was 38%, Ferritin level was 573.5, foliate level 12.2, vitamin B level 353

Previously he was also receiving vitamin B12 injections because of some kidney problem he was seen by a nephrologist I believe Dr Chang. An ultrasound of the kidneys that were done at Parma Hospital on 9-2-08 is reported as showing a slightly small right kidney, diffuse cortical thinning and bilateral simple renal cysts.

At this time I do not have any other medical records to review.

He says he has history of arthritis for about ten, fifteen years in the last couple of months he feels the pain from the right pelvic, sacroiliac joint is radiating into the right lower extremity he calls it a pinched nerve. He says similar sensation he is noticing in the past few days into the left lower extremity.

He gives history of bullet wound to his back or spine during World War II. He denies any previous history of hypertension, diabetes mellitus or heart problems.

He has history of renal stones and remote history of inguinal hernia surgery, remote his of bullet wound to his back.

He says he has had gout for the past ten, twelve years and he has been taking medications for this consisting of Allopurinol.

PERSONAL AND SOCIAL HISTORY: He used to smoke a pack of cigarettes per day but quit smoking about twenty, twenty-five years ago; drinks alcohol only on social occasions.

ALLERGIES: TO BEE STINGS.

FAMILY HISTORY: Unremarkable.

REVIEW OF THE SYSTEMS:

Musculoskeletal System: History of back pain and arthritis, radiating pain into the right lower extremity.
Cardiovascular System: Shortness of breath on exertion, no substernal chest pain or leg edema.
General and Constitutional Symptoms: Complains of fatigue. No fever and chills, night sweats, or weight loss.
Skin: Denies rash, itching, or easy bruising.
Head: No pressure or pain.
Eyes: Denies blurred vision.
ENT and Respiratory System: Denies any cough, sore throat, or hoarseness of the voice.
Hemic and Lymphatic System: Has not felt any lumps in the neck, under the arms, or groins.
GU System: No dysuria or burning micturition.
GI System: Appetite is good, no abdominal pain; denies rectal bleeding or melena. He says he had GI endoscopy previously but he is not very sure and apparently this was negative.
CNS: No headache or dizziness, he has probable sciatica in the right lower extremity.

PHYSICAL EXAM: Height: 5 ft 11 in. Weight: 228 pounds. Pulse rate is 76 per minute, respirations 20, temperature normal. B/P is 140/70. Head: Normal Eyes: No jaundice conjunctival pallor noted. ENT: Unremarkable. Neck: No lymphadenopathy. Chest: No sternal tenderness No lymph nodes felt in the left or right axilla. Heart: Sounds normal. Lungs: Clear Abdomen: No tenderness, no distention. Liver: Not felt. Spleen: Not felt. Extremities: No leg edema. Skin: Unremarkable except for pallor. Bones and joints: No spine, rib, or pelvic tenderness.

CLINICAL DIAGNOSIS:
1. Anemia and granulocytopenia probably secondary to myelodysplastic syndrome.

RECOMMENDATIONS: Review the copies of his medical records from S. W. General Hospital and Parma Community General Hospital especially his blood counts and the bone marrow findings.

Apparently chemotherapy was discussed by Dr. Lin for him regarding treatment of myelodysplastic syndrome, patient is not very sure about it and apparently he was reluctant to take it.

After I have a chance to review his previous medical records and make a better assessment of his condition we will see him again in the office in a week to ten days. We will check the blood counts at that time and we will consider continuing the Procrit therapy as needed.

Please send a copy of this consultation report to Dr. Steven Goliat.

TIMMAPPA P. BIDARI
TPB/djk

Cc: Dr. Steven Goliat

FROM :DR T BIDARI440-887-9572 FAX NO. :4408879572 Mar. 19 2009

TIMMAPPA P. BIDARI, MD., INC.

JANUARY 19, 2009

DEMJANJUK, JOHN

DIAGNOSIS:
1. Myelodysplastic syndrome.
2. Anemia and leukopenia secondary to above.
3. Acute gout in the right big toe and the mid foot.

HISTORY OF PRESENT ILLNESS: He says he was coming along okay he started having severe pain in the right big toe and the middle of the foot since yesterday he has taken Colchicine but has run out of the medication.

REVIEW OF THE SYSTEMS:
Musculoskeletal System: As above.
General and Constitutional Symptoms: Has moderate degree of fatigue, denies fever and chills, night sweats, or weight loss.
Cardiovascular System: Has shortness of breath on exertion, no leg edema, or chest pain.
Head: Denies pressure or pain.
Eyes: Denies blurred vision.
ENT and Respiratory System: Unremarkable.
Skin: Denies rash, itching, or easy bruising. He has redness of the skin over the right big toe due to gout.
GI System: Denies abdominal pain, nausea, or vomiting.
Hemic and Lymphatic System: Has not felt any lumps under the arms, in the neck, or groins.
GU System: No dysuria or burning micturition has urinary frequency.
CNS: Has occasional lightheadedness.

SOCIAL HISTORY: As recorded previously.

PAST HISTORY: As recorded previously.

FAMILY HISTORY: As recorded previously.

PHYSICAL EXAM: Today reveals a B/P of 140/60; pulse rate is 72, respirations 18, temperature normal. Weight. 218 pounds. Head. Normal. Eyes. Conjunctival pallor noted no jaundice. ENT: Unremarkable. Neck: No lymphadenopathy. Chest: No sternal tenderness. Heart: Sounds normal. Lungs: Clear. Abdomen: No tenderness, no distention. Extremities: No leg edema, redness of the skin noted over the dorsum of the right big toe.

LABORATORY DATA: Today CBC shows hemoglobin of 9.8, hematocrit 29.2, WBC 3,100, and platelets 277,000.

TREATMENT PLANS: Give Procrit 60,000 units subcutaneously today.

I have prescribed him Colchicine 0.6 mg to take 1 daily for gouty arthritis in the right big toe and the foot.

Continue weekly Procrit and CBC, re-exam in two week's time.

TIMMAPPA P. BIDARI
TPB/djk

CLEVELAND CLINIC CANCER CENTER
AT PARMA COMMUNITY GENERAL HOSPITAL
6525 Powers Blvd., Parma, OH 44129
Ph: 440-743-4747 Fax: 440-743-4715

NAME: DEMJANJUK, John
CLINIC NO: 48648207
DATE OF SERVICE: 07/15/2008

DIAGNOSIS:
1. Myelodysplastic syndrome
2. Persistent anemia secondary to above

John Demjanjuk returned to clinic for follow up with his wife. He stated he is still weak despite receiving 2 units of blood transfusion around a month ago. He has received 2 doses of Procrit injection (every 2 weeks) since last visit. Symptom wise, he does not feel much different. He denies any fever, chills, night sweats or weight loss. His main complaint is weakness and his knee bothers him. His knee problem is pre-existing. He denies any chest pain, shortness of breath at rest or palpitations. No GI or GU complaints. No bleeding at all. No easy bruising.

His past medical history, personal/social history, medications and allergies were all reviewed.

REVIEW OF SYSTEMS: All 10 systems were reviewed. Except what is described above, the rest of the review of systems was completely unremarkable.

PHYSICAL EXAM: GENERAL: Patient appears at his baseline, comfortable, not in distress. He is afebrile with temperature 96, pulse 64, respiratory rate 20, blood pressure 122/64, weight 225 pounds. HEENT: Pale, no jaundice. Normal oropharynx on visual exam. RESPIRATORY SYSTEM: Lungs clear to auscultation bilaterally. No wheezing, rhonchi or crackles. Chest movement symmetrical. Trachea midline. CARDIOVASCULAR SYSTEM: Heart sounds S1, S2 with regular rate and rhythm. No gallops or additional heart sounds. GASTROINTESTINAL SYSTEM: Abdomen is soft, obese and nontender, nondistended. Normal active bowel sounds. No palpable mass or hepatosplenomegaly. MUSCULOSKELETAL SYSTEM: Decreased range of motion in major joints, symmetrical. No asymmetrical muscle weakness. Trace edema in lower extremities.

LABORATORY TESTS: WBC 2.4, hemoglobin 9.5, hematocrit 28.3, platelet count 210,000. Creatinine 1.8, BUN 36, total bilirubin 0.6.

ASSESSMENT/PLAN:
1. Myelodysplasia, responding poorly to Procrit therapy, although he only received 2 doses so far. I will continue the treatment and increase frequency of Procrit injection to every week if possible.
2. Chronic renal failure. I will refer him to nephrologist for nephrology consultation.
3. I advised the patient and his wife to bring his son with him during the next visit in one month. I will discuss chemotherapy with hypermethylating agent with them. Patient does not really understand much English, therefore, I feel that the language barrier is really affecting his informed decision-making ability. He will probably benefit from hypermethylating agent like Vidaza or Dacogen, if he could tolerate. We will discuss more in detail next time.
4. Given his symptomatic anemia, I offered the patient another 2 units of blood transfusion. He understood my recommendation, however, he could not make any decision when I asked him whether he would like to have a blood transfusion, his answer was "I do not know". This is quite frustrating. I advised him and his wife to go home and talk to his son and if he changes his mind on blood transfusion he will call and let me know. I will be happy to schedule it for him.

Total counseling time was about 40 minutes. This apparently is a difficult patient to take care of.

Wei Lin, M.D.

cc:
Date Dictated: 07/15/2008

Date Typed: jlb 07/17/2008 09:00

Date 3/13/2009

To: Officer DeMalo

2 Pages total

Re: John Demjanjuk's Medical Status

Currently receiving weekly injections of Procrit to treat Mylodisplasia. Patient no longer responding positively to treatment and condition deteriorating. New treatment being prescribed by Dr. Bidari next week. Prior report from Cleveland Clinic Cancer Center dated 7/15/08 is attached assessing Myelodysplastic Syndrome and Cronic Renal Failure.

Procrit (see above and attached report)

Allopurinol (for Gout)

Colchicine (for Gout)

Tramadol (for back pain)

Motrin (for back pain)

Vitamin D supplement

Calcium Carbonate

Embassy
of the Federal Republic of Germany
Washington

To Whom It May Concern:

The Federal Republic of Germany hereby allows John Demjanjuk (stateless), birth name Iwan Nikolaj Demjanjuk, born April 3, 1920, Ukraine, to enter the territory of the Federal Republic of Germany.

The United States of America shall remove (deport) John Demjanjuk from the U.S. to Munich in the Federal Republic of Germany between March 23, 2009, and April 24, 2009. He will be accompanied by officers from U.S. Immigration and Customs Enforcement of the Department of Homeland Security in addition to, if necessary, U.S. medical personnel. The U.S. must provide names of these individuals and notice of travel in a timely manner prior to the removal (deportation).

The local court in Munich has issued an arrest warrant for John Demjanjuk on March 10, 2009.

This is to certify that the German authorities will allow Mr. Demjanjuk to enter the territory of the Federal Republic of Germany if he is not in possession of a visa for Germany, provided he carries a document issued by U.S. authorities that proves his identity. The German Border Police is informed accordingly.

John Demjanjuk will be taken into custody by German police officers immediately upon his arrival at the airport in Munich.

United States Department of Justice
Immigration and Naturalization Service

File No. A[redacted] (b)(6)
Date: March 16, 2009

Certificate of Identity

To facilitate transportation to Germany
of applicant whose photograph appears below.

NAME: John DEMJANJUK. AKA: Ivan Demjanjuk

DATE & PLACE OF BIRTH: April 3, 1920;Dubovye Makharintsy, Ukraine

NATIONALITY: Ukranian

Sex: Male

OCCUPATION OR PROFESSION: Retired

Marital Status: Married

PRESENT ADDRESS: [redacted] (b)(6)

PURPOSE OF JOURNEY: For travel to Germany
A national passport or any form of travel document cannot be obtained for travel to that country.

Attach Photograph

PERSONAL DESCRIPTION

Height: 6 Feet

Weight: 225 Pounds

Color of hair: White

Color of eyes: Blue

Identification marks: Scar Left Wrist

(b)(7)(c)

[redacted] 5000

Form I-269
(6-16-58)

For the U.S.Immigration and Naturalization Service

FBI Number: [redacted] (b)(6)
Name: DEMJANJUK, JOHN
TID: EICLE105031709080437

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

OHICE0100 ICN E2009076000000049886

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- FBI IDENTIFICATION RECORD -

WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE FBI.

NAME	FBI NO.	DATE REQUESTED
DEMJANJUK,JOHN	(b)(6) [redacted]	2009/03/17

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR
M	W	1920/04/03	602	230	BLU	BLN

BIRTH PLACE
UKRAINE

PATTERN CLASS
WU UC WU UC LS WU WU WU WU WU
LS LS WU LS LS LS LS

CITIZENSHIP
UKRAINE

1-ARRESTED OR RECEIVED 2004/12/20
AGENCY-USINS CLEVELAND (OHINSCV00)
AGENCY CASE-122020041100
CHARGE 1-8 USC 1227 - DEPORTATION PROCESSING

2-ARRESTED OR RECEIVED 2004/12/17
AGENCY-ICE-DETENTION/REMOV CLEVELAND (OHICE0100)
AGENCY CASE-30648087
CHARGE 1-DEPORTABLE ALIEN

RECORD UPDATED 2009/03/17

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THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED.□

RN#: 1087245947

Encounter ID	External System ID	Type	Encounter Date	Database
77464232	30648087	BP	03/17/2009 07:43:40	R

Print

View/Add Alerts

Show Bio

Copy Subject

Cancel

Encounter ID

77464232

No photo

Selected 1 of 1

FINS: 1087245947

(b)(6)

FBI. [redacted]

Last Name	First Name
DEMJANJUK	JOHN

Sex	DOB (MM/DD/YYYY)	Country of Birth
Male	04/03/1920	UKRAINE

Country of Citizenship	A #	Location
UKRAINE	[redacted] (b)(6)	XCL

Address - City/Residence	Address - State/Residence	Address - Country/Residence
[redacted]		UNITED STATES

Comments

NOTE: Comment text may be incomplete. Refer to ENFORCE Event ID# XCL0512000066 for details. SUBJECT PROCESSED IN ABSENTIA BASED ON INFORMATION PROVIDED TO ASACCL BY HQ DIRECTIVE - OFFICE OF SP

SUBJECT IS A NATIVE OF THE UKRAINE BASED ON BIRTH IN THAT COUNTRY ON 04/03/1920.

SUBJECTS HEALTH SITUATION IS UNKNOWN, BUT MEDIA COVERAGE OVER THE PAST YEARS IN CLEVELAND, OHIO HAS INDICATED THAT SUBJECT HAS BEEN SUFFERING FROM HEALTH PROBLEMS DUE TO HIS AGE

SUBJECT LIVES WITH HIS WIFE, VERA AND HAS OTHER FAMILY LIVING IN NEARBY COMMUNITIES.

SUBJECT HAS N

Method of Location/Apprehension	Location of Apprehension	Date and Time of Apprehension (MM/DD/YYYY HR:MI)
Located	At NYC	17-DEC-04 12:00

Apprehended By	Status of Entry	Length of Time Illegally in U.S.
[redacted] (b)(7)(c)	Immigrant	At Entry

Misc 1	Misc 2	Misc 3

View Prints | View/Add Alerts | Print | OK

LEAVE BLANK

(STAPLE HERE)

LEAVE BLANK

STATE USAGE

NFF SECOND SUBMISSION

APPROXIMATE CLASS

AMPUTATION

SCAR

STATE USAGE

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

Demjanjuk,John

SIGNATURE OF PERSON FINGERPRINTED

* John Demjanjuk

SOCIAL SECURITY NO.

LEAVE BLANK

ALIAS/MAIDEN
LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

FBI NO.	STATE IDENTIFICATION NO.	DATE OF BIRTH MM DD YY	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
		19200403	M	W	N74	230	BLU	BLN

1. R. THUMB

2. R. INDEX

3. R. MIDDLE

4. R. RING

5. R. LITTLE

6. L. THUMB

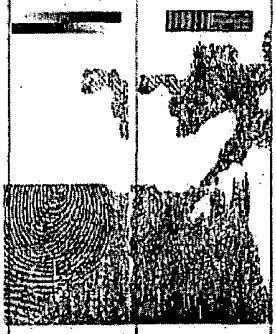
7. L. INDEX

8. L. MIDDLE

9. L. RING

10. L. LITTLE

LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY



L. THUMB

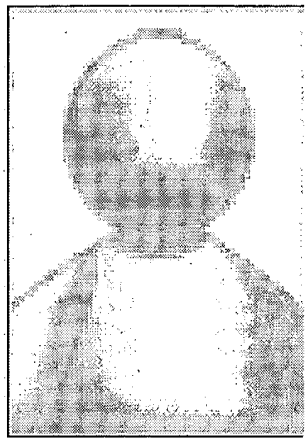
R. THUMB

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

Personal Information

Company ID: Cleveland_EM
Company Name: Ice-Cleveland EM
Social Security #:
*First Name: JOHN
Middle Name: DEMJANJUK
*Last Name: DEMJANJUK
Date of Birth: 12/08/1922
DOB format mm/dd/yyyy(ex:11/25/1978)
Marital Status: Married
Race: White
Gender: Male
Hair Color: Gray
Eye Color: Green

Portrait



Browse... Remove

Assigned Officer: ICE [redacted] (b)(7)(c)
Delete other users' notification settir
Status: Active
Assigned Device: 9137065047

Unit of Measure: English | Metric
Height: 5 ft 11 in
Weight: 220 lbs

(b)(6)
Other Info: A [redacted] NAZI WAR CRIMINAL ALERT/ ATTORNEY JOHN BROADLEY AT 202 - 333 6025 WA DC.
Only 1000 characters will be saved

Offender Language: English
Translator Required
Optional Identifier:
Location Identifier:

Contact Details

*Address Line1: [redacted]
Address Line 2:
County:
*City:
Country:
State:
Zip Code:

(b)(6)

Home Phone: [redacted]
Work Phone:
Ext:
Cell Phone: [redacted]
Fax:
Pager:

(b)(7)(c)

Program Details

*Start Date (mm/dd/yyyy) 03/12/2009

End Date (mm/dd/yyyy)

EOS 03/12/2012

Reason Other

OK Delete

(b)(7)(c)

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ABOUT THE CONSULATE

Contact Us

Our Address
Consulate General of the United States
Königinstraße 5
80539 Munich
Federal Republic of Germany

Our Telephone Number
from within Germany is (089) 2888-0.
From outside Germany, use the country and city codes: +(49) (89) 2888-0.

Our Fax Number
for consular services is (089) 280-9998 or - from outside Germany +(49)(89) 280-9998.

For all inquiries, the best way to reach us is by e-mail at **ConsMunich@state.gov**

Our consular region is the state of Bavaria.

Our consulate also includes a U.S. Commercial Service office providing full services to American business. The USCS representative in Munich supports business interests in Bavaria and in southern Baden-Württemberg.

Our consulate is closed to the public on American and German holidays. In addition, the

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"We are the face of America, bringing the people of the USA and Bavaria together to build a safer and more prosperous world. With a commitment to service, innovation, building goodwill, and 'going green' we work to
• expand our strong economic partnership,
• deepen our cooperation to make Europe, America and the world more secure,
• and facilitate the millions of people-to-people connections that unite us in all fields."

CONSUL GENERAL

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CONSUL GENERAL

Consul General Eric Nelson

Consul General Eric Nelson

Eric Nelson arrived in Munich July 31, 2006 to assume his duties as the 49th U.S. Consul General. As Consul General for Bavaria, he is working to expand and strengthen partnerships between Bavaria and the United States, focusing on security cooperation, citizen diplomacy through professional and individual exchanges, and business and investment ties, particularly in environmental and energy technology.

Mr. Nelson joined the Foreign Service in 1990. He most recently served in Washington in the Office of Global Support Services and Innovation and as a Special Assistant to the Assistant Secretary for Administration, where he developed strategies for improving the quality and

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- MISSION STATEMENT -

"We are the face of America, bringing the people of the USA and Bavaria together to build a safer and more prosperous world. With a commitment to service, innovation, building goodwill, and 'going green' we work to
• expand our strong economic partnership,
• deepen our cooperation to make Europe, America and the world more secure,
• and facilitate the millions of people-to-people connections that unite us in all fields."

efficiency of the State Department's support of overseas posts.

Mr. Nelson has served overseas as the Management Consul in Milan, Budget and Finance Attaché in Mexico City, and as a Vice Consul in Frankfurt and Santo Domingo.

He began his career in public service as a Peace Corps Volunteer teaching math and science in Liberia, West Africa from 1984-1985. Before joining the State Department, he was a finance and marketing consultant for U.S. Agency for International Development-funded projects in West Africa and Latin America.

Mr. Nelson, a resident of Texas, graduated from Rice University of Houston, Texas, in 1983 with a Bachelor of Science in Chemical Engineering. He also studied German in a Rutgers University program at the Universität Konstanz in 1982. In addition to German, he speaks Italian and Spanish. In 1988, Mr. Nelson received a Master of Business Administration degree from the University of Texas at Austin. He has received the Department of State's Superior Honor Award twice and the Meritorious Honor Award five times.
Consul General Eric Nelson received the "IDIZEM Dialogpreis 2008" in Munich in recognition of his engagement for interreligious and intercultural dialogue.

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John Demjanjuk (ID#: 4006807)

Officer Information (Edit) (b)(7)(c)

Agency Name:	Detroit EM
Officer Name:	[redacted]
Officer Profiles:	ICE EM

Participant Information (Edit)

Salutation:		
First Name:	John	Middle Initial:
Last Name:	Demjanjuk	Suffix:

Participant Attributes (Edit)

Gender:	M	Alias:	
Date of Birth:	04/03/1920	Birth Country:	Ukraine
Alien Registration Number:	[redacted] (b)(6)	Office Location:	Cleveland
Language Spoken:	ENGLISH	Participant Type:	PRE
Criminal:	No	Country of Citizenship:	

Addresses (Add | Edit Checked | Delete Checked)

Type	Name	Street Address 1	Street Address 2	City, State	Postal Code
☐ Home		[redacted]			

(b)(6)

Phone Numbers (Add | Edit Checked | Delete Checked | Move Checked Up | Move Checked Down)

Type	Name	Phone Number	Extension
☐ Home		[redacted] (b)(6)	
☐ Home			

(b)(7)(c)

(b)(7)(c)

(b)(7)(c)

(ID: 4006807) Record Detail | Create Ticket | Reporting Officer: [redacted]

Event Search

Start Date: 10/01/2008 End Date: 12/13/2008 Refresh | Print

Event Log (Filters)

Curfew	Report Date	Event			Received Date	Notes

Your date range of **10/01/2008 00:00:00** to **12/13/2008 23:59:59** returned no results.

(b)(7)(c)

(ID: 4006807) Record Detail Create Ticket Reporting Officer: [redacted]

Event Search

Start Date: 09/01/2008 End Date: 11/01/2008 Refresh Print

Event Log (Filters)

Curfew	Report Date	Event			Received Date	Notes
	07/23/2008 18:02:45	Activation Success				
	18:05:06	Activation Success				

(b)(7)(c)

John Demjanjuk(ID: 4006807)

Symbol Key

New Schedule

March 2009 < >

Call In Schedule Details

Period: 07/23/2008 - 12/31/9999
Calls: 1
Frequency: Monthly

Authorized Phone Number(s): [redacted] (b)(6)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	
8	9	10	11	12	13	
15	16	17	18	19	20	
22	23	24	25	26	27	
29	30	31				

(b)(7)(c)

United States Department of Justice
Immigration and Naturalization Service

(b)(6)

File No. A [redacted]
Date: March 16, 2009

Certificate of Identity

To facilitate transportation to Germany
of applicant whose photograph appears below.

NAME: John DEMJANJUK. AKA: Ivan Demjanjuk

DATE & PLACE OF BIRTH: April 3, 1920;Dubovye Makharintsy, Ukrain

NATIONALITY: Ukranian

Sex: Male

OCCUPATION OR PROFESSION: Retired

Marital Status: Married

PRESENT ADDRESS: [redacted] (b)(6)

PURPOSE OF JOURNEY: For travel to Germany
A national passport or any form of travel document cannot be obtained for travel to that country.

Attach Photograph

PERSONAL DESCRIPTION

Height: 6 Feet

Weight: 225 Pounds

Color of hair: White

Color of eyes: Blue

Identification marks: Scar Left Wrist

[redacted] -5000

Form I-269
(6-16-58)

For the U.S.Immigration and Naturalization Service
(b)(7)(c)

(b)(7)(c) [redacted]

U.S. Department of Justice
Immigration and Naturalization Service

Order of Supervision

File No: A [redacted] (b)(6)

Date: 08/13/08

Name: John DEMJANJUK

On 12/28/05 (Date of final order), you were ordered:

☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.

☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Service has not affected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

☒ That you appear in person at the time and place specified, upon each and every request of the Service, for deportation or removal.

☒ That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.

☒ That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.

☒ That you do not travel outside Ohio for more than 48 hours without first having notified this Service office of the dates and places of such proposed travel.

☒ That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.

☒ That you report in person on the 18th day of November 2008 to this Service office at: 1240 East 9th Street Cleveland, Ohio 44199

☒ That you assist the Immigration and Naturalization Service in obtaining any necessary travel documents.

☐ Other:

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

[redacted] (b)(7)(c)

Deportation Officer
(Print name and title of INS official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read)(had interpreted and explained to me in the _____ language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[redacted] (b)(7)(c)
(INS official serving order)

John Demjanjuk
(Signature of alien)

8-13-08
(Date)

Form I-220B(Rev.4/1/97)N

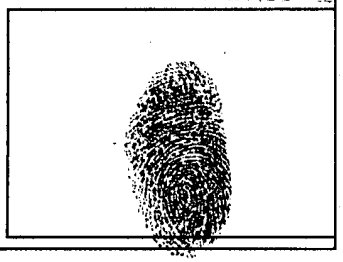
U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form: **I-220B**

Alien's Name	File Number	Date
John DEMJANJUK	A[redacted]	08/13/08

(b)(6)

RIGHT INDEX PRINT



X John Demjanjuk
Alien's Signature

Alien's Address

[redacted]

(b)(6)

Alien's Telephone Number (if any)

PERSONAL REPORT RECORD

DATE	OFFICER	COMMENT/CHANGES
3-12-09	[redacted]	- Subject placed on G.P.S. ankle Bracelet - Omni-Link.

(b)(7)(c)

[redacted]

(b)(7)(c)

Title: DO

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Order of Supervision-Addendum

File No: A [redacted]

Date: 08/13/08

Name: John DEMJANJUK (b)(6)

☒ **That you do not associate with criminals or members of a gang that is known to be involved criminal activity.**

☐ **That you register in a substance abuse program within 14 days and provide Immigration and Customs Enforcement (ICE) with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.**

☐ **That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, address of the program, duration, and objectives of the program as well as the name of a program counselor.**

☐ **That you register as a sex offender, if applicable within 7 days of being released with the appropriate agency/agencies and provide the ICE with written proof of such registration within 10 days.**

☒ **That you do not commit any crimes or be associated with any criminal activity while on this Order of Supervision.**

☒ **That you report to a parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone, and reporting requirements.**

☒ **You follow all reporting and supervision requirements as mandated by the parole or probation officer.**

☒ **That you continue to follow any prescribed doctors orders whether medical or psychological including taking prescribed medications.**

☒ **That you make good faith and timely efforts to obtain a travel document and assist ICE in obtaining a travel document**

☒ **That you submit a complete application for a travel document to all appropriate Embassies or Consulates, including those representing the countries of** Poland, Germany, Russia, Ukraine **. You must present ICE with evidence that each Embassy or Consulate to which you apply has received your request and all required documents. This may be done, for example, by mailing your application(s) with a request for return receipt and providing the signed return receipt to ICE, by obtaining a tracking number when you mail your application(s) and providing the number to ICE, or by submitting written confirmation of receipt issued by the Embassy or Consulate.**

☒ **That you submit your application(s) for a travel document to all appropriate Embassies or Consulates and provide proof of receipt to ICE on or before** _____ **.**

☒ **That you provide ICE a copy of your application(s) for a travel document that you submit to any Embassy or Consulate, including all supporting documents, photos, and other items provided to the Embassy or Consulate to support your application(s).**

☒ **That you provide ICE a copy of all correspondence related to your travel document application(s) that you send to, or receive from, an Embassy or Consulate.**

☒ **That you contact the Embassy or Consulate within 21 calendar days of making your application(s) to confirm that the information you provided is sufficient.**

☒ **That you comply with any requests from an Embassy or Consulate for an interview and make good faith efforts to submit further documentation if required by the Embassy or Consulate.**

☒ **Every time you report in person under this order of supervision, you must inform the local ICE office of all actions you have taken to obtain a travel document. You must provide any available written documentation to ICE regarding these actions and the status of your travel document application(s).**

☐ **That you provide ICE, upon request, with any and all information relevant to application(s) for a travel document. This may include, but is not limited to, information regarding your family history, including dates of birth, nationalities, addresses, and phone numbers as requested for such persons, whether in your country of nationality and/or citizenship or elsewhere, and your past residences, schools attended, etc.**

☒ **You will participate in a supervised release program, as described in the attached document. You will comply with the rules and requirements of this program, and cooperate with its administrators.**

I agree to comply with the rules, requirements, and administrators in the supervised release program described in the attached document.

Alien's signature X John Demjanjuk **Date** 8/13/08

☐ **Other:**

Any violation of any of the above conditions may result in a fine, more restrictive release conditions, return to detention, criminal prosecution, and/or revocation of your employment authorization document.

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read)(had interpreted and explained to me in the _____ language) the contents of this order and addendum, a copy of which has been given to me. I understand that failure to comply with the terms of this order and addendum may subject me to a fine, more restrictive release conditions, detention, prosecution, and/or revocation of my employment authorization document.

(b)(7)(c)

X John Demjanjuk (Signature of alien) 8/13/08 (Date)

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).

Drug Information Online
Drugs.com

Consumer Information

Procrit

Generic Name: epoetin alfa (e POE e tin AL fa)
Brand Names: *Epogen, Procrit*

What is Procrit?

Procrit is a man-made form of a protein that helps your body produce red blood cells. The amount of this protein in your body may be reduced when you have kidney failure or use certain medications. When fewer red blood cells are produced, you can develop a condition called anemia.

Procrit is used to treat anemia (a lack of red blood cells in the body).

Procrit may also be used for other purposes not listed in this medication guide.

What is the most important information I should know about Procrit?

This medicine can increase your risk of life-threatening heart or circulation problems, including heart attack or st
Procrit. Seek emergency medical help if you have symptoms of heart or circulation problems, such as chest pain shoulder, shortness of breath, slurred speech, or problems with vision or balance.
Before using Procrit, tell your doctor if you have epilepsy or a history of seizures. Procrit may cause seizures. Be you to be awake and alert.

Do not self-inject this medicine if you do not fully understand how to give the injection and properly dispose of all your doctor if you feel weak, light-headed, or short of breath, or if your skin looks pale. These may be signs that Some women using Procrit have started having menstrual periods, even after not having a period for a long time get pregnant if your periods restart. Talk with your doctor about the need for birth control.
Procrit is made from human plasma (part of the blood) and may contain viruses and other infectious agents that plasma is screened, tested, and treated to reduce the risk of it containing anything that could cause disease, the disease. Talk with your doctor about the risks and benefits of using this medication.

What should I discuss with my healthcare provider before using Procrit?

Do not use this medication if you are allergic to epoetin alfa, darbepoetin alfa (Aranesp), or if you have:

- untreated or uncontrolled high blood pressure;
- an allergy to animal products; or
- an allergy to albumin.

Before using Procrit, tell your doctor if you have:

- heart disease, congestive heart failure, or high blood pressure (hypertension);

- kidney disease (or if you are on dialysis);
- a history of stroke, heart attack, or blood clots;
- a blood cell or clotting disorder, such as sickle cell anemia or hemophilia;
- cancer; or
- epilepsy or another seizure disorder.

If you have any of the conditions listed above, you may need a dose adjustment or special tests to safely use Pr

Procrit is made from human plasma (part of the blood) and may contain viruses and other infectious agents that plasma is screened, tested, and treated to reduce the risk of it containing anything that could cause disease, the disease. Talk with your doctor about the risks and benefits of using Procrit.

FDA pregnancy category C. This medication may be harmful to an unborn baby. Tell your doctor if you are pregr treatment. It is not known whether Procrit passes into breast milk or if it could harm a nursing baby. Do not use F breast-feeding a baby. Some women using Procrit have started having menstrual periods, even after not having condition. You may be able to get pregnant if your periods restart. Talk with your doctor about the need to use bi Procrit may shorten remission time in some people with head and neck cancer who are also being treated with r in certain people with breast cancer, non-small cell lung cancer, head and neck cancer, cervical cancer, or lympl individual risk.

How should I use Procrit?

Use this medication exactly as it was prescribed for you. Do not use the medication in larger amounts, or use it f Follow the instructions on your prescription label.

Your doctor may occasionally change your dose to make sure you get the best results from Procrit.

Procrit is given as an injection under the skin or into a vein. Your doctor, nurse, or pharmacist will give you speci medicine. With your medication you will receive patient instructions.

Do not self-inject this medicine if you do not fully understand how to give the injection and properly dispose of ne the medicine.
Do not shake the medication vial (bottle). Vigorous shaking can ruin the medicine. Do not draw your Procrit dose yourself an injection. Do not use the medication if it has changed colors or has any particles in it. Call your docto

Use each disposable needle only one time. Throw away used needles in a puncture-proof container (ask your pl dispose of it). Keep this container out of the reach of children and pets.

Store Procrit in the refrigerator and do not allow it to freeze.
To be sure this medication is helping your body produce red blood cells, your blood will need to be tested on a re blood pressure during treatment. Do not miss any scheduled appointments.

What happens if I miss a dose?

Contact your doctor if you miss a dose of Procrit.

Seek emergency medical attention if you think you have used too much of this medicine.
Overdose symptoms may include headache, dizziness, itching (especially after bathing), fullness in your upper s breath, and vision problems.

What should I avoid while using Procrit?

Procrit can cause side effects that may impair your thinking or reactions. Be careful if you drive or do anything th

Procrit side effects

Contact your doctor if you feel weak, lightheaded, or short of breath, or if your skin looks pale. These may be sig Procrit.

Procrit can increase your risk of life-threatening heart or circulation problems, including heart attack or stroke. Th Seek emergency medical help if you have symptoms of heart or circulation problems, such as:

- chest pain or heavy feeling, pain spreading to the arm or shoulder, nausea, sweating, general ill feeling;
- feeling short of breath, even with mild exertion;
- sudden numbness or weakness, especially on one side of the body;
- sudden headache, confusion, problems with vision, speech, or balance; or
- pain or swelling in one or both legs.

Get emergency medical help if you have any of these signs of an allergic reaction: hives; difficulty breathing; swe using Procrit and call your doctor at once if you have any of these serious side effects:

- feeling short of breath, even with mild exertion;
- swelling of your ankles or feet;
- increased blood pressure (severe headache, blurred vision, trouble concentrating, chest pain, numbness);
- feeling light-headed, fainting; or
- seizure (black-out or convulsions).

Less serious side effects may include:

- dizziness, mild headache;
- fever, sore throat, body aches, flu symptoms;
- nausea, vomiting, diarrhea, constipation; or
- pain or tenderness where you injected the medication.

This is not a complete list of side effects and others may occur. Tell your doctor about any unusual or bothersom

What other drugs will affect Procrit?

There may be other drugs that can affect Procrit. Tell your doctor about all the prescription and over-the-counter minerals, herbal products, and drugs prescribed by other doctors. Do not start using a new medication without te

Where can I get more information?

- Your pharmacist can provide more information about Procrit.
- Remember, keep this and all other medicines out of the reach of children, never share your medicines with indication prescribed.
- Every effort has been made to ensure that the information provided by Cerner Multum, Inc. ('Multum') is acc guarantee is made to that effect. Drug information contained herein may be time sensitive. Multum informat healthcare practitioners and consumers in the United States and therefore Multum does not warrant that us appropriate, unless specifically indicated otherwise. Multum's drug information does not endorse drugs, dia Multum's drug information is an informational resource designed to assist licensed healthcare practitioners consumers viewing this service as a supplement to, and not a substitute for, the expertise, skill, knowledge The absence of a warning for a given drug or drug combination in no way should be construed to indicate th effective or appropriate for any given patient. Multum does not assume any responsibility for any aspect of h information Multum provides. The information contained herein is not intended to cover all possible uses, di interactions, allergic reactions, or adverse effects. If you have questions about the drugs you are taking, che

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U.S. Department of Justice
Immigration and Naturalization Service

Order of Release on Recognizance

(b)(6)

File No: A [redacted]
Date: December 17, 2004
Case No: VCO0512000066

Name: John DEMJANJUK

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Immigration and Naturalization Service or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☒ You must report in (writing)(person) to [redacted] (b)(7)(c) SDDO
(Name and Title of Case Officer)

at 1240 E. 9th Street, Room 535, Cleveland, Ohio 44199 (Location of INS Office) on 2nd Tuesday each month (Day of each week or month) at 10:00 AM (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the officer listed above.

☒ You must not violate any local, State, or Federal laws or ordinances.

☒ You must assist the Immigration and Naturalization Service in obtaining any necessary travel documents.

☐ Other: _____

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Immigration and Naturalization Service.

(b)(7)(c) [redacted]
(Signature of INS Official)

[redacted] GROUP SUPERVISOR
(Print Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Immigration and Naturalization Service may revoke my release without further notice.

[redacted] (Signature of INS Official Serving Order)

Refused to Sign (Signature of Alien)

12/17/04 (Date)

WITNESS: [redacted] SA
(b)(7)(c)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the condition of release.

☐ The alien was taken into custody for removal. _____ (Signature of INS Official Canceling Order) _____ (Date)

Form I-220A (Rev. 4-1-97)N

Konsulat Generalny RP
NEW YORK
JUN 24 2008

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 23, 2008

EMBASSY OF POLAND

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE which is a Corrected Copy from the Prior Request dated 6/18/08.

Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 as an immigrant.

Mr. DEMJANJUK was afforded a hearing before an Immigration Judge to answer the charges on the attached Notice to Appear. As a result of this hearing, Mr. DEMJANJUK was ordered deported from the United States as documented by the attached Order. Mr. DEMJANJUK then appealed this decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal.

Mr. DEMJANJUK will be scheduled to depart the United States upon receipt of a travel document.

If you require further information, please contact Officer [redacted] at [redacted] or email [redacted]

(b)(7)(c)

Sincerely,

[redacted]

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Biometric Information

08:05 TECS II EXTERNAL MESSAGE DISPLAY 03172009 T2MD0611
T2MD0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 01 **********

FROM NCIC ON 03/17/09 AT 08:04:28
7L01CQUQTL119700197
OHUSC5069
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/DEMJANJUK,JOHN SEX/M RAC/U DOB/19200403 PUR/C

NAME	FBI NO.	INQUIRY DATE
DEMJANJUK,JOHN	[redacted]	2009/03/17

(b)(6)

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	W	1920/04/03	602	230	BLU	BLN	N

BIRTH PLACE
UKRAINE

FINGERPRINT CLASS PATTERN CLASS
MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)
FIRST PAGE OF MESSAGE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

08:05 TECS II EXTERNAL MESSAGE DISPLAY 03172009 T2MD0611
T2MD0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 02 **********
WU UC WU UC LS WU WU WU WU WU
LS LS WU LS LS LS LS

ALIAS NAMES
DEMJANJUK,IWAN

SOCIAL SECURITY MISC NUMBERS
[redacted] AR-[redacted] (b)(6)
AR-

IDENTIFICATION DATA UPDATED 2005/10/06

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:
MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)
USE PF KEYS TO CONTINUE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

08:05 TECS II EXTERNAL MESSAGE DISPLAY 03172009 T2MD0611
[illegible]D0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 03 **********

FBI - FBI/[redacted] (b)(6)

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)

END OF THIS MESSAGE

(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

08:06 TECS II EXTERNAL MESSAGE DISPLAY 03172009 T2MD0611
T2MD0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 01 **********

FROM NCIC ON 03/17/09 AT 08:06:14
FL01CQUQTL120700207
OHUSC5069
THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/[redacted] THE FOLLOWING WILL RESPOND TO YOUR
AGENCY:
FBI - FBI,[redacted]
END

(b)(6)

MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)
END OF THIS MESSAGE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

08:06 TECS II EXTERNAL MESSAGE DISPLAY 03172009 T2MD0611
T2MD0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 01 **********
FROM NLETS ON 03/17/09 AT 08:06:16

CR.WVFBINF00
05:06 03/17/2009 45526
05:06 03/17/2009 01562 OHUSC5069
*CQUQTL1207
TXT

(b)(7)(c)

HDR/2L01CQUQTL120700207
ATN [redacted]
********** CRIMINAL HISTORY RECORD **********
Data As Of 2009-03-17
********** Introduction **********
This rap sheet was produced in response to the following request:
FBI Number [redacted] (b)(6)
MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)

USE PF KEYS TO CONTINUE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

08:06 TECS II EXTERNAL MESSAGE DISPLAY 03172009 T2MD0611
T2MD0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 02 **********

Request Id CQUQTL1207
Purpose Code C
Attention [redacted] (b)(7)(c)

The information in this rap sheet is subject to the following caveats:
This record is based only on the FBI number in your request-[redacted] (b)(6)
Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. (US; 2009-03-17)
All arrest entries contained in this FBI record are based on fingerprint comparisons and pertain to the same individual. (US; 2009-03-17)
The use of this record is regulated by law. It is provided for official use only and may be used only for the purpose requested. (US; 2009-03-17)

********** IDENTIFICATION **********

Subject Name(s)

MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)

USE PF KEYS TO CONTINUE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

08:06 TECS II EXTERNAL MESSAGE DISPLAY 03172009 D0611
D0634

QUEUE TYPE: PERSONAL QUEUE NAME: QTL1
MSG STATUS: NACK

********** TEXT OF MESSAGE ********** PAGE 03 **********

DEMJANJUK, JOHN
DEMJANJUK, IWAN (AKA)
Subject Description

FBI Number	State Id Number
[redacted] (b)(6)	Unknown (XX)

Social Security Number
[redacted]

Miscellaneous Numbers

0[redacted]	Alien Registration	Unknown
A[redacted]	Alien Registration	Unknown

Sex	Race	
Male	White	
Height	Weight	Date of Birth
6'02"	230	1920-04-03

MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
PF16(NEXT MSG). PF19(MSG LOG) PF18=(REROUTE)

USE PF KEYS TO CONTINUE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)

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     08:06       TECS II EXTERNAL MESSAGE DISPLAY          03172009  T2MD0611
                                                                      PD0634

 QUEUE TYPE:   PERSONAL            QUEUE NAME:  QTL1
                                   MSG STATUS:   NACK
 ******************** TEXT OF MESSAGE ***************  PAGE 04 ***************
Hair Color              Eye Color               Fingerprint Pattern
Blonde Or Strawberry    Blue                    WU UC WU UC LS WU WU WU WU WU (
Other)
Place of Birth          Citizenship
UK                      UK
Fingerprint Images
************************** CRIMINAL HISTORY **************************
============================== Cycle 001 ==============================
Earliest Event Date     2004-12-20
-----------------------------------------------------------------------
Arrest Date             2004-12-20
Arrest Case Number      122020041100
Arresting Agency        OHINSCV00 USINS CLEVELAND
Charge                  01
        Charge Literal  8 USC 1227 - DEPORTATION PROCESSING
MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
                              PF16(NEXT MSG). PF19(MSG LOG)  PF18=(REROUTE)
USE PF KEYS TO CONTINUE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)
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     08:06        TECS II EXTERNAL MESSAGE DISPLAY          03172009  T2MD0611
                                                                       D0634
 QUEUE TYPE:   PERSONAL          QUEUE NAME:  QTL1
                                 MSG STATUS:   NACK
 ******************** TEXT OF MESSAGE ****************  PAGE 05 ***************
              Severity  Unknown
************************  INDEX OF AGENCIES  *************************
Agency                  FBI-CJIS DIV-CLRKSBG CLARKSBURG; WVFBINF00;
Address
                         1000 CUSTER HOLLOW RD
                        CLARKSBURG, WV 26306
-----------------------------------------------------------------------
Agency                  USINS CLEVELAND; OHINSCV00;
Address
                        RM 581-D 1240 E NINTH STREET
                        CLEVELAND, OH 441992002
* * * END OF RECORD * * *


MESSAGE IS DISPLAYED. DEPRESS PF5(MSG INDEX) PF9(PREV SCRN) PF14(ACKD MSG)
                              PF16(NEXT MSG). PF19(MSG LOG)  PF18=(REROUTE)
END OF THIS MESSAGE
(PF1=HELP)(PF3=MAIN MENU)(PF4=PREV MENU)(PF7=PREV PAGE)(PF8=NEXT PAGE)
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U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 18, 2008

5319

EMBASSY OF POLAND

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE.

Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 without inspection.

Mr. DEMJANJUK was afforded a hearing before an Immigration Judge to answer the charges on the attached Notice to Appear. As a result of this hearing, Mr. DEMJANJUK was ordered deported from the United States as documented by the attached Order. Mr. DEMJANJUK then appealed this decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal.

Mr. DEMJANJUK will be scheduled to departed the United States upon receipt of a travel document. Since he is being detained at Bureau expense, a prompt response would be appreciated.

If you require further information, please contact Officer [redacted] at [redacted] or email [redacted]

(b)(7)(c)

Sincerely,

[redacted]

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Other
(5) Biometric Information

U.S Department of Justice

Immigration and Naturalization Service

Warrant of Removal/Deportation

(b)(6) File No: A [redacted]

Date: June 18, 2008

To any officer of the United States Immigration and Naturalization Service:

John Dejanjuk
(Full name of alien)

who entered the United States at New York, NY (Place of entry) on or about February 9, 1952 (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

237(a)(4)(D) and 237(a)(1)(A) of the Immigration and Nationality Act.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of: *appropriation "Salaries and Expenses, Immigration and Naturalization Service, 2008, including the expenses of an attendant if necessary.*

PLEASE RETURN TO:
DETENTION & REMOVALS
1240 EAST 9TH STREET, SUITE 535
CLEVELAND, OH 44199

[redacted] (b)(7)(c)
(Signature of INS official)

Field Office Director
(Title of INS official)

June 18, 2008 Cleveland, OH
(Date and office location)

Form I-205 (Rev 4-1-97)N

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : 117391

File No: A [redacted] (b)(6)

Event No: XCL0512000066

In the Matter of:

John DEMJANJUK

Respondent: _____ currently residing at:

[redacted] (b)(6)

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. SEE I-862

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

SEE I-862

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

U.S. Courthouse Suite 13-100 801 West Superior Avenue Cleveland OHIO US 44113182

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set *(Date)* at a time to be set *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

_____

(Signature and Title of Issuing Officer)

Date: _____ _____

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this preceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

Date: _____

_____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☐ in person ☐ by certified mail, returned receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(b)(7)(c) [redacted] SPECIAL AGENT

(Signature of Respondent if Personally Served) (Signature and Title of officer)

(b)(6)

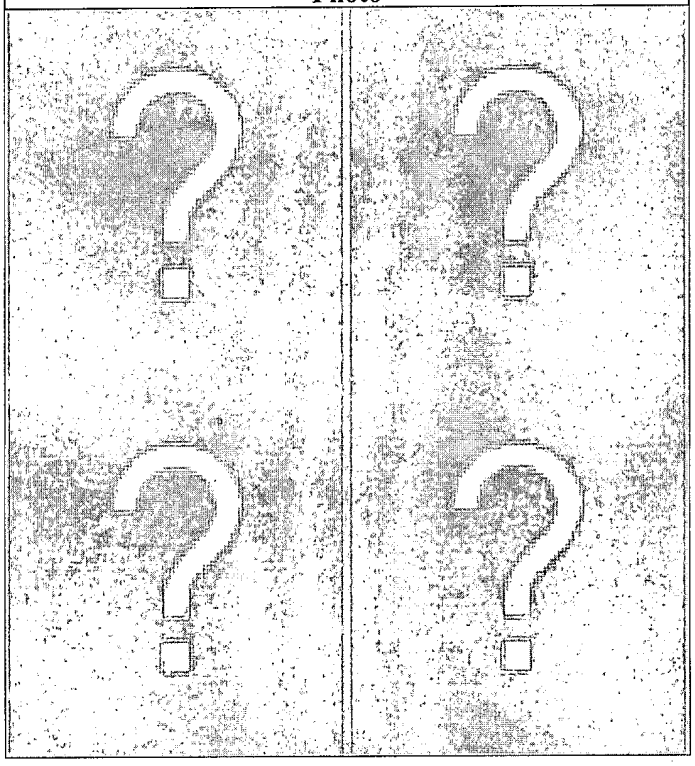
DATE PREPARED	INFORMATION FOR TRAVEL DOCUMENT OR PASSPORT	FILE
06/11/08		A [redacted]

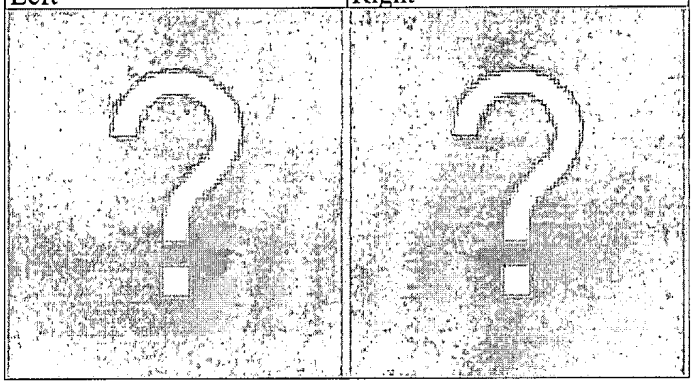
1. NAME: John DEMJANJUK
2. SEX: M
3. OTHER NAMES USED OR KNOWN BY: Iwan DEMJANJUK
4. CITIZENSHIP: Ukraine
5. DATE OF BIRTH: 04/03/1920
6. PLACE OF BIRTH: Dubovye Makharintsy, Vynnitsky Oblast, Ukrainian S.S.R., Soviet Union
7. HEIGHT: 6'1 | WEIGHT: 230 | EYES: BLU | HAIR: Gray | COMPLEXION: Light | MARKS OR SCARS:
8. NEAREST LARGE CITY TO PLACE OF BIRTH: KIEW
9. DISTANCE AND DIRECTION OF PLACE OF BIRTH FROM THIS LARGE CITY:
10. IF CITIZENSHIP IS DIFFERENT FROM COUNTRY OF BIRTH, EXPLAIN. IF NATURALIZED IN ANY COUNTRY, SHOW DATE AND PLACE OF NATURALIZATION, CERTIFICATE NUMBER, AND STATE HOW CITIZENSHIP WAS ACQUIRED.
Naturalized U.S. Citizen, U.S. citizenship revoked 5/29/01
11. NAMES; LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN SCHOOLS:
12. NAMES, EXACT LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN CHURCHES. INCLUDE DATE AND NATURE OF ANY RELIGIOUS CEREMONY WHICH MAY HAVE BEEN RECORDED.
Ukrainian Orthodox Church of USA, 50 + years
Parma, Ohio, USA
13. LAST PERMANENT RESIDENCE IN COUNTRY OF CITIZENSHIP *(Show dates of residence)*
Unknown
14. ADDRESS IN COUNTRY OF LAST FOREIGN RESIDENCE *(Show dates of residence, and Immigration status there)*
Regensburg, Germany Displaced Persons Camp, refugee
15. PLACE OF ENTRY INTO UNITED STATES: New York, NY
DATE OF ENTRY INTO UNITED STATES: 02/09/1952
16. LIST DATE AND PLACE OF ISSUANCE AND NUMBER OF PASSPORT, BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR DOCUMENT OF IDENTITY. SPECIFY DATES OF MILITARY SERVICE, COUNTRY AND UNIT, RANK, SERIAL NUMBER, AND PLACES OF INDUCTION AND DISCHARGE.
No passport, no birth certificate. Conscripted into Soviet Red Army 1940, captured as prisoner of war in 1942, did not return to the Soviet Union.
17. IN POSSESSION OF TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY? ☒ YES ☐ NO. DESCRIBE DOCUMENT (S). IF SUBJECT DID NOT HAVE TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY, OR DOES NOT HAVE SUCH A DOCUMENT NOW, INDICATE WHETHER EVER OBTAINED ONE: ☐ YES ☐ NO. STATE HOW, WHEN, AND WHERE IT WAS OBTAINED: WHAT KIND OF DOCUMENT IT WAS, AND WHAT BECAME OF IT.
Immigrant visa to USA issued in 1952.
18. FATHER'S NAME: Mikola DEMJANJUK | DATE OF BIRTH: | PLACE OF BIRTH:
PRESENT ADDRESS: Deceased
19. MOTHER'S MAIDEN NAME: Tabachuk | DATE OF BIRTH: | PLACE OF BIRTH:
PRESENT ADDRESS: Deceased
20. NAME, RELATIONSHIP, AND ADDRESSES OF RELATIVES ABROAD
Unknown
21. PREVIOUSLY ☐ EXCLUDED ☐ DEPORTED ☐ REQUIRED TO DEPART FROM THE UNITED STATES
ON _____ *(Date)* VIA _____ *(Port)* TO _____ *(Country)*
22. INDICATE WHETHER EVER ARRESTED, IN PRISON OR A PUBLIC INSTITUTION IN THE COUNTRY OF WHICH A NATIONAL, SUBJECT OR CITIZEN: ☒ YES ☐ NO, IF SO, GIVE DATES AND PLACES
Arrested in 1985 in the United States pending extradition to Israel.
23. NAME, NATIONALITY AND PRESENT ADDRESS OF SPOUSE, AND DATE AND PLACE OF MARRIAGE
Vera DEMJANJUK [redacted] married 1948 at Regensburg, Germany
24. NAMES, AGES AND ADDRESSES OF ALL CHILDREN
Three children, Lydia, Irene and John, all adult age and living in the USA (b)(6)
25. IF NONCANADIAN DEPORTABLE TO CANADA, GIVE DATE AND PORT OF ARRIVAL IN CANADA, AND NAME OF VESSEL
N/A

Form I-217 (Rev. 3-30-77)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

Biometric Information

Name: JOHN DEMJANJUK
Alien Number: [redacted] (b)(6)

Photo


Fingerprints	
Left	Right
	

DECISION AND ORDER OF THE CHIEF IMMIGRATION JUDGE

I. STATEMENT OF THE CASE

The respondent is an eighty-five year old former citizen of the United States and national of the Ukraine. He was born on April 3, 1920, at Dubovye Makharintsy, Ukraine. He was first admitted to the United States at New York, New York, on or about February 9, 1952, on an immigrant visa issued under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch.647, 62 Stat. 1009 (*amended* June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219).[1] He became a naturalized citizen of the United States in 1958. *See* Exhibit 5.

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. Exhibit 5B. The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. Exhibit 5E.[2] While that appeal was pending, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b) in the district court on February 12, 2003. *U.S. v. Demjanjuk*, 128 Fed. App. 496, 2005 WL 910738 (6th Cir. 2005) (unpublished decision). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *See id.*

The Office of Special Investigations, U.S. Department of Justice, (*hereinafter*, the government) commenced these removal proceedings against the respondent by filing a Notice to Appear (NTA), dated December 17, 2004, with this Court. Exhibit 1.

On February 25, 2005, the government filed a motion for the application of collateral estoppel and judgment as a matter of law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA had been litigated and decided during the respondent's denaturalization proceedings and that, with the exception of allegation #22, the respondent should be precluded from relitigating those issues in these removal proceedings. *See* Exhibit 5.

On February 28, 2005, the Court conducted a Master Calendar hearing in this matter. The Court issued an Order, instructing the respondent to file written pleadings and opposition to the government's motion for collateral estoppel and judgment as a matter of law by May 31, 2005. In addition, the respondent was requested to submit any applications for relief by June 30, 2005.

On May 31, 2005, the respondent filed his written pleadings to the allegations of fact and

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[1] The DPA was enacted to assist in alleviating the problem of World War II refugees. The DPA permitted the admission into the United States of over 400,000 displaced persons by 1951.

[2] The United States Court of Appeals for the Sixth Circuit discussed the six decisions issued in matters related to Respondent's citizenship prior to the denaturalization proceedings. *Id.* at 627.

charges of removability, as set forth in the NTA, and his opposition to the government's motion for application of collateral estoppel and judgment as a matter of law, and moved the Court to terminate the proceedings. Exhibit 14. The respondent denied all four charges of removability, and argued that the government's motion should be denied because he did not have "a full and fair opportunity to litigate substantive issues that go to the heart of these removal proceedings." *See id.*

On June 10, 2005, the Government filed its reply brief in support of its motion for the application of collateral estoppel and judgment as a matter of law.

On June 16, 2005, the Court issued an Order granting the government's motion for application of collateral estoppel and judgment as a matter of law and denying the respondent's motion to terminate proceedings, which is incorporated into this decision by reference. Exhibit 20. The Court sustained all four charges contained in the NTA, and found the respondent removable from the United States. *See id.* [redacted]

On June 23, 2005, the Court issued an Interim Order, canceling the June 30, 2005 hearing and granting the respondent until July 20, 2005 to comply with the Department of Homeland Security's (*hereinafter*, DHS) biometrics requirements. In addition, the Court granted the respondent until September 7, 2005 to submit any applications for relief, and required that the parties file a joint pre-hearing statement by September 21, 2005. *See* Exhibit 23. On July 5, 2005, the Court amended its June 23, 2005 order and granted the parties until October 5, 2005 to submit the joint pre-hearing statement and designated the Ukraine, or in the alternative Germany or Poland, as the country of removal. *See* Exhibit 28.

On September 7, 2005, the respondent submitted his application for deferral of removal and proof of compliance with instructions for providing biometrics. Exhibit 31.

On September 14, 2005, the Court conducted a status conference with the parties. The Court admitted Exhibits 1 - 32. The Court reaffirmed that the parties must submit the joint pre-hearing statement on or before October 5, 2005.

On October 4, 2005, the Court issued an Order granting the respondent's September 29, 2005 motion for an enlargement of time to file the joint pre-hearing statement and ordered the parties to file the joint pre-hearing statement on or before October 12, 2005. *See* Exhibit 34.

On October 12, 2005, the parties jointly filed a statement of stipulated facts not at issue and each party submitted an individual pre-hearing statement. *See* Exhibits 35 - 37ZZ. The respondent submitted nineteen exhibits in support of his pre-hearing statement. *See* Exhibits 36A - 36X. The government submitted fifty-two exhibits in support of its pre-hearing statement. *See* Exhibits 37A - 37ZZ.

On October 18, 2005, the Court issued an Order requiring each party to submit a supplemental memorandum addressing the exhibits submitted on October 12, 2005. *See* Exhibit 38. [redacted]

[redacted] The Court advised that failure to comply with this order with respect to any exhibit would result in that exhibit not being considered. *Id.*

[redacted]

On November 1, 2005, both parties submitted their supplemental memoranda addressing the exhibits submitted on October 12, 2005. Exhibits 40 and 41.

[redacted]

On November 29, 2005, the Court conducted a merits hearing. The respondent, through his attorney, appeared before the Immigration Court in Cleveland, Ohio. [redacted]

Neither the respondent nor the government called any witnesses in this case. However, each side submitted a brief closing argument and the Court took the matter under advisement.

II. STATEMENT OF THE FACTS

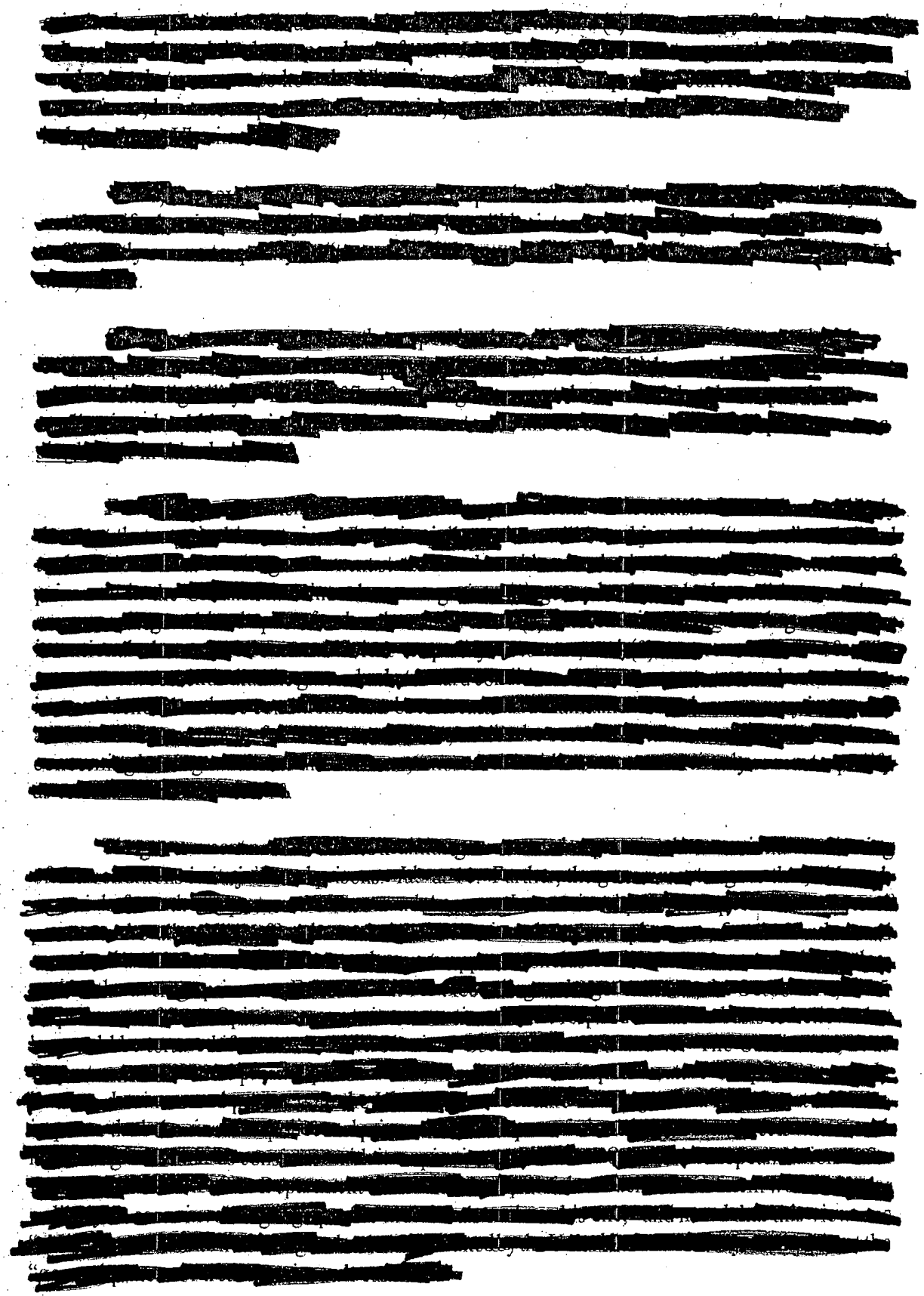
A. [redacted]

Although the respondent was given an opportunity to present testimony at the merits hearing on November 29, 2005, he presented no testimony but relied on his written application and supporting documents. [redacted]

[redacted]

B. [redacted]

[redacted]



[redacted]

C. **Stipulated Facts Not At Issue**

In conjunction with their submission of pre-trial statements, the parties stipulated to numerous facts not at issue. *See* Exhibit 35.

[redacted]

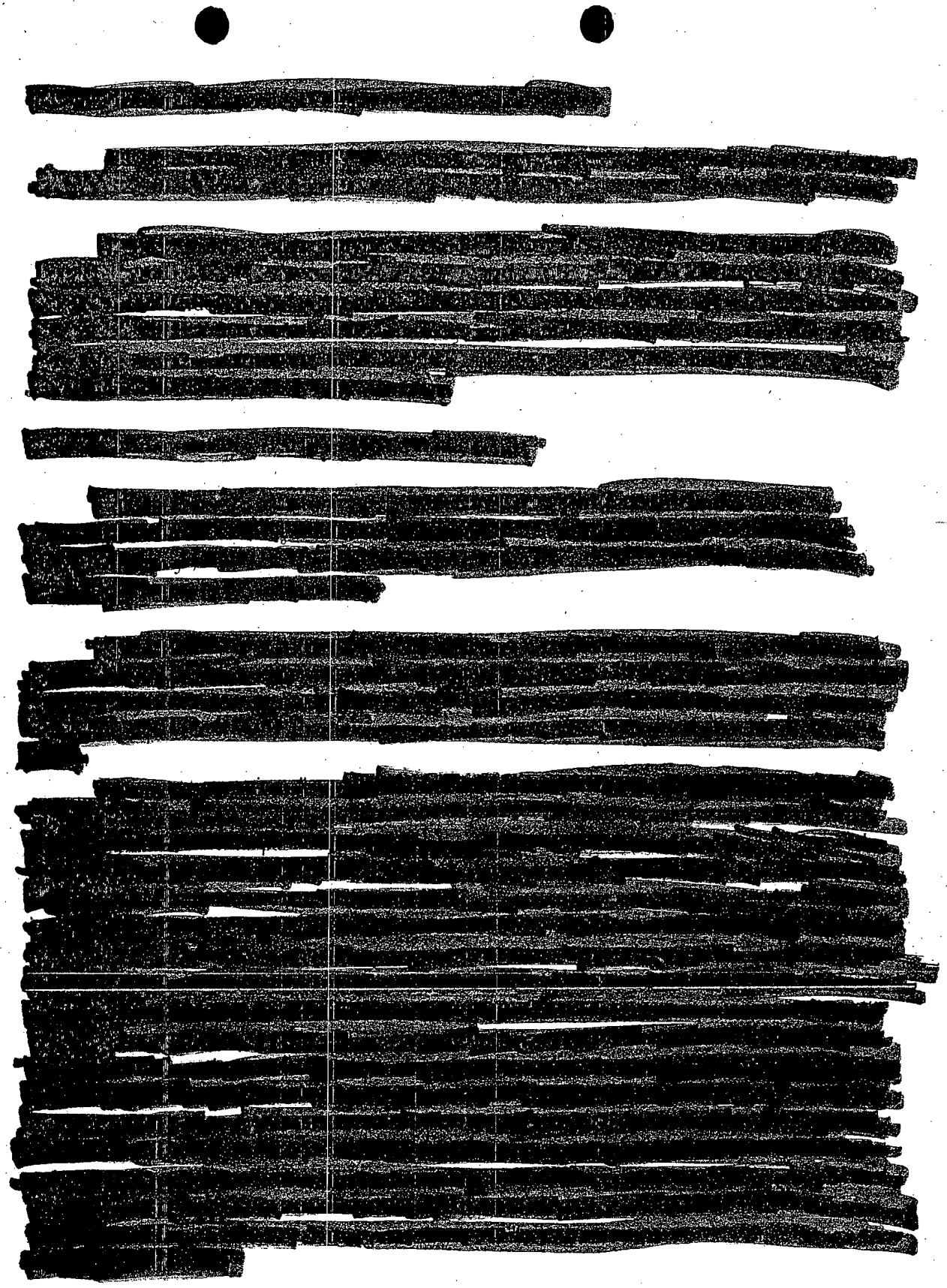
[redacted]

Finally, the parties stipulated to specific facts regarding the respondent's case. The parties agreed that, since the respondent's conviction by the Supreme Court of Israel was overturned, the United States government has not asserted that the respondent is Ivan the Terrible of Treblinka and no allegation of such facts were made during the denaturalization proceedings instituted in 1999. *Id.* at 8.

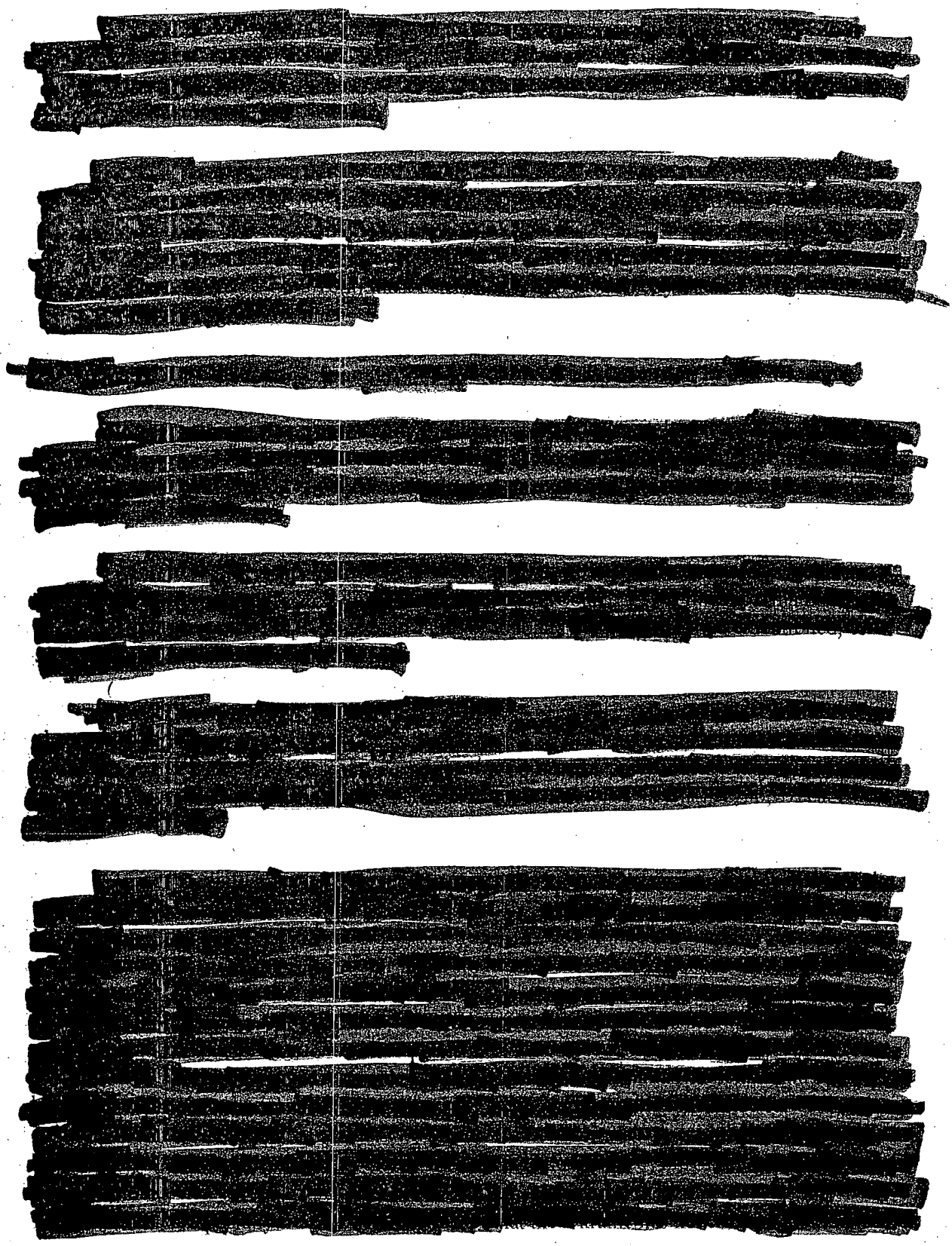
[redacted]

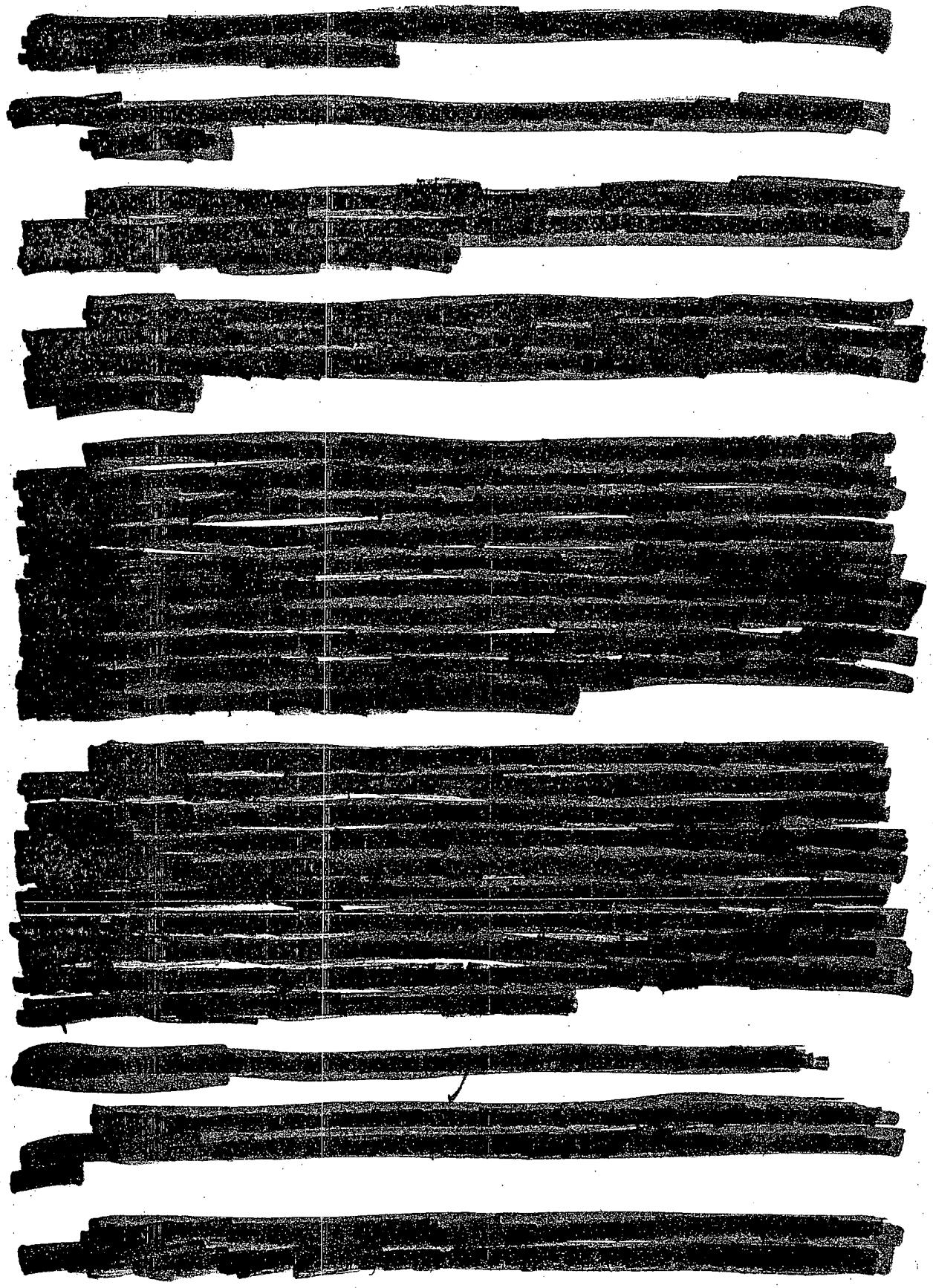
Finally, the parties agreed that the denaturalization proceedings that ended in 2002 and these removal proceedings are high profile cases, and that, if the respondent is removed to the Ukraine, his case may well be a high profile matter for the Ukrainian government and attract considerable public interest. *Id.* 8-9; *see also* Exhibit 36.

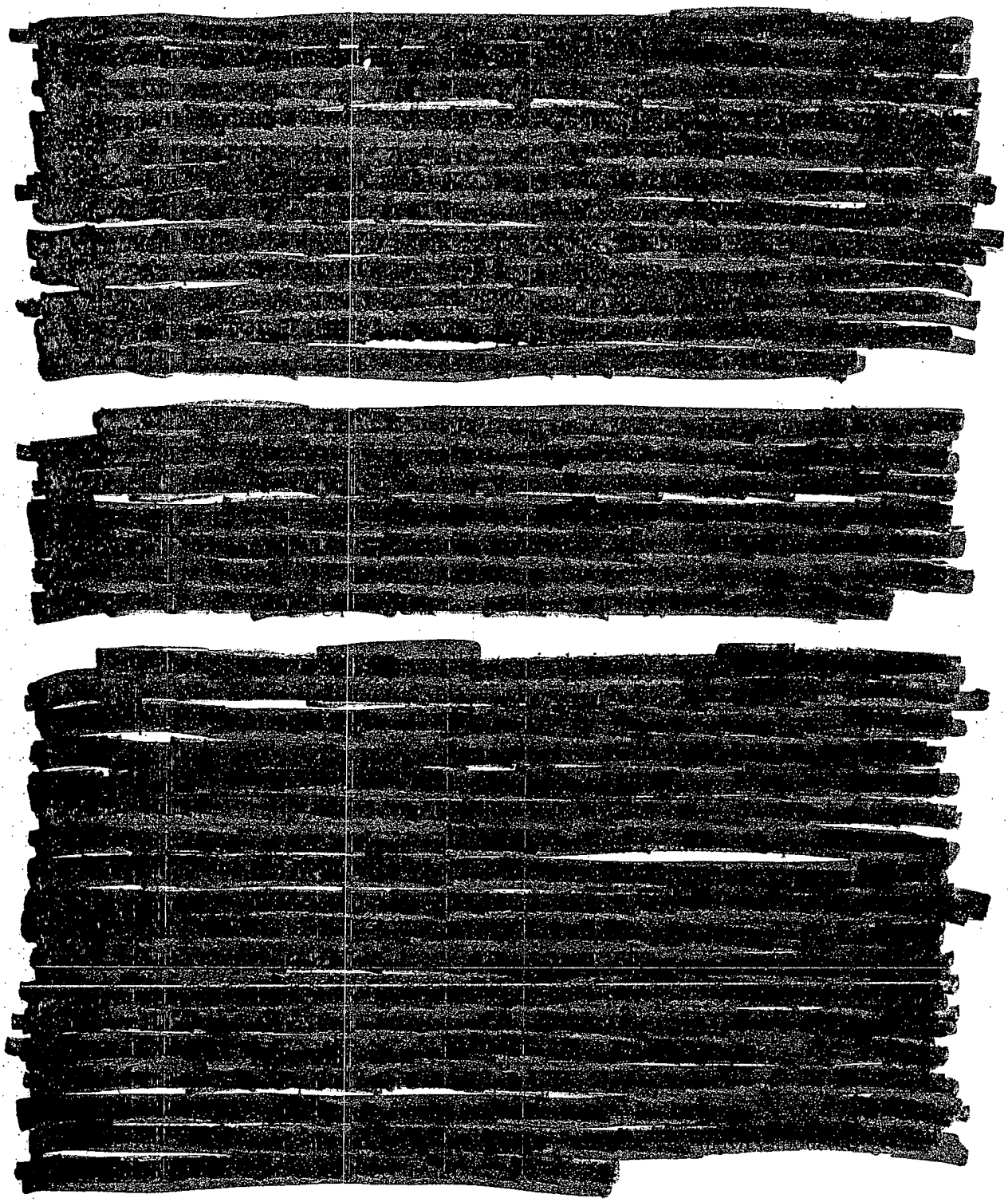
[redacted]



IV. APPLICATION OF THE LAW TO THE FACTS







V. DECISION AND ORDER

[redacted]

ORDER

[redacted]

IT IS FURTHER ORDERED that the respondent be removed from the United States to the Ukraine, or in the alternative to Germany or Poland, on the charges contained in the Notice to Appear.

MICHAEL J. CREPPY
CHIEF IMMIGRATION JUDGE

DATE: 12/28/05

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

(b)(6)

File: A [redacted] Cleveland Date: DEC 21 2006

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

[redacted]

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec.").

[redacted]

[redacted] On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. [redacted]

[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

[redacted] The Chief Immigration Judge ordered the respondent removed to Ukraine. with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

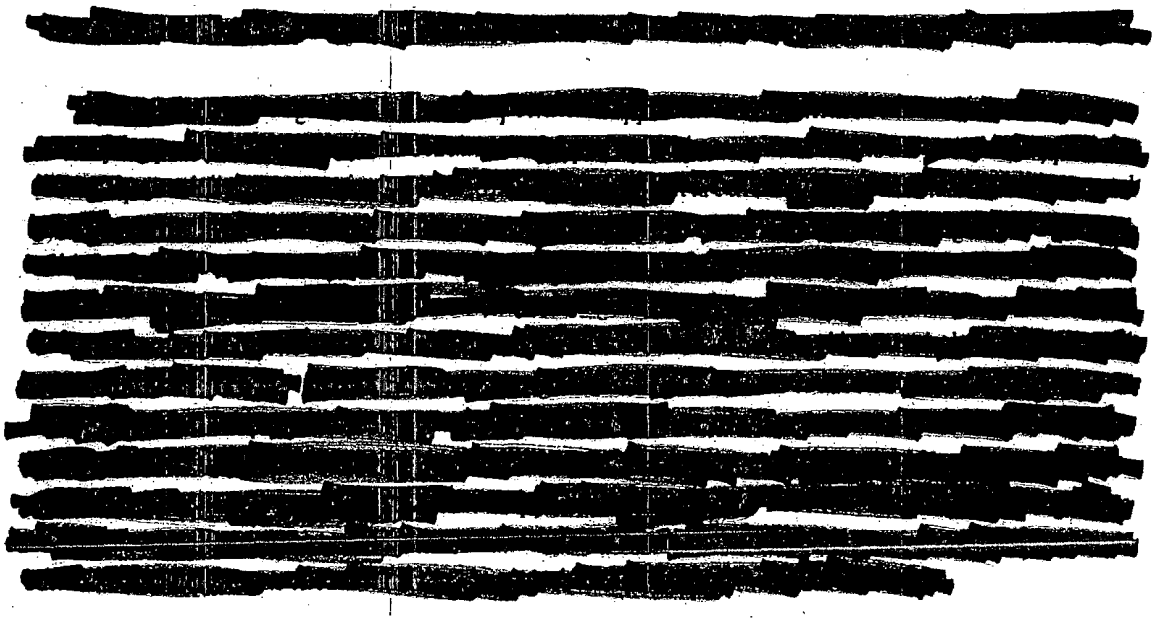
B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.



III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

relevant to the removability issue had been established by collateral estoppel [redacted] Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(l), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd, Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himelf to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal.' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hammer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as '"issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived...."' *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112; NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

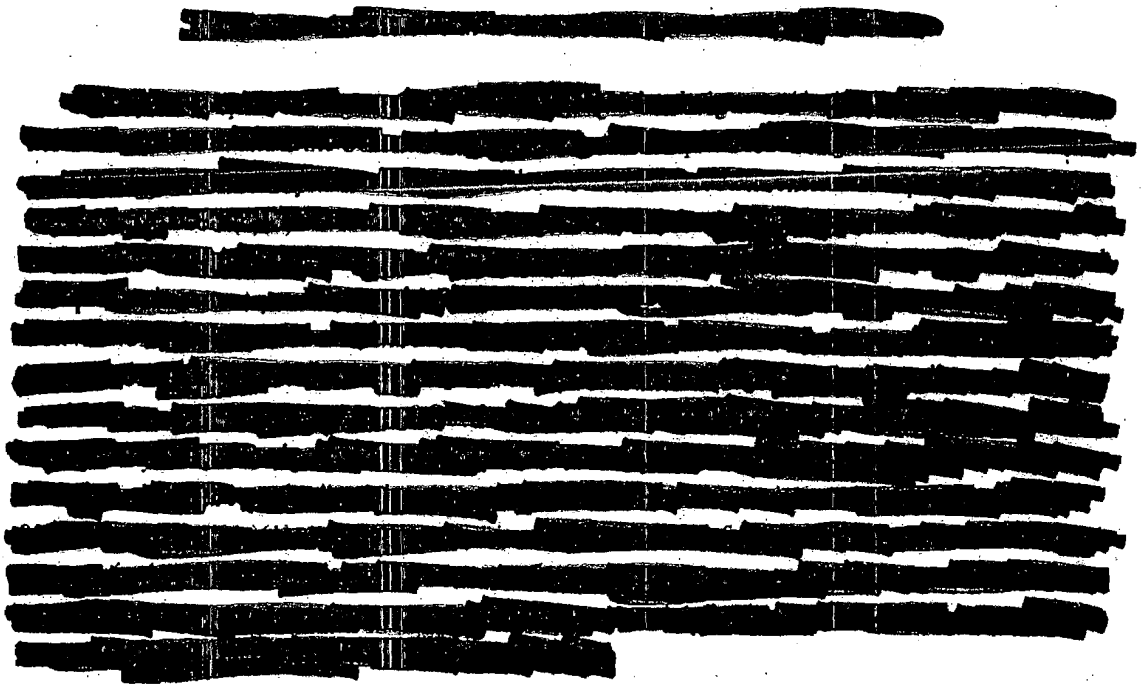
While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

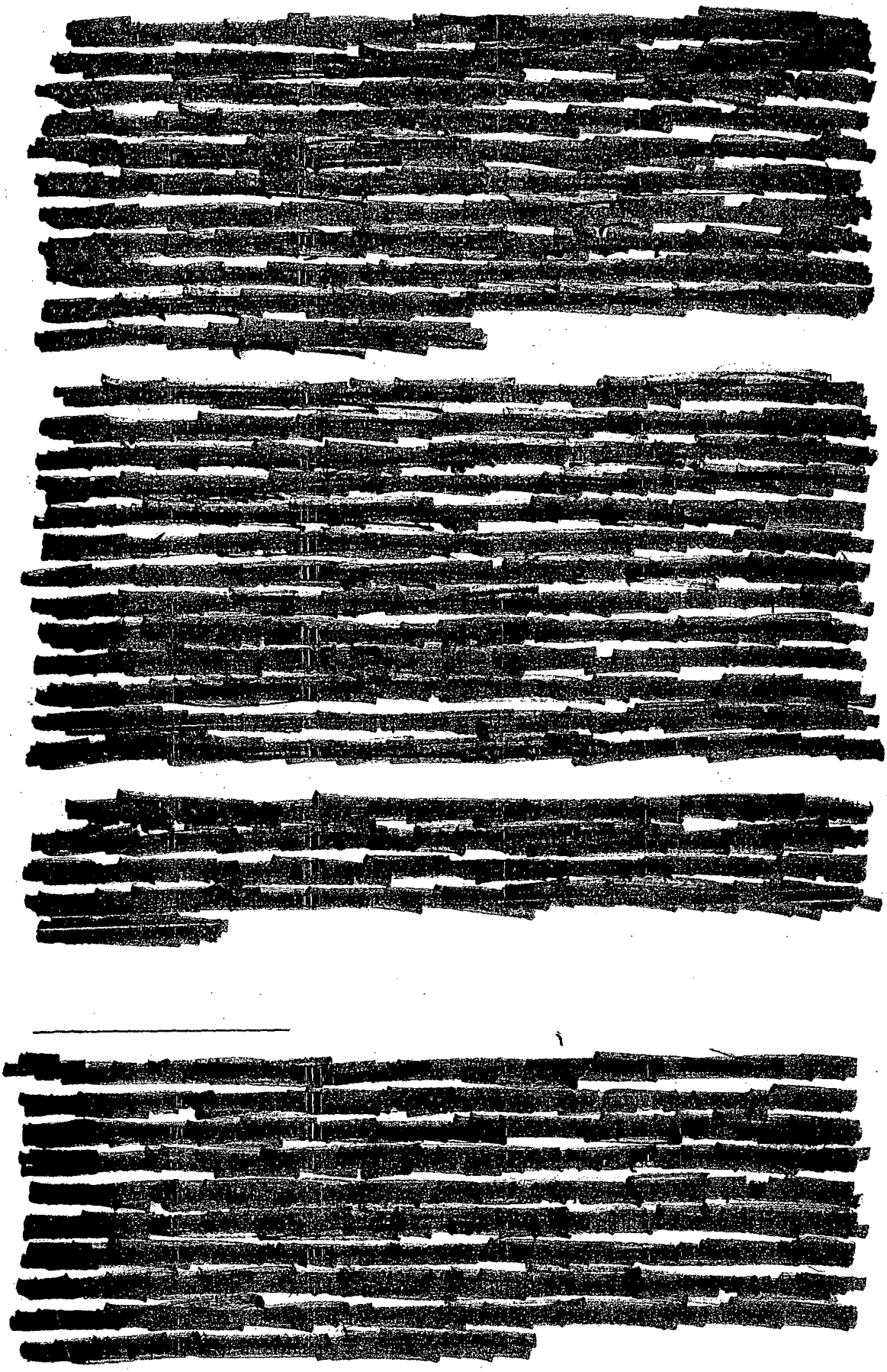
appeals." 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko, supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.



(b)(6)



[redacted]

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i) [redacted]

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

If you view the Full Docket you will be charged for 2 Pages $0.16

General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 07-3022
Demjanjuk v. Mukasey
Appeal From: Board of Immigration Appeals

Docketed: 01/08/2007
Termed: 01/30/2008

Case Type Information:
1) Agency
2) Review
3) Immigration

Originating Court Information:
District: BIA-1 : A08 237 417
Date Filed:

10/15/2007		Oral argument notice filed by Attorney Robert Thomson for Respondent Alberto Gonzales.
10/19/2007		Oral argument notice filed by Attorney Mr. John H. Broadley for Petitioner John Demjanjuk.
11/26/2007		ADDITIONAL CITATION filed by Robert Thomson for Michael B. Mukasey. Certificate of Service:11/21/2007.
11/29/2007		CAUSE ARGUED by Mr. John H. Broadley for Petitioner John Demjanjuk and Robert Thomson for Respondent Michael B. Mukasey before Judges Rogers; Sutton; Bertelsman.
01/30/2008		OPINION filed: Petition for Review is DENIED; decision for publication pursuant to local rule 206. John M. Rogers (AUTHORING), Jeffrey S. Sutton, Circuit Judges; William O. Bertelsman, U.S. District Judge for the ED of KY.
01/30/2008		JUDGMENT: Petition for Review is DENIED.
03/24/2008		MANDATE ISSUED with no cost taxed.
03/25/2008		ADMINISTRATIVE RECORD RETURNED to originating court at the end of appellate proceedings. Volumes include: 6 Pl.
04/24/2008		U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Petitioner John Demjanjuk. Supreme Court Filed Date: 04/21/2008, Supreme Court Case Number: 07-10487.
05/21/2008		U.S. Supreme Court letter filed denying petition certiorari petition [3764851-2] filed by John Demjanjuk. Supreme Court Action 1 Disposition Date: 05/19/2008, Supreme Court Case Number: 07-10487.

(ORDER LIST: 553 U.S.)

MONDAY, MAY 19, 2008

CERTIORARI -- SUMMARY DISPOSITIONS

07-6054 GAMBA, JUSTIN M. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Gonzalez* v. *United States*, 553 U.S. ___ (2008). Justice Stevens, Justice Scalia, and Justice Alito would deny the petition for a writ of certiorari.

07-10259 TOWNSEND, MARQUIS V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Gall* v. *United States*, 552 U.S. ___ (2007), and *Kimbrough* v. *United States*, 552 U.S. ___ (2007).

ORDERS IN PENDING CASES

07M68 KINDER CANAL CO., ET AL. V. JOHANNS, SEC. OF AGRIC.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

07-8950 THOMPSON, EDDIE L. V. DAVIS, WARDEN

07-9179 STRINGER, CHARLES L. V. AM. BANKER INS. CO. OF FL

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

07-9195 MURRAY, VINCENT P. V. SOUTER, JUSTICE, USSC, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied. Justice Souter took no part in the consideration or decision of this motion.

07-9808 HEGHMANN, ROBERT A., ET UX. V. RYE, NH, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until June 9, 2008, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

07-639 DONG, ZHEN H. V. DEPT. OF JUSTICE, ET AL.

07-937 CITY NAT'L BANK OF WV V. DEPT. OF AG., FARM SVC. AGENCY

07-1029 FORBES, WALTER A. V. UNITED STATES

07-1089 SMITH, HERMAN V. BARROW, KAREN J.

07-1164 SMITH, MICHELLE D. V. BROWN, HOMER, ET AL.

07-1168 JOHNSON, KENNETH W. V. GADSON, JESSE, ET AL.

07-1170 R AND J MURRAY, LLC V. MURRAY COUNTY, GA, ET AL.

07-1173 JOU, EMERSON M. F. V. ARGONAUT INSURANCE CO., ET AL.

07-1191 RIVERA, JUAN B. V. SNOW, MARY L., ET VIR

07-1208 SLAGTER, JOHN V. STONECRAFT, LLC

07-1218 HEIM, ARTHUR L. V. ASTRUE, COMM'R, SOCIAL SEC.

07-1219 KARPOVA, JUDITH V. PAULSON, SEC. OF TREASURY, ET AL.

07-1230 R.M. INVESTMENT CO. V. UNITED STATES FOREST SERVICE

07-1267 McLEAR, ROBERT L. V. WV STATE TAX COMMISSIONER

07-1269 ADVANTAGE MEDIA, LLC V. HOPKINS, MN

07-1271 NOWAK, JEROME J. V. TRANSP. JOINT AGREEMENT

07-1297	POLL, BRENT G. V. PAULSON, SEC. OF TREASURY
07-1313	CRAWFORD, GRETA V. DEPT. OF HOMELAND SEC.
07-1323	ALLAN, PATRICK V. UNITED STATES
07-8037	TRAN, QUANG T. V. MISSISSIPPI
07-8538	ANDERSON, ANGEL M. V. VIRGINIA
07-8561	ALBERT, BARRY V. JOHNSON, DIR., VA DOC
07-8752	THEER, MICHELLE C. V. NORTH CAROLINA
07-8797	PEGUERO-CRUZ, RAMON V. MUKASEY, ATT'Y GEN.
07-8798	MUTTART, DENNIS D. V. OHIO
07-8814	FONTES, ANTONIO D. V. MUKASEY, ATT'Y GEN.
07-8819	AWAD, RADFAN V. MUKASEY, ATT'Y GEN.
07-8942	RIGMAIDEN, CORY V. UNITED STATES
07-9037	MOORE, EUGENE H. V. TERRELL, WARDEN
07-9069	BERNARD, PAUL A. V. MICHIGAN
07-9093	COLE, BENJAMIN R. V. OKLAHOMA
07-9314	TYLER, ARTHUR V. DANN, ATT'Y GEN. OF OH, ET AL.
07-9355	IBARRA, RAMIRO R. V. TEXAS
07-9372	CULVERSON, SHAROL J. V. DAVISON, WARDEN
07-9544	LOWERY, MARK V. UNITED STATES
07-9838	WARE, ERIC V. BANK ONE
07-9847	PETTIJOHN, ARON E. V. BARTOS, WARDEN, ET AL.
07-9851	BARZEE, WANDA E. V. UTAH
07-9853	RAMIREZ, DAVID M. V. ARIZONA
07-9856	LEWIS, BRANDON L. V. VIRGINIA
07-9876	MYERS, SHAWN V. CALIFORNIA
07-9880	SALERNO, FOX J. V. SCHRIRO, DIR., AZ DOC
07-9883	CONNOLLY, BARBARA E. V. FOK, JOSEPH S., ET AL.
07-9885	SHAHID, MAURICE I. V. WILLIAMS, WARDEN

07-9889 BROWN, KEVIN E. V. JOHNSON, DIR., VA DOC

07-9890 ANDREOZZI, LEROY A. V. CA DOC, ET AL.

07-9891 McCAIN, WILLIAM T. V. MISSISSIPPI

07-9892 PATTERSON, WILLIE M. V. McCOLLUM, ATT'Y GEN. OF FL

07-9896 WILLIAMS, DARREN C. V. HAWS, WARDEN

07-9901 RANDOLPH, LOUIS V. HELLING, WARDEN

07-9904 BARNES, WAYNE C. V. WASHINGTON MUTUAL BANK, FA

07-9905 BRIGGS, ERNEST C. V. MOORE, JOHNNIE, ET AL.

07-9909 CORNELIUS, NADINE V. HOWELL, SAMUEL, ET AL.

07-9910 CLYMER, RAOUL B. V. COMBINE, REGIONAL DIR., ET AL.

07-9911 COLLIER, KENDRICK J. V. McDANIEL, WARDEN, ET AL.

07-9915 MEADS, ROBERT V. CAIN, WARDEN

07-9921 STREET, PHYLLIS V. VERIZON SOUTH, INC.

07-9922 MANN, GLENN B. V. TENNESSEE

07-9925 KNIGHT, SHAWN L. V. MISSISSIPPI

07-9929 PATTON, MARK S. V. NORTH CAROLINA

07-9934 BJORN, LEE T. V. CALIFORNIA

07-9941 FINLEY, COREY V. TENNESSEE

07-9944 FALLS, DELMAR V. LEWIS, WARDEN

07-9947 MONTESINO, VICTOR H. V. FLORIDA

07-9949 WASHINGTON, DANA W. V. QUARTERMAN, DIR., TX DCJ

07-9952 BOSWELL, BUCK E. V. CALIFORNIA

07-9956 MAHER, LAWRENCE V. MAINE

07-9957 MOTON, WENDELL E. V. CALIFORNIA

07-10021 GILCREAST, KEITH L. V. VOORHIES, WARDEN

07-10023 GAGNE, ALBERT V. O'BRIEN, SUPT., NORTH CENTRAL

07-10025 ROSSI, RUDOLPH V. NEW YORK, ET AL.

07-10028 DARBY, VONNIE D. V. NORTH DAKOTA

07-10035 LEE, DAN V. DEPT. OF VA, ET AL.

07-10037 KOHER, DAVID W. V. CAUDILL, JOHN D., ET AL.

07-10055 TICAS, HERBERT A. V. CALIFORNIA

07-10079 KENDRICK, KENNETH J. V. McNEIL, SEC., FL DOC

07-10103 BRYANT, STEVEN L. V. ARIZONA

07-10111 LIONG, THAT H. V. MUKASEY, ATT'Y GEN.

07-10148 PARRA, JULIO S. V. McDANIEL, WARDEN

07-10180 WOODS, ROSA V. WILLIAMS & SONS PLUMBING, ET AL.

07-10183 HANNAN, JOHN A. V. MACDONALD, WARDEN, ET AL.

07-10185 ANDERSEN, ANDREW V. GRIFFIN, BILL, ET AL.

07-10205 SMITH, CALVIN L. V. VIRGINIA

07-10207 DELACRUZ, WILFREDO V. MASSACHUSETTS

07-10209 DAVIS, MARVIN B. V. KANSAS

07-10237 LENTWORTH, JOHN V. POTTER, DAVID, ET AL.

07-10244 GILYARD, KENYOUN V. UNITED STATES

07-10245 DREW, ARCHIE L. V. SCRIBNER, WARDEN

07-10265 LIGHTBOURNE, IAN D. V. McCOLLUM, ATT'Y GEN. OF FL

07-10275 SCHWAB, MARK D. V. FLORIDA

07-10331 NEWSON, TERRY V. BOWERSOX, SUPT., SOUTH CENTRAL

07-10341 SHAW, REBECCA A. V. TEXAS

07-10379 SHANDOLA, LAWRENCE P. V. CLARKE, SEC., WA DOC

07-10405 PENLAND, CHARLES W. V. UNITED STATES

07-10427 ROBERTSON, WALTER K. V. UNITED STATES

07-10428 REIGLE, STUART L. V. UNITED STATES

07-10432 FRANKLIN, GORDON V. GUNJA, WARDEN

07-10433 McGEHEE, DENNIS J. V. UNITED STATES

07-10434 McRAE, MICHAEL V. UNITED STATES

07-10435 RUTKOSKE, DAVID V. UNITED STATES

07-10440 CLOUD, WILLIAM R. V. UNITED STATES

07-10444 HAWKINS, CHARLES E. V. UNITED STATES

07-10448 IRVING, WILLIS M. V. UNITED STATES

07-10452 CROCKER, DEMETRIUS V. UNITED STATES

07-10456 JACKSON, ANDRE L. V. UNITED STATES

07-10457 JONES, CARL P. V. UNITED STATES

07-10459 RIOS, PETER J. V. UNITED STATES

07-10460 RODRIGUEZ-MEJIA, GEOVANNI V. UNITED STATES

07-10464 EDGE, LAMAR V. UNITED STATES

07-10470 JOVE-REYES, JUAN C. V. UNITED STATES

07-10472 FOSTER, JOHN V. UNITED STATES

07-10478 BETANZOS-CENTENO, SAMUEL V. UNITED STATES

07-10482 ZAVALA, JUAN A. V. UNITED STATES

07-10484 JONES, QUEDOLTHUIS M. V. UNITED STATES

07-10485 CHAMBERS, JACKIE L. V. UNITED STATES

07-10487 DEMJANJUK, JOHN V. MUKASEY, ATT'Y GEN.

07-10494 MARTINEZ-VENTURA, RAUL V. UNITED STATES

07-10496 PLACENCIA-MEDINA, GILBERTO V. UNITED STATES

07-10497 McCOY, STANAUS V. UNITED STATES

07-10501 BROWN, ROBERT W. V. UNITED STATES

07-10502 BUENO, VICTOR M. V. UNITED STATES

07-10505 BINTZLER, KIRK E. V. RAEMISCH, SEC., WI DOC

07-10506 WASHINGTON, ASHANTI N. V. UNITED STATES

07-10508 THOMAS, RAYMOND A. V. UNITED STATES

07-10509 WALKER, SAMUEL V. UNITED STATES

07-10510 WILLIAMS, THOMAS E. V. UNITED STATES

07-10515 JENKINS, MICHAEL A. V. UNITED STATES

07-10516 MOON, YOUNG V. UNITED STATES

The petitions for writs of certiorari are denied.

07-9837 CHARLES, SHIRLEY A. V. QUARTERMAN, DIR., TX DCJ

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

07-10446 FAZZINI, PAUL V. U. S. PAROLE COMM'N, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (*per curiam*). Justice Stevens dissents. See *id.*, at 4, and cases cited therein.

HABEAS CORPUS DENIED

07-10503 IN RE COURTNEY A. BAILEY

07-10620 IN RE RASHAAN K. GOLDEN

The petitions for writs of habeas corpus are denied.

07-10621 IN RE LUTHER J. HADIX

The petition for a writ of habeas corpus is denied. Justice Alito took no part in the consideration or decision of this petition.

MANDAMUS DENIED

07-1179 IN RE RICHARD J. FLORANCE, JR.

The petition for a writ of mandamus is denied.

REHEARINGS DENIED

07-1045 PATRIDGE, DENNY R. V. UNITED STATES

07-7432 SMITH, EUGENE J. V. UNITED STATES

07-8499 MILLS, TAMMY L. V. HURLEY MEDICAL CENTER

07-8555 LOLLAR, LINDA V. DTR TENNESSEE, INC.

07-8598 SPUCK, DANIEL L. V. STOWITZKY, SUPT., MERCER, ET AL.

07-8763 EVANS, LEROY V. SUTER, CLERK, USSC

07-8775 QAZZA, SULEIMAN A. V. MUKASEY, ATT'Y GEN.

07-8781 STRICKLAND, WAYNE D. V. GEORGIA

07-8855 LANCASTER, CHARLES C. V. QUARTERMAN, DIR., TX DCJ

07-8957 SPUCK, DANIEL L. V. LYNCH, HELEN M.

07-8964 WILTZ, CASSANDRA V. MIDDLESEX COUNTY, ETC., ET AL.

07-9081 FIGUEROA, JUAN L. V. WEISENFREUND, ANAT, ET AL.

07-9088 GABRILL, JOSEPH V. CALIFORNIA, ET AL.

07-9419 TELLIER, ROBIN V. UNITED STATES

The petitions for rehearing are denied.

07-877 WIDTFELDT, JAMES V. TAX EQUAL. & REVIEW COMM'N, ET AL.

The motion for leave to file a petition for rehearing is denied.

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 08a0054p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN DEMJANJUK,

Petitioner,

v.

MICHAEL B. MUKASEY,

Respondent.

No. 07-3022

On Review from the Board
of Immigration Appeals.
No. A08 237 417.

Argued: November 29, 2007

Decided and Filed: January 30, 2008

Before: ROGERS and SUTTON, Circuit Judges; BERTELSMAN, District Judge.*

COUNSEL

ARGUED: John H. Broadley, JOHN H. BROADLEY & ASSOCIATES, Washington, D.C., for Petitioner. Robert Thomson, UNITED STATES DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, Washington, D.C., for Respondent. **ON BRIEF:** John H. Broadley, JOHN H. BROADLEY & ASSOCIATES, Washington, D.C., for Petitioner. Robert Thomson, Edgar Chen, UNITED STATES DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, Washington, D.C., for Respondent.

OPINION

ROGERS, Circuit Judge. Petitioner John Demjanjuk seeks review of the decision of the Board of Immigration Appeals holding that the Chief Immigration Judge was authorized to preside over Demjanjuk's removal proceeding. Pursuant to 8 U.S.C. § 1229a, a removal proceeding must be conducted by an immigration judge. Demjanjuk contends that the Chief Immigration Judge cannot be considered an immigration judge, and thus lacked authority to order Demjanjuk's removal from the United States. The Chief Immigration Judge, however, clearly meets the statutory definition of "immigration judge." Accordingly, we deny the petition for review.

*The Honorable William O. Bertelsman, Senior District Judge for the Eastern District of Kentucky, sitting by designation.

Demjanjuk, a native of Ukraine, entered the United States pursuant to an immigrant visa in 1952 and became a naturalized citizen in 1958. Prior to immigrating to this country, Demjanjuk served as an armed guard at three World War II Nazi concentration camps. Proceedings in this court regarding his extradition to Israel, for war crimes of which he was subsequently acquitted, are not relevant to the instant case. *See Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993); *Demjanjuk v. Petrovsky*, 776 F.2d 571 (6th Cir. 1985).

On May 19, 1999, the federal government filed a complaint in district court seeking the revocation of Demjanjuk's citizenship. The government asserted that Demjanjuk had been ineligible for a visa due to his wartime service to Nazi Germany and that Demjanjuk had consequently entered this country illegally. The district court ruled in the government's favor, and this court affirmed. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004).

On December 17, 2004, the Department of Homeland Security served Demjanjuk with a Notice to Appear, charging that he was removable from the United States. Shortly thereafter, the Executive Office for Immigration Review ("EOIR") initiated a removal proceeding pursuant to 8 U.S.C. § 1229a. Then Chief Immigration Judge ("CIJ") Michael J. Creppy assigned himself to preside over the removal proceeding. After learning that Creppy would be conducting the proceeding, Demjanjuk filed a motion to reassign the case to another judge, alleging, among other things, that the CIJ was without statutory authority to conduct removal proceedings. The CIJ denied the motion and, on December 28, 2005, ordered that Demjanjuk be removed from the United States.

Demjanjuk appealed both the denial of his motion to reassign, and the order of removal, to the Board of Immigration Appeals ("BIA"). The BIA, however, affirmed both rulings. Demjanjuk now seeks review of the BIA's decision with respect to CIJ Creppy's authority to conduct removal proceedings.

Because CIJ Creppy was an immigration judge, as that term is statutorily defined, he was empowered to preside over the removal proceedings brought against Demjanjuk. Accordingly, the BIA did not err in declining to vacate the CIJ's order of removal.

Pursuant to 8 U.S.C. § 1229a, proceedings for deciding an alien's admissibility or deportability must be conducted by an "immigration judge." The term "immigration judge" is defined in 8 U.S.C. § 1101(b)(4) to mean "an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title."

CIJ Creepy met all of the elements of this definition. First, it is uncontested that CIJ Creppy was an attorney. Second, it is evident from Creppy's certificate of appointment as CIJ that he was appointed by the Attorney General to serve within the EOIR. The certificate, signed by then Attorney General Janet Reno, provides that Creppy was to serve as CIJ in the "Office of the Chief Immigration Judge, Executive Office for Immigration Review."[1]

Third, Creppy's appointment as CIJ constituted an appointment as an administrative judge. Although the Immigration and Naturalization Act does not define "administrative judge," it is clear

[1]Demjanjuk does not dispute that Creppy was appointed to serve in the EOIR, but contends that this appointment was made by the Director of the EOIR, rather than by the Attorney General. Demjanjuk notes that at one point in its decision, the BIA stated that the CIJ "is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings." This contention overlooks the BIA's clear statement in the same paragraph that the CIJ "is an attorney whom the Attorney General appointed," and the contention is completely contrary to the evidence. While the BIA statement to which Demjanjuk points is not entirely clear, it appears to refer simply to the fact that a position description for Creppy, signed by the Director of the EOIR, stated that one of Creppy's responsibilities as CIJ was to conduct removal proceedings. The BIA took this description as evidence that Creppy was "qualified" to or "able to" preside over removal proceedings.

from the term's ordinary meaning that it encompasses the position of CIJ. This court "read[s] statutes and regulations with an eye to their straightforward and commonsense meanings." *Henry Ford Health Sys. v. Shalala*, 233 F.3d 907, 910 (6th Cir. 2000). In its normal use, the term "administrative judge" is understood to refer to an Article I judge who presides over executive agency proceedings. The CIJ is a judge, by the terms of his title, and was appointed by an executive official, the Attorney General, to serve in an executive agency, the EOIR. Common sense thus advises that CIJ Creppy was an administrative judge.

The designation of "Chief" before "Immigration Judge" in Creppy's job title does not change this understanding. Demjanjuk essentially asks this court to ignore the plain meaning of the words "Immigration Judge" because Creppy's title also included the word "Chief." The latter term, however, denotes merely that the CIJ is the head immigration judge, and, as such, may be responsible for performing duties beyond those performed by other immigration judges. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 387 (2002) (defining "chief" as "accorded highest rank"). The word "Chief" does not somehow alter the fundamental meaning of the words "Immigration Judge" to make this position entirely managerial, as Demjanjuk claims it to be.

Fourth, and finally, CIJ Creppy was qualified to conduct immigration proceedings, including those for removal. As noted, § 1101(b)(4) provides that an "immigration judge" should be "qualified to conduct specified classes of proceedings, including a hearing under section 1229a." The parties dispute the significance of this language, in particular the meaning of the term "qualified." The Attorney General contends that this clause requires simply that the appointee be "capable of" presiding over immigration hearings. Demjanjuk, on the other hand, reads this language to require that the Attorney General have specifically "appointed" a judge to conduct removal proceedings in order for that party to be considered "qualified."

Because CIJ Creppy was "qualified" in both senses of the term, we need not decide which of these interpretations is correct. If "qualified" means "capable of," or "able to," then there is little doubt that Creppy was qualified to preside over removal hearings. Demjanjuk does not suggest that Creppy was unable to conduct immigration proceedings effectively, nor does anything in the record so suggest.

This interpretation moreover represents a reasonable reading of the statutory language. In its normal use, the word "qualified" means "competent" or "fit," as the Attorney General contends. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1858 (2002). It is also significant that Congress chose to use the term "appoint" elsewhere in § 1101(b)(4), but not in the clause at issue. If Congress had wanted, it could have said that an immigration judge is an attorney "whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review to conduct [removal proceedings.]" Instead, Congress chose to discuss removal proceedings in a separate clause and use the word "qualified" instead of "appoint."

However, even assuming that the term "qualified" somehow means "appointed" or "delegated," as Demjanjuk suggests, the Attorney General has specifically delegated the power to conduct removal proceedings to all immigration judges. At the time that Creppy presided over Demjanjuk's removal hearing, the pertinent regulation, 8 C.F.R. § 1003.10 (2005),[2] stated that

[2]When Creppy was appointed in 1994, § 1003.10 similarly provided that

> Immigration judges shall exercise the powers and duties in this chapter regarding the conduct of exclusion and deportation hearings and such other proceedings which the Attorney General may assign them to conduct.

> Immigration Judges . . . shall exercise the powers and duties in this chapter regarding the conduct of exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

The CIJ is undoubtedly an immigration judge, and thus was explicitly empowered by the Attorney General to preside over removal hearings.

Demjanjuk argues that § 1003.10 did not grant removal authority to Creppy, since this section does not specifically mention the position of CIJ. This argument is unpersuasive. As discussed, the term "Chief" does not change the basic meaning of the words "Immigration Judge." Because any reasonable person would assume that the position of Chief Immigration Judge is a mere subcategory of immigration judge, the absence of any mention of the CIJ in § 1003.10 is not significant. Nor is it telling that § 1003.9, which describes the CIJ's duties, did not, at the time, list presiding over immigration hearings as one of the position's responsibilities.[3] Although that section only mentioned certain supervisory functions, it made explicit that the position "[was] not limited" to such duties.

This analysis is supported by recent amendments to § 1003.9, the language of which now clearly states that "[t]he Chief Immigration Judge shall have the authority to . . . [a]djudicate cases as an immigration judge." § 1003.9(b)(5). The amended regulation then goes on to provide that "[t]he Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to *another* immigration judge." § 1003.9(c) (emphasis added). While these amendments do not have retroactive effect, they confirm the previously implicit understanding that the CIJ is an immigration judge. Indeed, the comments to the current version of § 1003.9 state that the regulation was amended in part to clear up "apparent confusion . . . among some observers regarding the role and status of the immigration judges." Authorities Delegated to the Director of the Executive Office for Immigration Review, and the Chief Immigration Judge, 72 Fed. Reg. 53673, 53673 (Sept. 20, 2007).

Moreover, the case that Demjanjuk relies upon for the proposition that a delegation of authority must always be perfectly unequivocal and unambiguous, *San Pedro v. United States*, 79 F.3d 1065 (11th Cir. 1996), is distinguishable. *San Pedro* involved a situation where the Immigration and Naturalization Service ("INS") initiated deportation proceedings against a party despite a plea agreement, approved by the U.S. Attorney and several Assistant U.S. Attorneys ("AUSAs"), which purported to shield the party from deportation. *Id.* at 1067. The Eleventh Circuit held that the U.S. Attorney and AUSAs could not bind the INS, which had been delegated authority over deportation, since the Attorney General had not also granted such power to the U.S. Attorney by an "explicit and affirmative" delegation. *Id.* at 1070-71 (emphasis omitted).

The instant case differs from *San Pedro* in key respects. In *San Pedro*, the document claimed to have given U.S. Attorneys deportation authority, the United States Attorney's Manual, explicitly

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[3] In full, the regulation provided that

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9 (2005).

limited the power of U.S. Attorneys to negotiate concerning deportation orders and stated that U.S. Attorneys should "be cognizant of the sensitive areas where plea agreements involve . . . deportation." *Id.* at 1070 n.4. Here, the regulations describing the powers of the CIJ used broad rather than restrictive language, stating that the CIJ's powers "include, but are not limited to" certain enumerated duties. 8 C.F.R. § 1003.9 (2005). Further, in *San Pedro*, it would have been problematic for U.S. Attorneys to have been delegated deportation power, since that power had already been delegated to a different government entity. Here, on the other hand, there is no risk of opposing government entities' holding the same power and creating conflicting pronouncements. The CIJ and immigration judges operate within the same entity, the EOIR, and have aligned, rather than potentially adverse, interests. Because it would not be problematic or illogical for both the CIJ and the remaining immigration judges to conduct removal proceedings, there is not the same need for exact precision in a delegation that existed in *San Pedro*.

Officials must consider a multitude of issues in delegating authority and drafting regulations. Although they should make their best efforts to do so, they simply cannot anticipate every scenario that may arise or challenge that will be made. It is understandable that an official might take for granted something that is abundantly clear and that has long been understood to be the case. To hold that a delegation will always be ineffective where it does not spell out the obvious would place too onerous a burden on these officials and encourage parties to seek out the slightest of ambiguities in order to evade the law.

For the foregoing reasons, we deny the petition for review.

(b)(7)(c)

PACER Service Center			
Transaction Receipt			
06/04/2008 15:26:57			
PACER Login:	[redacted]	**Client Code:**	dhs
Description:	Case Summary	**Search Criteria:**	07-3022
Billable Pages:	1	**Cost:**	0.08

Board of Immigration Appeals - Case Appeal

(b)(6)

ANumber: [redacted] **Lead:** [redacted] **Chg. Doc. Date:** 12/17/2004

DEMJANJUK, JOHN **Gen:** 1 **SubGen:** 1
Base City: WAS **Hearing Location:** CLE
Nationality: UKRAINE

IJ Decision: 12/28/2005 **Decision:** Remove **Other Comp:** **Type:** RMV
Appeal Filed: 01/23/2006 **By:** Alien IJ Case Appea
Custody Status: Never Detained

---------- **Briefing Schedule** ----------

	Alien	INS
Served on Parties:	05/19/2006	05/19/2006
Originally Due:	06/09/2006	06/30/2006
Currently Due:	08/11/2006	09/01/2006
Briefs Received:	06/30/2006	08/07/2006

Oral Arg. Requested: Yes No **Status:** Pending

To/From Appellate Counsel:

BIA Decision: 12/21/2006 Dismiss Appeal/Affirm IJ's Decision
Aministrative Final Order: Alien has removal order

New A Number

Board of Immigration Appeals - Interlocutory Appeal

(b)(6)

ANumber: [redacted] **Lead:** [redacted] **Chg. Doc. Date:** 12/17/2004

DEMJANJUK, JOHN **Gen:** 1 **SubGen:** 1
Base City: WAS **Hearing Location:** CLE
Nationality: UKRAINE

IJ Decision: **Decision:** **Other Comp:** **Type:** RMV
Appeal Filed: 06/20/2005 **By:** Alien IJ Interlocutory Appea
Custody Status: Never Detained

---------- **Briefing Schedule** ----------

	Alien	INS
Served on Parties:		
Originally Due:		
Currently Due:		
Briefs Received:		07/01/2005
Oral Arg. Requested:	No	No

To/From Appellate Counsel:

BIA Decision: 09/06/2005 Dismiss Appeal/Affirm IJ's Decision
Aministrative Final Order: N/A

New A Number

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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 07-3022
Demjanjuk v. Mukasey
Appeal From: Board of Immigration Appeals

Docketed: 01/08/2007
Termed: 01/30/2008

Case Type Information:
1) Agency
2) Review
3) Immigration

Originating Court Information:
District: BIA-1 : A[redacted] (b)(6)
Date Filed:

10/15/2007		Oral argument notice filed by Attorney Robert Thomson for Respondent Alberto Gonzales.
10/19/2007		Oral argument notice filed by Attorney Mr. John H. Broadley for Petitioner John Demjanjuk.
11/26/2007		ADDITIONAL CITATION filed by Robert Thomson for Michael B. Mukasey. Certificate of Service:11/21/2007.
11/29/2007		CAUSE ARGUED by Mr. John H. Broadley for Petitioner John Demjanjuk and Robert Thomson for Respondent Michael B. Mukasey before Judges Rogers; Sutton; Bertelsman.
01/30/2008		OPINION filed: Petition for Review is DENIED; decision for publication pursuant to local rule 206. John M. Rogers (AUTHORING), Jeffrey S. Sutton, Circuit Judges; William O. Bertelsman, U.S. District Judge for the ED of KY.
01/30/2008		JUDGMENT: Petition for Review is DENIED.
03/24/2008		MANDATE ISSUED with no cost taxed.
03/25/2008		ADMINISTRATIVE RECORD RETURNED to originating court at the end of appellate proceedings. Volumes include: 6 Pl.
04/24/2008		U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Petitioner John Demjanjuk. Supreme Court Filed Date: 04/21/2008, Supreme Court Case Number: 07-10487.
05/21/2008		U.S. Supreme Court letter filed denying petition certiorari petition [3764851-2] filed by John Demjanjuk. Supreme Court Action 1 Disposition Date: 05/19/2008, Supreme Court Case Number: 07-10487.

(b)(7)(c)

PACER Service Center			
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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 01-3136 **Docketed:** 02/13/2001
Nature of Suit: 1890 Other Statutory Actions **Termed:** 03/15/2001
USA v. Demjanjuk
Appeal From: Northern District of Ohio at Cleveland

Case Type Information:
1) Civil
2) United States as party
3) Federal Question

Originating Court Information:
District: 0647-1 : 99-01193
Trial Judge: Paul R. Matia, U.S. District Judge
Date Filed: 05/19/1999
Date Order/Judgment: 01/29/2001
Date NOA Filed: 02/06/2001

02/26/2001	APPEARANCE filed by Attorney Edward A. Stutman for Appellee USA [01-3136]
02/26/2001	TRANSCRIPT ORDER FORM filed by Michael E. Tigar for Appellant John Demjanjuk: No hearings held in District Court. [01-3136] [2312853-1]
03/01/2001	Appellant RESPONSE in opposition filed regarding a motion to dismiss case [2310179-1] ; previously filed by Michael Anne Johnson . Response from Michael E. Tigar for Appellant John Demjanjuk . Certificate of service date 2/28/01 . [01-3136]
03/09/2001	APPEARANCE filed by Attorney Michelle Heyer for Appellee USA [01-3136]
03/09/2001	APPEARANCE filed by Attorney Jonathan C. Drimmer for Appellee USA [01-3136]
03/12/2001	Appellant MOTION filed to stay district court order until 7 days after this court's mandate. Motion filed by Michael E. Tigar for Appellant John Demjanjuk. Certificate of service date 3/12/01 [01-3136]
03/13/2001	REPLY filed by Michael Anne Johnson for Appellee USA in support of motion to dismiss [01-3136]
03/15/2001	Appellee RESPONSE in opposition filed regarding a motion to stay district court order [2320316-1] ; previously filed by Michael E. Tigar . Response from Edward A. Stutman for Appellee USA. Certificate of service date 3/14/01 [01-3136]
03/15/2001	ORDER filed : DISMISSED appeal for lack of jurisdiction. Denying as moot the defendant's motion for a stay pending review. [01-3136] . Damon J. Keith, Circuit Judge, Alan E. Norris, Circuit Judge, Martha C. Daughtrey, Circuit Judge.(2 pgs)

05/07/2001	MANDATE ISSUED with no cost taxed [01-3136]

(b)(7)(c)

PACER Service Center			
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Description:	Case Summary	**Search Criteria:**	01-3136
Billable Pages:	1	**Cost:**	0.08

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

2006 JAN 26 A 9:45

Broadley, John
1054 31st Street NW
suite 200
Washington, DC 20007-0000

ICE Office of Chief Counsel/CLE
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN **A** [redacted] (b)(6)

Type of Proceeding: Removal **Date of this notice: 01/24/2006**

Type of Appeal: Case Appeal **Filed by: Alien**

FILING RECEIPT FOR APPEAL

The Board of Immigration Appeals acknowledges receipt of your appeal and fee or fee waiver request (where applicable) on 01/23/2006 in the above-referenced case.

PLEASE NOTE:

In all future correspondence or filings with the Board, please list the name and alien registration number ("A" number) of the case (as indicated above), as well as all of the names and "A" numbers for every family member who is included in this appeal.

If you have any questions about how to file something at the Board, you should review the Board's Practice Manual and Questions and Answers at www.usdoj.gov/eoir.

Proof of service on the opposing party at the address above is required for ALL submissions to the Board of Immigration Appeals -- including correspondence, forms, briefs, motions, and other documents. If you are the Respondent or Applicant, the "Opposing Party" is the District Counsel for the DHS at the address shown above. Your certificate of service must clearly identify the document sent to the opposing party, the opposing party's name and address, and the date it was sent to them. Any submission filed with the Board without a certificate of service on the opposing party will be rejected.

WARNING: If you leave the United States after filing this appeal but before the Board isssues a decision, your appeal will be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. section 1001.1(q)).

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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 02-3529
Docketed: 05/13/2002
Nature of Suit: 1890 Other Statutory Actions
Termed: 04/30/2004
USA v. Demjanjuk
Appeal From: Northern District of Ohio at Cleveland

Case Type Information:
1) Civil
2) United States as party
3) Federal Question

Originating Court Information:
District: 0647-1 : 99-01193
Court Reporter: Bruce Matthews
Trial Judge: Paul R. Matia, U.S. District Judge
Date Filed: 05/19/1999
Date Order/Judgment: 03/28/2002
Date NOA Filed: 05/10/2002

04/30/2004	JUDGMENT : AFFIRMED .
05/07/2004	OPINION CORRECTION LETTER sent indicating revisions to 4/30/04 opinion filed 04/30/04 [02-3529]
05/17/2004	OPINION CORRECTION LETTER sent indicating revisions to published opinion filed 4/30/04 [02-3529]
05/17/2004	OPINION CORRECTION LETTER sent indicating revisions to published opinion filed 04-30-04 [02-3529]
06/10/2004	PETITION for rehearing before original panel filed by John H. Broadley for Appellant John Demjanjuk . Certificate of service date 6/9/04 . [02-3529]
06/14/2004	The case manager for this case is: lak
06/28/2004	ORDER filed denying petition for rehearing before original panel filed by John H. Broadley [02-3529] . R. G. Cole, Circuit Judge, Eric L. Clay, Circuit Judge, Curtis L. Collier, District Judge.
07/07/2004	MANDATE ISSUED with no cost taxed [02-3529]
10/01/2004	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant John Demjanjuk . Filed in the Supreme Court on 09-22-04 , Supreme Ct. case number: 04-6448 . [02-3529]

11/16/2004	U.S. Supreme Court letter filed denying petition for writ of certiorari [3033805-1] filed by John Demjanjuk [02-3529] Supreme Court No. 04-6448 . Filed in the Supreme Court on 11-01-04 .

(b)(7)(c)

PACER Service Center			
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Billable Pages:	1	**Cost:**	0.08

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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 03-3773 **Docketed:** 05/29/2003
Nature of Suit: 1890 Other Statutory Actions **Termed:** 04/20/2005
USA v. Demjanjuk
Appeal From: Northern District of Ohio at Cleveland

Case Type Information:
1) Civil
2) United States as party
3) Federal Question

Originating Court Information:
District: 0647-1 : 99-01193
Court Reporter: Bruce Matthews
Trial Judge: Paul R. Matia, U.S. District Judge
Date Filed: 05/19/1999
Date Order/Judgment: 05/01/2003
Date NOA Filed: 05/20/2003

12/19/2003	RULING granting motion appellant's motion to supplement the joint appendix by adding four pages number 1043-1047 [2871184-1] filed by John H. Broadley [03-3773] .
12/19/2003	FINAL BRIEF filed by John H. Broadley for Appellant John Demjanjuk. Copies: 7. Certificate of service date 12/17/03. Number of Pages: 32. [03-3773]
12/19/2003	Request to require oral argument filed by John H. Broadley for Appellant John Demjanjuk [03-3773]
12/19/2003	FINAL REPLY BRIEF filed by John H. Broadley for Appellant John Demjanjuk. Copies: 7 Certificate of service date 12/17/03. Number of Pages: 28. [03-3773]
04/09/2004	CAUSE SUBMITTED on briefs to panel consisting of Judges Cole, Clay, Collier sitting on 03/30/05. [03-3773]
09/30/2004	NOTIFICATION filed by Stephen J. Paskey for Appellee USA advising the Court that he is substituting as counsel for Jonathan Drimmer as counsel for the USA Certificate of service date 9/29/04 [03-3773]
09/30/2004	APPEARANCE filed by Attorney Stephen J. Paskey for Appellee USA [03-3773]
02/14/2005	The case manager for this case is: laj (Laura Jones).
04/20/2005	Per Curiam OPINION filed: AFFIRMED, decision not for publication pursuant to local rule 28(g) [03-3773] . R. G. Cole, Circuit Judge, Eric L. Clay, Circuit Judge,

	Curtis L. Collier, District Judge for the Eastern District of Tennessee.
06/13/2005	MANDATE ISSUED with no cost taxed [03-3773]

(b)(7)(c)

PACER Service Center			
Transaction Receipt			
06/04/2008 15:44:25			
PACER Login:	[redacted]	**Client Code:**	dhs
Description:	Case Summary	**Search Criteria:**	03-3773
Billable Pages:	1	**Cost:**	0.08

If you view the Full Docket you will be charged for 1 Pages $0.08

General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 99-4473 **Docketed:** 12/07/1999
In Re: Demjanjuk **Termed:** 02/01/2000
Appeal From: Northern District of Ohio at Cleveland

Case Type Information:
1) Original Proceeding
2) Mandamus
3) null

Originating Court Information:
District: 0647-1 : 77-00923
Trial Judge: Paul R. Matia, U.S. District Judge
Date Filed:

12/07/1999	The case manager for this case is: bb (Barb)
12/15/1999	RESPONSE to manadamus from Trial Judge Paul R. Matia
01/21/2000	MOTION CAUSE SUBMITTED on briefs to panel consisting of Judges Kennedy, Ryan, Boggs [99-4473]
02/01/2000	ORDER filed : DENIED petition for writ of mandamus. [99-4473] . Cornelia G. Kennedy, James L. Ryan, Circuit Judge, Danny J. Boggs, Circuit Judge. (1 pg)
02/01/2000	LETTER SENT TO district court by bb sending a certified copy of order filed 2/1/00 . [99-4473]
02/16/2000	TENDERED : petition for rehearing en banc from Michael E. Tigar for Petitioner John Demjanjuk which is one day late. [99-4473]
02/17/2000	PETITION for en banc rehearing filed by Michael E. Tigar for Petitioner John Demjanjuk. Certificate of service date 2/15/00. [99-4473]
02/29/2000	LETTER SENT by blh to Michael Anne Johnson and Edward A. Stutman for Respondent Paul Matia notifying that party is directed to respond to a petition for en banc rehearing [2102108-1] filed by Michael E. Tigar. Response due by 3/14/00. [99-4473] .
03/14/2000	RESPONSE to a petition for en banc rehearing [2102108-1] filed by Michael E. Tigar. Response filed by Michael Anne Johnson and Stutman for Respondent Paul Matia. Certificate of service date 3/13/00. [99-4473]
04/13/2000	ORDER filed denying petition for en banc rehearing [2102108-1] filed by Michael E. Tigar [99-4473]. Cornelia G. Kennedy, James L. Ryan, Danny J. Boggs, Circuit

Judges.

(b)(7)(c)

PACER Service Center			
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Description:	Case Summary	**Search Criteria:**	99-4473
Billable Pages:	1	**Cost:**	0.08

If you view the Full Docket you will be charged for 2 Pages $0.16

General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 07-3022 **Docketed:** 01/08/2007
Demjanjuk v. Mukasey **Termed:** 01/30/2008
Appeal From: Immigration & Naturalization Service

Case Type Information:
1) Agency
2) Review
3) Immigration

Originating Court Information:
District: INS-1 : A [redacted] (b)(6)
Date Filed:

07/09/2007		FINAL BRIEF filed by John H. Broadley for Petitioner John Demjanjuk. . Certificate of service date 7/6/07 Number of Pages: na. Argument Request: Request. [07-3022]
07/09/2007		FINAL REPLY BRIEF filed by John H. Broadley for Petitioner John Demjanjuk. Copies: 7 Certificate of service date 7/6/07 Number of Pages: na. [07-3022]
07/25/2007		FINAL BRIEF filed by Robert Thomson and Edgar Chen for Respondent Alberto Gonzales. Copies: 7 Certificate of service date 7/24/07 . Number of Pages: na. Argument Request: Waive. [07-3022]
09/27/2007		Oral argument date set for 9:00 a.m. November 29, 2007. Notice of argument sent to counsel on October 4, 2007.
10/15/2007		Oral argument notice filed by Attorney Robert Thomson for Respondent Alberto Gonzales.
10/19/2007		Oral argument notice filed by Attorney Mr. John H. Broadley for Petitioner John Demjanjuk.
11/26/2007		ADDITIONAL CITATION filed by Robert Thomson for Michael B. Mukasey. Certificate of Service:11/21/2007.
11/29/2007		CAUSE ARGUED by Mr. John H. Broadley for Petitioner John Demjanjuk and Robert Thomson for Respondent Michael B. Mukasey before Judges Rogers; Sutton; Bertelsman.
01/30/2008		OPINION filed: Petition for Review is DENIED; decision for publication pursuant to local rule 206. John M. Rogers (AUTHORING), Jeffrey S. Sutton, Circuit Judges; William O. Bertelsman, U.S. District Judge for the ED of KY.

01/30/2008	JUDGMENT: Petition for Review is DENIED.

(b)(7)(c)

PACER Service Center			
Transaction Receipt			
02/15/2008 15:57:46			
PACER Login:	[redacted]	**Client Code:**	dhs
Description:	Case Summary	**Search Criteria:**	07-3022
Billable Pages:	1	**Cost:**	0.08

U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

Office of Chief Counsel
1240 E. 9 Street, Suite 519
Cleveland, OH 44199

MEMO TO: DEPORTATION AND REMOVAL OPERATIONS

FINAL REMOVAL ORDER

IN THE MATTER OF: Demjanjuk [redacted] (b)(6)

The above alien has a Final Order of Removal (Deportation). It is appropriate to execute the warrant of deportation.

The following items apply as noted:

____ **Alien is in ICE Detention**

____ **Alien is a Criminal Alien**

✓ **Appeal of Immigration Judge's Order was dismissed by the BIA**

____ **Motion to Reopen was denied by IJ**

____ **Motion to Reopen was denied by BIA**

____ **Appeal of IJ's Denial of Motion to Reopen filed with BIA – no stay in effect**

____ **Motion to Reopen is pending – no stay in effect**

✓ **Petition for Review pending in 6th Cir. Court of Appeals** – ck **no stay in effect**

____ **Petition for Review was denied by 6th Cir. Court of Appeals**

____ **Habeas petition pending in U.S. District Court - no stay in effect**

____ **Habeas petition was dismissed by U.S. District Court**

VAC

Victoria A. Christian
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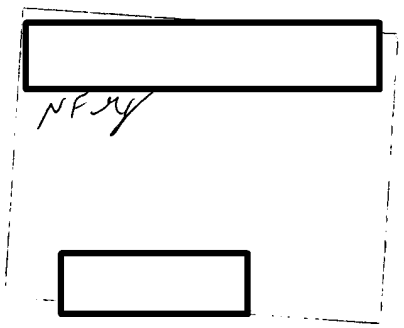

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

(b)(6)

File: A [redacted] - Cleveland Date: DEC 21 2006

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

APPLICATION: Deferral of removal under the Convention Against Torture

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec."). By decision dated December 28, 2005, the Immigration Judge denied the respondent's application for deferral of removal under the Convention Against Torture, and ordered him

removed from the United States to Ukraine, or in the alternative to Germany or Poland ("CIJ Deferral Dec."). On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. The Chief Immigration Judge also held that, as an alien who assisted in Nazi persecution, the respondent was barred as a matter of law from all forms of relief from removal other than deferral of removal under the Convention Against Torture. Exh. 20.

[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

Thereafter, the respondent filed an application for deferral of removal. Exh. 31. On December 28, 2005, the Chief Immigration Judge denied the respondent's application for deferral of removal on the ground that he failed to meet his burden of proving: 1) that he was likely to be prosecuted if removed to Ukraine; 2) that if prosecuted he was likely to be detained; and 3) that if prosecuted and detained, he was likely to be tortured. The Chief Immigration Judge ordered the respondent removed to Ukraine, with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

C. The Immigration Judge's December 28, 2005, Decision Regarding Relief from Removal

The Immigration Judge noted that the respondent's application for deferral of removal is based on three underlying premises: 1) prisoners in Ukraine are frequently subjected to serious abuse or torture, 2) persons who are potentially embarrassing to the Ukranian government are at risk of physical harm and death, and 3) he is uniquely at risk of torture if he is removed to Ukraine. The Immigration Judge found that the evidence of record did not support a finding that the respondent would be prosecuted in Ukraine because of his Nazi past. In reaching this decision, the Immigration Judge noted that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany. The Immigration Judge also found that the evidence of record did not support a finding that the respondent would likely be detained while awaiting trial or as a result of conviction. Finally, the Immigration Judge found the respondent's assertion that he would likely be tortured if taken into custody in Ukraine to be speculative and not supported by the record. For these reasons, the Immigration Judge denied the respondent's application for deferral of removal because he found that he had not established that he was more likely than not to be tortured if removed to Ukraine.

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

relevant to the removability issue had been established by collateral estoppel; and 5) the Chief Immigration Judge erroneously found that the respondent was not eligible for deferral of removal pursuant to the Convention Against Torture. Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(1), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd, Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himelf to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal.' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"). published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337. 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense." is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985. 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391. 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hammer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as '"issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived . . . ."' *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112; NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

appeals," 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko*, *supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

E. Deferral of Removal under the Convention Against Torture

Finally, the respondent argues that the Chief Immigration Judge erred in denying his application for deferral of removal under the Convention Against Torture. A person seeking deferral of removal must prove that it is more likely than not that he or she would be tortured if removed to a particular country. 8 C.F.R. §§ 208.16(c)(2) and 208.17(a). It is not sufficient for an applicant to claim a subjective fear of torture, rather, the applicant must prove, through objective evidence, that he or she is likely to be tortured in a particular country. *Matter of J-E-*, 23 I&N Dec. 291, 302 (BIA 2002). For purposes of the Convention Against Torture, "torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for a specific purpose, such as extracting a confession or punishing the victim. 8 C.F.R. § 208.18(a)(1). To qualify as torture, the act must also be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," at a time when the victim is in the offender's "custody or physical control." 8 C.F.R. §§ 208.18(a)(1) and (6). "Torture is an extreme form of cruel and inhumane treatment and does not include lesser forms of cruel, inhumane, or degrading treatment or punishment...." 8 C.F.R. § 208.18(a)(2). Moreover, "[a]n act that results in unanticipated or unintended severity of pain and suffering is not torture." 8 C.F.R. § 208.18(a)(5).

The thrust of the respondent's claim for deferral is that: 1) the United States Government created a widespread public perception that he is responsible for crimes committed against Jewish prisoners by "Ivan the Terrible" at the Treblinka death camp; 2) the United States will encourage Ukraine to arrest, detain, and prosecute him if he is removed to Ukraine; 3) it is "irrational" to believe that the Ukranian government will not comply with such requests; 4) many prisoners in Ukraine are subjected to mistreatment and/or torture; and 5) the respondent is especially "vulnerable" to mistreatment and torture because of his age. In denying the respondent's application, the Chief Immigration Judge concluded that the respondent failed to prove three key facts: 1) that as a result of the government's previous assertion that he was "Ivan the Terrible" (an assertion that the government has not made in more than a decade), he is likely to be prosecuted if removed to Ukraine; 2) that if prosecuted, he is likely to be detained; and 3) that if prosecuted and detained, he is likely to be tortured.

The Chief Immigration Judge relied on numerous exhibits showing that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. CIJ Deferral Dec. at 10 (citing Exhibits 35 at 1-2, 36, 37A at 15-22, 37C, 37G, 37H). Moreover, we note that the respondent stipulated that several Ukranian nationals who assisted in Nazi persecution had not been indicted or prosecuted, nor had Ukraine requested their extradition, despite the U.S. government's efforts to encourage Ukraine to do so. Exh. 35 §§ 1-20. We reject the respondent's speculation that because of his notoriety , his case is markedly different from others who have been returned to Ukraine. Instead, the State Department's advisory opinion letter[7] rebuts this claim by expressing the opposite opinion: that the government of Ukraine is "very unlikely" to mistreat a "high-profile individual[]" such as the respondent. Exhs. 39A and 45. For these reasons, and given the absence of *any* evidence of a Nazi war criminal facing prosecution in Ukraine, the respondent's speculative argument is not persuasive. Therefore, we agree with the Chief Immigration Judge that the respondent failed to establish that he is likely to be prosecuted if removed to Ukraine.

We also agree with the Chief Immigration Judge's finding that the respondent has not established that he is likely to be detained even in the unlikely event that he is prosecuted in Ukraine. As set forth in the stipulations between the parties, Ukranian law allows for pre-trial release of criminal defendants, and large numbers of Ukranian criminal defendants are released from custody while awaiting trial. CIJ Deferral Dec. at 11 (citing Exh. 35).

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[7] We reject the respondent's argument that the State Department's advisory opinion is inadmissible. In this regard, we note that the Federal Rules of Evidence do not apply in immigration court proceedings. Because the letter from the State Department is probative and its use is not unfair to the respondent, we find no error in the Chief Immigration Judge's consideration of the letter. *See Matter of K-S-*, 20 I&N Dec. 715, 722 (BIA 1993) (relying on State department advisory opinion letter as "expert" evidence); *Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785 (BIA 1999) (noting that the test for admissibility of evidence is whether the evidence is probative and whether its use is fundamentally fair so as to not deprive the alien of due process); 8 C.F.R. §§ 1208.11(a) and (b) (the State Department may provide an assessment of the accuracy of an applicant's claims, information about the treatment of similarly-situated persons or "[s]uch other information as it deems relevant").

Finally, we agree with the Chief Immigration Judge's finding that although conditions in Ukranian prisons may be harsh, it is unlikely that the respondent would be tortured if detained. In this context we note that the evidence of record indicates that the government of Ukraine has permitted international monitoring of its prisons and has engaged in improvement efforts. CIJ Deferral Dec. at 12 (citing Exhs. 39A and 45). Moreover, we note that even if the respondent were to face harsh prison conditions in the unlikely event that he faces detention, generally harsh prison conditions do not constitute torture. *See Matter of J-E-*, 23 I&N Dec. at 301-04; *see generally, Alemu v. Gonzales*, 403 F.3d 572, 576 (8th Cir. 2005) (noting that substandard prison conditions are not a basis for relief under the Convention Against Torture unless they are intentionally and deliberately created and maintained in order to inflict torture); *Auguste v. Ridge*, 395 F.3d 123, 152-53 (3rd Cir. 2005).

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). Simply put, the respondent's arguments regarding the likelihood of torture are speculative and not based on evidence in the record. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006) (applicant fails to carry burden of proof if evidence is speculative or inconclusive). Therefore, we reject the respondent's arguments, and conclude that the Chief Immigration Judge correctly decided that the respondent failed to prove that he is likely to be prosecuted in Ukraine; that if prosecuted, he is likely to be detained either prior to trial or as a result of a conviction; and, that if prosecuted and detained, he is more likely than not to be tortured.

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

LAW OFFICES

JOHN H. BROADLEY & ASSOCIATES, P.C.

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May 29, 2006

JOHN H. BROADLEY

BY OVERNIGHT DELIVERY

Office of the Chief Clerk
Board of Immigration Appeals
5107 Leesburg Pike
Suite 2000
Falls Church, Virginia 22041

(b)(6)

Re: In the Matter of John Demjanjuk, A [redacted] Appeal from Order of Removal

Dear Sir/Madam:

Enclosed for filing in the captioned case is an original of RESPONDENT'S MOTION FOR ENLARGEMENT OF TIME TO FILE APPEAL BRIEF. A certificate of service evidencing service of the motion and of this transmittal letter is attached to the motion.

Yours very truly,

John Broadley

Enclosures

UNITED STATES DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
Board of Immigration Appeals

In the Matter of JOHN DEMJANJUK, Respondent	(b)(6) Alien No. A [redacted]
Removal Case	
Respondent's Appeal from a decision of the Chief Immigration Judge	

RESPONDENT'S MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE APPEAL BRIEF

Respondent, John Demjanjuk, hereby moves for an enlargement of time in which to file his appeal brief. The government's attorney has stated that the government does not oppose the motion for enlargement of time.

Respondent's counsel is currently out of the country engaged in a matter involving advice to the government of Cambodia. Counsel left the United States on May 17, 2006 and will return to Washington on June 8, 2006.

On May 19, 2006 the Board set the due date for Respondent's appeal brief as June 9, 2006. Because of the difficulty involved in preparing and filing an appeal brief from Cambodia, Respondent respectfully requests that the due date for his appeal brief be enlarged by 21 days from June 9, 2006 to June 30, 2006.

Respectfully submitted,

JOHN DEMJANJUK

By: John Broadley
One of his attorneys

John Broadley

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Dated: May 29, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2006, I served a copy of the foregoing RESPONDENT'S MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE APPEAL BRIEF and accompanying transmittal letter on the Department of Homeland Security by causing copies thereof to be deposited in the United States mail, first class postage pre-paid, addressed to counsel listed below:

ICE Office of Chief Counsel/CLE
1240 E. Ninth Street, Suite 519
Cleveland, OH 44199

John Broadley

Dated: May 29, 2006

LAW OFFICES

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June 30, 2006

BY HAND DELIVERY

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Board of Immigration Appeals
5107 Leesburg Pike
Suite 2000
Falls Church, Virginia 22041

(b)(6)

Re: In the Matter of John Demjanjuk, A [redacted] Appeal from Order of Removal

Dear Sir/Madam:

Enclosed for filing in the captioned case is an original of RESPONDENT'S BRIEF ON APPEAL. A certificate of service evidencing service of the brief and of this transmittal letter is attached to this brief as the last page.

Please file stamp the additional copy of the brief and return it with our messenger.

Yours very truly,

John Broadley

Enclosures

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	)	
John Demjanjuk	)	File No. A [redacted] (b)(6)
In removal proceedings	)	

RESPONDENT'S BRIEF ON APPEAL

Dated: June 30, 2006

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

IN THE MATTER OF	)	
	)	
John DEMJANJUK,	)	DHS FILE NO. A [redacted] (b)(6)
	)	
Respondent	)	IN REMOVAL PROCEEDINGS
	)	

RESPONDENT'S BRIEF ON APPEAL

Respondent John Demjanjuk respectfully submits this brief in support of his appeal of the following decisions issued by the Chief Immigration Judge in the above-captioned proceedings:

> Decision of June 16, 2005 denying Respondent's Motion to Reassign to Arlington Immigration Judge (henceforth cited as "C.I.J. Jurisdiction")
>
> Decision of June 16, 2005 granting DHS motion for collateral estoppel (henceforth cited as "C.I.J. Collateral Estoppel")
>
> Decision of December 28, 2005 denying Respondent's petition for deferral of removal under the Convention Against Torture and ordering him removed (henceforth cited as "C.I.J. Removal and CAT")

I. FACTS AND PROCEDURAL HISTORY

On December 16, 2004, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") that set forth 28 allegations of fact and charged Respondent with removability pursuant to section 237(a)(4)(D) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(4)(D) (2000), as an alien who is inadmissible under INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i), for having "ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi

government of Germany." The NTA further charged Respondent with removability under INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A), as an alien who, at the time of entry or of adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: (1) aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the Displaced Persons Act of 1948, Pub. L. No 80-774, ch. 647, 62 Stat. 1009, 1013, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 ("DPA"); (2) aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948); (3) aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Respondent appeared at a master calendar hearing on February 28, 2005 represented by his newly retained immigration counsel. The government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law, and Respondent's counsel requested a six month continuance in order to review the voluminous record of materials in the case, prepare written pleadings to the factual allegations and charges in the NTA, and respond to the government's motion. The government opposed a six-month continuance and urged the Court to order that written pleadings and a response to the motion be filed within 60 days. Over Respondent's counsel's objections, the presiding Chief Immigration Judge ordered that written pleadings and a written response to the government's motion for application of collateral estoppel and judgment as a matter of law be filed no later than May 31, 2005. The Chief Immigration Judge reset Respondent's case for a master calendar hearing on June 30, 2005, and ordered that all applications for relief from removal be filed by that date.

On April 26, 2005, Respondent filed a Motion to Reassign to Arlington Immigration Judge ("Motion to Reassign"), challenging the Chief Immigration Judge's jurisdiction to preside over the instant removal proceedings and moving for transfer of the case, on a random basis, to a sitting Immigration Judge in Arlington, Virginia with authority over cases arising in the Cleveland, Ohio hearing location.[1] The government filed an opposition to Respondent's motion on May 10, 2005, and Respondent submitted a response to the government's opposition on May 20, 2005.

On May 31, 2005, as ordered by the Chief Immigration Judge, Respondent filed his written pleadings to the allegations of fact and charges of removability set forth in the NTA, along with his opposition to the government's motion for application of collateral estoppel and judgment as a matter of law. Respondent denied all four charges of removability and moved for termination of proceedings. In the alternative, Respondent requested relief from removal under INA §§ 237(a)(1)(H) and 240A(a) and protection under the Convention Against Torture.

On June 15, 2005, Respondent moved for a continuance of the June 30, 2005 deadline to submit all applications for relief from removal pending (1) a determination on the charges of removability and designation of a country or countries for removal purposes; (2) a decision by the Chief Immigration Judge on Respondent's Motion to Reassign; and (3) receipt of materials requested by Respondent under the Freedom of Information Act ("FOIA"), which had not been produced despite passage of the statutory deadline for production of such materials.

On June 16, 2005, the Chief Immigration Judge issued a decision denying Respondent's Motion to Reassign. (C.I.J. Jurisdiction). The decision explicitly rejected

[1] Although the proper venue of Respondent's proceedings is Cleveland, Ohio, all correspondence and documents pertaining to this case are to be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203. See 8 C.F.R. § 1003.11.

Respondent's arguments (1) that the Chief Immigration Judge lacks the jurisdiction to preside over removal proceedings; (2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and (3) that due process requires random reassignment to an Arlington Immigration Judge. Respondent submitted his appeal from that decision on January 23, 2006.[2]

In addition, also on June 16, 2005, the Chief Immigration Judge issued a decision granting the Government's motion for application of collateral estoppel and judgment as a matter of law and denying Respondent's motion to terminate removal proceedings. (C.I.J. Collateral Estoppel). The Chief Immigration Judge found that collateral estoppel applies to all but one of the factual allegations contained in the NTA, and he found Respondent removable on all four charges of removability set forth in the NTA. The Chief Immigration Judge also found Respondent statutorily barred from all requested forms of relief, except deferral of removal under the Convention Against Torture ("CAT"). The Chief Immigration Judge ordered Respondent to be prepared to file his application for deferral of removal at the scheduled June 30, 2005, master calendar hearing.

On June 23, 2005 the Chief Immigration Judge issued an order cancelling the June 30 hearing and setting September 7, 2005 as the date for Respondent to file his application for deferral of removal under the Convention Against Torture. Respondent filed his application on that date, the parties submitted a statement of stipulated facts not at issue, individual pre-hearing statements and proposed exhibits. The Chief Immigration Judge admitted all proposed

[2] Respondent filed an interlocutory appeal of the Chief Immigration Judge's reassignment decision on June 20, 2005. On September 6, 2005 the Board issued an order returning the record to the Immigration Court without further action, finding that the circumstances of the case do not present a recurring problem involving a significant issue in the administration of the immigration laws which could not be be considered on appeal during the regular course of proceedings.

exhibits and on November 29, 2005 held a merits hearing. On December 28, 2005 the Chief Immigration Judge issued a final decision denying Respondent's application for deferral of removal under the Convention Against Torture and ordering Respondent removed to Ukraine, or in the alternative to Germany or Poland on the charges contained in the NTA. (C.I.J. Removal)

The Chief Immigration Judge summarized the course of proceedings at greater length at C.I.J. Removal at pp. 1-3, but did not refer to Respondent's challenge to the Chief Immigration Judge's jurisdiction.

II. ISSUES PRESENTED FOR REVIEW

Five issues have been raised on appeal and will be addressed below:

1. Whether the Chief Immigration Judge has jurisdiction to conduct removal proceedings;

2. Whether the Chief Immigration Judge improperly refused to recuse himself as required by applicable law;

3. Whether the Chief Immigration Judge improperly refused to assign Respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio;

4. Whether the Chief Immigration Judge erroneously found that certain facts relevant to removability had been established by collateral estoppel; and

5. Whether the Chief Immigration Judge erroneously found that Respondent was not eligible for deferral of removal pursuant to the Convention Against Torture.

III. STANDARD OF REVIEW

Pursuant to 8 CFR § 1003.1(d)(3) the Board applies a "clearly erroneous" standard to an Immigration Judge's findings of act, including credibility findings. Pursuant to 8

CFR § 1003.1(d)(3) the Board applies a *de novo* standard of review to questions of law, discretion, judgment, and other issues. *See also* Board of Immigration Appeals Practice Manual, p.7. Point Nos. 1-4 above are governed solely by the *de novo* standard as being questions of law, discretion or judgment. Point No. 5 above is governed by a combination of "clearly erroneous" and *de novo* standards.

IV. SUMMARY OF ARGUMENT

1. The Chief Immigration Judge has no jurisdiction to conduct removal proceedings.

Under the regulations, the position of the Chief Immigration Judge is a purely administrative one. The regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge. *See* 8 CFR 1003.9. The Chief Immigration Judge, unlike the Chairman of this Board, is not selected from among the sitting Immigration Judges nor is his right to sit as an Immigration Judge confirmed by the regulation. *Compare* 8 CFR § 1003.1(a)(2)(i) with 8 CFR § 1003.9.

2. The Chief Immigration Judge improperly refused to recuse himself as required by applicable law.

Substantial evidence was presented below based on which the Chief Immigration Judge's impartiality might reasonably be questioned. Such evidence included a law review article written by the Chief Immigration Judge in which he expressed strong personal convictions about the treatment to be afforded to Nazi and other war criminals. Since 1996 the Chief Immigration Judge has presided over only two cases other than the present matter involving the respondent. The first was a deportation case that commended on November 20, 1996 in Detroit, Michigan, in which the respondent was charged with deportability as an alien alleged to have ordered, incited, assisted, or otherwise participated in Nazi persecution or genocide. The second

was a removal case unrelated to allegations of Nazi persecution. The third is this case which the Chief Immigration Judge circumvented the random assignment of cases practiced in the Arlington Immigration Court and assigned to himself. The combination of the Chief Immigration Judge's expressed views in his law review article and his selection of cases to assign to himself (two out of three in the past ten years involving alleged Nazi war criminals) provides an ample basis for a reasonable person to reasonably question the Chief Immigration Judge's impartiality, the applicable standard for recusal promulgated for Immigration Judges. *See* Office of the Chief Immigration Judge, *Operating Policies and Procedures Memorandum 05-02: Procedures for Issuing Recusal Orders in Immigration Proceedings* ("*Recusal Memo*"), *published in* 82 Interp. Rel. 547-53 (Mar 28, 2005).

3. The Chief Immigration Judge improperly refused to assign the Respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio.

An alien in deportation or removal proceedings must be "afforded that due process required by the regulations" and that "as long as the regulations remain operative," the Attorney General or his designees may not "sidestep" the proper regulatory procedures or "dictate [the outcome of the proceedings] in any manner." United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267 (1954). The Chief Immigration Judge, by singling out Respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration court, has sidestepped the proper regulatory procedures. *See* 8 CFR § 1003.10. Moreover, the Chief Immigration Judge's actions resulted in a violation of Respondent's due process rights by depriving him of a fair hearing in which a randomly selected Immigration Judge is permitted to exercise his or her own

independent judgment and discretion. *See id.* at 268 (emphasizing the necessity that an administrative adjudicator "in arriving at [a] decision exercise [his or her] own independent discretion, after a fair hearing, which is nothing more than what the regulations accord petitioner as a right.")

4. The Chief Immigration Judge erroneously found that certain facts relevant to the removability issue had been established by collateral estoppel.

The government moved to apply collateral estoppel based on findings and conclusions entered by the United States District Court for the Northern District of Ohio in United States v. Demjanjuk, Case No. 99CV1193, 2002 WL 544622 (N.D. Ohio) (February 21, 2002) (Chief Judge Paul R. Matia). Respondent argued that he had not had a full and fair opportunity to litigate certain matters relating to the authenticity of the "Demjanjuk" signature on a German identity card on which the government's case was substantially based.

The Chief Immigration Judge's decision failed to correctly apply the standards for collateral estoppel established by the Supreme Court, the Sixth Circuit and this Board by failing to recognize that Respondent had not had a full and fair opportunity to litigate his case below. That failure resulted from the failure of the district court and the court of appeals to address a major issue argued by Respondent going to the heart of Respondent's case -- mischaracterization of the Israeli trial testimony by the government's handwriting expert, and the inability of the Respondent to obtain access to the Ukrainian KGB file on Respondent as a result of the conduct of the Office of Special Investigations.

5. The Chief Immigration Judge erroneously found that Respondent was not eligible for deferral of removal pursuant to the Convention Against Torture.

In making his findings under the regulations implementing the Convention Against Torture, the Chief Immigration Judge erroneously relied upon analogies to other cases

that bear no relationship to Respondent's circumstances. The Chief Immigration Judge improperly relied upon the opinion of a State Department official that was prepared expressly for this proceeding and that contained none of the factual or methodological predicates necessary to underpin opinion testimony. The Chief Immigration Judge also made an error of law in concluding that there was no evidence of Respondent's vulnerability to torture on account of his age.

V. ARGUMENT

The case at bar presents critical jurisdictional issues regarding the administration of the immigration laws – including the Chief Immigration Judge's authority to preside over removal proceedings, the need for recusal where the Chief Immigration Judge's impartiality might reasonably be questioned, and the random assignment of cases to Immigration Judges to ensure fairness and impartiality. If the Board finds that the Chief Immigration Judge is not an Immigration Judge within the meaning of the regulations entitled to hear removal proceedings, as Respondent argues it must, the Board must dismiss this appeal on jurisdictional grounds. The Board's own jurisdiction is limited to review of appeals from decisions of *Immigration Judges* in removal, deportation, and exclusion proceedings, including decisions of Immigration Judges pertaining to the Convention Against Torture. 8 CFR 1003.1(b).

A. The Chief Immigration Judge Lacks Jurisdiction to Preside Over Removal Proceedings.

In his Motion to Reassign, Respondent argued that the Chief Immigration Judge is without jurisdiction to conduct removal proceedings, and that his self-appointment to preside over the instant case is therefore *ultra vires*. Specifically, Respondent noted that the authority of the Executive Office for Immigration Review, which includes the Chief Immigration Judge, Immigration Judges, and the Board of Immigration Appeals ("Board" or "BIA"), is delineated in

regulations promulgated by the United States Attorney General. 8 C.F.R. Part 1003. The authority of these administrative actors is "limited by statute and regulation to that which has been delegated by the Attorney General." Matter of H-M-V-, 22 I&N Dec. 256, 258 (BIA 1998). As this Board has made clear, unless the regulations contain an affirmative grant of power to act in a particular matter, neither the Chief Immigration Judge, nor the Immigration Judges, nor the Board have jurisdiction over it. Matter of Sano, 19 I&N Dec. 299, 300-01 (BIA 1985); see also Matter of Hernandez-Puente, 20 I&N Dec. 335, 339 (BIA 1991) ("[T]his Board . . . can only exercise such discretion and authority conferred upon the Attorney General by law. 8 C.F.R. § 3.1(d)(1) (1991). Our jurisdiction is defined by the regulations and we have no jurisdiction unless it is affirmatively granted by the regulations.").

The regulation at 8 C.F.R. § 1003.9 sets forth the authority of the Chief Immigration Judge:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

By contrast, the authority of the Immigration Judges is set forth at 8 C.F.R. § 1003.10:

> Immigration Judges, as defined in 8 CFR part 1, shall exercise the power and duties in this chapter regarding the conduct of exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

The term "immigration judge," in turn, is defined at 8 C.F.R. § 1001.1(l):

> The term immigration judge means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the [Immigration and Nationality] Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.[3]

As Respondent has argued, these provisions make clear that Immigration Judges are authorized by regulation to conduct proceedings of the type at issue here, i.e., removal proceedings under INA § 240. The Chief Immigration Judge, by contrast, administers the Immigration Courts and provides general supervision, direction, and scheduling to the Immigration Judges, as well as evaluation of their performance. However, the Chief Immigration Judge enjoys *no* regulatory authority to conduct or preside over removal proceedings. Compare 8 C.F.R. § 1003.9 with 1003.10 and 1001.1(l).

In his June 16, 2005 decision, the Chief Immigration Judge asserts that "[i]t is beyond cavil that the Chief Immigration Judge is an Immigration Judge." C.I.J. Jurisdiction at 2 n.2. According to the decision, "[t]he designation as Chief simply adds additional duties and responsibilities," and "no one would argue" in other judicial contexts – such as in federal district, state, or municipal court – that a "Chief Judge" is not a judge. Id. The Chief Immigration Judge declares: "Citations to authority is unnecessary; common sense is all that is needed." Id.

Respondent respectfully disagrees. The Chief Immigration Judge's reliance on such circular reasoning and resort to "common sense" argument as a basis for his purported authority is simply unpersuasive. What *is* beyond dispute is that the authority vested in different

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[3] In a rule published in the Federal Register on February 28, 2003, the Department of Justice reorganized Title 8 of the Code of Federal Regulations to reflect the transfer of functions from the Immigration and Naturalization Service ("INS") to the Department of Homeland Security ("DHS"). 68 Fed. Reg. 10,349 (Mar. 5, 2003).

administrative components of the Executive Office for Immigration Review (including the Immigration Judges, the Chief Immigration Judge, and the Board) is expressly limited to that which has been delegated by the Attorney General. Matter of H-M-V-, supra, at 258. As this Board has made clear, "[o]ur jurisdiction is defined by the regulations and *we have no jurisdiction unless it is affirmatively granted* by the regulations." Matter of Hernandez-Puente, supra, at 339 (emphasis added). Absent an explicit grant of regulatory authority, it is simply not sufficient for the Chief Immigration Judge to maintain that "Respondent overlooks the fact that the Chief Immigration Judge is an Immigration Judge appointed by the Attorney General." C.I.J. Jurisdiction at 2 n.2. The simple fact remains that *no* evidence has been provided to indicate that the Chief Immigration Judge has also been appointed as an "immigration judge," apparently because no such evidence exists. The Chief Immigration Judge's pronouncement is not a substitute for authority, and merely declaring that something is the case doesn't make it so.

Clearly, the regulations define an "immigration judge" as "an attorney whom the Attorney General appoints as an administrative judge," and to this extent the Chief Immigration Judge meets the definition. 8 C.F.R. § 1001.1(l). However, the provision proceeds to require that the individual be "qualified to conduct specified classes of proceedings, including a hearing under Section 240 of the Act." Id. As discussed above, Immigration Judges *are* granted the explicit regulatory authority to "conduct . . . exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct." 8 C.F.R. § 1003.10.

The Chief Immigration Judge, by marked contrast, is not. See 8 C.F.R. § 1003.9.

An examination of other portions of Title 8 of the Code of Federal Regulations is instructive. The necessity of explicit authority is demonstrated elsewhere in the regulations,

specifically with respect to the organization, jurisdiction, and powers of this Board. According to the regulations, "The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them." 8 C.F.R. § 1003.1(a)(1). Furthermore, "The Attorney General shall designate *one of the Board members* to serve as Chairman." 8 C.F.R. § 1003.1(a)(2) (emphasis added). Thus, in contrast to the Chief Immigration Judge, the Chairman of the Board is clearly *also* a Board Member, albeit one charged with administrative and supervisory duties that are in addition to, rather than in lieu of, his or her role as a member of the Board.[4]

Proceeding from a "common sense" conclusion that a Chief Immigration Judge is *ipso facto* also an Immigration Judge – notwithstanding the absence of any regulatory or statutory authority to support that determination – the decision goes on to argue that the "plain language" of the operative regulation supports the conclusion that the Chief Immigration Judge's administrative duties are in addition to his duties as an Immigration Judge. C.I.J. Jurisdiction at 3. The decision notes that 8 C.F.R. § 1003.9 provides that the duties described therein "shall include, *but are not limited to*" the establishment of operational policies and the evaluation of the performance of Immigration Courts. Id. A plain reading of the distinct statutory provisions defining the duties of the Immigration Judges versus those of the Chief Immigration Judge does not support the conclusion that "[t]he Attorney General . . . established the position of the Chief

[4] The same situation applies to the chief judges of United States District Courts. 28 U.S.C. § 136 provides that "In any district having more than one district judge, the chief judge of the districts shall be the district judge in regular active service who is senior in commission of those judges who -- . . . . The chief judge of a U.S. District Court thus is selected from among the sitting district judges in the district. Similarly with respect to the United States Courts of Appeal. 28 U.S.C. § 45 provides that "The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who -- . . . ." The chief judge of a Circuit Court of Appeals thus is selected from among the sitting circuit judges on the court of appeals.

Immigration Judge and gave additional authority to that office." Id. Rather, the plain language indicates that the Immigration Judges were delegated authority to adjudicate deportation, exclusion, and removal cases, whereas the Chief Immigration Judge was assigned various administrative and supervisory functions that are "not limited to" those specific administrative functions spelled out in the regulation. Compare 8 C.F.R. § 1003.9 with § 1003.10. The Chief Immigration Judge was delegated exclusive authority distinct and separate from the authority vested in the Immigration Judges.

The decision also relies on the Department of Justice's employment position description (OF-8) for Chief Immigration Judge as authority for the conclusion that the latter enjoys regulatory sanction to also act as an Immigration Judge. C.I.J. Jurisdiction at 3. First, it is noteworthy that the cited position description language contains no reference to performance of Immigration Judge duties in deportation or removal proceedings, but only in exclusion proceedings and various other areas. C.I.J. Jurisdiction, Exh. 1. Second, the position description states that "When called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, ..." Id. The "when called upon" preamble implies that the Chief Immigration Judge would only be expected to perform the duties of an Immigration Judge when a higher authority in the Executive Office for Immigration Review, or elsewhere within the Department of Justice, determined that such a need existed. In the case at bar, the Chief Immigration Judge has appointed himself to preside over Respondent's removal proceedings. Surely this is not what was intended by the phrase "when called upon" in the position description. Third, and most important, a job position announcement – no matter what language it contains – is no substitute for explicit regulatory authority to act which has

resulted from a considered rulemaking process conducted pursuant to the Administrative Procedure Act.

The decision proceeds to assert that "[t]he Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges handle cases when necessary and have done so for years." C.I.J. Jurisdiction at 3. It notes that matters decided by these adjudicators have been reported by this Board as well as by the federal courts, which have thereby "clearly recognized the authority of the Chief Immigration Judge and the Assistant Chief Immigration Judges to preside over cases." Id. at 4. The decision's supposition is not well founded. Merely because the Chief Immigration Judge and his fellow administrative actors who are defined in 8 C.F.R. § 1003.9 have adjudicated cases in the past does not establish that they enjoyed at the time, or currently enjoy, regulatory authority to do so. To Respondent's knowledge and belief, the Chief Immigration Judge's authority to preside over removal proceedings has not previously been challenged. The issue of such authority was never raised, argued, or decided by the Board or the federal courts in the cited opinions, hence it cannot be said that these decisions "clearly recognized the authority of the Chief Immigration Judge . . . to preside over cases." C.I.J. Jurisdiction at 4.

The decision argues further that a 1997 amendment to 8 C.F.R. § 1003.9, which added the "but are not limited to" language, "implicitly recognized . . . the authority of the Chief Immigration Judge to conduct removal proceedings." Id. As Respondent has argued, implicit recognition of authority is *not* a sufficient basis upon which to conclude that the Chief Immigration Judge has regulatory sanction to appoint himself to preside over a particular alien's removal proceedings. Unless the regulations contain an affirmative grant of power to act in a particular matter, neither the Chief Immigration Judge, nor the Immigration Judges, nor the

Board have jurisdiction over it. Matter of Sano, supra, at 300-01. An "implicit" assertion of authority to preside, without reference to any legal basis or authorization, cannot substitute for a clear and unambiguous delegation of authority, particularly given this Board's insistence that administrative actors may proceed only upon explicit statutory or regulatory permission. See, e.g., Matter of H-M-V-, supra; Matter of Hernandez-Puente, supra.

In sum, the Chief Immigration Judge's bald assertion of authority to preside, without reference to an explicit regulatory mandate, is simply not sufficient to find that he is authorized to preside over this, or any other, removal case. Jurisdiction must be clear and unambiguous, and the Chief Immigration Judge is acting *ultra vires* in these proceedings. Unlike the explicit regulatory language setting forth the authority of the Chairman of the Board of Immigration Appeals, who is designated by the Attorney General from *among the existing Board Members* to serve in that role, or the chief judges of United States District Courts or the chief judges of the United States Courts of Appeal who are selected from *among the sitting district or circuit judges on those courts*, the Chief Immigration Judge is not required by regulation to have also been appointed as, or to conduct the duties of, an Immigration Judge. Compare 8 C.F.R. § 1003.1(a)(2) with 8 C.F.R. §§ 1003.9 and 1003.10. The decision's contention that "[c]itations to authority is unnecessary" (C.I.J. Jurisdiction at 2 n.2) confirms Respondent's position that the Chief Immigration Judge's asserted authority is, in fact, non-existent. The arguments set forth fail to overcome a lack of explicit regulatory authority to preside. The Board should find that the Chief Immigration Judge had no jurisdiction to adjudicate a removal petition and should vacate his decision and dismiss this appeal.

B. Recusal is Appropriate Because the Chief Immigration Judge's Impartiality Might Reasonably be Questioned.

The standard for recusal of an Immigration Judge[5] is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, *Operating Policies and Procedures Memorandum 05-02: Procedures For Issuing Recusal Orders in Immigration Proceedings* ("*Recusal Memo*"), *published in* 82 Interp. Rel. 547-53 (Mar. 28, 2005). This federal standard is stringent: to ensure public confidence in the judiciary, recusal must be insisted upon wherever it is required so as to "avoid[] even the appearance of impropriety whenever possible." Id. (quoting Liljeberg v. Health Service Acquisition Corp., 486 U.S. 847, 865 (1988)).

As Respondent argued in his Motion to Reassign and response to the government's opposition, a reasonable person, possessed of all relevant facts, might reasonably question the impartiality of the Chief Immigration Judge in this case. See Liteky v. United States, 510 U.S. 540, 548 (1994). The Chief Immigration Judge's decision to appoint himself to preside over Respondent's removal case raises serious concerns about his impartiality in these proceedings. In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law, and offered his own "thoughts for the future in this area of immigration law." Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443, 443 (1998). The Chief Immigration Judge opined that the issue of Nazi war criminals in immigration law "will eventually subside" with the passage of time, but declared that "*[t]he author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities.*" Id. at 467 (emphasis added). In his article, the Chief Immigration Judge

[5] This argument is premised upon a finding by the Board that the Chief Immigration Judge is an Immigration Judge within the meaning of the regulations and authorized to preside over removal proceedings.

asserted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009, 1948 U.S.C.C.A.N.695, amended by Act of June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 ("DPA"). Id. at 447. The DPA is the provision of law under which Respondent entered this country in 1951, prior to becoming a naturalized United States citizen in 1958. United States v. Demjanjuk, 367 F.3d 623, 628 (6th Cir. 2004). Furthermore, referring to "aliens who have committed genocide," the Chief Immigration Judge declared that "it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders" and that only "[a]s long as we persist in taking action against them, then we continue to triumph over them." Id. at 467.

As Respondent has previously stated, the view that those responsible for Nazi persecution should be identified and vigorously prosecuted is a conviction with which few reasonable individuals would disagree. However, as the government official charged with supervising, directing, evaluating, and establishing operational policies for the 53 United States Immigration Courts and 218 Immigration Judges nationwide, the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betray an improper bias. See 8 C.F.R. § 1003.9. In particular, the Chief Immigration Judge's opinion that those suspected of having committed war crimes and "similar atrocities" should be "targeted for removal," reveals a lack of impartiality toward aliens – such as Respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA.

The Chief Immigration Judge's lack of impartiality is further evidenced by the cases over which he has elected to preside in recent years. According to information obtained

through a FOIA request, since 1996 the Chief Immigration Judge has presided over only two cases other than the present matter. The first was a deportation case that commenced on November 20, 1996, in Detroit, Michigan, in which the respondent was charged with deportability under INA § 241(a)(4)(D), 8 U.S.C. § 1251(a)(4)(D) (1994), as an alien alleged to have ordered, incited, assisted, or otherwise participated in Nazi persecution or genocide. See also INA § 212(a)(3)(E), 8 U.S.C. § 1182(a)(3)(E) (1994). The second was a removal case in which the respondent was charged with removability under INA §§ 212(a)(6)(A)(i) and (7)(A)(i)(I), 8 U.S.C. §§ 1182(a)(6)(A)(i), (7)(A)(i)(I) (2000), as an alien alleged to be present in the United States without permission and not in possession of a valid immigrant visa. More than five years after completion of the latter case, the Chief Immigration Judge has appointed himself to preside over the instant matter, in which Respondent is charged with removability under the successor statute that was at issue in the 1996 Detroit, Michigan case. Namely, Respondent is charged with removability under INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D) (2000), as an alien alleged to have ordered, incited, assisted, or otherwise participated in Nazi persecution or genocide. See also INA § 212(a)(3)(E), 8 U.S.C. § 1182(a)(3)(E) (2000).

As pointed out by Respondent in his arguments to the Chief Immigration Judge, these statistics reveal that, over the past nearly ten years, two of the three cases over which the Chief Immigration Judge has elected to preside have involved allegations of participation in Nazi persecution or genocide. The Chief Immigration Judge's determination to single these cases out, from among the many hundreds of removal proceedings conducted annually nationwide, bespeaks a bias toward selective prosecution of cases involving purported Nazi war criminals. The Chief Immigration Judge has exhibited an unmistakable interest in such cases, as evidenced by his Georgetown Law Review article and, in particular, his assertion therein that the United

States Government should focus its efforts on targeting the removal of alleged Nazi collaborators and their successors, "other war crime criminals believed to have committed similar atrocities." 12 Geo. Immigr. L.J. at 467. He has encouraged the government to "persist in taking action" against perceived "war criminals," so as to "continue to triumph against them." Id. Read in isolation, these statements would not raise particular concerns. However, because the Chief Immigration Judge is, for all practical purposes and owing to the authority delegated to him by the Attorney General, the very government that he has admonished to target alleged Nazi collaborators for removal from the United States, the assertions indicate a decided lack of judicial impartiality, if not an outright bias toward the aggressive prosecution of individuals in Respondent's circumstances under U.S. immigration law.

Consequently, recusal of the Chief Immigration Judge is appropriate in this case. See Liljeberg, 486 U.S. at 860-61 (holding that recusal is required "if a reasonable person, knowing all of the facts, would harbor doubts concerning the judge's impartiality"); Liteky, 510 U.S. at 548; Del Vecchio v. Illinois Dept. of Corrections, 31 F.3d 1363, 1371 (7th Cir. 1994) ("[T]he due process clause sometimes requires a judge to recuse himself without a showing of actual bias, where a sufficient motive to be biased exists."). According to the OCIJ's recently issued *Recusal Memo*, "recusal is the process under which a judge is excused or disqualifies himself or herself from presiding over a case in which he or she may have an interest or may be unduly prejudiced." *Recusal Memo* at 1. Citing with approval Liteky v. United States, supra, the memorandum states that a judge – including an Immigration Judge – ought to follow the federal standard and "'disqualify himself in any proceeding in which his impartiality might reasonably be questioned.'" Id. at 2 (quoting 28 U.S.C. § 455). Likewise, the American Bar Association's Code of Judicial Conduct calls for recusal where there are "reasonable" concerns over a judge's

impartiality, such as where he "'has a personal bias or prejudice concerning a party'" or "'personal knowledge of disputed evidentiary facts.'" Id. (quoting Canon 3(E)(1) of the Code of Judicial Conduct). The proper procedure requires a motion or request for recusal, submitted in writing or made on the record, supported by specific reasons why recusal is warranted. Id. at 7. Prior to the hearing, as in the case at bar, a written decision on a recusal request must be issued by the Immigration Judge, setting forth "a well-reasoned opinion explaining the circumstances and legal reasoning behind either the grant or the denial of the recusal." Id.

Furthermore, this Board has declared that recusal is warranted where (1) an alien demonstrates that he was denied a constitutionally fair proceeding; (2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or (3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." Matter of Exame, 18 I&N Dec. 303 (BIA 1982). The regulations also address "withdrawal and substitution of immigration judges" in removal proceedings, stating as follows: "The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified." 8 C.F.R. § 1240.1(b) (2004). Thus, the regulations place the burden on the Immigration Judge to determine when disqualification is necessary, given the circumstances of a particular case.

In his decision, the Chief Immigration Judge maintains that recusal is not warranted where a judge has publicly expressed an understanding or opinion on a legal issue, where the judge has authored a law review article in a certain field, or where the judge has indicated an intention to uphold the law or impose severe punishment upon those found guilty. C.I.J. Jurisdiction at 5-6 and cases cited therein. The cited authority, however, does not support the Chief Immigration Judge's refusal to recuse himself in the instant matter. For example, in Laird v. Tatum, 409 U.S. 824, 826, 830 (1972), Justice Rehnquist denied the respondent's

motion to disqualify where he had "expressed an understanding of the law" regarding federal surveillance and First Amendment rights and had "previously expressed in public an understanding of the law on the question of the constitutionality of governmental surveillance." Although the Justice had indicated his view of the general legal question presented, he had not advocated targeting or focusing on parties in the particular circumstances of the respondent. Id. In United States v. Bonds, 18 F.3d 1327 (6th Cir. 1994), the judge ruled that his attendance at a scholarly conference on DNA did not provide a basis for his recusal from a subsequent murder case, because his attendance revealed a mere "interest[] in the subject matter area, and no more." Id. The judge had not expressed an opinion that individuals in the defendants' circumstances should be the focus of vigorous prosecution, or any other extraordinary measures. Id. Finally, in Buell v. Mitchell, 274 F.3d 337, 345 (6th Cir. 2001), the court ruled that a blanket disqualification of judges who, as legislators, may have sponsored or voted for legislation advocating a certain position was unwarranted. According to the court, the "impartiality might reasonably be questioned" standard of recusal "requires a fact-specific analysis of the judge's prior activity, legislative or otherwise, to determine whether disqualification is required." Id. The court held that the judge's prior expressions of support for the death penalty and sponsorship of death penalty legislation, *before* he became a judge, did not disqualify him from later sitting on cases involving capital crimes. Id. Notably, the acts and expressions that were the focus in Buell occurred when the judge in question was a legislator, before he had been appointed to the bench.

Respondent maintains that recusal is appropriate in these proceedings. In none of the cases cited in the Chief Immigration Judge's decision had the judge in question advocated or expressed support for targeting a certain class of individuals for vigorous prosecution.

Moreover, the acts considered by the Sixth Circuit in Buell occurred prior to the judge in question even becoming a judge, whereas the Chief Immigration Judge's law review article was published during his tenure as the Chief Immigration Judge. Respondent contends that he has provided "compelling evidence" which would lead a reasonable person, having been apprised of all the relevant facts, to conclude that the Chief Immigration Judge's impartiality in these removal proceedings "might reasonably be questioned." *Recusal Memo* at 4, 7. Thus, even if the Chief Immigration Judge had jurisdiction to conduct the proceedings, he should have disqualified himself from presiding over this case and transfered the matter, on a random basis, to an Arlington Immigration Judge.

C. The Chief Immigration Judge Should Have Reassigned Respondent's Case to an Arlington Immigration Judge on a Random Basis.

It is well established that an alien in deportation or removal proceedings must be "afforded that due process required by the regulations" and that "as long as the regulations remain operative," the Attorney General or his designees may not "sidestep" the proper regulatory procedures or "dictate [the outcome of the proceedings] in any manner." United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267 (1954). The Chief Immigration Judge, by singling out Respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, has sidestepped the proper regulatory procedures. See 8 C.F.R. § 1003.10. Moreover, the Chief Immigration Judge's actions raise serious due process concerns that Respondent was deprived of a fair hearing, in which a randomly selected Immigration Judge was permitted to exercise his or her own independent judgment and discretion. See id. at 268 (emphasizing the necessity that an administrative adjudicator "in arriving at [a] decision exercise [his or her] own independent

discretion, after a fair hearing, which is nothing more than what the regulations accord petitioner as a right").

As Respondent argued before the Immigration Court, among the most important means of ensuring fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. As one federal circuit court jurist has stated, "One of the court's techniques for promoting justice is randomly to select panel members to hear cases." Beatty v. Chesapeake Center, Inc., 835 F.2d 71, 75 (4th Cir. 1987) (Murnaghan, C.J., concurring); see also United States v. Osum, 943 F.2d 1394 (5th Cir. 1991) (although no formal local rule imposed random assignment system, "the system appeared to serve purposes of distributing case load among judges and *fostering selection of tribunal in neutral manner*" (emphasis added)). Numerous federal courts have promulgated local rules to ensure the random selection of judges. See, e.g., Hatcher v. Consolidated City of Indianapolis, 323 F.3d 513, 519 (7th Cir. 2003) ("[T]he Local Rules of the U.S. District Court for the Southern District of Indiana provide that selections of magistrate judges are to be made at random. See Local Rule 72.1(h)."); United States v. Todd, 245 F.3d 691 (8th Cir. 2001) (noting that Local Rule 40.1(a) of the U.S. District Court, Eastern District of Arkansas "directs that '[a]ll civil and criminal actions and proceedings shall be assigned by a random selection process.'"); United States v. Simmons, 476 F.2d 33 (9th Cir. 1973) (discussing Rule 2(f) of the United States District Court, Central District of California, which provides for random selection of judges).

In his decision, the Chief Immigration Judge cites to no written policy regarding the assignment of cases in the Arlington Immigration Court, and Respondent's FOIA request for such information is past due and has not been answered. The Chief Immigration Judge states merely that the regulations do not require random assignment and that "the Chief Immigration

Judge has the authority to assign cases to any Immigration Judge, *including himself*." C.I.J. Jurisdiction at 8 (emphasis added). Respondent asserts that the right to take a certain action does not necessarily mean it is the appropriate course, particularly when serious due process concerns are implicated. Respondent's contention is not that random assignment is mandatory, but that it is appropriate given the history and circumstances of this unique case.

As discussed, the Chief Immigration Judge, through his published writings and his selective decisions to preside over matters involving allegations of Nazi persecution or genocide, has exhibited a lack of impartiality and an appearance of bias toward individuals such as Respondent, whom the United States Government has targeted for removal pursuant to INA § 237(a)(4)(D). Viewed in its totality, these actions clearly satisfy the applicable federal standard for recusal, where "[a] judge must recuse himself, regardless of any actual bias or prejudice, if the judge's impartiality might reasonably be questioned." Liteky v. United States, 510 U.S. at 548. See *Recusal Memo* at 4. It is the accumulation of factors that raises serious concerns about the Chief Immigration Judge's impartiality in this case, particularly when coupled with the history of tortuous mistakes and outright fraud that have characterized Respondent's encounters with the government over the past three decades. See, e.g., Demjanjuk v. Petrovsky, 10 F.3d 337 (6th Cir. 1993) (vacating the prior judgment of the district court in habeas proceedings and the circuit court's own judgment in extradition proceedings and finding that the judgments were wrongly procured as a result of prosecutorial misconduct that constituted fraud on the court).

Accordingly, Respondent urges the Board to vacate the Chief Immigration Judge's decisions in this case on grounds that the Chief Immigration Judge should have recused himself.

D. The Chief Immigration Judge Improperly Applied the Doctrine of Collateral Estoppel.

In his June 16, 2005 Collateral Estoppel decision (C.I.J. Collateral Estoppel) the Chief Immigration Judge applied collateral estoppel with respect to all but one of the factual allegations of the NTA. Based on those findings, the C.I.J. found Respondent removable under the INA. C.I.J. Collateral Estoppel at 14. In reaching this decision, the C.I.J. erred in applying the established law of the Sixth Circuit on the doctrine.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." Montana v. United States, 440 U.S. 147, 153 (1979); see also Hickman v. Commissioner, 183 F.3d 535, 537 (6th Cir. 1999) (explaining that the doctrine reflects the policy that one full opportunity to litigate an issue is sufficient). The United States Court of Appeals for the Sixth Circuit, in whose jurisdiction this case arises, has held that collateral estoppel may be applied to preclude further review of an issue *only* when the following criteria have been met: "1) the parties in both proceedings are the same or in privity, 2) there was a valid, final judgment in the first proceeding, 3) the same issue was actually litigated in the first proceeding, 4) that issue was necessary to the judgment, and 5) the party against whom preclusion is asserted (or its privy) had a full and fair opportunity to litigate the issue." United States v. Dominguez, 359 F.3d 839, 842 (6th Cir. 2004); see also Hammer v. INS, 195 F.3d 836, 840 (6th Cir. 1999).

The Board has ruled that the doctrine of collateral estoppel applies in deportation proceedings, so long as "the parties had a full and fair opportunity to litigate the issues." Matter of Fedorenko, 19 I&N Dec. 57, 65, 67 (BIA 1984) (holding that alien's prior denaturalization

proceedings conclusively establish the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arise from "virtually identical facts" and there has been "no change in the controlling law"). The Board cautioned, however, that collateral estoppel applies only to findings of fact and questions of law "conclusively" established or resolved by the prior proceeding. Id. at 65-67. The determination whether an alien is deportable remains within the purview of the Immigration Judge and the Board: "Collateral estoppel does not foreclose our consideration of this legal issue because the question of the respondent's deportability . . . was not litigated in the denaturalization proceeding." Id. at 68 (citing Wilson v. Steinhoff, 718 F.2d 550 (2d Cir. 1983)).

The Sixth Circuit has also made clear that exceptions to the collateral estoppel doctrine apply under particular circumstances. Specifically, the doctrine may not be invoked in a subsequent proceeding where controlling facts or legal principles have changed significantly, or where the circumstances of the case justify an exception to general estoppel principles. Detroit Police Officers Ass'n v. Young, 824 F.2d 512, 515 (6th Cir. 1987); see also Crowder v. Lash, 687 F.2d 996 (7th Cir. 1982) (same); Scooper Dooper, Inc. v. Kraftco Corp., 494 F.2d 840 (3d Cir. 1974) (holding that changed factual circumstances can operate to preclude application of collateral estoppel). As other federal circuit courts have explained, issue preclusion applies only in cases where the controlling facts and law remain unchanged. Spradling v. City of Tulsa, 198 F.3d 1219, 1223 (10th Cir. 2000). Where an intervening change in the law or a modification of significant facts has occurred between the first and second suit, so as to create new legal conditions, collateral estoppel does not apply. Id. Hence, the doctrine of collateral estoppel does not "cement the status quo into perpetuity." Monahan v. New York City Dept. of Corrections, 214 F.3d 275, 290 (2d Cir. 2000). Rather, "changed circumstances may sufficiently alter the

factual predicate such that new as-applied claims would not be barred by the original judgment." Id.

The question before the Chief Immigration Judge, and the question before the Board on this appeal, is whether the Respondent had a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the Government's collateral estoppel motion. He did not for two reasons.

First, Respondent raised significant issues going to the heart of the Government's denaturalization case in both the district court and the court of appeals that were not addressed by either court. Second, because of the difficulties in obtaining evidence from the Soviet Union and its successor states, Respondent was dependent upon the assistance of the Government in obtaining such evidence. The Government offered to provide such assistance and represented to the district court that it had done so, and then failed to provide the assistance to Respondent it had offered. A brief discussion of the facts underlying the denaturalization and removal proceedings against Respondent is necessary for presentation of the argument on these points.

The denaturalization and removal proceedings against Respondent rested on the Government's contention that he served the Germans as a guard at several extermination and concentration camps during the period 1942-1945. Brief in Support of the Government's Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law ("Gov't Brief), at 2-5; see also United States v. Demjanjuk, 367 F.3d 623, 627-29 (6th Cir. 2004). In particular, the Government's case is grounded on its contention that Respondent was the person to whom a German *Dienstausweis,* or Service Identity Card, was issued, identifying the holder as guard number 1393 at the Trawniki Training Camp – the so-called "Trawniki Card." Gov't Brief at 4; Demjanjuk, 367 F.3d at 628. The United States District Court for the Northern District of Ohio

found the Trawniki Card to be authentic and concluded that the evidence established it had been issued to Respondent. Demjanjuk, 367 F.3d at 630. The Cyrillic signature on the Card "Demjanjuk" was a point of issue in the case.

In the denaturalization case, Respondent offered, and the district court admitted, the transcript of the testimony of Dr. Julius Grant, a handwriting expert who had testified in Respondent's earlier criminal trial in Israel, in which Respondent was ultimately acquitted on all counts. Demjanjuk, 367 F.3d at 626. Dr. Grant testified that it was unlikely that the signature on the Trawniki Card was that of Respondent based on a comparison of the signature on the Card with Cyrillic exemplars obtained from Respondent in 1986 by the Israeli police and on Respondent's Cyrillic signature on a letter to a relative in Ukraine written in 1977. According to Dr. Grant, the Cyrillic signature on the Card was differentiated from the Cyrillic exemplar signatures by the formation of the initial capital "D," and by the fact that the signature on the Card had no penlift except the one following the capital "D," while each of the known exemplars from Respondent had one or more penlifts in addition to the one following the capital "D."

The Government's handwriting expert, Mr. Gideon Epstein, testified during the denaturalization trial that he had reviewed Dr. Grant's testimony at the criminal trial in Israel. He further testified that Dr. Grant did not follow certain basic principles in the examination of handwriting, specifically, that he had not compared the signature on the Card with any Cyrillic exemplars of Respondent's signature, and that it was not meaningful to compare Cyrillic signatures with Latin exemplars. Mr. Epstein also testified that, so far as he was aware, Dr. Grant was not a handwriting expert and had never testified as such and had never published on handwriting examination issues. Citing Mr. Epstein's testimony, the district court dismissed as

"not reliable or credible" Dr. Grant's testimony that the signature on the Card was unlikely to be that of Respondent. Gov't Brief, at 3-4.

The Government did not introduce any expert testimony on the "Demjanjuk" signature on the Card during Respondent's denaturalization trial, although it did contend in its proposed findings of fact that three letters in the Cyrillic signature on the Card "show a close similarity to the known samples." Gov't Brief at 3. The district court adopted the Government's proposed finding in support of its conclusion that the Card was issued to Respondent. Id. at 9.

Respondent appealed the district court's denaturalization decision to the Sixth Circuit arguing, *inter alia*, that the district court had relied exclusively on Mr. Epstein's characterization of Dr. Grant's methodology and experience in rejecting his testimony, and that it was plain from the record that Epstein's characterization of Dr. Grant's methodology was simply incorrect, as was his testimony regarding Grant's experience. The Sixth Circuit affirmed the district court's denaturalization decision Demjanjuk, 367 F.3d at 638. In so doing, the circuit court never considered on the merits Respondent's substantive arguments concerning the "Demjanjuk" signature on the Trawniki Card and the testimony of Mr. Epstein. Demjanjuk, 2005 WL 910738, at *1; Demjanjuk, 367 F.3d at 638. The circuit court refused to consider the merits of Respondent's claims, finding that because they were "asserted for the first time in [Respondent's] reply brief, [they are] beyond the scope of our review." Id. [6]

Because these critical issues were "neither litigated nor decided" on the merits during the underlying denaturalization proceedings, Detroit Police Officers Ass'n, 824 F.2d at

[6] The court of appeals refused to consider the argument that Mr. Epstein's testimony was perjured stating that it was raised for the first time in the reply brief. The court never addressed the argument, made at length in Mr. Demjanjuk's opening brief, that Epstein's testimony was plainly wrong and completely at odds with the Israeli trial transcript which the district court had admitted into evidence.

517, no bar to consideration applies because Respondent was denied "a full and fair opportunity to litigate the issue[s]." Dominguez, 359 F.3d at 842; Hammer, 195 F.3d at 840. In the language of Fedorenko, the federal courts' decisions were not "conclusive" with respect to substantive factual questions that remain unanswered in this case. 19 I&N Dec. at 65.

Contrary to the Chief Immigration Judge's view, Respondent has *not* "had his day in court" or been afforded "one full opportunity" to litigate all the dispositive issues in his case, and the factual allegations set forth in the NTA have *not* been "conclusively established by clear, convincing, and unequivocal evidence." Respondent does not seek to relitigate issues already decided, but to be afforded a full and fair opportunity to litigate those issues which, as yet, have never been considered on the merits or conclusively determined by the courts. Such issues are central to the instant removal proceedings.

The second reason that the Board should find that Respondent did not have a full and fair opportunity to litigate the issues below arises from facts that have come to light since the Chief Immigration Judge entered his decision granting collateral estoppel. First, however, some additional background is necessary. The government's second denaturalization case against Mr. Demjanjuk was founded entirely on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union. The ability of defendants in denaturalization cases founded upon documents obtained from Soviet archives to investigate and to obtain other documents from the files from which the government's documents came has been very limited or non-existent. There are two constraints: first, in the case of the Respondent, there is a severe financial constraint. Respondent has been in litigation with the United States government or the Israeli government for almost thirty years. Resources are not available for retaining Russian and German speaking historians to spend

prolonged periods in Soviet or former Soviet archives and the district court denied Respondent's motion for financial assistance. Second, there is the problem of obtaining access to the Soviet or former Soviet archives, even if resources to do so did exist.

Since the Chief Immigration Judge's June 16, 2005 Collateral Estoppel decision, a number of facts have come to light, some of which were outlined in the Notice of Appeal. Since the Notice of Appeal was filed in January 2006, additional facts have come to light. As stated in the Notice of Appeal:

- Shortly before the denaturalization trial began on May 29, 2001, the government produced in discovery documents that referred for the first time to a KGB "Operational Search File No. 1627" which had been the source of certain documents produced by the government of the former Soviet Union to the Office of Special Investigations of the Department of Justice.
- Respondent moved for a continuation of the trial and for leave to take further discovery of the government and of the Ukrainian authorities. *See* Tab D to Notice of Appeal.
- The district court granted in part Respondent's motion to take further discovery of the Ukrainian authorities. *See* Tab E to Notice of Appeal.
- The Office of Special Investigations, on behalf of Respondent, sent a letter to the Ukrainian authorities requesting certain information, including a photo copy of Operational Search File No. 1627. *See* Tab F to Notice of Appeal.
- On August 17,2001 the Office of Special Investigations sent a letter to the district court stating that it had received a letter from the Ukrainian authorities and that "all investigative documents pertaining to the Defendant were sent to Moscow in 1979 and 1980." *See* Tab G to Notice of Appeal.

- In the spring of 2005 Respondent submitted a Freedom of Information Act request to the Office of Special Investigations seeking materials to support his opposition to the removal proceedings brought against him in December 2004. *See* Tab H to Notice of Appeal.
- On July 22, 2005 the Office of Special Investigations produced a document dated May 31, 2001, a photocopy of an e-mail from Evgeniy Subarov of the United States Embassy in Kiev that clearly showed that Operational Search File 1627 existed, that it consisted of 7 volumes each with approximately 200 pages, and that the US embassy in Kiev was seeking to obtain copies of that file. *See* Tab I to Notice of Appeal.
- At the time the Office of Special Investigations sent its August 17, 2001 letter to the Chief Judge telling the district court that "all investigative documents pertaining to the Defendant were sent to Moscow in 1979 and 1980," it knew that Operational Search File No. 1627 relating to the Respondent and consisting of approximately 1400 pages in seven volumes was in the possession of the Ukrainian SBU. *See* Tab I to Notice of Appeal.

Since the Notice of Appeal was filed on January 23, 2006, certain additional information has come to light as a result of Respondent's FOIA requests to the Department of Justice.

- In early March 2001, Dr. Steven Coe, an OSI historian working on the Demjanjuk case, made a trip to Vinnitsa in Ukraine. Dr. Coe's trip report dated March 27, 2001 is attached to this brief as Tab J.[7] According to Dr. Coe's report on his trip to Vinnitsa (Tab J at 6):

> The last request I made was to look through the folder 1627 from the SBU Archive from which pages from MVD "Search

[7] We will continue the tab numbers from the last tab used in the Notice of Appeal.

> Particulars" from August 1948 and July 1952 had recently been forwarded to OSI. Though the file he brought me was labeled "no. 1627," it was not the correct file, however, and he explained to me that the one I had requested had been transferred to the Oblast Archive in 1995. I asked him to call Mr. Hal'chak to see whether I could look at it there, but no one answered his phone. By 4:30, my work was finished.[8]

- The second piece of information to come to light is the absence of documents from OSI reflecting any effort by OSI to persuade the Ukrainian Authorities to comply with the request OSI had made on behalf of Mr. Demjanjuk for a copy of Operational Search File No. 1627. In response to Mr. Demjanjuk's FOIA request (Tab H to Notice of Appeal), the Department of Justice has produced **no** documents dated between May 31, 2001, the date of the Subarov e-mail to Dr. Coe regarding File 1627, and August 7, 2001, the date when OSI received the Ukrainian response to the May 24 letter.[9] At least for present purposes, the Board must take OSI at its word that the responsive documents for the relevant time period have been produced, and that neither OSI nor the Department of State acting on OSI's behalf took any further steps between May 31 and August 7, 2001 to move the request for a copy of File 1627 forward, or to persuade the Ukrainian authorities to provide a copy.

- A third piece of information has also come to light as a result of OSI's FOIA response. At the time the request was made to the Ukrainian authorities, OSI historians were well aware that it was highly unlikely that the Ukrainian authorities would provide a photo copy of File 1627. An August 7, 2001 e-mail from David Rich, an OSI staff historian, to Steven Coe speculates on the Ukrainian answer: "**So, do you suppose that the 'reply'**

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[8] Dr. Coe, one of OSI's historians working on the Demjanjuk case, made no further effort to review File No. 1627, the KGB's seven volume investigative file on Ivan Demjanjuk.

[9] Mr. Demjanjuk's counsel brought this unusual state of affairs to the attention of the Criminal Division's FOIA Officer in an e-mail dated May 22, 2006. The Criminal Division's FOIA officer responded on May 23, 2003. A copy of that e-mail exchange is attached as Tab K.

says not only NO, but HELL no?!?" The clear inference of this is that OSI's historians who were regularly dealing with the Ukrainian authorities and should have knowledge of such matters, did not expect the Ukrainians to provide photocopies. Mr. Rich's e-mail is attached as Tab L.

Whether taken as an investigation of alleged violations of law by Mr. Demjanjuk or as historical research, the foregoing is a tale of incredibly shoddy work or woeful incompetence on the part of OSI. By the spring of 2001, OSI has been investigating Mr. Demjanjuk for 25 years. Prior to 2001 they had never sought to review the Ukrainian KGB investigative file on the person they had pursued for so long. In March 2001 Dr. Coe traveled to Vinnitsa, Ukraine to review Operational Search File No. 1627 **from which OSI had recently received copies of certain documents dealing with Mr. Demjanjuk**, but failed to spend the necessary time in Vinnitsa do so.

Supposedly to "assist" Mr. Demjanjuk, OSI wrote to the Ukrainian authorities asking for a photocopy of File No. 1627. Clearly, OSI's historians knew at the time they sent that request that the likelihood of the Ukrainian authorities copying the file was small ("NO or HELL no?!?") yet they made no effort to persuade the Ukrainians to comply with the request, nor did they tell Respondent or his attorneys or the district court that it may be possible to review the file in person (but for his other engagements and perhaps the hardships of staying in Vinnitsa Dr. Coe would have been able to do so in March 2001), but that obtaining a photocopy of the entire file was unlikely.

In ordinary civil litigation, of course, the investigative or research competence or incompetence of OSI would simply have imposed a burden on OSI's ability to litigate its case. This is not ordinary civil litigation, however, as Mr. Demjanjuk's only realistic access to

documents in the possession of the Soviet Union or the states of the former Soviet Union was through OSI. Under these circumstances, OSI's failure to make any efforts to persuade the Ukrainian authorities to comply with their request for a copy of File 1627 and OSI's failure to communicate to Mr. Demjanjuk, his counsel or the district court regarding more practical options for obtaining access to Operational Search File No. 1627 imposed a serious impediment to Mr. Demjanjuk's ability to litigate his case. Given Mr. Demjanjuk's necessary reliance on the government for assistance in obtaining access to File No. 1627, OSI's passive attitude toward the Ukrainian authorities and its failure to communicate with Mr. Demjanjuk or the district court regarding the progress of its efforts to obtain File 1627 effectively denied Mr. Demjanjuk a fair opportunity to litigate his case.[10] The Chief Immigration Judge's conclusion on this issue was erroneous.

The Chief Immigration Judge's conclusion that Respondent had a full and fair opportunity to litigate his case is plainly inconsistent with the facts discussed above, fact which Respondent did not have available during trial in the district court and which he could not reasonably have obtained for trial.

E. The Chief Immigration Judge Erroneously Found That Respondent Was Not Eligible for Deferral of Removal Pursuant to the Convention Against Torture.

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[10] One can reach this conclusion by another route. Assume that OSI's knowledge of Operational Search File No. 1627 had been given to Mr. Demjanjuk and to the district court during trial (May 29 - June 6, 2001), specifically that they had been informed that: (i) certain documents relating to Mr. Demjanjuk had come from Operational Search File No. 1627, (ii) OSI's historian had been granted permission to review tha file, but had been unable to do so because of other commitments, (iii) File No. 1627 consisted of 7 volumes with 200 pages each (approximately 1400 pages in total), (iv) the file was likely the Ukrainian KGB's investigative file on Mr. Demjanjuk, and (v) that it was unlikely the Ukrainians would copy the entire file, but they may permit review of the file with copying of certain documents. Can there be any reasonable doubt that the district court would have permitted Mr. Demjanjuk to review that file and would have ordered the government to assist him in doing so?

Respondent applied for deferral of removal pursuant to the Convention Against Torture. Respondent's application was predicated on three central facts.

1. The Department of Justice had taken numerous steps, including denaturalization proceedings, extradition, and official and unofficial publicity to paint the Respondent as "Ivan the Terrible" of Treblinka, and the Department of Justice has failed to take any steps to clear the record of the charges once it was clear that the Department's allegations in that respect were false. The end result has been that there is a widespread public perception that the Respondent is "Ivan the Terrible" of Treblinka, as evidenced, in part, by the widespread public interest in this matter.
2. There is a history of torture in Ukrainian prisons as found by the State Department as recently as February 2005 and by numerous other international governmental and non-governmental entities, both before and after February 2005.
3. The United States government will encourage the Ukrainian authorities to arrest and prosecute the Respondent if he is removed to Ukraine.

Succinctly summarized, the Department of Justice has established Respondent as a target for retribution or persecution at the hands of the Ukrainian authorities, there is a pattern and practice of torture in Ukrainian prisons, and the likelihood of arrest, incarceration and prosecution will be enhanced by the persuasive actions of the United States government.

The Chief Immigration Judge found that the Respondent had not established the likelihood of his being subject to prosecution if removed to Ukraine. (C.I.J. Removal and CAT at 10). The Chief Immigration Judge reached this conclusion, in part, by looking at the conduct of Ukraine with respect to the prosecution of others alleged to have committed war crimes. (C.I.J Removal and CAT at 10). However, the other cases all differed from that of the

Respondent in numerous respects. They involved persons who either voluntarily returned to Ukraine or were not alleged to have committed specific crimes. *See* e.g. Exhibit 37 C.

Respondent's case is entirely unlike the cases relied on by the government which formed the predicate for the Chief Immigration Judge's decision on this point. In Respondent's case, the **Department of Justice** alleged that specific horrific crimes had been committed by "Ivan the Terrible" of Treblinka, the **Department of Justice** alleged that Respondent was "Ivan the Terrible" of Treblinka, the **Department of Justice** procured and presented the testimony of five Treblinka survivors detailing in gruesome fashion the crimes of "Ivan the Terrible" of Treblinka, the **Department of Justice** procured and presented the testimony of five Treblinka survivors that Respondent was "Ivan the Terrible" of Treblinka, and at the end of the day, when its case collapsed under the weight of evidence that the **Department of Justice** had fraudulently withheld from the Respondent, the **Department of Justice** -- at its very highest levels -- has refused to concede or acknowledge that those allegations that it made, and the testimony the Department procured in support of them, were false insofar as they identified the Respondent as Ivan the Terrible of Treblinka.

The Chief Immigration Judge's reliance on other cases cited by the government in which the person (i) voluntarily returned to Ukraine, (ii) was not alleged to have committed specific crimes, or (iii) whose public profile was near to non-existent, simply does not support his conclusion that the Respondent would not be exposed to the risk of prosecution if he is forced to return to Ukraine. Not only did the Chief Immigration Judge rely on inappropriate analogies proposed by the Government as described above, he gave no weight at all to the impact of the conduct of the Department of Justice. It is irrational the believe that the Ukrainian authorities would not be influenced by the allegations made and testimony presented by the Department of

Justice, especially where the highest levels of the Department themselves have refused to admit error. Similarly, it is irrational to believe that Ukraine will not comply with the urgings of the United States government that the Respondent be arrested and prosecuted if he is removed to Ukraine.[11]

Similarly, the Chief Immigration Judge erred in finding that Respondent had not established the likelihood of being tortured while in custody in Ukraine. In reaching this conclusion, the Chief Immigration Judge erred in relying on an October 13, 2005 letter from the State Department offering an opinion that (C.I.J. Removal and CAT at 12):

> Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union.

The letter is a simple *ipse dixit* from the State Department, specially prepared for this litigation, which is totally at odds with the State Department's own Country Report to Congress regarding Ukraine made on February 28, 2005 ("police regularly beat detainees and prisoners in Ukraine.") It is also at odds with other more recent reports on conditions in Ukraine, all of which were part of the record before the Chief Immigration Judge. The facts, if any, on which the State Department's opinion was based are unidentified, other than the State Department's bald assertion that its view is "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." The letter contains none of the indicia of reliability that the courts have found a predicate to the use of opinion evidence.

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[11] The government is seeking to have it both ways in its arguments regarding the government's influence on Ukraine. In one breath the government is arguing that Ukraine is "cleaning up its act" in prisons because of its desire to join NATO and the EU, *infra* at 39, while in the other breath it is arguing that Ukraine is unlikely to follow the government's urging that Respondent be arrested and prosecuted if he is returned to Ukraine.

The regulations give an Immigration Court wide latitude in considering materials from agencies, including the Department of State, and both the government and Respondent have relied on formal reports made by the Department of State to Congress. *See* e.g. Respondent's Exhibit 31. The October 13, 2005 letter, however, stretches this wide latitude well beyond the breaking point.

The letter quotes the State Department's own Country Reports citing continuing reports that "police regularly beat detainees and prisoners" in Ukraine. (C.I.J. Removal and CAT at 12, and Exhibit 39A). As the Department of State has made this statement in a statutorily required report to Congress, Chief Immigration Judge and the Board are entitled to afford considerable weight it, and indeed Respondent himself has relied relies on this State Department report.

The letter's next conclusory assertion, relied on by the Chief Immigration Judge, is that:

> Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as a part of a broader effort to meet international human right standards consistent with its aspirations to join NATO and the European Union.

This conclusory assertion finds no support in the State Department's own Country Report to Congress on Ukraine dated February 28, 2005, nor does the letter or the (or the Chief Immigration Judge) point to any facts to underpin the conclusion. Respondent pointed out to the Chief Immigration Judge that Ukraine had signed and ratified the Convention Against Torture and the European Convention for the Prevention of Torture many years ago, but as recently as February 28, 2005 the State Department's Country Report on Ukraine amply demonstrates that was continuing to engage in torture and inhuman and degrading treatment of prisoners.

Ukraine's expressed good intentions in the past have not led to reform, and the State Department's October 13, 2005 letter provides no basis for expecting such a change in the future.

Finally, the October 13, 2005 letter states that:

> It is our view that such mistreatment would be very unlikely in cases involving high profile individuals such as this one, a view shared by Ukrainian human right leaders consulted by our Embassy in Kiev about the general pattern of treatment in such cases.

In this sentence the writer of the letter is plainly offering an opinion, indeed an opinion on the ultimate issue now the Chief Immigration Judge. The Federal Rules of Evidence, while not per se applicable here, provide a useful guide to what opinion testimony is sufficiently reliable to be given weight by a court. Rule 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

See also Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); and Kumho tire Co. v. Carmichael, 526 U.S. 137 (1999). Here, State Department's letter provides no information whatsoever as to the qualifications of the person whose opinion the Chief Immigration Judge it is asked to consider.[12] The letter provides no information whatsoever regarding the facts and data upon which the opinion is based, or indeed whether it is based on

[12] The opinion expressed gains no weight by being expressed in the first person plural. In contrast to the State Department's Country Reports which represent an assessment made at the direction of Congress with wide input within the Department, the October 13, 2005 letter is clearly a special-purpose project drafted on a last minute basis to bolster the government's case against the Respondent. At most, the letter represents the opinion of the author (likely unidentified) or the signatory, neither of whose qualifications to provide an opinion on this subject has been disclosed by the government.

any facts or data at all. The letter provides no information whatsoever on the question of whether the opinion testimony is the product of reliable principles and methods, or indeed whether it is based on the application of any principles and methods at all.[13] As the letter specifies neither the facts and data relied on, nor the principles and methods applied, it plainly did not give the Chief Immigration Judge (or this Board) any basis for concluding that the writer of the letter has applied those principles and methods reliably to the facts of the case.

Rule 702 and Daubert and its progeny are not simply a technical hurdle that opinion testimony must overcome. They are basic common sense standards for determining whether an "opinion" is something that should even be considered. The October 13 letter gave the Immigration Judge no basis whatsoever for finding that the writer's opinion was in any way helpful in making a decision in this case. Accordingly, it should have been rejected and not relied on as part of the basis for denial of Respondent's claim for deferral of removal under the Convention Against Torture.

The Chief Immigration Judge also erred in finding that:

> The respondent, unlike the respondent in *Matter of G-A*, has not established that he possesses specific characteristics that would make him likely be subject to torture. *Matter of G-A supra*, at 372. The respondent's claim of vulnerability to torture based upon age and alleged poor health is wholly unsubstantiated, as no evidence was submitted to such facts, and counsel's self serving statements during closing argument are not considered part of the evidentiary record.

The Chief Immigration Judge was wrong on all counts.

First, the Respondent's age was an undisputed matter of record in this proceeding. The NTA asserted that:

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[13] The "terse" nature of the opinion suggests that it may well have been pulled from the air simply to assist the government's case. Whether that is in fact the case can only be determined by cross-examination.

2. You were born on April 3, 1920 in Dubovye Makarintsy, Ukraine. See Attachment 1, U.S. v. Demjanjuk, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002)(unpublished decision), Findings of Fact # 5.

The Respondent admitted this allegation, and, moreover, the Chief Immigration Judge found that collateral estoppel applied to NTA 2, Finding of Fact No. 5. C.I.J. Collateral Estoppel at 12. The Chief Immigration Judge's assertion that there was no substantiation to Respondent's claim of vulnerability to torture based on age is simply inexplicable and contrary to the Chief Immigration Judge's own rulings in this case.

Second, the Chief Immigration Judge's conclusion that there was no evidence of Respondent's state of health is similarly inexplicable. Respondent did not argue that he was in poor health for an 85 year old man, simply that Respondent's health was typical of that of an 85 year old man. Tr. 55, 57. Respondent was in the court room all morning on November 29, 2005. His apparent physical condition and demeanor were clearly visible to the Chief Immigration Judge. Counsel for the government argued that the Chief Immigration Judge could not draw conclusions from Respondent's appearance and demeanor in the court room. Tr. 55. Counsel for Respondent pointed out in rebuttal that in reaching a decision as to whether conduct rose to the level of torture within the meaning of the regulations, the physical condition of the Respondent was highly relevant. Tr. 58. If the Chief Immigration Judge's conclusion was founded on the proposition that Respondent's physical condition is not a relevant factor in determining whether treatment of him amounts to torture under the regulations, the conclusion is founded upon a plain error of law.

If the Chief Immigration Judge's decision was founded on the proposition that the trier of fact could not take account of the appearance, conduct and demeanor of the Respondent in the court room in determining his physical condition insofar as it relates to his vulnerability to

torture, it is founded upon a plain error of law, and flies in the face of Rule 201(d) of the Federal Rules of Evidence which clearly states that the court shall take judicial notice if requested by a party and supplied with the necessary information. The Chief Immigration Judge was clearly invited to take judicial notice that Respondent's apparent physical condition was typical of an 85 year old man. The necessary information was before the Chief Immigration Judge all morning on November 29, 2005.

CONCLUSION

For the foregoing reasons:

1. Respondent respectfully requests the Board to vacate the Chief Immigration Judge's Collateral Estoppel Decision of June 16, 2005 and his Removal and CAT Decision of December 28, 2005, and to reverse the Chief Immigration Judge's Jurisdiction and Recusal Decision of June 16, 2005 on the ground that the Chief Immigration Judge did not have jurisdiction under the regulations to hear a removal case. The Board should remand this case to the Arlington Immigration Court for assignment to an Immigration Judge authorized by the regulations to conduct removal proceedings for trial on the merits.

2. In the alternative, in the event that the Board upholds the Jurisdiction Decision, Respondent respectfully requests the Board to reverse the Chief Immigration Judge's Collateral Estoppel Decision and to vacate the Removal and CAT decision and remand the matter to the Chief Immigration Judge for trial on the merits.

3. In the alternative, in the event that the Board upholds the Jurisdiction and Collateral Estoppel Decisions, Respondent respectfully requests the Board to reverse the Chief Immigration Judge's Removal and CAT Decision with instructions for the Chief Immigration

Judge to defer removal of Respondent to Ukraine pursuant to the Convention Against Torture and the implementing regulations.

4. Respondent respectfully requests that the Board enter such other and further relief in favor of Respondent as to the Board may appear just and proper.

Respectfully submitted,

JOHN DEMJANJUK

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Dated: June 30, 2006

Tab J

(March 27, 2001 Trip Report of
Dr. Steven Coe, OSI Historian)

U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

To: Elizabeth White, Chief Historian
Michael MacQueen, Chief of Research and Development

From: Steve Coe, Historian SRC

Date: 27 March 2001

Re: Research Trip to Ukraine, 2-13 March 2001

Part I, Overview

Saturday, 3 March:

After arriving in Kyiv basically on-time around 1:15 p.m., I was picked up at Borispil Airport by Marat from the U.S. Embassy, and dropped off at the President Hotel. Looked around the immediate vicinity a little, found Khreshchatyk Street and looked around there. Marat had told me that a lot of heavy, wet snow had fallen the day before. It was beginning to melt, but turning into black slush from the mud and dirt, and made getting around extremely difficult. Very good Ukrainian borshch for dinner at one of hotel's restaurants.

Sunday, 4 March:

Found metro station closest to hotel (easy to reach via shortcuts of muddy pathways and crumbling stairs) and took it over to University station. Walked past University building (still painted deep, dark red = *chervonyy*) and down Volodymyrs'ka Street. A great variety of architectural styles, many buildings beautifully restored, others being worked on. Walked all the way down to St. Sophia's, and looked around cathedral and neighboring exhibit on archaeological excavations in former rectory.

A little further on was what appeared to be a new cathedral, painted bright blue and with highly polished gold-colored domes. Outside it were a small and unobtrusive memorial to the famine victims of 1933-34, and a larger monument to Olga, Yaroslav the Wise and Saints Cyril and Methodius, both monuments recent additions to the cityscape. While walking through the large park near here, I saw a group of women who I believe were Orthodox nuns. Walked down to the Ukrainian Fine Arts Museum, which, while in the middle of a major restoration, was partly open, and saw a special exhibit, primarily of portraits in the style of Serov, by a turn-of-the-century Ukrainian

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artist by the name of Olexander Murashko; thoroughly delightful (a Ukrainian John Singer Sargent). In addition, there were exhibits of examples of Ukrainian "avant-garde" (i.e. underground, dissident) art from throughout the Soviet period, with some very interesting works especially from the 1920s; an exhibit of icons retrieved from churches destroyed during Stalin's time; and two exhibits of contemporary Ukrainian artists.

Monday, 5 March:

Many phone calls in the morning: reached Mr. Papakin at the Main Archival Administration to get the name, phone number and address of the director of the Vinnytsya Oblast State Archive; and reached Mr. Ilyushin, and at his request, we made an appointment for 2 p.m. Around noon, I went over to the U.S. Embassy to pick up train tickets to Vinnytsya and retrieved them without major incident, though cold rain made getting around unpleasant. Taxi driver had considerable difficulty finding address of General Procuracy (after assuring me that he knew where it was when I asked him!), but we managed to get there by 2 with the help of another taxi driver who really did know where it was.

I had about 50 minutes with Mr. Ilyushin before I had to leave to catch my train to Vinnytsya. First I obtained from him the name, phone number and address of my contact in the Vinnytsya Oblast Procuracy, and Mr. Ilyushin called him and reconfirmed that he was informed of my arrival there the next day. He also relayed to me that about a dozen of the 23 files OSI had requested had been found and would be available to me. I then asked Mr. Ilyushin about a couple of outstanding requests for judicial assistance from OSI. He told me first of all that our request connected with the DEMJANJUK case (OSI Case #42), from January 17 this year, had been completed in full and was in the final stages of being prepared for transfer to the U.S. Embassy. Secondly, Mr. Ilyushin told me that he had received no response from the Security Service of Ukraine (SBU) to our request (also for Case #42, dated October 30, 2000) for information about the contents of a file referred to in Yanov Camp Investigation materials in the Kyiv SBU Archive. Finally, we determined that his office had never received a request from OSI connected with th[redacted] (b)(6)
from July 18, 2000. He photocopied the copy of the request that I had brought with me and promised to send it to the appropriate authorities.

At about 3:00, when I had to leave to catch my train (which left at 4:18; I also had to return to the hotel to retrieve my luggage), we still had a few outstanding judicial requests to discuss, but we made an appointment for the following Monday, March 12, also at 2:00 to discuss those.

Had some trouble catching a cab, but managed to retrieve luggage and get to station through especially heavy traffic by 3:40; driver, Volodya, was very helpful and invited me to call him and have him meet me at the station when I returned to Kyiv. The train station was being renovated and this turned the simple process of getting to

the right track and to the right train into an absolute nightmare. The schedule posted in the station lobby indicated that my train was leaving from Track 1; I soon discovered that no trains were leaving from Track 1 because of the ongoing renovations. I decided that the best way to proceed would be to move outwards and check each track for my train (listed as going to Chernyvtsy, with a stop in Vinnytsya). The stairs to the overhead walkway, however, were closed due to the renovations, so I began to look for stairs to an underground passage. I found one at the far end of the station, which was flooded and had planks of wood laid at the bottom to step across. Inside, the underground passageway was dark, the floor covered with large puddles, and crowded with masses of people selling all manner of food and things in very dim light. The number of people crowded inside was simply astonishing. The passageway went all the way underneath the tracks to the far side of the station; thus, I could not get to any of the tracks this way. I walked back through the puddles, stepped across the planks through the flooded stairwell and emerged back on Track 1's platform. I asked a couple of policemen which train was the one going to Chernyvtsy, and they pointed to the one on Track 2. Since I had seen several people simply clambering over the tracks to get to it, I asked the police if it were all right to do so, and they said it was. Struggling with my suitcases, I managed to cross the tracks and the mud, and after a few more inquiries to confirm that I was boarding the correct train, got on board.

The train journey was very pleasant, though I could not see much as darkness fell. Arrived in Vinnytsya only about five minutes late (c. 8 p.m.), but in total darkness, nearly fell headfirst out of the train when I missed the last step (because I couldn't see it) into a large puddle. Found a driver who offered to take me to my hotel, the Podillya, for 6 hryvni (about $1.10), and he delivered me there along with his wife, who was riding in the front seat. Checked in without any trouble, a very friendly receptionist on duty who talked me into accepting a "*luxe*" room (as opposed to a "standard" room) for 30 hryvni (c. $5.50) more per night, which came with a refrigerator. I could not make an international phone call from my room, but had to use an international phone downstairs in the lobby using a call card which I purchased from the receptionist for 15 hryvni, good for 30 seconds. Called OSI and left my phone number at the hotel; got it right after a second call.

Tuesday, 6 March:

I planned to call my contact at the local procuracy around 9 a.m., but about 8:45 a very friendly guard sent over from the procuracy knocked on my door and escorted me over. (It was a good thing, too, as directions over the phone would have gone something like, "go down the muddy sidewalk to the bottom, turn vaguely leftwards toward the road that looks like it might be a street, then follow that across the wide open space that might be a parking lot empty of cars," etc.) The Oblast Procuracy was not far from the hotel, but would have been impossible to find without a guide.

I was delivered first to a younger man's office, where I explained who I was and what I wanted, and was then taken upstairs to the office of Olexander Hryhor'evych Charhorots'kyy (my contact, from Mr. Ilyushin). I explained to him who I was and what I wanted, and he replied that since the files I wished to look at were in the SBU archive, I would be the SBU's responsibility. Mr. Charhorots'kyy made some phone calls, then told me that I would be taken over the SBU; he wished me success with my work and we said goodbye. Another young man then came and drove me over to the SBU, which was also not very far from the hotel. He dropped me off, and asked me to wait in the "reception area" (in Russian, *priyom*, a standard feature of virtually all government offices and agencies where members of the public interact initially with government representatives).

I waited there for a while in comfort, and eventually another man came in, who appeared to be some kind of office manager, and told me that he proposed that I should work in an adjoining room at a desk (I had explained to everyone that all I needed was a table and chair), which he showed me and which appeared perfectly acceptable. He asked me to wait a little longer and then left. A second man came in (who turned out to be Olexander Vasil'evych's boss) and looked over the arrangements. He told me that the first couple of files OSI had requested would be delivered shortly. Olexander Vasil'evych then brought the first two or three files, and I began to go through them while he sat with me the entire time. I worked the rest of the day in this way, under Olexander Vasil'evych's constant supervision, and looked through almost all of the files that were available (see Part II for more detailed description of the contents of these files). Because of the upcoming holidays on Thursday and Friday, I was faced with the prospect of having to complete my work in less than two days (i.e. Tuesday and Wednesday) instead of having four days available to do it, and thus had to go through the files quickly. Some of the files contained wartime German documents; some (with similar but different names from the ones OSI had requested) did not involve Trawniki guards at all and were irrelevant to my research interests.

Around mid-day Olexander Vasil'evych had invited me out to lunch at a tiny café off the entrance to a large city park near the SBU, where we shared vodka and beer. On the way back to the SBU, he told me that both his grandfathers had been shot by the NKVD (Soviet People's Commissariat of Internal Affairs) in 1938 together with a large number of other people. He also showed me the site in this park where he knew that at least one of his grandfathers had been shot, a site now occupied by a children's amusement park. I asked him whether some kind of memorial were being considered, and he replied that there was no money available for such a thing, but that someone had proposed renaming a nearby street "Victims of Stalinist Repression Street," a suggestion that he seemed not to think much of. He later joined me for dinner at the hotel's *bufet* on the fifth floor that evening, where we split a bottle of Ukrainian *Khersones* cognac, followed by slices of lemon coated with sugar, sausages, bread and pickles, and ultimately, coffee.

Wednesday, 7 March:

Olexander Vasil'evych had asked me to come by the SBU to resume work at 10 a.m., so I finished writing some postcards in the morning, and around 9:00 called Mr. Hal'chak at the Oblast State Archive to arrange a meeting there. I asked him whether I could come at 2 that afternoon, but he replied that because the next day was a holiday (International Women's Day), he preferred that I should come at 10:30 that morning.

I went over to the SBU at 10, and informed Olexander Vasil'evych of Mr. Hal'chak's request. He then called Mr. Hal'chak himself, and offered to take me to the Oblast Archive personally. On the way, we bought several small bouquets of tulips. We hopped onto a very crowded "route taxi" and traveled down the main street, *Sobornaya*, several blocks to the Oblast Archive, which was housed in a 400-year-old and shockingly decrepit building, originally a Jesuit monastery. We proceeded directly to Mr. Hal'chak's office. He was a very friendly and affable man, and he then led us throughout the archive and in each department, asked me to deliver personally the bouquets of tulips to all the archive's female employees. He consistently identified me as "*amerikanskii professor*," and took great delight in the response elicited.

We then met in his office together with three archivists to discuss the provenance of the photocopy of the *Dienstausweis* issued to Ivan DEM'YANYUK. The archivists then left Mr. Hal'chak's office to check some other records, returned, and said they could find nothing about it. They explained that the absence of any kind of archival citation on the photocopy we have made finding the document or file impossible, since the archive held over 1.5 million documents. They also produced a bound volume of correspondence from the archive from the period of 1979-80, and also found no reference to the document there (they did not check earlier or later volumes). We ended the meeting when one of the archivists asked me whether I was satisfied with their answer, and I replied that while I could not say that I was satisfied, they had told me everything they knew about the document, and that they were simply unable to locate it or provide any information about it given the lack of specific information about its location. I thanked them for looking into the matter, and thanked Mr. Hal'chak for his help.

When we left, Olexander Vasil'evych asked a friend of his who worked at the local history museum next door to give me a quick tour of the Vinnytsya Oblast History Museum, which she did. The tour was by necessity so quick that I didn't learn very much from it; however, there was at least one very interesting display of the various religious traditions that were part of Vinnytsya's local history, and this display included information about the communities and artefacts of Roman Catholicism, Orthodoxy, Greek Catholicism and Judaism. We returned to the SBU at about 12:30, and had lunch at the

café where we had been the day before. Though I agreed to one beer, I turned down his requests that we drink more vodka.

We went back to the SBU and I finished looking through the few remaining files, this time in the outer "reception" office. I requested photocopies of roughly two dozen documents (German wartime documents and their translations), and because I knew that such a request is a significant burden on their resources, I gave Olexander Vasil'evych paper for photocopying. He went off to oversee the photocopying, while a guard from the outer office sat with me as I went through the remaining files one final time. Olexander Vasil'evych told me that the photocopies would still have to be approved by his boss and by the local procuracy (to make sure that we were not receiving any documents from files of people who had been rehabilitated) before they could be sent to Kyiv for final processing. I believed that none of the documents I had requested could have come from files of rehabilitated persons.

The last request I made was to look through file folder 1627 from the SBU Archive, from which pages from MVD "Search Particulars" from August 1948 and July 1952 had recently been forwarded to OSI. Though the file he brought me was labeled "no. 1627," it was not the correct file, however, and he explained that the one I had requested had been transferred to the Oblast Archive in 1995. I asked him to call Mr. Hal'chak to see whether I could look at it there, but no one answered his phone. By 4:30, my work was finished.

I met Olexander Vasil'evych and his wife, Viktoria, in the hotel lobby around 7:30 for dinner. Because the main restaurant was fully booked (because of the following day's holiday), we went back to the *bufet* on the fifth floor and had chips, filberts, coffee, lemons coated with sugar, and slightly less cognac than the night before. We walked around a bit afterwards, and they showed me Vinnytsya's eternal flame monument to its World War II soldiers. I had missed Todd's call around 9 p.m., and he called again around 11 or 12.

Thursday, 8 March:

International Women's Day – virtually everything closed. Walked around the city, discovered some very interesting neighborhoods in oldest part of town, mostly single-story individual houses from 19th century. Crossed Southern Buh River and discovered a lovely wooden church, built around 1745, St. Mykola, all locked up. Very nice view of city on other side of river. Newly renovated church near Oblast Archive still in process of being renovated on interior, an Orthodox Church (Holy Annunciation?), built c. 1768, probably originally as a Catholic Church connected to Jesuit monastery.

Friday, 9 March:

All government offices were closed today as well. Looked around town a little more in the morning. Discovered (after crossing Southern Buh in the other direction, to the west where it loops back) a Greek Orthodox church, newly built and probably still under construction. Rediscovered the World War II memorial, looked over names of the fallen (apparently all from Vinnytsya city, and not from Vinnytsya Oblast). Man in square adjacent to memorial was giving rides to children on three motorized vehicles; it seems he could set the speed, and then the kids were free to take off on their own for a spin around the square. Also walked through city park, where some of the children's amusement rides were being operated. A lovely spring day, many people out.

Returned to the hotel, and Olexander Vasil'evych was there with his 9-year-old son, Vasya, a studious and well-behaved kid. I got a taxi, and we all went to the train station together. Olexander Vasil'evych asked me to share "five drops for the road," so he insisted that I leave my luggage inside the train's police station (flashing his SBU badge at them), and we entered a very dark, underground bar and had shots of vodka and a little bit to eat. The train to Kyiv arrived right on time, and I left Vinnytsya. Saw much more of the countryside on the return trip (more daylight and sunnier weather), endless Ukrainian steppe, villages, controlled burns along the railroad tracks. Only one stop this time, in Kozyatin.

I had called Volodya from the hotel before I left, and he met me on the platform in Kyiv and carried my luggage to his taxi. His daughter, probably about 16 (judging from her silent sullenness) was riding in the back seat. Through very light traffic, he told me about the day's events (the mass protest against President Kuchma, the trampling of the flowers he had left at the monument to Taras Shevchenko) and said that the situation had been "interesting, but not serious," and that Taras Shevchenko Boulevard had been completely closed off earlier in the day. All appeared calm that evening, however. While checking in at the President Hotel, I saw footage of the violence on a television in the lobby. The footage showed the demonstrators repeatedly attacking the police, hurled bricks and broken windows.

(b)(7)(c) [redacted] called from OSI in the evening, inquiring about the violence, and I told him I had been in Vinnytsya and had therefore missed it. He asked me to call the U.S. Embassy Monday morning if there were any further violence over the weekend.

Saturday, 10 March:

Spent the morning walking around a different part of the city near the hotel, seemed to be a very exclusive neighborhood, with large, imposing apartment buildings from early 20th century. Then took the metro over the the Golden Gate, and spent most of the afternoon walking through the National Ukrainian History Museum near St. Andrew's Cathedral. The layout of the museum was somewhat confusing, but friendly

babushki usually set me straight when I threatened to wander into halls that were out of sequence, from prehistoric times to the present. Nonetheless I somehow managed to miss that portion of Ukraine's history from the founding of the Kyivan state to the mid-16th century. Exhibits were interesting and informative, reflecting the museum's difficulties not only in portraying the history of a people that had been simultaneously part of different empires at different times, but also in coming to terms with the particularly mixed (and painful) baggage of the Soviet era. Even so, unlike the museum in Vinnytsya, this one did not contain a single reference to Ukraine's Jewish community, and did not, in any of the exhibits I saw, even acknowledge the presence of their culture and their population in Ukraine over the centuries. There was likewise no reference to the specific experiences of Ukraine's Jews during World War II. The last portion of the museum's exhibits dealing with the establishment of an independent Ukrainian state in 1991, however, included a display of mutual recognition documents exchanged between Ukraine and Israel.

Enjoyed an excellent Indian dinner at Himalaya, a restaurant on Khreshchatyk Street.

Sunday, 11 March:

Considered attending a recital at a venue listed as "House of Organ and Chamber Music," which turned out to be a Catholic cathedral in the process of being restored. Unfortunately, that day's recital was in the evening instead of the afternoon as I had hoped, and I decided not to attend.

Took the metro to a different location in the old city (Independence Square) and saw yet another interesting and dynamic part of town with stores, storefronts available for rent, and even an "Irish pub" on Mykhailevs'kyy Street. Walked up to St. Andrew's cathedral but declined to go inside. Walked down the "corkscrew" of Andrivs'kiy Ascent (*uzvyz*) to the section of town called Pidil past numerous stalls and tables selling tourist kitsch. Very few of these vendors had older items for sale; one woman seemed to be selling used books, but they were not displayed in a way that invited looking at them. There seemed to be some permanent stores along the street, as well, but I didn't look in them. Many bars and cafes, some with outdoor seating: likely a very pleasant place to spend summer evenings.

Spent the day wandering around Pidil. Many churches in various stages of restoration. Saw statue of Hrihory Skovoroda and building that used to contain the original Kyiv-Mohila Academy; unfortunately, both were impossible to photograph due to position of sun. Academy building also fairly run down, but not much worse than most in vicinity. Up along Upper Rampart Street (*Verknhyy val*) there was a tremendous amount of commercial activity: stalls and kiosks everywhere, many spilling out of large market, *Zhytniy Rynok* ("Rye Market"). Everything imaginable being sold, also in various underground passages. Very crowded. A clear demonstration of the great

interest in and aptitude for commerce on the part of contemporary Ukrainians, but also of the extreme lack of even rudimentary capital available to invest in such things as permanent shop space, a fixed address.

While on metro back to hotel, I observed one old woman dressed peasant-style knock into a younger woman and try to push her out of her way in her determination to catch a train; the younger woman went so far as to push her back! Rare public behavior.

Monday, 12 March:

Began the day with phone calls to American Medical Center at U.S. Embassy to try to get help with a non-emergency medical problem. Received no help whatsoever. Fortunately, the problem was not serious and simply entailed a walk over to a Ukrainian pharmacy where I was able to get what I needed without any trouble. Reconfirmed appointment with Mr. Ilyushin at 2 p.m.

We met at the appointed time and went over a few final items of business. I asked him to follow up on our request to the Kyiv SBU Archive for information about the contents of a file referred to in Yanov Camp Investigation materials. I requested that if the SBU were unable to find this information, would he, Mr. Ilyushin, ask the SBU to write a letter stating as such. I also asked him to follow up, if necessary, on the photocopies I had requested from the Vinnytsya SBU Archive, which Olexander Vasil'evych expected to be checked and certified that week. I then went over three other outstanding requests (two for DEM'YANYUK, one for [redacted] (b)(2) WASYLYK) from the previous month, and in each case, the request had been forwarded to the SBU for action. Mr. Ilyushin also explained that part of the request that had been fulfilled (specifically, a portion supplied by the Dnipropetrovs'k SBU Archive) could not be entirely fulfilled because, in one case, the original document (a translation of a German roster) was too fragile to be photocopied, and in the other case, had not been identified specifically enough by OSI in order to be found and photocopied.

We parted and I spent the rest of the day preparing to leave for the U.S. the following day.

Tab K

(E-mail exchange regarding Department of Justice compliance with Freedom of Information Act request regarding John Demjanjuk.)

John Broadley

From: McIntyre, Thomas [Thomas.McIntyre@usdoj.gov]
Sent: Tuesday, May 23, 2006 3:41 PM
To: jbroadley@alum.mit.edu
Subject: RE: FOIA Document Production

Dear Mr. Broadley,

While I understand that OSI provides informal discovery, that is most emphatically not the function of the FOIA.

The FOIA law is quite clear that we are obligated to do a reasonable search for records and account for what we find. You are certainly not the first requester to try to argue that additional documents, in your opinion, should exist. The courts are clear that explaining the absence of documents is not required by the FOIA once it is established that a reasonable search has been conducted and all located documents accounted for. Nor are we required to provide any descriptions of documents withheld at the administrative stage. The schedules of documents withheld in full as part of the initial response are created by the Criminal Division as a matter of Division discretion in an effort to be helpful to requesters. I am fairly certain that other Justice Department components do not furnish such information.

We have already gone so far beyond what we are required to do that I do not know how I can justify spending even more time on this matter. Nevertheless, I will contact OSI to determine what further course they wish to take. I am fully aware of your right to file suit on this matter. I am working on two separate litigation matters as we "speak." But I have also found that some requesters will file suit regardless of how much discretionary assistance we provide. So now I simply assume that everyone is going to sue.

Yours sincerely,

Tom McIntyre

From: John Broadley [mailto:jbroadley@verizon.net]
Sent: Monday, May 22, 2006 8:49 PM
To: McIntyre, Thomas
Cc: 'John Demjanjuk'; 'Ed Nishnic'
Subject: FOIA Document Production

Tom:

In reviewing OSI's document production in response to our FOIA request of April 2005, there seems to be a major omission. On May 24, 2001 Eli Rosenbaum sent a letter to the Ukrainian Embassy on behalf of Mr. Demjanjuk asking for, among other things, a copy of UKGB Operational Search File No. 1627. OSI's document production included a May 25, 2001 memorandum to the file from Todd Huebner summarizing a May 24, 2001 telephone conference with the Ukrainian Embassy in Washington. That is the last document in the production relating to the May 24, 2001 letter until an August 7, 2001 e-mail from Mr. Suborov in the US Embassy in Kiev to Dr. Coe telling him that the Procuracy's reply to the May 24, 2001 letter is being FedExed. (CRM-229)

We know that there were exchanges between the OSI and the American Embassy in Kiev relating to the May 24, 2001 letter -- we have the 5/31/01 e-mail from Mr. Subarov in the American Embassy in Kiev to Dr. Coe at OSI. (I have attached a copy for your ready reference.) I find it extraordinary that there were no further efforts by OSI and/or the American Embassy to move the request along after Mr. Subarov's 5/31/01 e-mail, or at least to report the progress of the request through the Ukrainian bureaucracy.

The lack of follow up by OSI is equally extraordinary because it was clear to OSI by at least February 2001 that Operational Search File 1627 was likely the UKGB investigative file on Mr. Demjanjuk. See CRM-337, a February 9, 2001 letter from Mr. Rosenbaum to the Ukrainian Procuracy asking for permission for Dr. Coe to:

"work in Vinnytsya with materials from the oblast archive of the SBU primarily to review the file from which two of the documents you most recently sent us came (archival file no. 1627), ..."

It would have been obvious to Dr. Coe and OSI that Operational Search File No. 1627 (from which pages from two All Union Search lists had been produced listing Mr. Demjanjuk) was very likely the UKGB investigative file on Mr. Demjanjuk **which OSI had to that date never seen**. See CRM-301 where OSI asks the Russian Procuracy in Moscow on May 19, 2000 whether the FSB had an investigative file on Mr. Demjanjuk. I do not find it credible that OSI's historians made no further attempts between May 31, 2001 and August 7, 2001 to prod the Ukrainians to produce a 7 volume KGB investigative file on Mr. Demjanjuk, a man OSI had by that time spent 25 years pursuing.

Could you please ensure that OSI's files (and particularly e-mail records) have been searched to produce this correspondence.

Your transmittal letter said that some materials had been referred to the Department of State and the INS for processing and direct response. Could you please let me know whether these included communications to/from the American Embassy in Kiev relating to the request for Operational Search File No. 1627.

Yours very truly,

John Broadley

p.s. I am out of the country at the moment, so it is best to communicate by e-mail. As I noted in my earlier e-mail, I would like to avoid the need to file a formal appeal as there are only a very limited number of issues relating to withholding. We do need to be satisfied, however, that **all** correspondence and documents relating to the May 24, 2001 letter and the Ukrainian response have been produced.

John Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 202-333-5685
Cell 301-466-0685
E-mail jbroadley@alum.mit.edu

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Tab L

(August 7, 2001 e-mail from David Rich, OSI historian, to Steven Coe, OSI historian re likely nature of Ukrainian response to May 24, 2001 letter on behalf of Mr. Demjanjuk)

From: David Rich
To: Coe, Steve
Date: 8/7/01 10:39AM
Subject: Fwd: RE: reply from Prosecutor General

So, do you suppose that the 'reply' says not only NO, but HELL no?!?

David Rich
Staff Historian

>>> Steve Coe 08/07/01 10:35AM >>>
FYI. The May 24 request was for a complete copy of the multi-volume Demjanjuk file, and any files on Ivan Andreevich.

Crm 231

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June 2006, I served a copy of the foregoing RESPONDENT'S BRIEF ON APPEAL and accompanying transmittal letter on the Department of Homeland Security by causing copies thereof to be deposited in the United States mail, first class postage pre-paid, addressed to counsel listed below:

ICE Office of Chief Counsel/CLE
1240 E. Ninth Street, Suite 519
Cleveland, OH 44199

John Broadley

Dated: June 30, 2006

ICE - DETROIT

Page: 1 Enrollee Profile For Id [redacted] (b)(6) *Dec 20 2004 11:08:53 CST*

Enrollee Name: **DEMJANJUK, JOHN**

Start Date: **12/20/2004** End Date: **12/20/2014** Status: **ENROLLED**

Language: **ENGLISH** Security Level: **LOW**

Monitoring: **MINIMUM SUPERVISION**

Supervisor: [redacted] (b)(7)(c)

Assigned Active Phones

Phone	Status	Timezone	Address
[redacted]	ACTIVE	EASTERN	[redacted] (b)(6)
	ACTIVE	EASTERN	

ISR Call Schedules

Call Period	Calls Per Period	Phone	Schedule Status	Start-End Date
WEEKLY	1	[redacted] (b)(6)	PERMANENT	
			PERMANENT	

SETTINGS/DEFAULTS

VALIDATE_PHONE	: YES
VALIDATE_VOICE	: YES
COUNTRY	: UKRAINE
CRIMINAL	: NO
DOB	: 04/03/1920
SEX	: MALE
YOB	: 1920

ISR PROMPTS

ADDRESS
PHONE

(b)(7)(c)

ICE - DETROIT

Page: 1

Program Start Date Report

Dec 20 2004 11:10:34 CST

Report Date: **12/20/2004**

Enrollee Name	ID#	Security	Status
Monitoring	Start Date	End Date	Release Date
Phone Number	Address		
DEMJANJUK, JOHN	[redacted]	**LOW**	**ENROLLED**
MSR	**12/20/04**	12/20/14	

[redacted]

(b)(6)

(b)(7)(c)

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear, Bond, and Custody Processing Sheet

A. Alien's Name
John DEMJANJUK (b)(6)

Date of birth	File No.	Date of processing
04/03/1920	Case No: VCO0512000066 A0[redacted]	12/17/2004

Address [redacted]

Factual Allegations (attach separate sheet if necessary): ☐ Charged under section 212 as inadmissible ☒ Charged under section 237 as deportable

1) SEE I-862

☐ Attorney of Record?

Supporting Evidence SEE I-213

B. ADDITIONAL FACTORS TO BE CONSIDERED FOR BOND/CUSTODY DETERMINATION

1. Is a petition or application pending for this alien or a family member? (Explain)
NONE KNOWN

2. Total times apprehended
Bonded before? ____ How many times?____ Released O/R before?____
Bond breached? ____ How many times?____ Complied with terms of O/R? ____

3. Present health of subject, spouse and children (Explain if other than good)
UNKNOWN - PROCESSED IN ABSENTIA

4. Total time in U.S., dates and location; residing with (Family members or others)
SEE I-213

5. Personal property in U.S. (Liquid and non-liquid assets)

6. Family members in U.S. (Spouse, children, immediate relatives) address if different than subject's

7. Employment history: (Other than current)
From / / To / / FORD MOTOR CO.

8. Other factors (i.e. false claim, attempted flight, unsupervised children at home, etc.)

C. The undersigned recommends: ☐ V/D without OSC ☒ NTA Charges (Code) R4D, RI6C1, RI7A1

Signature and title of officer [redacted] SPECIAL AGENT

D. Approved as to legal sufficiency: Date:_____ Office:_____

Signature and title of Service counsel: (b)(7)(c)

E. Based on the above information I have set the following bond: $ ROR Date: 12/17/2004 Office: VCO/VDT

Signature and title of authorizing official: [redacted] GS (b)(7)(c)

Form I-265 (Rev. 4/1/97)N

U.S. Department of Justice

Immigration and Naturalization Service

Record of Deportable/Inadmissible Alien

Family Name (CAPS)	First	Middle	Sex	Hair	Eyes	Cmplxn
DEMJANJUK, John			M	BLN	BLU	FAR

Country of Citizenship	Passport Number and Country of Issue	File Number	Height	Weight	Occupation
UKRAINE		Case No: VCO0512000066	72	230	

U.S. Address: [redacted] (b)(6)

Scars and Marks:

Date, Place, Time, and Manner of Last Entry	Passenger Boarded at	F.B.I. Number	Marital Status
02/09/1952, Unknown Time, NYC, IMMIGRANT			☐ Single ☐ Divorced ☒ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence:

Method of Location/Apprehension: L 511.2.5

Date of Birth	Date of Action	Location Code	At/Near	Date/Hour
04/03/1920 Age: 84	12/17/2004	VDT/VCO	SEVEN HILLS, OHIO	12/17/2004 0000

City, Province (State) and Country of Birth	AR	Form: (Type and No.)	Lifted	Not Lifted	By
, UKRAINE	☒		☐	☐	[redacted]

NIV Issuing Post and NIV Number	Social Security Account Name	Status at Entry	Status When Found
	(b)(7)(c)	Immigrant	

Date Visa Issued	Social Security Number	Length of Time Illegally in U.S.
(b)(6)	[redacted]	AT ENTRY

Immigration Record	Criminal Record
NEGATIVE	None known

Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate):

Number and Nationality of Minor Children:

Father's Name, Nationality, and Address, if Known	Mother's Present and Maiden Names, Nationality, and Address, if Known
, Unk	, Unk

Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? Yes ☐ No ☒	INS Systems Checks	Charge Code Word(s)
		CIS Positive	

Name and Address of (Last)/(Current) U.S. Employer	Type of Employment	Salary	Employed from/to
FORD MOTOR CO.	Operators, Fabricators, and Laborers	Hr.	/ / / /

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

Narrative Title: Record of Deportable/Excludable Alien (b)(7)(c)
Narrative Created by [redacted]

SUBJECT PROCESSED IN ABSENTIA BASED ON INFORMATION PROVIDED TO ASACCL BY HQ DIRECTIVE - OFFICE OF SPECIAL INVESTIGATIONS (OSI). PER OSI, SUBJECT TO BE SERVED NTA DUE TO SUBJECT'S ALLEGED INVOLVEMENT IN WAR CRIMES COMMITTED DURING WWII AND THE SUBSEQUENT MISREPRESENTATION OF MATERIAL FACTS ON HIS IMMIGRANT APPLICATION TO GAIN ADMISSION TO THE U.S. AS A LEGAL PERMANENT RESIDENT. IN DECEMBER OF 2004, THE U.S. CIRCUIT COURT OF APPEALS FOR THE 6H CIRCUIT AFFIRMED THE LOWER COURT'S DECISION TO STRIP SUBJECT OF HIS U.S. CITIZENSHIP.

SUBJECT IS A NATIVE OF THE UKRAINE BASED ON BIRTH IN THAT COUNTRY ON 04/03/1920.

SUBJECT'S HEALTH SITUATION IS UNKNOWN, BUT MEDIA COVERAGE OVER THE PAST YEARS IN CLEVELAND, OHIO HAS INDICATED THAT SUBJECT HAS BEEN SUFFERING FROM HEALTH PROBLEMS DUE TO HIS AGE.

SUBJECT LIVES WITH HIS WIFE, VERA, AND HAS OTHER FAMILY LIVING IN NEARBY COMMUNITIES.

SUBJECT HAS NO KNOWN PENDING APPLICATIONS/PETITIONS WITH U.S. CIS.

[redacted] SPECIAL AGENT [redacted]

Alien has been advised of communication privileges. _____(Date/Initials) (Signature and Title of INS Official)

Distribution:
FILE, LOG

Received: (Subject and Documents) (Report of Interview) (b)(7)(c)

Officer: [redacted]

on: December 17, 2004 at _____ (time)

Disposition: Notice to Appear Released (I-862)

Examining Officer: [redacted]

6.5

Alien's Name	File Number	Date
DEMJANJUK, John	Case No: VCO0512000066 A[redacted]	12/17/2004

(b)(6)

TECS RECORD ID#P9B65610700CCL.

SUBJECT TO BE SERVED WITH THE NTA AND RELEASED ON HIS OWN RECOGNIZANCE PER SACDT.

(b)(7)(c)

Signature	Title
[redacted]	SPECIAL AGENT

CONTROL Name (Last, First, Middle)						
DEMJANJUK, John						
Birthdate / Age		Marital Status	☐ Widowed ☐ Married ☐ Divorced	File Number		
04/03/1920 / 84		☐ Single ☐ Separated		VCO0512000066		
Sex	Hair	Eyes	Complexion	Height	Weight	Scars or Marks
M	BLN	BLU	FAR	72	230	
U.S. Address/Mail (Number)	(Street)	(City)	(State)	(ZIP CODE)		
[redacted] (b)(6)						
Alien's Telephone #		Date of Action		Location Code		
( )		12/20/2004		VDT/VCO		
City, Province (State) and Country of Birth				Country of Citizenship		
, UKRAINE				UKRAINE		
Date, Place, Time, and Manner of Last Entry/Attempted Entry				Status at Entry		
02/09/1952, Unknown Time, NYC, IMMIGRANT				Immigrant		
Foreign Address/Residence (Number, Street, City, Province (State), Country)						
Method of Location/Apprehension		(At/Near)		Date & Hour		
L 511.2.5		SEVEN HILLS, OHIO		12/17/2004 0000		

(b)(6)

You are required to retain this permit in your possession and to surrender it to the transportation line at the time of your departure unless you depart over the land border of the United States in which case you must surrender it to a Canadian immigration officer on the Canadian border, or to a United States Immigration officer of the Mexican border.

DEPARTURE RECORD

Port:

Date:

Manner:

Country of Destination:

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Form Approved OMB No. 43-RO496
ARRIVAL - DEPARTURE RECORD
Form I-94 (Rev. 6-12-92)

JOHN DEMJANJUK

A [redacted] (b)(6)

TAKEN ON 12/20/04 WHEN SUBJECT REPORTING IN TO DER

26 Federal Plaza
New York, New York 10007

NYC 50/40.378

February 13, 1978

Superintendent Menachem Russek
Israel Police Headquarters
Section for Investigation of
Nazi War Crimes
Salame Street 18
Tel Aviv/Yaffo, Israel

Dear Superintendent Russek:

In connection with the pending proceedings against Iwan Demjanjuk, the United States Attorney trying the case has requested that the "photo spread" used when interviewing the witnesses be furnished for use in court. Please send, at your earliest opportunity, the photos used and, if possible, identify which photographs were shown to which witness. The original "photo spread" is necessary as they were in the deportation proceedings against the Latvians.

In addition, it has come to our attention that two persons residing in Israel are survivors of Treblenka and may have knowledge of Demjanjuk and Feodor Fedorenko. Please interview these persons to ascertain whether they have any knowledge of these two Ukrainians. Their names and addresses are:

(b)(6) [redacted]

Bat Yam Jerusalem

Thank you for your continued cooperation. [redacted] retired in January but sends his regards. [redacted] sends his warm regards to you and your staff.

Very truly yours,

Maurice F. Kiley

MAURICE F. KILEY,
District Director,
New York District

cc: COINV (for your info)
ROINV, Eastern (for your info)
DIINV, CLE

File, DEMJANJUK & FEDORENKO IDR's. mp

RECEIVED
INVESTIGATIONS
MAR 8 1978
IMMIGRATION & NATURALIZATION SERVICE
WASHINGTON

Death-camp past traps 'Cruel Ivan'

Survivors of Nazis' infamous Treblinka death camp say quiet, hard-working Cleveland mechanic was merciless guard who killed Jews at random.

By William Clements and Charles Nicodemus
©1977, Chicago Daily News

The gas chamber already was bulging with half-dead, terrified human beings, but before the door was to be slammed shut another 10 or 15 persons had to be stuffed inside. There was a deadline to be met within the hour, when several hundred more Jews were scheduled for extermination at the notorious Treblinka death camp in Poland.

"I can still see 'Ivan the Cruel' whipping out his sword and swinging at those poor defenseless people, slashing and shoving and screaming at them until all of them were forced inside the chamber.

"And then he would slam the door shut, check it once to make sure it was closed tight, and then walk calmly down

Jewish witness identifies accused Nazi, Page 2

the flight of steel stairs to the basement where the machinery of death was located.

"Once he got there, he would turn on the motors that manufactured the carbon monoxide gas which went directly into the chambers. Within half an hour, all 600 or 700 people in the three chambers would be dead."

• • •

It is 34 years later on a bright day in Cleveland. The Easter weekend has just ended, and with it "Ivan the Cruel's" lengthy and successful quest for anonymity. The life of "Ivan" is about to come together with that of an engine plant worker named John Demjanjuk after a four-month Daily News investigation. Meanwhile, the U.S. Immigration and Naturalization Service pursues the laborious work of preparing and filing denaturalization proceedings.

Avraham Lindwasser, 58, suddenly stopped talking. Tears welled in his eyes and he seemed about to lose control of himself.

Then he stiffened, eyes and features growing taught. Daily News Foreign Correspondent Jay Bushinsky, who interviewed the Treblinka death camp survivor last January in Israel, said he seemed to age in front of his eyes as he related the horror story of "Ivan the Cruel" and the infamous death camp.

"The basement below the three gas chambers was known as 'Ivan's area,' " Lindwasser continued. "I saw this beast of a man turn on the motors so often that it pains me now—more than 30 years later—to even think about it. To do so is almost like killing me."

Lindwasser, who arrived at Treblinka Aug. 28, 1942, five weeks after it opened, was forced by the Germans to work as a "dentist" at the camp—sorting, cleaning and classifying gold fillings yanked from the teeth of his dead Jewish brethren.

The laboratory where Lindwasser worked was adjacent to the three gas chambers in what was known to inmates as Camp No. 2. There, more than 800,000 Jews were gassed to death from July, 1942, to Aug. 2, 1943, in one of the grizzliest and most tragic episodes of World War II.

Treblinka was unique among the German concentration camps. Whereas Auschwitz and Dachau were populated with Jews and non-Jews, not all of whom were brought there to die, only Jews were sent to Treblinka and all of them were earmarked for extermination in a last major effort by the Germans to solve what they called the "Jewish problem."

Originally established to kill Jews shipped there by train from the Warsaw ghetto, Treblinka was expanded to handle the gassing deaths of Jews brought in from Lithuania, France, Hungary and Yugoslavia, as well as Germany.

Treblinka was built in a hurry in 1942 on eight acres of forest land about 80 miles east of Warsaw. Later, the three gas chambers with a loading capacity of 600 persons was expanded to 13 gas chambers with a capacity of 2,600 persons.

CONTINUED PAGE 7

Please File, DEMJANJUK individual folder.

Lindwasser's laboratory looked down upon the basement where "Ivan the Cruel" reigned supreme, controlling as he did the huge piston motors that generated the gas that was pumped into the chambers.

"People ask me now, how I could stand it—with all of those horrible things happening so near. With all of the terrible screaming and dying.

"I will tell you one thing we did. We worked with these little hammers, and every time they would put people into

"And this man, Ivan the Cruel, now is living in your country of freedom. It is hard to believe, but it is true."

the chambers to die, we would start our hammering, all together, so that we would not be able to hear those terrible sounds of death.

"So people went out of this world hearing that strange hammering of ours in the background."

Lindwasser, a distinguished looking man who has worked for years as a civil servant in Tel Aviv and who is married and the father of two daughters, looked down at the floor of his office and said:

"And this man, Ivan, now is living in your country of freedom. It is hard to believe, but it is true."

• • •

John Demjanjuk had finished work for the day, so he hurried from the plant and headed toward the giant Ford Motor Co. parking lot in Brook Park, a southwest suburb of Cleveland.

Slowly, he eased his six-foot frame into a light blue Pinto, started the engine and drove out of the lot toward busy Brookpark Rd.

The early September day had been hot and muggy but it was cooling off some as the afternoon faded. Demjanjuk had just completed 10 gruelling hours of work at Ford's Cleveland Plant Number One, where he works as a top-flight mechanic in what his friends call "the Cadillac of Ford jobs."

The rush-hour traffic wasn't particularly heavy this day—his overtime work had eased the crunch—so Demjanjuk relaxed as he turned onto Brookpark Rd. and drove east, the start of a 14-mile, 35-minute trip to his $60,000 home in the quiet, comfortable suburb of Seven Hills.

At 57, Demjanjuk could look back on 25 years of satisfying work at the Ford plant, a steady job with high union pay in which overtime frequently was available to conscientious employes who sought it, as he often did.

The fringe benefits fought for and won by Local 1250 of the United Auto Workers of America, to which he belongs, are among the best in the industrial world, and would come in handy indeed as he looks ahead toward retirement in a few years.

The Ford job, as important as it had been to Demjanjuk since coming to the United States from the refugee camps of Germany in 1952, was not the only portion of his life that he could view with satisfaction.

His wife, Vera, 52, whom he had met and married in 1947 while both were living as refugees in a Displaced Persons camp at Ulm, West Germany, was a source of particular pride. She has worked 19 years as a "coiler" in the General Electric plant in Cleveland. Starting from nothing, the two of them had pooled resources and shaped a life that now was more than comfortable for them and their family.

There was daughter Lydia's gala wedding two years ago at St. Vladimir's Ukrainian Orthodox Church in suburban Parma, the church jam-packed with people and, later, more than 200 well-wishers celebrating at a reception in St. Vladimir's new banquet room.

Two younger children were still at home, Irene and namesake John, growing up so fast it seemed, but happy in school and a source of much pride.

Demjanjuk turned south onto Broadway, the four-lane street that divides suburban Parma and Seven Hills. As the car ascended the street, climbing the various levels from which Seven Hills derives its name, Demjanjuk could look back and down at the small bungalows of Parma, where so many of his Ukrainian friends still lived.

He slowed the car as he reached the top, then turned into Meadow Lane and drove the 3½ blocks to his split-level ranch home, decorated in front with carefully pruned flowers and set off nicely by three large evergreen trees.

Demjanjuk drove into the two-car garage attached to the house and disappeared inside.

Thirty minutes later he came out again, dressed in a white polo shirt and knee-length Bermuda shorts, removed the power lawn mower from the garage and wheeled it behind the house.

There, he began methodically cutting the grass of his two-acre back yard, additional land he had acquired about the time he bought the house five years ago as a kind of investment for the future.

• • •

As early as January, 1977, three Treblinka survivors in Israel told Bushinsky that they had identified Demjanjuk from a gallery of photos shown them by U.S. immigration authorities. They said unquestionably that the person they picked out as Demjanjuk was the same person who ran the Treblinka gas chambers and whom they knew in camp as "Ivan the Cruel."

In April, The Daily News first talked with Demjanjuk in Cleveland about his background.

In late August, without much fanfare, the Justice Department filed suit in Cleveland seeking to strip Demjanjuk of his citizenship and, eventually, to deport him as an "undesirable alien."

Eyewitnesses' affidavits attached to the Justice Department's complaint are brief, but they do provide enough information to reveal the extent and nature of the government's case against the Ukrainian-born Demjanjuk.

During the period extending from "some time in 1942 until Aug. 2, 1943," the government alleges, Demjanjuk "used a sword, sabre or metal pole to push, prod and force Jewish prisoners into a gas chamber where they were then executed."

Another allegation contends that Demjanjuk used a knife or bayonet, "to stab, cut and remove parts of the bodies of Jewish prisoners before forcing them into the gas chambers."

Demjanjuk has denied all of the government charges and maintains that he never served as a guard at Treblinka.

• • •

Yosef Charny, 51, a labor official in Tel Aviv, recalls with detailed horror the dreadfully cold night in 1943 when the train from Grodno, Byelorussia, arrived at Treblinka with several thousand Jews destined for death.

"The Jews were ordered off the train quickly for processing at Camp No. 1," Charny said. "This meant they had to strip naked and leave their clothes and other belongings at that camp and then walk the 'Road to Heaven' which led them to the gas chambers at Camp No. 2.

"But it was so cold and the people from the trains didn't want to strip. There were screams and shouting and the Ukrainian guards were thrashing and beating them horribly"

- 7 - CONTINUED PAGE 8

Shalom Cohen, another of the 100 or so persons who were known to have escaped from Treblinka who still are alive, recalls that at this point, the Jews turned against the Ukrainian guards and began throwing rocks and bottles and anything else they could get their hands on.

"It was bad odds, though. The guards had rifles. The Jews were defenseless," Cohen said.

Charny and Cohen, who now also lives in Israel, were part of the "slave work force" set up by the Germans to provide a variety of services necessary to keep the camp operating. As such, they were not immediate targets of their captors.

Charny said his job at that time was to carry bodies from the gas chambers to the huge, burning burial pits.

"All of a sudden," Charny remembered, "the Ukrainian guards grabbed their rifles and jumped atop the roofs of huts and onto fences and began firing.

"I remember looking out and seeing 'Ivan the Cruel' firing away at all of the people on the ground who were refusing to strip."

Charny's voice broke as he was interviewed in January by Bushinsky in Tel Aviv. It was several minutes before he regained composure and was able to continue.

He described "Ivan" as very young and tall, and dressed in a uniform worn by Ukrainian personnel who served with the German SS units.

He said that "Ivan" wore a military "flying saucer" hat with the Nazi skull and crossbones symbol sewed on in front.

"All of those women and children being shot to death," he said. "You could hear the words of prayer coming from their mouths—'Hear O Israel, the Lord thy God, the Lord is one.' "

Charny said that after what seemed like many hours, the shooting finally stopped.

"We went out in the morning to clean up," he said. "There could never have been anything like it in the world. I'll never forget it, walking around in all of the blood and among the dead bodies. The bodies were all over, hundreds of them.

"Jewish men who had been shot were lying there in their prayer shawls with their religious articles at hand. And the dead women holding their dead children, their last gesture being a futile attempt to shield them with their bodies."

Charny said the job of the slave laborers that morning was to transport the bodies to the *Lazaret*, the so-called hospital which actually was a deep burial pit hidden behind a huge fence. The pit was an inferno, burning 24 hours a day, and it was used to burn aged and infirm Jews who didn't have the strength to walk the "Road to Heaven" to the gas chambers.

At the "hospital" that morning, Charny said, the workers heaved into the pit the bodies of the Jews who had been shot during the night.

"We were beaten all along the way as we carried away the dead. Some of the workers dropped dead themselves along the way," he said.

Charny, who was 16 at the time and one of the youngest prisoners at Treblinka, told Bushinsky in January that he particularly remembers "Ivan" and that he readily selected his picture when shown a gallery of photos of different men by U.S. immigration officials a few months earlier.

The officials were in Israel investigating Demjanjuk's role during the year he allegedly spent as a guard at Treblinka.

- 8 - CONTINUED PAGE 9

"He was always as drunk as Lot," Charny said. "And he always had a revolver with him, as well as a *Peitch* (a rubber club dotted with steel balls). He used the club to beat people to death. He was always doing that."

Charny said he is willing to "stand in front of the President of the United States and tell all of this. I am not afraid or hesitant about anything."

• • •

John Demjanjuk's new life in America received a setback soon after he and his family arrived in New York as war refugees headed for work on a farm in the Midwest.

The day after debarking from the troop ship General Haahn on Feb. 9, 1952, Demjanjuk took his wife and young daughter to Decatur, Ind., all set for work promised by the farm owner who sponsored his entry into this country.

"The guards jumped atop the huts and began firing. I remember looking out and seeing 'Ivan the Cruel' firing away at all the people on the ground."

As it turned out, not much work was available. It was a poor farm, and any work to be done was handled by the farmer and his oldest son, who had grown up between the time the owner applied for refugee help in the late 1940s and the time the Demjanjuks arrived in 1952.

It was a bitter-cold and hungry winter for the new arrivals, who managed to stay on the farm by doing odd jobs and light chores.

"They had a roof over their heads, but not much else. They barely survived. I remember Vera hardly had enough milk to feed the baby," said Mrs. Anne Lishjuk, a friend from German refugee camp days who is still the best of friends with the Demjanjuk family.

"When I wrote Vera that winter, I always put in a little money, because I know how bad it was for them," she said.

Things got worse, and by July of that year Demjanjuk was desperate for a job. It was then that Anne Lishjuk's husband, William, drove to Decatur and brought the Demjanjuks to Cleveland.

Those were lean times for immigrant Demjanjuk, nearly penniless, out of work, somehow hoping to pull himself away from the Lishjuk house, where the cramped quarters represented a level of living not much better than in the DP camps of Germany.

It was Vera who found work first, as a scrub lady in the Federal Reserve Bank in downtown Cleveland.

As it happened, the Ford Motor Co. at that time was in a period of rapid expansion at its three plants in suburban Brook Park, and Demjanjuk was hired as a "motor balancer" in the autumn of 1952.

"He was always so good with his hands," said Gerald Kravchuk, a Parma resident and another friend of Demjanjuk's from the post-World War II days in the refugee camps of Germany. "He was willing to work hard and there was need for good mechanics. He got a pretty good job right away."

Starting from nothing, the family scrimped and saved. Late that fall, they finally were able to move into a small, two-room flat at 7th and College Av., in the heavily Ukrainian, Polish and Italian section on the South Side.

It wasn't much, but it was a beginning, and there was comfort in living among fellow Ukrainian immigrants and in going to nearby old St. Vladimir's Orthodox Church on 11th St., built in 1924 by Ukrainians who had fled Russia after the Communist Revolution.

The church was a center of Ukrainian community life, with its tall twin-tower belfry sitting above a massive yellow brick frame. Old friends say Demjanjuk often went there, that he found "old world" solace in the traditional multicolored rose window at the rear, in the sturdy oak pews, the scarlet carpet running down the center aisle, and in the blue and gold stained glass windows lining each side.

The neighborhood was a first stop for immigrant groups coming to Cleveland, and many older persons with small incomes and fixed habits still remain. Demjanjuk, though, wanted to get out.

Not far from the church is the industrially polluted Cuyahoga River, and Demjanjuk could walk down there and look north across the river at the glittering lights of downtown Cleveland.

So much nearer, though, were the stifling characteristics that had such a heavy impact on this neighborhood and which Demjanjuk wanted to get away from—giant power company smokestacks, railway marshaling yards, trucking terminals, sand and gravel operations, a variety of light industry.

During the next two years, Demjanjuk began making his moves. The family went from the small flat on College to a slightly larger place nearby on 6th St., and finally to a four-room apartment on Literary Rd.

"He got a good job and she got a good job and they saved their money," Anne Lishjuk said. "All the time they saved up money to buy a home."

• • •

Avraham Lindwasser recalled that he was able to "monitor" the activities of "Ivan the Cruel" from the vantage point of the so-called dentist's office where he worked.

"He used to help fill the chambers by shoving the people through the doors, clubbing them until they were all inside. And he did it with brutality— almost as though he enjoyed doing it," Lindwasser told Bushinsky in Israel.

"But he also used to pull out from the lines pretty young girls and rape them. I saw this so many times. And after they were raped he would take them outside and shoot them—either he would shoot them himself or the Germans would."

Lindwasser said the system set up by the Germans at Treblinka was scientific and punctual—established with the goal of killing as many Jews as quickly as possible.

"Once the extermination process in the chambers was completed, the Germans wouldn't allow the chambers to be used for the gassing of just a few people.

"So instead, they just took the few who remained out and shot them and then dumped their bodies into the burning pits at the other end of the courtyard. This was called the *Lazaret*.

"That is why the girls who had been raped were shot. The chambers never were reopened for such a few. That was the German system," Lindwasser said.

• • •

Anna Kravchuk, sitting on a couch in her comfortable suburban Parma bungalow, still cannot believe the allegations against her longtime friend, Demjanjuk.

"I don't say if he is guilty or innocent," she said. "But the United States government should take into consideration all this man has gone through after coming to this country.

"He is a good father, a good family man and husband. And he is a hard worker. He always work so hard. I never see him angry or hurt anyone. Maybe he is not too smart. But he is a very nice man.

"Doesn't the government count such things?"

• • •

John Demjanjuk's purposeful strides toward attainment of the immigrant's American Dream took a long step forward in 1956 when he bought a house at 2517 W. 18th Pl.

It was near enough to the old melting-pot neighborhood so that his daughter, Lydia, could still attend Ukrainian study and cultural school on Saturdays at the Orthodox church, but far enough away so that he felt, finally, he was getting someplace.

The house was small, containing a living room, kitchen, dining room and three tiny bedrooms. But it was his own, and it had a yard in the back where he promptly planted several rose bushes.

The house, on an old, 18-foot-wide street, was in a rundown condition when the Demjanjuks moved in. Over the next five years, John and Vera spent their off-work hours putting it into prime shape. Two years after moving into the house, they were eligible to apply for citizenship status, and in November, 1958, became naturalized citizens.

Simultaneously, Demjanjuk legally changed his name, Anglicizing it from Ivan (or Iwan) to John.

It was in 1961 that Demjanjuk made another major move, always in the interest of upward mobility. He sold his home on 18th Pl. and used the money, friends say, to make a down payment on a large lot on Norris Av. in Parma.

Ironically, immigrant Demjanjuk became a pioneer blockbuster of sorts, selling the 90-year-old 18th Pl. house to a Latino family, the first of that nationality on the block.

By this time, the Demjanjuks had another child, although Vera returned to work at the General Electric plant not long after the baby was born.

By 1963, the Demjanjuks were ready to make the big move to the suburbs, their $21,000 home at 3226 Norris Av., Parma, having been completed.

Anne and William Lishjuk moved into a home down the street not long after the Demjanjuks came to Parma, thus completing a long, hard climb that had started for the two couples back in Germany in 1945.

"We had good times on Norris Av.," Mrs. Lishjuk told The Daily News a few weeks ago. "We were raising families and didn't have money for restaurants. But we had parties at each other's homes and often in the summer we would go out to the Ukrainian picnic grounds at the Ss. Peter and Paul Church."

John's good friends, Anna and George Kravchuk, remembered a time that John broke down and sobbed as he related the story of his early days in the Russian Ukraine.

"He never talked much of those days. But once at a party he told a story and he cried," Anna Kravchuk said.

She was talking with two reporters in the living room of her comfortable bungalow home on Norris Av. in Parma.

Demjanjuk was born April 3, 1920, on a farm in the small Ukrainian village of Dub Macharenzi. By the late 1920s, nearly all such farms in the Ukraine operated under a collectivized system put into practice by the Soviet government.

"John said his family was poor, just like so many other farmers in the Ukraine," Mrs. Kravchuk said. "I believe it was during the terrible winter of 1932 and 1933 when so many Ukrainians were either killed by the Communists or starved or froze to death."

She said Demjanjuk told her his family was desperate for food, so his mother decided to travel to a nearby large town and barter or beg for enough groceries to keep the family alive.

9 - CONTINUED PAGE 10

"She took young John with her [redacted] they went from shop to shop, but nothing worked," [redacted] Kravchuk continued. "John said most of the shops were run by Jews.

"Finally they went to one shop and his mother decided to sell her gold wedding ring to get money to buy food to bring back home. John said what they got for the ring was hardly anything—but they needed money so badly they had to sell it.

"Demjanjuk was always so good with his hands. He was willing to work hard and there was need for good mechanics. He got a pretty good job right away."

"You could see tears in his eyes when he talked about this. He said he has never forgotten, that he can't forget this experience."

Demjanjuk, who completed only five years of schooling in Russia, spent his youth driving a tractor on a collective farm in the Ukraine, according to friends.

Later, from 1945 to 1951, he drove a large General Motors truck as a refugee worker for the U.S. government at camps in Augsburg, Regensburg and Ulm in Germany.

It was at Regensburg in 1947 that Demjanjuk first met both the Kravchuks and Anne and William Lishjuk.

"He is quiet, always in control. And he doesn't like to talk much about World War II times," Anne Lishjuk said. "Oh, he mention once that he was in Russian Army fighting the Germans and was wounded. He said he was in hospital for eight or nine months with piece of metal in his back. But he say he went back to the fighting."

During the summer of 1942, Anne Lishjuk said Demjanjuk told her, he was captured by the Germans at a resort area near the Crimean Sea. "I remember him saying the mud was up to their knees and the soldiers couldn't move. So Germans came and captured them," she said.

Neither the Kravchuks nor the Lishjuks can believe the government's charges against their longtime friend and fellow Ukrainian, and they have vowed to stick by him and his family no matter what happens.

"For more than 30 years we've known Demjanjuk," said Anne Lishjuk. "But John never once mentioned the name Treblinka nor does he say anything about Jews or being a guard with the Germans.

"Don't you think he make slip just once if he were guilty? Just one time maybe at party when we were making toasts. But he never did though."

MONDAY: A three-decade search ends for the former chief of the "Lithuanian Gestapo." Second story in the continuing Daily News investigation.

Accused war criminal John Demjanjuk tries to avoid being photographed. (Cleveland Press Photo)

This is the seventh story in a continuing Daily News investigation spotlighting the scores of war crimes suspects who slipped into this country after World War II—and who for decades were ignored by U.S. authorities. The intent of the articles is to enhance public awareness of this persisting problem and to spur the pace of the recently reorganized federal inquiry that seeks finally to resolve these allegations after 30 years of delay.

The names of the suspects, and interviews with eyewitness survivors now prepared to testify against them, were obtained by Jay Bushinsky, the Daily News correspondent in Tel Aviv. The Daily News investigation in the United States has been conducted by reporters Charles Nicodemus and William Clements.

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

UNITED STATES GOVERNMENT

Memorandum

NR 92/5-P
NR 340-P

TO : Commissioner (COCOU), Washington

DATE: March 3, 1977

FROM : Acting Regional Commissioner (ROCOU), Northern

SUBJECT: Proposed revocation proceedings under Section 340(a), I. & N. Act (8 U.S.C. 1451(a)), against John Demjanjuk, aka Iwan Demjanjuk, aka Ivan Grozny (Ivan the Terrible), A [redacted] C [redacted] (b)(6)

Subject's file, in two parts, is forwarded for your consideration. The attached copy of an Affidavit of Good Cause sets forth the basis for the recommendation that revocation proceedings be instituted.

For convenience, Part II has been assembled to include the original plus two copies of the Affidavit of Good Cause, the original and two copies of the revocation report of the District Director, Cleveland, Ohio, and the documentary evidence, a list of which precedes the numbered exhibits.

Part I of the file, from which the exhibits in Part II were removed, has been noted to show the original location of each document.

Also attached hereto is a copy of the District Director's revocation report so that nothing need be removed from Part II.

Finally, a draft has been prepared of a memorandum for forwarding the file to the Department, including a list of the exhibits. The information in the next to the last paragraph referring to two publications on the Treblinka camp was obtained from a copy of Hartford Report of Investigation No. 2 dated June 15, 1976 relating to Feodor Fedorenko which report is filed chronologically in Part I hereof.

Attachments

cc: District Director (DIINV), Cleveland
District Director (DIINV), New York
Regional Commissioner (ROINV), Eastern Region
Assistant Commissioner, Investigations, Central Office
Attention: John Stevenson
Regional Commissioner (ROCOU), Eastern Region
ARC, Investigations, Northern Region

Please file, DEMJANJUK individual Folder.

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

5010-106

STATE OF MINNESOTA)
)
)
)
COUNTY OF HENNEPIN)

[redacted] (b)(6)

AFFIDAVIT OF GOOD CAUSE

Arthur E. Kellogg, being first duly sworn, deposes and says:

1. I am Regional Counsel for the Northern Region of the Immigration and Naturalization Service, United States Department of Justice, and, as such, have access to the official records of said Service from which the following facts appear regarding the naturalization of John Demjanjuk:

a. Subject, who was born on April 3, 1920 (according to his visa, in Kiew; according to his petition for naturalization, in Dub Macharenzi) Ukraine, entered the United States under the name of Iwan Demjanjuk on February 9, 1952 as a Polish national with an immigration visa issued pursuant to Section 2(c) of the Displaced Persons Act of June 25, 1948, as amended.

b. On December 27, 1951, in his Application for Immigration Visa and Alien Registration, executed under oath, subject included the statement that he "resided at the following places, during the periods stated, to wit: 1934-43 Sobibor, Poland; 1943 - 9/44 Pilau, Danzig; - - -".

c. On December 29, 1951, as a part of his preexamination before an officer of this Service, subject executed an affidavit on an official United States Department of Justice, Immigration

and Naturalization Form 1-144 which included the statement "I have never advocated or assisted in the persecution of any person because of race, religion, or national origin;"

d. On May 15, 1958 subject submitted to the Immigration and Naturalization Service at Cleveland, Ohio an Application to File Petition for Naturalization, Form N-400, which form included questions, among others, relating to organizations of which he had been a member. Answers to these questions were corrected by statements by subject orally and while under oath, when he appeared before a Service officer to file Petition for Naturalization No. [redacted] in the United States District Court of Ohio at Cleveland, Ohio on August 12, 1958. (b)(6)

e. At that time, as a part of the preliminary investigation conducted pursuant to Section 332 of the Immigration and Nationality Act (8 U.S.C. 1443), while still under oath, subject stated that the only organization, club, or society of which he had been a member in the United States or any other country during the last 10 years had been the C.I.O. union, and that, before the last 10 years, he had belonged to "None".

f. Subject thereupon filed his Petition for Naturalization No. [redacted] under the name of Iwan Demjanjuk, requesting therein a change of name to that he presently uses, John Demjanjuk, which petition, sworn to under oath included, among others, the following statements: - - - (b)(6)

(15) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. - - -

* * *

- - - I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: SO HELP ME GOD.

g. Later, on the same date and following the filing of said Petition for Naturalization No. [redacted] subject again appeared before the same Service officer at a preliminary examination held pursuant to Section 335 of the Immigration and Nationality Act (8 U.S.C. 1446) and, under oath, reaffirmed all his testimony given at the preliminary investigation prior to the filing of his Petition for Naturalization. (b)(6)

h. Thereafter subject appeared in the above-named court on November 14, 1958, was admitted to citizenship, had his name changed from Iwan Demjanjuk to John Demjanjuk, and was issued Certificate of Citizenship No. [redacted] (b)(6)

2. The following statutory provisions are relevant to this case:

a. Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) provides in part:

> Sec. 316.(a) No person, - - - shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years - - - and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.
>
> * * *
>
> (e) In determining whether the petitioner has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the court shall not be limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period.

b. Section 318 of the same Act (8 U.S.C. 1429) provides in part:

- - - no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. - - -

c. Section 101(f) of the same Act (8 U.S.C. 1101), states:

(f) For the purposes of this Act--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was--

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

* * *

(8) one who at any time has been convicted of the crime of murder.

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

d. Section 340(a) of the same Act (8 U.S.C. 1451) provides in part:

It shall be the duty of the United States Attorneys for the respective districts, upon affidavit showing

good cause therefor, to institute proceedings - - - for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation. - - -

3. Statements made by subject, under oath as related above, were untrue in the following particulars:

a. At the time subject executed under oath the visa application on December 27, 1951, but not disclosed therein, he previously had resided in a prisoner's camp at Treblinka, Poland from sometime in 1942 to about August 2, 1943.

b. At the time subject executed under oath the affidavit on Form 1-144 on December 29, 1951, but not disclosed therein, he previously had advocated or assisted in the persecution of persons because of race, religion, or national origin.

c. At the time subject testified under oath during the preliminary investigation on August 12, 1958, he failed to disclose his membership as an Ukranian Guard serving with German SS personnel in the prisoner's camp at Treblinka, Poland from sometime in 1942 to about August 2, 1943.

d. On the same date, as a part of the preliminary examination which followed the filing of his Petition for

Naturalization No. [redacted] and while under oath, he reaffirmed (b)(6)
the testimony at the aforesaid preliminary investigation, again failing to disclose his membership as an Ukranian Guard serving with German SS personnel in the prisoner's camp at Treblinka, Poland from sometime in 1942 to about August 2, 1943.

e. At all times previously mentioned subject failed to disclose--

(1) That during the period from sometime in 1942 to about August 2, 1943 subject had been an uniformed Guard in the prisoner's camp at Treblinka, Poland.

(2) That during this period subject was known as "Ivan Grozny" (Ivan the Terrible) because of his cruel, inhumane and bestial treatment of Jewish prisoners and laborers in the camp.

(3) That during this period subject used a sword, sabre or metal pole to push, prod and force Jewish prisoners into a gas chamber where they were then executed.

(4) That during this period subject used a knife, sword, bayonet or other instrument to stab, cut and remove parts of the bodies of Jewish prisoners before forcing them into the gas chamber, sometimes so many that the doors could not be closed without difficulty.

(5) That during this period subject, after the gas

chamber was full, released gas into the chamber, causing the death of those inside.

(6) That during this period, while working at the gas chamber, subject sometimes cut off the ears, and sometimes whipped, Jewish laborers who worked there carrying the corpses from the gas chambers for disposal.

(7) That during this period, on one occasion, subject pulled a naked religious Jew from a group, forced his head between strands of barbed wire at the gas chamber, whipped him until the pain caused the Jew to move until the pressure of the wire suffocated him.

(8) That during this period, on one occasion, subject ordered a Jewish laborer, whom he had whipped 30 times for having a piece of bread, to perform a sexual act with a dead woman.

(9) That during this period, on one occasion, subject with a German SS-man, while compelling Jewish laborers to carry tree trunks from the forest, shot and killed several of them who had collapsed from the heavy burden.

4. That subject did intentionally and deliberately make false statements and misrepresentations to Government officials for the purpose

of obtaining a visa and for gaining admission to the United States and such false statements and misrepresentations prevented a full and proper investigation regarding his eligibility for the visa.

5. That subject's visa, with which he was admitted to the United States on February 9, 1952, was procured by fraud and by willfully misrepresenting material facts, and therefore was invalid, and his entry into the United States was illegal and unlawful.

6. That because subject did not have a lawful admission into the United States, his naturalization was illegally procured.

7. That subject was not, as required by law, a person of good moral character either at the time of his naturalization or prior thereto.

8. That subject did intentionally and deliberately conceal material facts and make willful misrepresentations in the proceedings leading up to and for the purpose of obtaining his naturalization.

9. That because subject's false testimony was to obtain naturalization, and because he was not a person of good moral character as required by law, his naturalization was illegally procured.

10. Good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act (8 U.S.C. 1451(a)) to revoke and set aside the order admitting subject to citizenship and to cancel his certificate of naturalization on the grounds that it was illegally procured and that it was procured by concealment of material facts and by willful misrepresentations.

11. The last known place of residence of the said John Demjanjuk was [redacted] (b)(6)

Arthur E. Kellogg
Regional Counsel

Subscribed and sworn to at Twin Cities, Minnesota, this 2nd day of March, 1977, before me, the Acting Regional Commissioner of the Immigration and Naturalization Service, United States Department of Justice, authorized to administer oaths by the provisions of Section 332(d) of the Immigration and Nationality Act (8 U.S.C. 1443(d)) and Title 8, Code of Federal Regulations, Section 332d.1.

Acting Regional Commissioner
Northern Region

WF 50/10.1

January 28, 1977

District Director
Cleveland

Regional Commissioner
Eastern Region

(b)(6)

John Demjanjuk, [redacted] List of Alleged Nazi War Criminals Residing in the United States

The relating file is forwarded herewith by registered mail, return receipt requested, for your consideration of the institution of revocation proceedings pursuant to Section 340 of the Immigration and Nationality Act.

Please refer to New York's memorandum, NYC 50/40.378, dated December 16, 1976, which expresses, in detail, the basis for the recommendation by the Nazi War Criminal Project Action Committee that revocation proceedings be instituted.

This office has carefully reviewed the aforementioned memorandum and the relating file and concurs with the conclusions and recommendations of the Action Committee that revocation proceedings be instituted under Section 340(a) of the Immigration and Nationality Act. The Regional Counsel, Eastern Region, also concurs.

The seven affidavits obtained from witnesses in Israel appear to constitute prima facie evidence of subject's participation in atrocities during World War II. Any additional evidence which may be developed through other inquiries initiated by the Project Control Office at New York will be furnished to you upon receipt by that office.

All of the specific steps to be followed in conducting the investigation looking toward the institution of revocation proceedings, as required by Chapter 6.1 of the Investigator's Handbook, have not been completed in this case. It is the opinion of this office that it would be more practical to have this phase of the investigation conducted under your immediate supervision rather than by the Project Control Office at New York. The New York office will, however, maintain administrative control of this case as a pending Nazi War Criminal investigation. Please ensure that periodic 60-day progress reports are furnished to New York, as well as this office and to the Assistant Commissioner, Investigations.

Attachment

CC: Commissioner (COINV)
With copy of New York's memorandum dated December 16, 1976.
For your information, regarding your CO 934-C.

CC: General Counsel, Central Office
With copy of New York's memorandum dated December 16, 1976.
For your information.

CC: Regional Commissioner (RCINV) Northern
With copy of New York's memorandum dated December 16, 1976.
For your information.

CC: Regional Counsel, Eastern Region
For your information, regarding your ER 340-C dated January 21, 1977.

CC: District Director (DIINV-SUBV-SHZ) New York
For your information. Please maintain appropriate callups relating to this case and include results in your overall report regarding List of Alleged Nazi War Criminals Residing in the United States.

CU: 4/8/77

WRL/slm

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

ER 340-C

TO : Assistant Regional Commissioner, Investigations
Burlington

DATE: January 21, 1977

FROM : Regional Counsel, Burlington

SUBJECT: NYC 50/40.378; December 16, 1976; John Demjanjuk, a/k/a Iwan Demjanjuk, A [redacted] (Alleged Nazi War Criminals Residing in the United States)

(b)(6)

I concur that revocation proceedings be instituted under Section 340(a).

Dale S. Page

5010-110

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

Indiv. folders

Regional Counsel, Eastern Region

WF 50/10.1
January 13, 1977

Assistant Regional Commissioner,
Investigations, Eastern Region

NYC 50/40.378; December 16, 1976; John Demjanjuk, aka Iwan Demjanjuk, [redacted] (Alleged Nazi War Criminals Residing in the United States)

(b)(6)

The relating file is forwarded for your review.

The Nazi War Criminal Project Action Committee has recommended that revocation proceedings be instituted under section 340(a) of the Immigration and Nationality Act.

Your views as to the practicality of the proposed course of action are requested.

Attachment

CC: [redacted] (b)(6)

WRL/jph

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

NYC 50/40.378
DATE: December 16, 1976

TO : Regional Commissioner (ROINV)
Eastern Region, Burlington, Vermont

FROM : District Director (DIINV)
New York, New York

SUBJECT: Demjanjuk, John, aka Demjanjuk, Iwan; [redacted] (b)(6)
Ivan Grozny (Ivan the Terrible), A
(Alleged Nazi War Criminals Residing in the United States)

Subject was born on April 3, 1920 in Kiev, Ukraine, U.S.S.R. He entered the United States on February 9, 1952 at New York, N.Y. for permanent residence under Section 2(c) of P.L. 774 as amended. Subject was naturalized a United States citizen in Cleveland, Ohio on November 14, 1958.

According to information contained on a list furnished by Michael Hanusiak, President of the UKRAINIAN NEWS in New York, the Subject allegedly volunteered for the German "SS" Troops and Security Police, underwent training in the German training camp in the town of Travniki, Poland. In this camp, those trained became masters in the art of hanging and the torturing of civilians. From March 1943, Subject served as a Wachmann with the "SS" Unit in the town of Sobibor, Poland, and later from October 1943, served as a Guard in the concentration camp in the town of Flossenburg, Germany. He personally participated in the mass executions of the Jewish population in the Death Camp at Sobibor, Poland.

Preliminary investigation conducted on March 8, 1976 by the Cleveland Office indicates Subject resided at [redacted] and appeared to be in good health. On March 16, 1976, the Action Committee recommended that a full investigation should be conducted. The Subject's name, photograph and background were furnished to Major Lengsfelder of the Israeli Police Department for his assistance in locating potential witnesses in Israel.

Cleveland Summary Report #3 dated November 19, 1976 sets forth in detail the results of the investigation. This report reflects that seven eyewitnesses in Israel testified that the Subject as a Guard in the Treblinka Death Camp, had committed atrocities against Jewish inmates in the most brutal and bestial manner. The following is a brief description of the witnesses' testimony:

Abraham Goldfarb furnished a statement before an officer of the Israeli Police Department on May 9, 1976. The witness was an inmate at the Treblinka Death Camp from August 1942 to August 1943. He identified the Subject's photograph as being a Guard at the Treblinka Death Camp and was known by the nickname "Ivan Grozny" (Ivan the Terrible). The Subject, together with a German SS volunteer,

5010-110

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

were the ones who released the gas into the gas chambers. The witness saw the Subject pushing the victims into the gas chamber in a most cruel and bestial manner. He saw the Subject hack at the victims with his knife, forcing them into the gas chamber. He also saw the Subject cut off the ears of laborers who were removing the dead victims from the gas chambers. The witness worked at the slaking lime pits where the victims were thrown after being taken from the gas chambers.

Eugene Turowski furnished a statement before an officer of the Israeli Police Department on May 10, 1976. The witness was an inmate from September 1942 to August 1943. The witness identified the Subject's photograph and stated that he knew the name Demjanjuk, but that he was better known by the name "The Ivan". He knew that the Subject worked as a Guard in Camp 2 where the victims were gassed to death. He saw the Subject with other Ukrainians dragging apprehended Jews already beaten half dead from the woods to the Camp. The witness was used to take the people from the transports to the Camp and then as a mechanic worked on repairs in the quarters of Germans and Ukrainians.

Eli Jahu Rosenberg furnished a statement before an officer of the Israeli Police Department on May 11, 1976. The witness was an inmate of the Treblinka Death Camp from the beginning of 1942 until August 1943. He identified the photograph of the Subject and stated the photograph bore a great resemblance to a Ukrainian guard who was called "Ivan Grozny" (Ivan the Terrible). He saw the Subject take a naked religious Jew with a long beard and put his head between some barbed wire. He then began horsewhipping the Jew in a horrible manner until the barbed wire pressed into his neck and he suffocated. He saw the Subject stand at the entrance to the gas chamber and with a sword slashed at the victims, mostly women, on their naked bodies. After the gas chamber doors were closed, the Subject ran the diesel motor forcing the gas into the gas chambers. He also saw the Subject shoot a worker removing the dead corpses. The witness personally received from the Subject 30 whiplashes at a roll call because he had purloined a small piece of bread. On one occasion the witness was ordered by the Subject to perform a sexual act with a dead woman who had been pulled out of the gas chamber. The witness's task was to remove the corpses of the victims from the gas chambers after each gassing process.

Joseph Czarny furnished a statement before an officer of the Israeli Police Department on September 21, 1976. The witness was an inmate at the Treblinka Death Camp from the fall of 1942 to

the uprising there on August 2, 1943. He identified the Subject's photograph and knew him by the name "Ivan Grozny" (Ivan the Terrible). The witness stated the Subject was employed at Camp 2 where the gas chambers were located. He saw the Subject shoot people to death as they arrived on the transports that brought them to the Death Camp. The witness worked at the Camp as a "Yard-Jew".

Schlomo Helman furnished a statement before an officer of the Israeli Police Department on September 28, 1976. The witness was an inmate at the Treblinka Death Camp from July 1942 until the uprising in August 1943. The witness was unable to identify the Subject's photograph, however, he knew of a Ukrainian guard with a nickname "Ivan Grozny" (Ivan the Terrible) who forced the victims into the gas chamber. He would stand with a saber in his hand, which he stabbed into the unfortunate victims so that they would go more quickly into the gas chamber. The witness was assigned to carry the corpses out of the gas chamber and burn them.

Gustaw Boraks furnished a statement before an officer of the Israeli Police Department on September 30, 1976. The witness was an inmate of the Treblinka Death Camp from September 1942 until the uprising in August 1943. When he and his family arrived at the Camp, he was selected as a barber and the rest of his family were immediately put into the gas chambers. He identified the Subject's photograph and knew him by the nickname "Ivan Grozny". The witness saw the Subject every day at the gas chambers as he brutally drove the victims to their death. He saw the Subject shoot to death several Jewish laborers. In the summer of 1943 when fewer victims were being sent to Treblinka, the witness was taken, along with others, into the woods to chop down trees. The Subject would shoot a laborer who had collapsed because of overwork.

Abraham Lindwasser furnished a statement before an officer of the Israeli Police Department on October 3, 1976. The witness was an inmate at the Treblinka Camp from August 1942 to August 1943. The witness was used to carry the corpses from the gas chambers to the graves and subsequently was used to pull teeth from the corpses. The witness identified the Subject's photograph and knew him by the name "Ivan Grozny" (Ivan the Terrible). The witness saw the Subject driving people into the gas chambers with a sword. Many of the corpses had been cut and pierced when they were removed from the gas chamber. In one incident, three Jewish laborers tried to escape and were caught. When the witness arrived

> at the scene, he saw the Subject with a sword full of blood and the three Jewish victims were being carried away.

All of the aforementioned witnesses stated they would be willing to testify at proceedings in the United States.

On December 14, 1976 a meeting of the Action Committee was held. In attendance were Maurice F. Kiley, District Director; Henry E. Wagner, Assistant District Director for Investigations; Marjorie Jackson, Assistant District Director for Citizenship; William Dunlap, Acting Supervisory Trial Attorney; Lloyd Sherman, Trial Attorney; William Strasser, Trial Attorney, and Samuel H. Zutty and John P. Weiss, Criminal Investigators. After an in-depth discussion, it was unanimously recommended that consideration be given to the institution of revocation proceedings, as the nature of the Subject's involvement in atrocities would appear to bring him within the purview of Section 13 of the Displaced Persons Act as amended on June 16, 1950.

> "No visas shall be issued under the provision of this Act, as amended . . . to any person who advocated or assisted in the persecution of any person because of race, religion or national origin . . . If any person not entitled to a visa under this Section who, nevertheless, gained admission, such person shall, irrespective of the date of his entry, be deported in the manner provided by Sections 19 and 20 of the Immigration Act of February 5, 1917, as amended."

The provisions of Section 13 of the Displaced Persons Act as amended on June 16, 1950, by its own terms, were specifically made retroactive. A retroactive change of law is effective and valid where so specified. (Matter of M - 5 I&N Dec. 261).

This is significant as, on December 27, 1951 when the Subject received his visa, the law dealing with the actions of aliens during the World War II era related only to those who participated in or were members of a movement hostile to the United States and its form of government.

It should be noted, however, that existent at that time was the Act of May 22, 1948 as amended (repealed by the Act of 6/27/52) which provided that during the existence of national emergencies proclaimed by the President of the United States, it was not lawful for any alien to enter the United States except under such reasonable orders as the President prescribed. In addition, it provided that the issuance of a visa document could not be construed as entitling the alien to enter if found to be

inadmissible under the Act above referred to or any other law referring to the entry of aliens. Pursuant to the statutory authority granted him, the President annunciated in Presidential Proclamation 2850, on August 17,1949, the ineligibility to receive a visa by any alien found to be or charged with being a war criminal by the United States or anyone of its co-belligerents, or an alien who had been guilty of or advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the World War.

In any event, at the time of his entry the Subject was inadmissible because under Section 13 he would immediately be subject to deportation. The Board of Immigration Appeals has held in Matter of V., 1 I&NS Dec. 293, that a person who was immediately deportable on entry is excludable from the United States. This decision was reaffirmed in Matter of R_____ G_____, 1 I&NS Dec. on Page 128, wherein it said that if there are no specific grounds for exclusion, but law makes the alien subject to deportation, exclusion is permissible (see also matter of O_____, 8 I&NS, Page 291, citing cases on Page 292 in the penultimate paragraph).

In the Matter of Eng, 12 I&NS Dec. 855 decided, August 23, 1968, on Page 851, the Board of Immigration Appeals stated, "qualitative restrictions include physically, mentally or morally disqualified; the subversives, and the violators of criminal, immigration or narcotics laws." It is obvious that crimes against humanity, the persecution of persons because of race, religion or national origin, falls completely within "qualitative restrictions".

It is axiomatic that if the Subject's entry into the United States was unlawful, then the naturalization based on such entry must fall and the Subject would be amenable to revocation proceedings.

Because of extreme interest by the news media, general public and members of Congress, it is requested that this matter be given expeditious handling.

Subject's file is attached for your convenience.

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

Attachment

NYC 50/40.378
November 18, 1976

District Director (DIINV)
Newark, New Jersey

District Director (DIINV)
New York, New York

(b)(6)

IWAN DEMJANJUK, A [redacted]
(Alleged Nazi War Criminals Residing in the United States)

The above named Subject was alleged to have been a guard in the death camp "SOBIBOR" in Poland. He was reported to have participated in the mass execution of Jewish inmates at this camp.

[redacted] were interviewed in Connecticut and stated that [redacted] was also an inmate of the SOBIBOR death camp and may have knowledge of the above named Subject.

A photograph of the Subject is attached. Please insure that when showing the photograph to [redacted] it should be included with at least six others in a photographic spread.

In the event the witness can positively identify the Subject, obtain a sworn statement or affidavit along the lines set forth in the attached guidelines

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

cc: ROINV, Eastern (for your info)
COINV (for your info)
DD Cleveland (for your info)

file
KM

BURLINGTON, VT.
IMM. & NAT. SERVICE
NOV 24 1976
RECEIVED
INVESTIGATIONS

NYC 50/40.378
October 12, 1976

District Director (DIINV)
Hartford, Ct.

District Director (DIINV)
New York, New York

(b)(6)

DEMJANJUK, Iwan; A [redacted]
(Alleged Nazi War Criminals Residing in the United States)

The Cleveland office has advised that [redacted] last known to be residing at [redacted] were survivors of the camp of Sobibor, Poland. Please interview these individuals to ascertain if they have any knowledge of the Subject. The Subject was born on April 3, 1920 in Dub Macharenzi, Ukraine. A photograph of the Subject is attached.

When questioning the witnesses, a photographic spread of at least six photos should be presented. If the witnesses can identify the Subject, sworn statements should be taken as to their specific knowledge of the Subject's wartime activities.

As this investigation has been designated high priority by the Central Office, please expedite your response. Please respond directly to the Cleveland office with an information copy to this office.

FOR THE DISTRICT DIRECTOR
Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

Attachment

cc: COINV (for your info)
ROINV, Eastern (for your info)
DIINV CLE (Attn: Inv. Jacobs)

RECEIVED
OCT 25 1976
INVESTIGATIONS
IMMIG. & NAT. SERVICE
WASHINGTON, D.C.

Please file, DEMJANJUK
mfm

20 West Broadway
New York, New York 10007

NYC 50/40.378
September 22, 1976

American Consulate
Melbourne, Australia

Dear Sir:

(b)(6)

Re: Feodor FEDORENKO, [redacted]
Ivan DEMJANJUK, [redacted]
(Alleged Nazi War Criminals Residing in the United States)

In connection with a pending investigation of the above-named Subjects, it is requested that [redacted] residing at [redacted] Melbourne, Australia, be interviewed. The World Jewish Congress in New York, advised that they received a letter from this witness stating he is a survivor of the SOBIBOR Death Camp and is willing to testify against the above-named Subject.

Subject Feodor Fedorenko was born on September 17, 1907 in Sivash, Ukraine. He is accused of having served in the "SS" and personally participating in the executions of Jews. From the Spring of 1942 to August, 1942, he served as a guard in the concentration camp of LUBLIN. After that he was transferred to the death camp TREBLINKA. He personally participated in the mass shootings of Jews. A photograph of the Subject is attached.

Subject Ivan Demjanjuk was born on April 3, 1920 in Dub Macharenzi. is accused of having served with an "SS" unit in the town of SOBIBOR, Poland and later from October, 1943, served as a guard in concentration camp in the town of FLOSSENBURG, Germany. He personally participated in the mass executions of the Jewish inmates in the SOBIBOR Death Camp in Poland. A photograph of the Subject is attached.

If the witness can identify the Subjects, a detailed deposition should be taken concerning his eyewitness knowledge of any atrocities committed by the Subjects. Only acts which were personally witnessed should be included in the statement. Determine if the witness known of any other persons in the United States or elsewhere who have eyewitness knowledge of any of the

NYC 50/40.378
September 22, 1976

alleged atrocities committed by the Subjects. Ascertain if the witness would be willing to testify at Immigration proceedings in the United States if necessary.

As this investigation is the object of widespread public and congressional interest, please expedite your response.

Very truly yours,

Maurice F. Kiley
District Director
New York District

Attachments

cc: COINV (for your info)
ROINV, Eastern (for your info)
DD CLE
DD HAR

10/4/76

Please File FEDORENKO & DEMJANJUK.
Maintain FEDORENKO CU
NO CU DEMJANJUK.

20 West Broadway
New York, New York 10007

NYC 50/40.378
July 29, 1976

Major G. Lengsfelder
Israel Police Headquarters
Section for Investigation of
Nazi War Crimes
Salame Street 18
Tel Aviv/Yaffo, Israel

Dear Major Lengsfelder:

Attached is a list of names of survivors from the Concentration Camp of Treblinka. The addresses on this list date from 1967, so it is very likely that some of the survivors may have moved or are deceased. The list was supplied by Mrs. Bessy Pupko of the World Jewish Congress in New York as an aid to our investigation of two Alleged Nazi War Criminals. Would you please attempt to interview these witnesses for any information they may have concerning Feodor FEDORENKO and Iwan DEMJANJUK, who are alleged to have been involved in atrocities in the death camp of Treblinka. We are in receipt of the statements you sent us taken from witnesses concerning these two individuals. However, if we are able to obtain additional substantiating witnesses, it will greatly enhance our cases.

We have received the two statements taken from witnesses, [redacted] and [redacted], concerning [redacted]. The witness, [redacted], (b)(6) mentioned a certain [redacted] who now lives in Haifa. [redacted] states that [redacted] should be considered as a witness concerning the Subject, [redacted] Please interview [redacted] for any information he may have concerning the Subject, [redacted].

We are also in receipt of two affidavits taken from [redacted] and [redacted] (nee) [redacted] concerning [redacted]. On March 28, 1976, your office furnished a statement regarding [redacted] from [redacted] These three statements do not make it completely clear whether the witnesses actually saw the Subject participating in brutalities or killing of Jews. In addition, the statement from [redacted]

(b)(6)

(b)(6)

states that he did not see [redacted] in the Ghetto in Kovno. The statement of [redacted] that he was together with [redacted] in the Ghetto and that [redacted] pointed out [redacted] to him. Please attempt to clear up this discrepancy in the testimonies. Before we are able to proceed in the possible institution of Service proceedings in this case, it is necessary that we have additional eyewitness testimony concerning the Subject's involvement in atrocities.

Thank you very much for your continued cooperation in these cases, and best regards from Sam Zutty.

Very truly yours,

Maurice F. Kiley

Maurice F. Kiley
District Director
New York District

Attachment

cc: COINV (for your info)
ROINV, Eastern (for your info)

8-5-76
Please place copy of this correspondence in individual Folders relating to:
FEDORENKO
DEMJANJUK

[redacted]

(b)(6)

AND wF 50/10.1 Attachment
Pt. II under tab Liaison w/ Israel, Police major Lengsfelder

NYC 50/40.378
July 23, 1976

District Director (DIINV)
Hartford, Ct.

District Director (DIINV)
New York, New York

(b)(6)

Feodor FEDORENKO [redacted]
(Alleged Nazi War Criminals Residing in the United States)

Attached is a copy of a list of 48 survivors of the Concentration Camp at Treblinka. This list was supplied by Bessy Pupko of the World Jewish Congress. Your office should request the interview of these potential witnesses concerning any knowledge they may have of the Subject. In addition, the witnesses should be interviewed concerning their possible knowledge of Iwan DEMJANJUK, (b)(6) [redacted] who has been identified as a guard, "Ivan the Terrible", at the Concentration Camp of Treblinka. Iwan Demjanjuk was born on April 3, 1920 in Dub Macharenzi, Ukraine. He entered the United States at New York City on February 9, 1952 for permanent residence. He was naturalized a United States Citizen on November 14, 1958 at Cleveland. He is presently under investigation as an Alleged Nazi War Criminal at Cleveland. Photographs of this Subject are being forwarded to your office directly from Cleveland. Your office should request that the witnesses be interviewed concerning both Subjects in order to avoid duplication of efforts. Copies of all reports and/or pertinent memoranda should be furnished the Cleveland office for their information. In addition, copies of these reports and memoranda should also be furnished this office.

This office is in the process of interviewing those witnesses residing in the New York District. In addition, we will request Major Lengsfeldox of the Israeli Police to interview those potential witnesses residing in Israel. Before request are made for interview of other witnesses residing overseas, the results of the interviews with witnesses residing in the United States and Israel should be received and evaluated.

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

Attachment
cc: COINV (for your info)
ROINV, Eastern (for your info)
DIINV, CLE
ROINV, Northern (for your info)

File FEDORENKO, Feodor] Folders
& DEMJANJUK, Iwan]

20 West Broadway
New York, New York 10007

NYC 50/40.378
June 16, 1976

Major G. Lengsfelder
Israel Police Headquarters
Section for Investigation of
Nazi War Crimes
Salame Street 18
Tel Aviv/Yaffo, Israel

Dear Major Lengsfelder:

In response to your letter P.AIN/01632-54853 of June 7, 1976, the following information is herewith furnished to assist your office in its efforts to locate witnesses in connection with the project Alleged Nazi War Criminals Residing in the United States. In the following cases we have recommended that either deportation or revocation of citizenship proceedings be instituted. However, if additional witnesses are located in these cases, it could greatly enhance chances of successful action:

(b)(6)

[redacted]

In connection with the following cases, inasmuch as we now have one or two witnesses, it is most important to endeavor to obtain additional eyewitnesses so Service proceedings can then possibly be instituted:

[redacted]

Feodor FEDORENKO
Iwan DEMJANJUK

In the following cases, although several witnesses have been located, it does not appear that successful action is likely at this time:

[redacted]

(b)(6)

In the following cases, even if witnesses are located, it appears that successful Service action is not likely at this time:

(b)(6) [redacted]

It is to be noted in the previous two categories there is Pending Congressional Legislation, which if passed, may render the aforementioned Subjects amenable to Service proceedings.

As to the remaining Subjects where, to date, no eyewitnesses have been located, please continue efforts to locate eyewitnesses.

Regarding those Ukrainian Subjects whose names we have recently sent to you or may send you in the future, please continue efforts to locate eyewitnesses.

Please advise if you have completed interviews of witness, [redacted] which was requested on March 5, 1976 regarding [redacted] and

(b)(6) [redacted]

Sam Zutty sends his best regards and hopes that you and your family are well.

Very truly yours,

Maurice F. Kiley

Maurice F. Kiley
District Director
New York District

cc: COINV (for your info)
ROINV, Eastern (for your info)

IMMIGRATION AND NATURALIZATION SERVICE
RECEIVED
JUN 18 1976
INVESTIGATIONS

31

WF 50/10.1
May 14, 1976

District Director (DIINV) Cleveland

Regional Commissioner (ROINV) Eastern

(b)(6)

Your A[redacted], April 5, 1976; John (Iwan) Demjanjuk

A check was made of the indices of this office and reflects no sources that would be of assistance to you in your investigation of the above cited subject.

FOR THE REGIONAL COMMISSIONER

KM

Acting Assistant Regional
Commissioner, Investigations, ERO

jph

[redacted]

(b)(6)

A [redacted]

Regional Commissioner Twin Cities, Minn.;
Burlington, Vt.; San Pedro, Calif.; Dallas, Texas

April 5, 1976

District Director, (DIINV)
Cleveland, Ohio

DEMJANJUK, John (Iwan)

Subject was born April 3, 1920 in Kiew, USSR. He was admitted to the United States Feb. 9, 1952 for permanent residence as a displaced person, and was naturalized a citizen of the United States Nov. 14, 1958. He was of Ukrainian extraction, but had Polish nationality. His last foreign address was Camp Feldafing, Munich, Germany. He presently resides at [redacted]

(b)(6) [redacted] with his wife, Vera nee [redacted] whom he married in Regensburg, Germany.

Subject resided in Sobibor, Poland from 1934 to 1943; in Pilau, Danzig from 1943 to Sept. 1944; in Munich, Germany from Sept. 1944 to May 1945; in Landshut, Germany from May 1945 to May 1947; in Regensburg, Germany from May 1947 to Sept. 1949; in Ulm, Germany from Sept.1949 to April 1950; in Ellwangen, Germany from April 1950 to October 1950; in Ulm, Germany from October 1950 to February 1951; in Bad Reichenhall, Germany from February 1951 to May 1951 and in Feldafing, Germany from May 1951 to Feb. 1952.

Subject's file reflects that he was a "Driver" at Regensburg, Germany and his occupation is so reflected on his visaapplication. The application also indicates that he was coming to the United States to engage in general farming.

Subject's name appeared on a list compiled by Michael Hanusiak, President of the Ukrainian News where it was alleged that he "volunteered for the German 'SS' troops and Security Police. Underwent training in the German training camp in Town of Travniki, Poland. From March 1943 served as a watchman with the "SS" unit in the town of Sobibor, Poland and later (from Oct. 1943) served as a guardsman in the concentration camp in the town of Flossenburg, Germany. Personally participated in the mass executions of the Jewish population in the death camps 'Sobibor' in Poland."

Please furnish the symbol numbers, or names, of any informants that may be of assistance in our pending investigation.

FOR THE DISTRICT DIRECTOR

Peter J. Skjold, Assistant
District Director for
Investigations

20 West Broadway
New York, New York 10007

NYC 50/40.378
March 19, 1976

Major G. Lengsfelder
Israel Police Headquarters
Section for Investigation of
Nazi War Crimes
Salame Street 18
Tel Aviv/Yaffo, Israel

Dear Major Lengsfelder:

Supplementing our memorandum of February 20, 1976, we are herewith furnishing the names of nine additional Ukrainians who are alleged to have been involved in committing atrocities in the Ukraine during World War II. This now makes a total of 18 names thus far furnished to your office.

Kindly make efforts to ascertain if there are any available witnesses in Israel who may have eyewitness knowledge of the Subjects' alleged involvement in persecutions or atrocities.

The following are the names, biographical background, and allegations of the additional nine Ukrainians:

(b)(6) [redacted]

DOE: 4-8-53; NYC PR

Allegation: In 1941-1943 served in the Gendarmery of Brusilov district. Personally participated in arrests, tortures, and the execution of Soviet citizens (Z. Bdovichenko; A.S. Makarenko; E.M. Makarenko; S.A. Macarenko, etc.).

RECEIVED
MAR 22 1976
INVESTIGATIONS
SERVICE TAM & MMI
NY NOTIFICATION

Place copy in each individual folder then
File

✓ DEMJANJUK, IVAN aka/ Demjanuk, Ivan Nikolayevich
DOB: 4-3-20, Dub Nacharenai, Ukraine
DOE: 2-9-52, NYC

Allegation: Volunteered for the German "SS" troops and Security P Police. Underwent training in the German training camp in town of Travniki, Poland. In this camp those trained became masters in the art of hanging and the torturing of civilians. From March, 1943 served as a Wachmann with the "SS" unit in the town of Sobibor, Poland and later (from October, 1943) served as a guardsman in the concentration camp in the town of Flossenburg, Germany. Personally participated in the mass executions of the Jewish population in the death camp "Sobibor" in Poland.

✓ DRENOV, ALEXANDER aka/ Drenov, Alexei Kallistratovich
DOB: 4-4-07, Dubno, USSR
DOE: 9-5-50, NYC

Allegation: Served as a policeman in the Nedrigailovsky district police set-up. Actively participated in the arrests, executions and other punitive actions. In particular in February, 1942 participated as a member of the district police in the execution of Soviet citizens of Jewish origin near the village of Korovintsy. In February, 1943 took part in the execution of ten civilians being held as prisoners in the police chambers.

✓ FEDORENKO, FEDOR aka/ Fedorenko, Fedor
DOB: 9-17-07, Sivash, Dniepro-Petrovsk Oblast, Ukraine (also reported as Sarny, Poland and Dzhankoy, Crimea, Ukraine)
DOE: 11-5-49, Boston DP

Allegation: Served in the "SS" in the "Travniki" camp in Poland. With the rank of "Oberwachmann" of the "SS", he personally participated in the execution of Jews. From the Spring of 1942 to August, 1942, he served as a guard in the concentration camp in Lublin, Poland. After that was transferred to the death camp, Treblinka. He personally participated in the mass shooting of Jews.

(b)(6)

[redacted]

DOB: 6-8-49, Boston, Mass.

Allegation: In 1941-1943 served as the Forester. He personally participated in the arrests, tortures of many Soviet citizens. He set afire 30 houses of these civilians. He participated in punitive operations against Soviet partisans.

[redacted]

DOB: 3-20-56, NYC

Allegation: In 1941-1943 served as policeman in his native village. Participated in punitive operation against the village of Kozary, and the execution of its inhabitants. Personally for the execution of civilian Lapko a resident of this village.

[redacted]

DOB: 3-15-57, NYC

Allegation: From 1941-1943 he was the Deputy-Chief of the First Department of the Zaporozhe police, participating in the arrests, tortures and mass shootings of the civilian population, including Jewish citizens. In 1943, he retreated with the Germans and fled to Poland. He lived in Lodz and Khemplts where he served in the Schutzpolice.

LOPUSHOK, MICHAIL aka/ Lopushok, Michail Afanasievich
DOB: 6-10-03, Rachino, Poland
DOR: 3-3-50, NYC

Allegation: From 1941-1943 served with the Krostyanets district police. He personally killed Antonchenka, a civilian and a Jewish citizen named Shkolnikov. He also participated in the hanging of 22 civilians in Krostyanets. He is reported to have taken action against Soviet paratroopers.

NYC 50/40.378
March 19, 1976

MESERYA, STEPHAN
DOB: 6-4-08, Hupaly, Ukraine
DOE: 4-18-61, LPR

Allegation: During occupation served in the "SD" in the town of Krasny Luch, then entered the "Zondergrupp-Peter". Participated in actions against partisans and took part in the shooting of civilians. Personally executed his kinsmen - brothers Bezbozny, the Zhusovs. Together with other executioners he had killed 24 civilians, whose bodies were thrown into the mine shaft #151 "Bogdan" located in the town of Krasny Luch.

Photographs of these nine individuals are enclosed for identification purposes.

If any witnesses are located, please take a statement along the lines previously discussed.

Best regards from Sam H. Zutty.

Very truly yours,

Maurice F. Kiley

Maurice F. Kiley
District Director
New York District

Enclosures

cc: COINV (for your info)
ROINV, Eastern (for your info)

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

NYC 50/40.378

TO : Regional Commissioner (ROINV)
Eastern

DATE: March 18, 1976

FROM : District Director (DIINV)
New York, New York

SUBJECT: DEMJANJUK, Iwan A [redacted] (b)(6)
(Alleged Nazi War Criminals Residing in the United States)

Attached is a copy of New York memorandum dated March 16, 1976 indicating that the Action Committee had determined that a full field investigation should be conducted in the above-named Subject's case. The Subject's case has been assigned #116 on the list of Alleged Nazi War Criminals Residing in the United States.

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

Attachment

Index create folder and 5x8 with info from 2nd para of N.Y. memo of 3/16/76 BM

5010-110

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

Complete local and national agency checks should also be made.

It has been directed that this investigation be given high priority and completed as expeditiously as possible. The initial report should be submitted within 30 days to this office and thereafter a report every 90 days so that the results can be reported to the Central Office. The Subject's file is herewith forwarded for your compliance with the above directive.

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District
Director for Investigations

Attachments

cc: COINV (for your info)
ROINV, Eastern (for your info)
ROINV, Northern (for your info)

HEW

NYC 50/40.378
March 16, 1976

District Director (DIINV)
Cleveland, Ohio

District Director (DIINV)
New York, New York

(b)(6)

DEMJANJUK, John A [redacted]
(Alleged Nazi War Criminals Residing in the United States)

The Subject was born on April 3, 1920 in Kiev, Ukraine. He entered the United States on February 9, 1952 at New York City for permanent residence as a displaced person. He was naturalized a United States citizen in Cleveland, Ohio on November 14, 1958. No prior investigation was conducted in this case.

(b)(6) The Subject's name appeared on a list compiled by Michael Hanusiak, President of the UKRAINIAN NEWS where it was alleged the Subject participated in atrocities in the Ukraine during World War II. A characterization of the source will be forwarded under separate cover.

On March 8, 1976, your office advised the Subject is in good health and resides at, [redacted]

The Subject's case was discussed in depth at a meeting of the Nazi War Criminal Project Action Committee in New York on March 12, 1976, attended by Joe D. Howerton, Acting District Director; Henry E. Wagner, Assistant District Director for Investigations; Michael Anguilo, Acting District Director for Citizenship; Allan Shader, Supervisory Trial
(b)(7)(c) Attorney; and [redacted] Investigators. It was the Action Committee's unanimous recommendation that the Subject's name be included on the list of Alleged Nazi War Criminals Residing in the United States as previously furnished in CO memorandum 934-C dated June 29, 1973 and NERO memorandum WF 50/10.1 dated July 6, 1973. The Subject has been assigned #116 on the list.

It has been decided that further investigation is warranted to determine if the Subject is amenable to Service proceedings. Pursuant to Central Office directive, your office is to immediately initiate an investigation concerning the war crime charges made against the Subject.

Central Office memorandum CO 934-P, CO 934-C of March 18, 1975, as amended a copy of which is attached, sets forth certain guidelines which should be followed in your investigation. A full and thorough investigation should be conducted including a check of the FAOI. Local sources of information that have been developed should be contacted.

NYC 50/40.378
January 29, 1976

District Director (DIINV)
Cleveland, Ohio

District Director (DIINV)
New York, New York

(b)(6)

DEMJANJUK, IWAN [redacted]
(List of Reported Nazi War Criminals Residing in the United States)

Attached is file A[redacted] relating to the above-named Subject. The Central Office has designated New York as the administrative control office regarding the above-captioned project.

The Subject was born in Dub Macharenzi, Ukraine on April 3, 1920. He arrived in the United States at New York City on February 9, 1952 for permanent residence. Subject was naturalized on November 14, 1958 at Cleveland, Ohio.

According to information contained on a list furnished by Michael Hanusiak, President of the UKRAINIAN NEWS in New York, the Subject allegedly volunteered for the German "SS" troops and Security Police. Underwent training in the German training camp in town of Travniki, Poland. In this camp those trained became masters in the art of hanging and the torturing of civilians. From March, 1943 served as a Wachmann with the "SS" unit in the town of Sobibor, Poland and later (from October, 1943) served as a guardsman in the concentration camp in the town of Flossenburg, Germany. Personally participated in the mass executions of the Jewish population in the death camp "Sobibor" in Poland. In 1964 was living in the United States at [redacted]

Prior to a possible full-scale investigation of the Subject, a preliminary inquiry should be conducted to ascertain the Subject's employment, residence, and state of health in compliance with Central Office memorandum CO 934-P and CO 934-C of March 18, 1975, paragraph 5(a-e). Complete agency checks, including local checks, should be initiated. The results of these inquiries should be set forth in a memorandum-type report, including a summary of the Subject's file. Please return Subject's file to this office.

As this matter has been designated high priority by the Central Office, please expedite your response.

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

Attachment

(b)(6)

NYC 50/40.378
January 29, 1976

cc: COINV
(As this is a preliminary inquiry, the Subject's name has not been added at this time to the List of Reported Nazi War Criminals Residing in the United States).

ROINV, Eastern
(As this is a preliminary inquiry, the Subject's name has not been added at this time to the List of Reported Nazi War Criminals Residing in the United States).

ROINV, Northern (for your info)

#6 (yes)

BURLINGTON, VT.
IMM. & NAT. SERVICE
FEB 5 1976
RECEIVED
INVESTIGATIONS

JULY 1973 EDITION
GSA FPMR 141 CFR 101-11.6

UNITED STATES GOVERNMENT

Memorandum

NYC 50/40.378

DATE: November 17, 1975

TO : District Director (DIINV)
Cleveland, Ohio

FROM : District Director (DIINV)
New York, New York

SUBJECT: DEMJANUK, Ivan (Iwan) Nikolayevich
DOB: 1920, Ukraine
(List of Reported Nazi War Criminals Residing in the United States)

According to information contained on a list furnished by Michael Hanusiak, editor of UKRAINIAN NEWS in New York, the Subject was allegedly involved in war crimes in the Ukraine. His address was indicated as [redacted] in 1964.

(b)(6)

Central Office indices were checked on October 23, 1975 for a relating record with negative results.

Please conduct investigation at the above address for any information regarding the Subject in an effort to ascertain his file number and whereabouts.

In the event investigation at the address is non-productive, check local telephone directories, I-53 indices, local soundex, Ukrainian fraternal organizations, and any other sources that may assist to identify the Subject.

If file is located in your district, please forward file to this office.

As this matter has been designated high priority by the Central Office, please expedite your response.

FOR THE DISTRICT DIRECTOR

Henry E. Wagner

Henry E. Wagner, Assistant District Director for Investigations

cc: COINV (for your info)
ROINV, Northeast (for your info)
ROINV, Northwest (for your info)

5010-110

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

DOCUMENTS IN FILE

(b)(6) List of documents to be used in revocation proceedings relating to John Demjanjuk, aka Iwan Demjanjuk, aka Ivan Grozny (Ivan the Terrible), A[redacted], C[redacted]

Exhibit 1. Application for Immigration Visa and Alien Registration executed December 27, 1951.

2. Affidavit as to Subversive Organizations or Movements, Form 1-144, executed December 29, 1951.

3. Application to File Petition for Naturalization, Form N-400, executed August 12, 1958.

4. Petition for Naturalization No.[redacted] Form N-405, executed and filed August 12, 1958.

5. Certificate of Naturalization No.[redacted], issued November 14, 1958.

6. Statement of Abraham Goldfarb, and English translation, executed May 9, 1976.

7. Statement of Eugen Turowski, and English translation, executed May 10, 1976.

8. Statement of Elijahu Rosenberg, and English translation, executed May 11, 1976.

9. Sworn statement of Feodor Fedorenko taken May 25, 1976.

10. Statement of Dow Freiberg, and English translation, taken May 30, 1976.

11. Statement of Mejer Ziss, and English translation, executed May 30, 1976.

12. Statement of Schalom Kohn, and English translation, executed June 7, 1976.

13. Statement of Josef Czarny, and English translation, executed September 21, 1976.

14. Statement of Schlomo Helman, and English translation, executed September 28, 1976.

15. Statement of Gustaw Boraks, and English translation, executed September 30, 1976.

16. Statement of Abraham Lindwasser, and English translation, executed October 3, 1976.

European Case # 195757

AREA # 2
UNITED STATES
DISPLACED PERSONS COMMISSION

As required under Section 10 of the Displaced Persons Act of 1948, as amended, and by Presidential Executive Order, the following report is submitted in the case of:

DEMJANJUK, Iwan	Principal Applicant	Age 30
DEMJANJUK, Wira	his wife	Age
DEMJANJUK, Lydia	his daughter	Age

(b)(6)

1. The thorough investigation which has been conducted into the character, history and eligibility of the Principal Applicant(and family), as supported by the statements, certifications and other documents contained in the Commission's files, has established to the satisfaction of the Commission as follows:

Character:

that the Principal Applicant (and each member of his family) is of good character and behavior;

that the Principal Applicant (and each member of his family)

(1) is not and has not been a member of the Communist, Nazi or Fascist parties, or of political or subversive groups of an ideological character similar to that of the aforementioned parties;

(2) does not adhere to, advocate or follow and has not adhered to, advocated or followed the principles of any political or economic system or philosophy directed toward the destruction of free competitive enterprise and the revolutionary overthrow of representative governments;

(3) is not and has not been a member of any organization which has been designated by the Attorney General of the United States as a Communist organization;

(4) is not and has not been a member of or participated in any movement which is or has been hostile to the United States or the form of government of the United States;

(5) has not advocated or assisted in the persecution of any person because of race, religion or national origin;

(6) has not voluntarily borne arms against the United States during World War II.

7

HISTORY:

that the Principal Applicant was born on 3 April 1920 at Kiew, Ukraine;

that his wife, Wira, nee [redacted] (b)(6)

that they were married on 1 September 1947 at Regensburg, Germany;

that his daughter, Lydia, was born o[redacted]

that from 1936 to September 1943 the Principal Applicant was an independent farmer at Sobibor, Poland;

that from September 1943 to May 1944 he was employed as a worker at the harbor of Danzig, (September 1943, the date of the Applicant's arrival in Danzig is listed under item 7 of the Applicant's IRO Registration Form as his entry date into Germany. It is to be noted that for the purpose of entry into Germany under the provisions of the Displaced Persons Act, that Danzig does not constitute a part of Germany);

that in May 1944 he entered into Germany, arriving at Munich, where he was employed as a railway worker until May 1945;

that from May 1945 to May 1947 he resided at Landshut, there occasionally employed by US Army units;

that from May 1947 to September 1949 he was employed as a driver at Regensburg, Germany;

that from September 1949 to the present time he and his family have held residence at Displaced Persons Camp Ulm, the Applicant being unemployed during this period;

that based on information contained in the IRO documentation and/or other documents in the Principal Applicant's dossier, it has been determined that he was a resident of the US Zone of Germany on 1 January 1949.

8

European Case # 195757

Eligibility:

that the Principal Applicant is a displaced person and an eligible displaced person as defined in Annex I of the Constitution of the International Refugee Organization, and is the concern of that Organization;

that the Principal Applicant entered into and was present in one of the areas, within and on the appropriate dates as prescribed by the Act, or if not so present, was temporarily absent for reasons showing special circumstances justifying such absence in accordance with the regulations of the Commission under the Act.

2. The Commission further states:

that assurances have been given to the Commission on behalf of the Principal Applicant (and family) by **D.D. Colter, UUARC;**

that these assurances are in accordance with the requirements of the Act and regulations, have been approved by the Commission and bear the Commission (Washington) Number **A-7229;**

that the Principal Applicant will be employed in general farming and that he and his family will reside at c/o Donald D. Colter, Decatur, Ind.;

that the Principal Applicant (and such members of his family for whom the assurance requires employment) has executed the oath or affirmation required under Section 6 of the Act.

3. Based upon the foregoing findings, the Commission determines and hereby certifies:

that the Principal Applicant is a displaced person and an eligible displaced person, eligible for consideration for admission into the United States under Section 2(c) of the Act, and that such admission would be in accordance with the regulations of the Commission.

that Wira and Lydia are also eligible for admission as the spouse and unmarried, minor dependent child of the Principal Applicant.

that the Principal Applicant is entitled to **the FIRST PREFERENCE under Section 6(a) of the Act, because he will be employed as a farmer in the United States.**

4. Therefore, in accordance with the regulations of the Commission, this report is submitted to the Officer of the US Foreign Service at Ludwigsburg, Germany, for consideration in connection with the subject's application for an immigation visa.

For the
UNITED STATES DISPLACED PERSONS COMMISSION

Ludwigsburg, Germany

22 October 1950/re

Case Analyst
LEO B. CURRY, Jr.

Process with (husbands/wifes) file # A- [redacted]

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Index Checked
On MAY 19 1958
by [illegible]
Cleveland, Ohio

Form approved.
Budget Bureau No. 43-R079.7.

Mail or take to:
IMMIGRATION AND NATURALIZATION SERVICE

ALIEN REGISTRATION
(Show the exact spelling of your name as it appears on your alien registration receipt card, and the number of your card. If you did not register, so state.)
Name Iwan Demjanjuk
No. [redacted]

DEMJANJUK
EX - 1
J.C. 2/20/80
PENGAD Bayonne, N.J.

APPLICATION TO FILE PETITION FOR NATURALIZATION

2530

I desire to file a petition for naturalization in the U. S. District (Name of court) Court at Cleveland (City) (b)(6) Ohio (State)

Iwan Demjanjuk (Print or type your name)
[redacted]

Cleveland (City) Cuyahoga (County) Ohio (State) (Print or type apartment number, street address and if appropriate "in care of")

AUG 12 1958
8:30

INSTRUCTIONS TO THE APPLICANT

IMPORTANT.—Under the naturalization laws, citizenship may be revoked for concealment of a material fact or for willful misrepresentation in connection with the naturalization proceedings. It is important therefore that you fill out pages 1, 2, 3, and 4 of this form completely and as accurately as possible, using ink or a typewriter. If you do not have enough room to answer a question, continue your answer on another sheet of paper and show the number of the question you are continuing.

PHOTOGRAPHS.—You must send with this application two identical photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. DO NOT SIGN YOUR PHOTOGRAPHS.

DATE OF YOUR ARRIVAL.—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, give the facts as you remember them.

If the date of your arrival in the United States was on or before June 29, 1906, you should submit with this application documentary evidence of your residence in the United States prior to that date. Such documents may be family Bible entries, deeds of record, wills or other authentic legal documents, life insurance policies, bankbooks and records, employment records or other documents showing that you were in the United States on or before June 29, 1906. Do not submit such documents if your arrival in the United States was after June 29, 1906.

ALIEN REGISTRATION RECEIPT CARD.—DO NOT SEND your alien registration receipt card with this application.

FINGERPRINT CARD.—This application must be accompanied by a record of your fingerprints. Fingerprint cards, with instructions for recording your fingerprints, are available at any office of the Immigration and Naturalization Service.

(1) In what places in the United States have you lived during the last 5 years? ANY TUESDAY OR THURSDAY BETWEEN 1:00 P.M. & 4:00 P.M.

	From—	To—	Street Address	City and State
(a)	July 1952	Feb. 1954	[redacted]	Cleveland,13,Ohio
(b)	Feb. 1954	Aug. 1955		Cleveland,13, Ohio
(c)	Aug. 1955	Sept. 1957		Cleveland,13,Ohio
(d)	Sept. 1957	to present		Cleveland,13,Ohio
(e)				
(f)				
(g)				
(h)				
(i)				
(j)				

(2) What were the names, addresses, and occupations (or types of business) of your employers during the last 5 years? (If necessary, use an additional sheet)

	From—	To—	Employer's Name	Address	Occupation or Type of Business
(a)	Aug. 1952	present	Ford Motor Co.	Brookpark	Motor Balancer
(b)					
(c)					
(d)					
(e)					
(f)					
(g)					
(h)					

(3) Have you been out of the United States since you first arrived? Yes ☒ or No ☐ If "Yes" fill in the following information for every absence of *less than 6 months*.

Date Departed	Date Returned	Name of Ship, or of Airline, Railroad Company, Bus Company, or Other Means Used to Return to the United States	Place or Port of Entry Through Which You Returned to the United States
7/8/1954	7/9/1954	Private Car	Buffalo,N.Y.

Form N-400 (Rev. 10-15-57)

(b)(6)

Process with (husbands/wifes) file # A- [redacted]

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Mail or take to:
IMMIGRATION AND NATURALIZATION SERVICE

Index Checked
on MAY 16 1958
by [illegible]
Cleveland, Ohio

Form approved.
Budget Bureau No. 43-R079.7.

ALIEN REGISTRATION
(Show the exact spelling of your name as it appears on your alien registration receipt card, and the number of your card. If you did not register, so state.)
Name Iwan Demjanjuk
No. [redacted]

Demjanjuk
EX-1
J.C. 2/20/80

PENGAD - Bayonne, N.J.

APPLICATION TO FILE PETITION FOR NATURALIZATION

2530

(b)(6)

I desire to file a petition for naturalization in the—
U. S. District (Name of court) Court at Cleveland (City) Ohio (State)
Iwan Demjanjuk
[redacted] (Print or type apartment number, street address, and if appropriate "in care of")
Cleveland (City) Cuyahoga (County) Ohio (State)

AUG 12 1958
8:30

INSTRUCTIONS TO THE APPLICANT

IMPORTANT.—Under the naturalization laws, citizenship may be revoked for concealment of a material fact or for willful misrepresentation in connection with the naturalization proceedings. It is important therefore that you fill out pages 1, 2, 3, and 4 of this form completely and as accurately as possible, using ink or a typewriter. If you do not have enough room to answer a question, continue your answer on another sheet of paper and show the number of the question you are continuing.

PHOTOGRAPHS.—You must send with this application three identical photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. DO NOT SIGN YOUR PHOTOGRAPHS.

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ALIEN REGISTRATION RECEIPT CARD.—DO NOT SEND your alien registration receipt card with this application.

FINGERPRINT CARD.—This application must be accompanied by a record of your fingerprints. Fingerprint cards, with instructions for recording your fingerprints, are available at any office of the Immigration and Naturalization Service.

ANY TUESDAY OR THURSDAY
BETWEEN 1:00 P.M. & 4:00 P.M.

(1) In what places in the United States have you lived during the last 5 years?

	From—	To—	Street Address	City and State
(a)	July 1952	Feb. 1954	[redacted]	Cleveland, 13, Ohio
(b)	Feb. 1954	Aug. 1955		Cleveland, 13, Ohio
(c)	Aug. 1955	Sept. 1957		Cleveland, 13, Ohio
(d)	Sept. 1957	to present 19		Cleveland, 13, Ohio
(e)	19	19		
(f)	19	19		
(g)	19	19		
(h)	19	19		
(i)	19	19		
(j)	19	19		

(2) What were the names, addresses, and occupations (or types of business) of your employers during the last 5 years? (If necessary, use an additional sheet)

	From—	To—	Employer's Name	Address	Occupation or Type of Business
(a)	Aug. 1952	present 19	Ford Motor Co.	Brookpark	Motor Balancer
(b)	19	19			
(c)	19	19			
(d)	19	19			
(e)	19	19			

EXHIBIT 3

in the following information for every absence of *less than 6 months*.

Bus the	Place or Port of Entry Through Which You Returned to the United States
	Buffalo, N.Y.

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—1M—4349

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Form N-400 (Rev. 10-15-57)

(b)(6)

(4) Have you ever filed a declaration of intention? ☐ Yes ☒ No.
If "Yes," state when and in what court

(5) Have you borne any hereditary title or have you been of any order of nobility in any foreign state? ☐ Yes ☒ No.

(6) How many times have you been married? 1 How many times has your husband or wife been married? 2 If either of you has been married more than once, fill in the following information for each previous marriage.

	Date Married	Date Marriage Ended	Name of Person to Whom Married	Sex	(Check one) Person Married Was Citizen ☐	Alien ☐	How Marriage Ended
(a)	8.5.46	8-18-47	Eugene D Lakowski	M	☐	☒	Divorce
(b)					☐	☐	
(c)					☐	☐	
(d)					☐	☐	

(7) Have you ever been an inmate of an insane asylum or similar institution? ☐ Yes ☒ No.

(8) Have you ever been treated for any mental disorder? ☐ Yes ☒ No.

(9) Are you or have you ever been a narcotic drug addict? ☐ Yes ☒ No.

(10) Have you ever, in the United States or in any other country, been arrested, charged with violation of any law or ordinance, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation or parole, or forfeited collateral for any act involving a felony, misdemeanor, or breach of any public law or ordinance? ☐ Yes ☒ No.
If "Yes" give the following information for every case. If necessary continue this list on another sheet of paper.

	When	Where (City) (State) (Country)	Offense Involved	Outcome of Case
(a)				
(b)				
(c)				
(d)				
(e)				
(f)				
(g)				

(11) Are deportation proceedings pending against you, or have you ever been deported or ordered deported, or have you ever applied for suspension of deportation or for pre-examination? ☐ Yes ☒ No.

(12) What organizations, clubs, or societies in the United States or in any other country have you been a member of during the last 10 years? (If none, write "none.")

(a) None ex	(e) C.I.O. Union	(i)
(b)	(f)	(j)
(c)	(g)	(k)
(d)	(h)	(l)

(13) What organizations, clubs, or societies in the United States or in any other country have you been a member of before the last 10 years? (If none, write "none.")

(a) None	(e)	(i)
(b)	(f)	(j)
(c)	(g)	(k)
(d)	(h)	(l)

(14) Do you owe a tax of any kind to the Federal Government? ☐ Yes ☒ No.

(15) Have you ever filed a Federal Income Tax Return? ☒ Yes ☐ No. If "Yes" give the last year filed 1958

(16) Have you ever misrepresented yourself as a United States citizen either by voting, or by obtaining employment, a license, permit, privilege or other benefit or advantage for which only United States citizens were eligible? ☐ Yes ☒ No.

(17) Have you at any time been a member of the Communist Party in the United States or any other country? ☐ Yes ☒ No. If "Yes" give name of country and dates.

(18) Was your father or mother ever a citizen of the United States? ☐ Yes ☒ No. If "Yes" give full information

(19) If male, did you ever register under United States Selective Service laws or draft laws? ☐ Yes ☒ No. If "Yes" give date
Were you ever exempted from service because of conscientious objections, alienage, or other reasons? ☐ Yes ☐ No.
If "Yes," state reasons

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(20) If you ever served in the Armed Forces of the United States, state branch _____ (Army, Navy, etc.); from _____, 19____ to _____ 19____
Service No. _____; type of separation _____ (Honorable, Dishonorable, etc.); reason for separation, ☐ alienage; ☐ conscientious objections; ☐ other _____ (If "other", state details)

(21) If the law requires it, are you willing (a) to bear arms on behalf of the United States? ☒ Yes ☐ No; (b) to perform noncombatant services in the Armed Forces of the United States? ☒ Yes ☐ No; (c) to perform work of national importance under civilian direction? ☒ Yes ☐ No.

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

(23) The law provides that no person shall be regarded as a person of good moral character who, during the period of residence required for naturalization, is or was an habitual drunkard; has committed adultery; derived income principally from illegal gambling activities; has given false testimony for the purpose of obtaining any benefits under the immigration and naturalization laws; is or was a polygamist or practiced or advocated polygamy; is or was a prostitute, or engaged in or received support or the proceeds from prostitution or procured or imported or attempted to procure or import persons for prostitution or any other immoral purposes or who came to the United States to engage in any other unlawful commercialized vice; knowingly and for gain encouraged or aided any alien to enter the United States illegally; has committed a crime involving moral turpitude; or is or has been an illicit trafficker of narcotic drugs. Have you at any time, either within or outside the United States, ever been such a person or ever committed any of these acts? ☐ Yes ☒ No. If answered "Yes" when, where, and the nature of the conduct

3

STATEMENT OF FACTS FOR PREPARATION OF PETITION

Iwan Jaw 5 yrs

ALIEN REGISTRATION
Name Iwan Demjanjuk
No. [redacted]

(b)(6)

(1) My full, true, and correct name is Iwan Demjanjuk (without abbreviation, and any other name which has been used must appear here)

(2) My present place of residence is [redacted] (Number and street) Cleveland (City or town) Cuyahoga (County) Ohio (State)

(3) My present occupation is Motor Balancer

(4) I was born on April 3, 1920 (Month) (Day) in Dub Macharenzi (City or town) Ukraine (County, district, province, or State) (Country)

(5) My personal description is as follows: Sex male; complexion fair; color of eyes blue; color of hair brown; height six feet 0 inches; weight 182 pounds; visible distinctive marks operation scar on back Scar left wrist;
country of which I am a citizen, subject, or national Ukraine;

(6) I (am, ~~am not~~) married; the name of my wife or husband is Vera;
we were married on Sept. 1, 1947 (Month) [redacted] (Year) at Regensburg (City or town) Germany (State or country);
he or she was born at [redacted] (City or town) Ukraine (County, district, province, or State) (Country)
on [redacted] (Month) (Day) New York (City or town); entered the United States at New York (State)
on Feb. 9, 1952 (Month) (Day) (Year); for permanent residence in the United States and now resides at Cleveland (City or town) (with me) Ohio (State or country);
and was naturalized on (Month) (Day) (Year) at (City or Town) (State)
certificate No. or became a citizen by

(7) I have 1 children; and the name, sex, place and date of birth, and present place of residence of each of said children who is living, are as follows:

NAME	SEX	PLACE BORN	DATE BORN	NOW LIVING AT—
Lydia	female	[redacted]		with me

(8) My lawful admission for permanent residence in the United States was at New York (City or town) New York (State);
under the name of Iwan Demjanjuk on Feb. 9, 1952 (Month) (Day) (Year)
on the General Haahn (Name of vessel or other means of conveyance)

(9) Since such lawful admission, I have not been absent from the United States for a period or periods of 6 months or longer except as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(6) (10a) I have resided continuously in the United States of America since Feb. 9, 1952 and continuously in the State of Ohio
where I now live since 1952 and during the past 5 years I have been physically present in the United States for an aggregate period of 60 months.

(10b) Do you intend to reside permanently in the United States? ☒ Yes ☐ No.

If "No," explain

(11) I (have, have not) heretofore made petition for naturalization No. on (Month) (Day) (Year) at (City) (State)
in the Court which was denied because

(7) (12) I wish the naturalization court to change my name to John DEMJANJUK (Give full name desired)

TO THE APPLICANT: DO NOT WRITE BELOW THIS LINE.

27

(1st witness) [redacted] Truck Oper (Occupation)
residing at [redacted] Ohio (State)
(2d witness) [redacted] Factory Worker
residing at [redacted] (Number and street) (City or town) (State)

United States 8-1-53
State
Physical presence 37 min.
Examiner

(b)(6)

(OVER)

1.

(13) My father's full name is/was Nick Demjanjuk

(14) My mother's maiden name was Olga Martchenko

(15) My last place of foreign residence was Feldafing (City) Germany (Country)

(16) I migrated to the United States from the port of Bremen (City) Germany (Country)

(Answer questions 17, 18, 19, only if you arrived in the United States before July 1, 1924.)

(17) The person in the United States to whom I was coming was

(18) The place in the United States to which I was going was

(19) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are

Date: [redacted] Ivan Demjanjuk (Signature of applicant) Cleveland 13 Ohio (Address at which applicant receives mail)

(b)(6)

TO APPLICANT: DO NOT FILL IN BLANKS BELOW THIS LINE

NOTE CAREFULLY.—This application must be sworn to before an officer of the Immigration and Naturalization Service at the time you appear before such officer for examination on this application.

AFFIDAVIT

I, Ivan Demjanjuk, do swear (affirm) that I know the contents of this application comprising pages 1 to 4, inclusive, and the supplements thereto, Forms No. ....., subscribed to by me; that the same are true to the best of my knowledge and belief; that corrections numbered (1) to (7) were made by me or at my request; and that this application was signed by me with my full, true, and correct name.

Ivan Demjanjuk
(Complete and true signature of affiant)

Subscribed and sworn to (affirmed) before me by the above-mentioned applicant at the preliminary interrogation (examination) at Cleveland Ohio this 12 day of Aug, 19 58

I certify that before verification the above applicant stated in my presence that he had (heard) read the foregoing application and understood the contents thereof.

E R Keddington
Examiner
(Title of officer)

For use in searching Records of Arrival

RECORDS EXAMINED	RECORDS FOUND
Card index	Place
Index books	Name
Manifests	
	Date
	Manner
	Marital status

(Signature of person making search)

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C.

U. S. GOVERNMENT PRINTING OFFICE : 1957—O-448078

26.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

(b)(6)

Form approved.
Budget Bureau No. 42-R083.9.

DUPLICATE
(To accompany monthly report on Form N-4)

UNITED STATES OF AMERICA

PETITION FOR NATURALIZATION

No. [redacted]

Filed under General Law

To the Honorable the DISTRICT *Court of* UNITED STATES *at* CLEVELAND, OHIO

This petition for naturalization, hereby made and filed, respectfully shows:

(1) My full, true, and correct name is IVAN DEMJANJUK

(2) My present place of residence is [redacted] (Number and street) Cleveland, Cuyahoga, OHIO (City, county, and State) (3) My occupation is Motor Balancer (4) I was born on April 3, 1920 (Month) (Year), in Dub Nacharenki, Ukraine (City or town) (County, district, province, or State)

(5) My personal description is as follows: Sex Male, complexion Fair, color of eyes Brown, color of hair Brown, height 5 feet 8 inches, weight 182 pounds, visible distinctive marks scar left wrist (Country of which I am a citizen, subject, or national) Ukraine (6) I am married; the name of my wife or husband is Vera, we were married on September 1, 1947 (Year) at Regensburg, Germany (City or town), he or she was born at [redacted] (City or town) (District, province, or State) (Country), on [redacted] (Month) (Day) (Year) and entered the United States at New York, New York (City or town) (State) on February 9, 1952 (Month) (Day) (Year) with me for permanent residence in the United States and now resides at [redacted] (Number and street) (City or town) (County and State) and was naturalized on not (Month) (Day) (Year) at [redacted] (City or town) (State) certificate No. [redacted]; or became a citizen by [redacted]

(7a) (If petition is filed under section 319 (a), Immigration and Nationality Act.) I have resided in the United States in marital union with my United States citizen spouse for at least 3 years immediately preceding the date of filing this petition for naturalization, and have been physically present in the United States at least half of that time.

(7b) (If petition is filed under section 319 (b), Immigration and Nationality Act.) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or subsidiary thereof or of a public international organization in which the United States participates; and such husband or wife is regularly stationed abroad in such employment. I intend in good faith upon naturalization to live abroad with my spouse and to resume my residence within the United States immediately upon termination of such employment abroad.

(8) I have 1 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

LYDIA Female [redacted] with me

(9) My lawful admission for permanent residence in the United States was at New York, New York (City or town) (State)

under the name of Ivan Demjanjuk on February 9, 1952 (Month) (Day) (Year)

on the General Haan (Name of vessel or other means of conveyance)

(10) Since my lawful admission for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, except as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen. (12) It is my intention to reside permanently in the United States. (13) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch, affiliate or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that Act. (14) I am able to read, write and speak the English language (unless exempted therefrom). (15) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, to perform noncombatant service in the Armed Forces of the United States, and to perform work of national importance under civilian direction (unless exempted therefrom). (16) I have resided continuously in the United States since February 9, 1952 (Month) (Day) (Year) and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition and I have been physically present in the United States for at least one-half of the five year period immediately preceding the date of this petition. (17) I have not heretofore made petition for naturalization No. [redacted]

on [redacted] (Month) (Day) (Year) at [redacted] (City or town) (County) (State) in the [redacted] (Name of court) Court, and such petition was denied by that Court for the following reasons and causes, to wit:

[redacted]

(18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law.

(19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to JOHN DEMJANJUK. I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: SO HELP ME GOD.

ALIEN REGISTRATION NO. A [redacted]

Ivan Demjanjuk 32
(Full, true, and correct signature of petitioner, without abbreviation)

Form N-405

(b)(6)

(b)(6)

AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

(1) My name is [redacted], my occupation is Machine Operator

I reside at [redacted] Cleveland, Ohio (City or town) (State) and

(2) My name is [redacted], my occupation is Factory Worker

I reside at [redacted] Cleveland, Ohio (City or town) (State)

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least August 1, 1953 (Month) (Day) (Year); to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned; that the petitioner has been physically present in the United States for at least 31 months of that period; and that the petitioner has been a resident in the State in which the petition is filed during at least the last 6 months. I have personal knowledge that the petitioner is, and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in the affidavit to this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

[redacted] [redacted]

(Signature of Witness)

(b)(6)

WHEN OATH ADMINISTERED BY CLERK OR DEPUTY CLERK OF COURT

Subscribed and sworn to (affirmed) before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of clerk of the said court at _____

this _____ day of _____ A. D. 19__

_____ Clerk.

By _____ Deputy Clerk.

[SEAL]

WHEN OATH ADMINISTERED BY DESIGNATED EXAMINER

Subscribed and sworn to (affirmed) before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit at Cleveland, Ohio this 12th day of August A. D. 19 58

C R Riddiough

Designated Examiner.

I HEREBY CERTIFY That the foregoing petition for naturalization was by petitioner named herein filed in the office of the clerk of said court at Cleveland, Ohio this 12 day of August A. D. 19 58

C. B. WATKINS pak

Clerk.

[signature]

Deputy Clerk.

RESULT OF EXAMINATION	COURT ACTION
English: Speaks yes Reads yes Writes yes Classes yes Govt. 7	Date NOV 14 1958 Admitted ~~Denied~~
Depositions required: Received:	Grounds
in _____ from _____ to _____ G-135 (Id.) OK	Examiner E J Scantland
in _____ from _____ to _____	Cont'd
in _____ from _____ to _____ G-135 (Inv.) OK	Cont'd
in _____ from _____ to _____	

Witness (1) [signature] Citizenship 11-11-54 (2530)

Known petitioner since 1952 - M.

Absence—Petitioner yes; Witness [illegible]

Arrests—Petitioner no; Witness [illegible]

Witness (2) [signature] Citizenship 6-27-58 (2530)

Known petitioner since [illegible] 1953 [illegible]

Absence—Petitioner [illegible]; Witness [illegible]

Arrests—Petitioner [illegible]; Witness [illegible]

Documents presented: A Ribard

Action or documents still required:

31

Petitioner under oath approved all statements made at the preliminary investigation.

C R R

Designated Examiner

INVESTIGATION WAIVED

NATURALIZATION EXAMINER

Recommendation of preliminary examiner [signature] C R R (Signature and date) 19__

Recommendation of designated examiner [signature] Riddiough 8-12 58 (Signature and date) 19__

U. S. GOVERNMENT PRINTING OFFICE 16—41073-9

(b)(6)

CONSOLIDATED

APPLICATION FOR IMMIGRATION VISA AND ALIEN REGISTRATION

USNS GEN W G HAAN

NEW YORK

Apr 7 1952

Examined and found admissible

28 Dec 1951

IMMIGRATION SERVICE

Immigration Inspector

UNITED STATES OF AMERICA IMMIGRATION VISA, AND ALIEN REGISTRATION

NEW YORK, N. Y.

I CERTIFY that the immigrant named herein arrived in the United States at this port on the "GENERAL W.G. HAAN"

S. S. on FEB 9 1952

and was inspected by me and duly admitted. held for BSI

under Section 2(c) of the Immigration Act of JUN 28 1948

Immigrant Inspector.

RECORD OF BSI

The immigrant named herein was admitted. excluded and appeal granted.

Date

Chairman BSI.

RECORD OF APPEAL

Admitted Excluded Date

Benjanjuk

STATISTICAL

Bearer's Primary Applicant

Twan DEMJANJUK, visa # 1580/78

daughter: Lydia DEMJANJUK, visa # 1580/79

Nonquota; Subdivision ( ) Section 4

DEC 27 1951

Nonpreference; Quota

First preference; Quota

Second preference; Quota

Section 2 (c) of PL 774 as amended

Soviet Eligible Displaced Person

IMMIGRATION VISA No. 1580/78

American Foreign Service

DEC 27 1951

at Stuttgart, Germany Date

Name: Twan DEMJANJUK The bearer

who is of Polish (Citizen or subject)

Nationality, having been examined and established, is classified as a displaced person immigrant and is granted this Immigration Visa pursuant to the Immigration Act of 1924, as amended and PL 774 as amended

The validity of this Immigration Visa expires 4 months from date of issue unless otherwise noted.

Harold L. Henrikson

HAROLD L. HENRIKSON

Vice Consul of the United States of America.

Fee No Exempt no fee prescribed

Passport No. or other travel document

Passport waived by Secretary of State under date of September 28, 1948.

(Describe)

Issued to

Issued by

Date 20

Valid until

NOTE.—This Immigration Visa will not entitle the person to whom issued to enter the United States if upon arrival in the United States he is found to be inadmissible to the United States under the immigration laws. (Subdivision (g), sec. 2, Immigration Act of 1924.)

Demjanjuk Dep. Ex.

U. S. GOVERNMENT PRINTING OFFICE 16—22257-4

[redacted] (b)(6)

Form 258a
FOREIGN SERVICE
(Revised February 1940)

APPLICATION FOR IMMIGRATION VISA AND ALIEN REGISTRATION

No. I- [redacted]

TO THE AMERICAN CONSULATE AT Stuttgart, Germany

I, the undersigned APPLICANT FOR AN IMMIGRATION VISA AND ALIEN REGISTRATION, being duly sworn, state the following facts regarding myself:

I claim to be a {nonquota / preference quota} immigrant and my claim is based on the following facts:
eligible Displaced Person of Section 2 (c) of PL 774 as amended

Available documents required by the Immigration Act of 1924, as amended, are filed herewith and made part hereof, as follows: *& PL 774 as amended
Affidavit in lieu of Birth Certificate.
Police Dossier.
Good Conduct Certificate.
Copy of Marriage Certificate.
Affidavit concerning employment.

FULL AND TRUE NAME	Iwan DEMJANJUK 525
OCCUPATION	driver
LAST PERMANENT RESIDENCE	Camp Feldafing/Munich, Germany
DATE AND PLACE OF BIRTH	April 3, 1920 at Kiew, USSR 32
AGE	31
M ☒ S ☐ F ☐ W ☐ D ☐	
NATIONALITY	Polish 39
RACE	Ukrainian
HAIR	brown
EYES	grey
HEIGHT	6'2"
COMPLEXION	med
MARKS OF IDENTIFICATION	scar on left hand
FINAL DESTINATION IN UNITED STATES	Decatur, Indiana 08
DATES OF PREVIOUS SOJOURN IN THE UNITED STATES	none
THE NAMES AND ADDRESSES OF MY PARENTS ARE	
Mother	Olga nee MARTSCHENKO Address unknown
Father	Nikolaj DEMJANJUK Address unknown
NEITHER OF MY PARENTS IS LIVING AND THE NAME, RELATIONSHIP AND ADDRESS OF NEAREST RELATIVE IN COUNTRY WHENCE I COME IS	XX

That I am aware that the Deportation Act of March 4, 1929, provides in part that an alien who enters the United States in an illegal manner, or who eludes examination or inspection by immigration officials or who obtains entry to the United States by a willful false or misleading representation or willful concealment of a material fact shall be punishable by fine or imprisonment, or both; and that the Immigration Act of 1924 provides in part that a person who knowingly makes under oath any false statement in any application, affidavit, or other document required by the immigration laws or regulations issued thereunder shall be punishable by fine or imprisonment, or both;

That I have had the following excludable classes explained to me, and that, except as hereinafter noted I am not a member of any one of the following classes of individuals excluded from admission to the United States under the immigration laws: (1) idiots; (2) imbeciles; (3) feebleminded; (4) epileptics; (5) insane persons; (6) persons having had previous attacks of insanity; (7) persons with constitutional psychopathic inferiority; (8) persons with chronic alcoholism; (9) paupers; (10) professional beggars; (11) vagrants; (12) persons afflicted with tuberculosis; (13) persons afflicted with loathsome or dangerous contagious disease; (14) persons convicted of, or who admit committing, a crime involving moral turpitude; (15) polygamists; (16) anarchists; (17) persons who believe in or advocate the overthrow by force or violence of the Government of the United States or the assassination of public officials, or the unlawful destruction of property, or who have ever held or advocated such views; (18) persons inadmissible under the provisions of section 3 of the act of February 5, 1917; (19) persons inadmissible under the provisions of the act of October 16, 1918, as amended; (20) prostitutes; (21) procurers; (22) contract laborers; (23) persons likely to become public charges; (24) persons previously deported or ordered deported and permitted to leave the United States voluntarily under the order of deportation; (25) persons previously excluded from admission to the United States at a port of entry; (26) persons whose passage paid by another; (27) unaccompanied children; (28) natives of Asiatic barred zone; (29) illiterates; (30) aliens ineligible to citizenship; (31) persons removed from and at the expense of the United States under the provisions of section 23 of the act of February 5, 1917; (32) persons who left the United States to evade military service; 22/26

That I have had the various exceptions to the foregoing excludable classes explained to me, and that I claim to be exempt from exclusion on account of the class [illegible]

22/26 Exempt under DP Act 1948 as amended
I am not a member of any other excludable class.

That I have (not) been in prison or almshouse; I have (not) been in an institution or hospital for the care and treatment of the insane; my (father, mother) (have, has) (not) been in an institution for the care and treatment of the insane; I have (not) been arrested or indicted for, or convicted of, any offense; I have (not) been the beneficiary of a foreign pardon or amnesty, to wit: XX

That within the past 5 years I have (not) been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part to influencing or furthering in the United States the political activities, public relations, or public policy of any other government.

That since reaching the age of 14 years I have resided at the following places, during the periods stated, to wit: 1934-43 Sobibor, Poland; 1943-9/44 Pilau, Danzig; 9/44-5/45 Munich, Germany; 5/45-5/47 Landshut, Germany; 5/47-9/49 Regensburg, Germany; 949-4/50 Ulm, Germany; 4/50-10/50 Ellwangen, Germany; 10/50-2/51 Ulm, Germany; 2/51-5/51 Bad Reichenhall, Germany; 5/51 to date Feldafing, Germany

That I am (married, ~~widow(er)~~) and the name of my (husband, wife) is Wira nee [redacted]; and resides at Feldafing, Germany [redacted]

That the names, dates of birth, and places of residence of my minor children are:

Daughter: Lydia [redacted] (b)(6)

That I am able to speak, read and write the following languages or dialects: Ukrainian, German, Polish

That my port of embarkation is Bremerhaven, Germany; I shall enter the United States at the port of New York, N.Y.; I do (not) have a ticket through to my final destination in the United States; my passage was paid for by International Refugee Organization whose address is

That I intend to join (relatives, friend) Donald D. COLTER, UUARC whose address is Decatur, Indiana

That the names and addresses of other close relatives in the United States are: XX

That my purpose in going to the United States is to reside my occupation will be general farming; I intend to engage in the following activities there XX

I intend to remain (permanently, temporarily) XX; my education total: 5 years

That I have (not) applied for an immigration or passport visa at any American Consulate, either formally or informally. XX

WHEREFORE, I apply for an Immigration Visa pursuant to the provisions of the Immigration Act of 1924, as amended, and PL 774 as amended

I Iwan Demjanjuk
(Signature of applicant)

[seal]

Subscribed and sworn to before me this 29th day of December 19 51

Fee No. [illegible]
Fee $XX no fee prescribed

HAROLD L. HENRIKSON
Vice Consul of the United States of America.

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EXHIBIT 16

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—1M—4349

(b)(6)

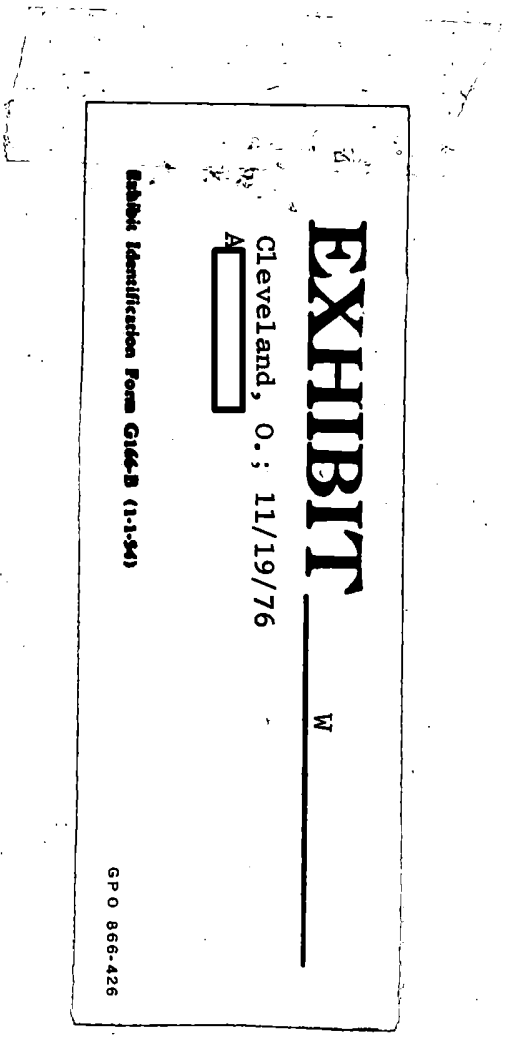
EXHIBIT
W
Cleveland, O.; 11/19/76
A
Exhibit Identification Form G166-B (1-1-54)
GPO 866-426

2
CLE

Translation # 35177

(b)(6)

[redacted] [redacted] Abraham Mosche Lindwasser - Warschau [redacted]

[redacted] employee

M. Radiwker Headquarters 9 A.M. 10/3/76

To the subject of investigations against the Ukranian Nazi criminal Ivan D e m j a n j u k, Mr. Abraham Lindwasser was intervied. He testifies as follows:

I came to the annihilation camp Treblinka ina large Jewish transport, men, women and children on August 28, 1942, from the Warsaw Ghetto. There were several thousand persons in the transport. Only two persons, I because I reported as a dentist and an electrical engineer were selected for work. All of the others were gassed. I was sent to Camp I, the annihilation camp proper and there

(End of page 1 of the original)

I remained an inmate until the uprising on August 2, 1943. At the start, I worked at carrying corpses from the gas chambers to the grave and shortly thereafter I was occupied with pulling the teeth of the cadavers and after that only the washing of teeth in the dentist's room. Questioned if the witness remembered a Ukrainian who was at Treblinka and whose name was Ivan Demjanjuk, the witness declares: The name Demjanjuk is not known to me. I do remember a Ukranian whom they called Ivan the Grozny (the terrible). He was active in Camp II

(End of page 2 of the original)

and him I will never forget.
The witness was shown 8 photographs pasted on a brown cardboard page. The witness points at first glance to picture No. 16 and declares: Well, this is Ivan, I recognize him with full certainty. Most of each day I was naer Ivan. The picture must have been taken certainly later. However, tere is the construction of his head and body. You can see in the picture that the man is of stocky build. It is his nose, his eyes, his mouth.

(End of page 3, of the original)

At the time he was a young man, in my opinion he was about 21-22-23 years old, he was tall and solidly built. Then, his face was somewhat hollow, not as full as here in the picture, but the face structure is the same. I frequently saw him in black uniform, when at work, he sometimes wore a workshirt too. I don't remember, it is hard for me to say if he had a rank. To demonstrate how close the witness stood to Ivan, he makes a sketch.

(End of page 4, of the original)

(-) M. Radiwker (-) Lindwasser

W

313
(cont'd)

The dentist's chamber bordered the machine chamber, which was the original workplace of Ivan. Ivan serviced the big Diesel engine, which sent the gas into the gas chambers. From there pipes were leading into all the gas chambers. Before the gassing process began, Ivan always busied himself with the loading of victims into the gas chambers. I was always able to see as he was shoving the people with a sort of metal staff or stick (I don't know whether it was a sword or a metal pipe)

(End of page 5, of the original)

into the gas chamber. It must have been rather a sabre or sword, because many of the corpses had cut and pierced wounds. they resulted from Ivan's activities. To injure and pierce the victims even before the gassing in order to fill the gas chambers faster, was his own special sadism. They did'nt call him "Ivan the Terrible" for nothing. There was the case, toward the end of the year 1942, that an attempt by Jewish laborers to escape was discovered.

(End of page 6 of the original)

A punitive roll call was called. I was very run-down and arrived somewhat late at the roll call. When I arrived, I saw Ivan with his metal sabre or metal pipe in his hands. This object was full of blood, it was dripping from it. I saw as they were carrying the corpses of three Jewish laborers away from the roll call place and my friends told me that they had been just then murdered by Ivan. These are the things I can tell about Ivan.

(End of page 7, of the original)

I am ready to repeat my testimony before American authorities.

Finished, read, signed.

(-) M. Radiwker (-) Abraham Lindwasser)

ek

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned

Kata Sz. Wahl OCT 19 1976
(Interpreter) (Date)

(b)(6)

הודעה מס' _____ גליון מס' 1

הודעתו של Abraham L i n d w a s s e r (שם המשפחה (לנקד) / השם הפרטי) השם באותיות לטיניות

השם הקודם – שם האב Mosche מס' הזהות [redacted] שנת הלידה [redacted]

מקום הלידה Warschau המען הקבוע [redacted] המיקוד

מס' הטלפון [redacted] המקצוע Beamter מקום העבודה Tel Aviv מס' הטלפון

M.Radiwker מספרו, דרגתו ושמו של החוקר Hauptquart. המקום 0900 השעה 3.10.76 התאריך

Es wurde heute zum Gegenstand der Ermittlungen gegen den ukrainischen Naziverbrecher Ivan D e m j a n j u k Herr Abraham Lindwasser vernommen. Er sagt folgend aus:

Aus dem Ghetto Warschau kam ich ins Vernichtungslager Treblinka am 28.8.1942 in einem grossen Judentransport - Maenner, Frauen und Kinde.- Es waren einige tausend Menschen im Transport. Nur zwei Menschen. Ich, weil ich mich als Dentist meldete und ein Ingenieur Elektriker wurden zur Arbeit ausgesondert. Alle anderen wurden vergast. Ich wurde ins Lager I, das eigentliche Vernichtungslager geschickt und dort (Ende Seite 1 d.Originals) war ich die ganze Zeit inhaftiert, bis zum Aufstand am 2.8.1943. Anfangs arbeitete ich beim Leichentragen von den Gaskammern zur Grube, nach kurzer Zeit wurde ich beim Zaehne herausziehen von den Leichen und nachher nur beim Zaehne waschen in der Dentistenkammer beschaeftigt.

Befragt, ob sich der Zeuge an einen Ukrainer, welcher in Treblinka taetig war und Ivan Demjanjuk hiess, erinnert, erklaert der Zeuge: Der Name D e m j a n j u k ist mir unbekannt. Ich erinnere mich an einen Ukrainer den man Ivan der Grozny (der Schreckliche) nannte. Er war im Lager (Ende Seite 2 d.Originals) II taetig und den werde ich nie vergessen.

Dem Zeugen wurden 8 Lichtbilder von ukrainischen Naziverbrechern auf einem braunen Kartonblatt angeklebt, vorgezeigt. Der Zeuge weist auf den ersten Blick auf das Bild Nr.16 und erklaert: Da ist ja der I v a n, ich erkenne ihn mit voller Sicherheit. Den meisten Teil des Tages war ich in der Naehe von Ivan. Das Bild ist gewiss spaeter angefertigt. Es ist aber sein Kopfbau und Koerperbau. Man sieht auf dem Bild, dass der Mann fest gebaut ist. Das ist seine Nase, seine Augen und sein Mund.

(Ende Seite 3 d.Originals)

Er war damals ein junger Mann, meiner Schaetzung nach war er damals 21-22-23 Jahre alt, war gross und fest gebaut. Sein Gesicht war damals etwas eingefallen, nicht so voll wie hier auf dem Bild, aber der Gesichtsbau ist derselbe. Ich habe, ihn oft in schwarzer Uniform gesehen, bei der Arbeit trug er auch manchmal eine Art Arbeitsbluse. Ich erinnere mich nicht, es ist mir schwer zu sagen, ob er einen Rang hatte. Um zu zeigen, wie nahe sich der Zeuge von Ivan befand, fertigt er eine Skizze an. (Ende Seite 4 d.Originals)

(-) M.Radiwker (-) Lindwasser

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Die Dentistenkammer grenzte an die Maschinenkammer,wo sich der eigentliche Arbeitsplatz des I v a n befand.Ivan bediente den grossen Dieselmotor,welcher das Gas in die Gaskammern lieferte. Von dort gingne Roehre in alle Gaskammern. Vor dem Vergasungsprozess war Ivan immer beim Anfuellen der Gaskammern mit den Opfern taetig. Ich konnte ihn immer sehen,wie er die Menschen mit einer Art Metallstange (ich weiss nicht,war es ein Saebel oder ein Metallrorhr)

(Ende Seite 5 d. Originals)

in die Gaskammer hereindraengte. Es war eher ein Saebel,weil viele Leichen geschnittene und gestochene Wunden hatten. Es war das Resultat der Taetigkeit des I v a n. Die Opfer noch vor dem Vergasen zu verwunden und zu stechen,um schneller die Gaskammer voll zu haben, das war schon sein eigener Sadismus. Nicht umsonst wurde er "Ivan der Schreckliche" genannt.

Es war ein Fall gegen Ende des Jahres 1942,dass ein Fluchtversuch der juedischen Arbeiter entdeckt wurde

(Ende Seite 6 d. Originals)

Es wurde ein Strafappell gemacht. Ich war sehr heruntergekommen und kam etwas spaet zum Appell. Als ich ankam sah ich den Ivan mit seinem Metallsaebel oder Metallroehre in den Haenden . Dieser Gegenstand war voll mit Blut,das Blut tropfte davon. Ich sah wie man die Leichen von drei juedischen Arbeitern vom Appellplatz trug und die Kameraden sagten mir,dass diese Menschen eben vor einer Weile durch I v a n ermordet wurden. Das waere das,was ich ueber Ivan berichten koennte. Meine (Ende Seite 7 d. Originals)

Aussagen bin ich bereit vor amerikanischen Behoerden zu wiederholen. Beendet,gelesen,unterschrieben.

(-) M.Radiwker (-) Abraham Lindwasser

ek

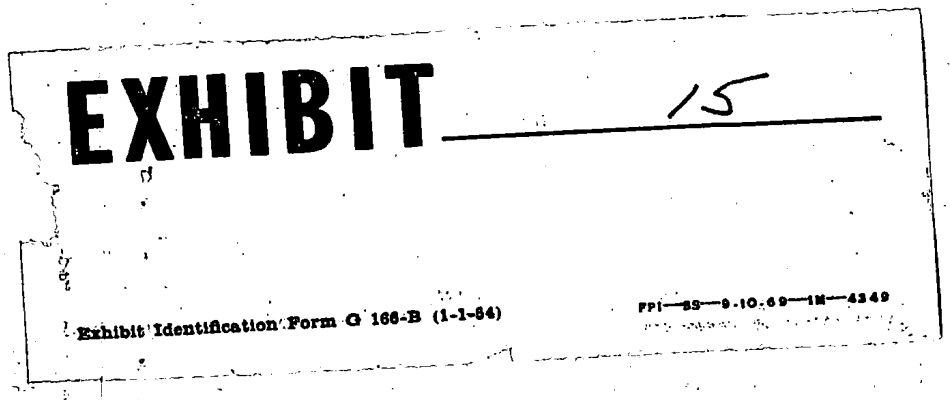
EXHIBIT 15
Exhibit Identification Form G 166-B (1-1-64)
FPI—SS—9-10-69—1M—4349

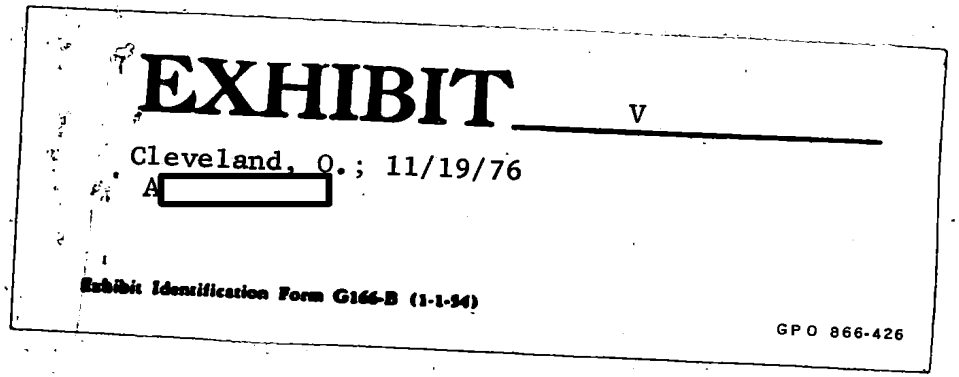
EXHIBIT V
Cleveland, O.; 11/19/76
A
Exhibit Identification Form G166-B (1-1-54)
GPO 866-426

(b)(6)

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CLE

Translation # 35178 (b)(6)

Gustaw B O R A K S

1/1/1901 [redacted] Josef

Haifa, [redacted] Hairdresser Wielun/Poland [redacted]

Dan Glucksam Haifa 10.10 A.M. 9/30/76
M. Radiwker

To the subject of investigations against Ivan DEMJANJUK, Mr. Gustaw Boraks was interviewed. He states as follows:

In September of 1942, on the Jewish Day of Atonement, I arrived in a large transport of Jews - men, women and children - with my wife and two children in the annihilation camp of Treblinka. In this transport there were all my relatives, among them my siblings.. Only a few skilled workers, like hairdressers, were selected from this transport for work. All the others were immediately chased into the gas-chambers. At the time, I lost my entire family. I was assigned to work in the barber-shop, together with

(End of page 1, of the original)

a few colleagues. We had to cut off the hair of the women who were chased naked in the barber-shop before they were driven in the gaschambers. In the beginning, for some weeks, the barber-shop was located in the area of Camp No. I, in the barracks, where the women had to disrobe in a partitioned off room of the barracks. This barracks was at a distance of 50 meters from the gas chambers, which were in Camp II. Later, the barber-shop was in Camp II, in the same building which housed the gas chambers. I was an inmate at Camp Treblinka until the uprising in August 1943.
To a question: In connection with (End of page 2, of the original)

my work, I knew a Ukranian of the camp staff, who was called "Ivan Grozny". The name D e m j a n j u k means nothing to me.
The witness is shown 8 photographs of Ukranian Nazi criminal, on a brown cardboard. The witness points at picture No. 16, (photograph of Ivan Demjanjuk) and declares: This is the likeness of Ivan Grozny. I recognize him with one hundred percent of certainty. I recognize him by his features. He was younger then, up to 25 years old, the face was not as full, but there is no doubt in my mind that he is the one. I saw him every day at the gas chambers as he brutally drove the people

(End of page 3, of the original)

into the gas chambers. I don't remeber wheter he used a sword or a whip to hit the victims with, but he msitreated them in an awful way. After the door was closed behind

(-) M. Radiwker (-) D. Glucksam (-) G. Boraks

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the victims, I did not see him. The apparatus for the release of gas and the gas pipes were on another side behind the building and I could'nt see that. I was an eyewitness when "Ivan Grozny" shot to death several Jewish laborers. This was not long before the uprisinf of the summer 1943. There were fewer transports arriving. We hairdressers no longer had this kind of work daily and several times a week they took us to work in the woods. "Ivan Grozny" together

(End of page 4, of the Original)

with a German SS-man went along with us. We had to fell trees. The limbs were used for camouflage, the heavy trunks we had to carry to the camp. "Ivan Grozny" ordered us to cary the tree trunks on our shoulders, running and singing. When somebody collapsed under the burden, Ivan shot him to death then and there. I saw several such cases right where it happened. from the nearest possible vantage point. The victims were not from my town and I don't know their names. Ivan wore a black uniform and on his cap he wore the death-head (skull) emblem.

I am ready to repeat my testimony before the American authorities.

Terminated, read and confirmed.

(-) M. Radiwker (-) D. Glucksam (-) G. Boraks

ek

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the _____ language was made by the undersigned.

OCT 19 1976

(Interpreter) (Date)

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(b)(6)

הדעה מס' _____ גליון מס' 1

הודעתו של Gustaw B O R A K S (לנקד) שם הנשפחה — השם הפרטי — השם באותיות לטיניות

השם הקודם _____ שם האב Josef מס' הזהות [redacted] שנת הלידה 1.1.1901

מקום הלידה Wielun/Polen המען הקבוע _____ המיקוד [redacted]

מס' הטלפון _____ המקצוע [redacted] מקום העבודה Friseur מס' הטלפון [redacted]

התאריך 30.9.76 השעה 10.10 המקום Haifa מספרו, דרגתו ושמו של החוקר Dan Glücksam

M.Radiwker

Es wurde heute zum Gegenstand der Ermittlungen gegen Ivan DEMJANJUK Herr Gustaw Boraks vernommen. Er sagt folgend aus:

September 1942,am juedischen Versoehnungstag,kam ich mit einem grossen Transport von Juden - Maenner,Frauen und Kinder - mit meiner Frau und zwei Kindern ins Vernichtungslager Treblinka . In diesem Transport waren alle meine Verwandten,unter ihnen meine Geschwister. Nur einige Fachleute,Friseure,wurden aus diesem Transport zur Arbeit ausgesondert. Alle anderen wurden sofort in die Gaskammern gejagt. Meine ganze Familie habe ich damals verloren. Ich wurde in der Friseurstube arbeitsmaessig eingesetzt,zusammen mit noch (Ende Seite 1 d.Originals) einigen Kollegen. Den Frauen,welche schon nackt in die Friseurstube gejagt wurden,mussten wir die Haare abschneiden,bevor sie in die Gaskammern getrieben wurden. Die Friseurstube war vorerst waehrend einiger Wochen auf dem Gelaende des Lagers Nr.I in der Baracke,wo sich die Frauen ausziehen mussten,in einem abgeteilten Raum der Baracke. Diese Baracke war in einer Entfernung von etwa 50 Meter von den Gaskammern,welche sich im Lager II befanden. Spaeter war die Friseurstube im Lager II,im selben Gebäude in dem sich die Gaskammern befanden. Im Lager Treblinka war ich bis zum Aufstand im August 1943 inhaftiert.

Auf Frage: Im Zusammenhang mit (Ende Seite 2 d.Originals) meiner Arbeit ist mir ein Ukrainer aus der Lagerbesatzung,den man "Ivan Grozny" nannte,bekannt. Der Name D e m j a n j u k sagt mir nichts.

Dem Zeugen wurden 8 Lichtbilder von ukrainischen Naziverbrechern auf einem braunen Karton vorgelegt. Der Zeuge weist auf das Bild Nr.16 (Lichtbild von Ivan Demjanjuk) und erklaert: Auf diesem Bild ist Ivan Grozny abgebildet. Ich erkenne ihn mit hundertprozentiger Sicherheit. Ich erkenne ihn an seinen Gesichtzuegen. Er war damals juenger,bis 25 Jahre alt,das Gesicht war nicht so voll,habe aber keinen Zweifel,dass er es ist. Ich habe ihn taeglich bei den Gaskammern gesehen wie er mit Brutalitaet die Menschen in die (Ende Seite 3 d.Originals) Gaskammern hineintrieb. Ich erinnere mich nicht,ob er mit einem Saebel oder einer Peitsche auf die Opfer einschlug,aber er misshandelte sie schrecklich. Nach dem Schliessen der Tuer hinter

(-) M.Radiwker (-) D.Glücksam (-) G.Boraks

den Opfern sah ich ihn nicht. Der Apparat zur Gaslieferung und die Gasroehren lagen auf der zweiten Seite hinter dem Gebäude und das habe ich nicht sehen koennen. Ich war Augenzeuge wie "Ivan Grozny" einige juedische Arbeiter erschossen hat. Es war schon nicht lange vor dem Aufstand im Sommer 1943. Es kamen schon weniger Transporte. Wir, Friseure hatten schon nicht taeglich Friseurarbeit und wurden einige Mal in der Woche zur Arbeit in den Wald gefuehrt. "Ivan Grozny" zusammen (Ende Seite 4 d.Originals)
mit einem deutschen SS-Mann ging mit uns. Wir mussten Bäume faellen. Die Aeste wurden zur Tarnung verwendet, die schweren Staemme mussten wir ins Lager tragen. "Ivan Grozny" befahl uns mit den Staemmen auf der Schulter zu laufen und zu singen. Wenn jemand unter der Last zusammenbrach, erschoss ihn Ivan an Ort und Stelle. Ich sah einige solcher Faelle aus naechster Naehe. Die Opfer waren nicht aus meiner Stadt und ich kenne ihre Namen nicht. Ivan trug eine schwarze Uniform und auf der Muetze trug er das Totenkopfabzeichen.
Ich bin bereit meine Aussage vor den amerikanischen Behoerden zu wiederholen.
Beendet, gelesen und bestaetigt.

(-) M. Radiwker (-) D. Glücksam (-) G. Boraks

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EXHIBIT 14

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-59—1M—4349

(b)(6)

EXHIBIT U

A [redacted] Cleveland, O.; 11/17/76

Exhibit Identification Form GI66-B (1-1-54)

GPO 866-426

Translation # 35176 (b)(6)

3/13/1907	[redacted]	Schmarjahu	Schlomo	H e l m a n
-	-	Retired		Warschau [redacted]

M. Radiwker Headquarters 9.30 A.M. 9/28/76

To the subject of investigations against Ukranian Nazi criminals, who at present live in the United States, Mr. Schlomo Helman was interviewed. He states as follows: Since the summer of 1942 - I think the end of July 1942 - I was staying in the annihilation camp Treblinka until the August 1943 uprising, as an inmate. During the entire time I was assigned to work in Camp II and only occasionally did I do construction work in Camp I. Camp II was the original annihilation camp, where the gas chambers were located. I was working at the construction of

(End of page 1, of the original)

the big gas chambers. When the big gas chambers were ready and in operation I was working at carrying corpses and at burning corpses. When asked if I remeber Ukranians who were active in Treblinka, I say that in Camp Treblinka the crew consisted of Germans and Ukranians. As I remember, the Ukranians were quartered in Camp I but every morning a detail of the Ukranian guards came to Camp II. Most of the time they were always the same people.

(End of page 2, of the original)

There may have been occasions when there was a change in the Ukranian guards but at any rate two of them were always the same. One was a Ukranian whom they called "Ivan Grozny" and the other who had a rank was called, I believe, K o l k a. The Ukranians wore mostly black uniforms, sometimes gre-green ones with a crew cap. When you ask me about the Ukranian "Ivan Grozny" I can tell you that he deserved the name "Grozny" - "The Terrible" fully. That was a horrible man. He was always active in Camp II. I saw it with my own eyes as he stood at the entrance of the gas chamber with a sabre in his hand which he stabbed into the unfortunate victims so that they should go quicker in the gas chamber. They had to put 1200 persons to be gassed in one of the big cabins and 600 persons into a small one. As to who released

(End of page 3, of the original)

the gas into the cabins after the doors were closed, I did'nt see. It was said that it was Ivan who did that,

(-) M. Radiwker (-) Schlomo Helman

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(cont'd)

but I didn't see it myself. I saw it when Ivan beat up in a sadistic way the Jewish laborers without any reason, I personally was not beaten by him. The name D e m j a n j u k which you mention to me, does not ring a bell. To a question: Ivan was tall, as I remember, he may have been about 30 years old. I cannot remember if he had a

(End of page 5 of the original)

rank emblem.
The witness is shown 5 photographs of Ukranians, pasted on brown paper. The witness is unable to identify Ivan Demjanjuk. He points only to photo No. 17 (that of FEDORENKO) and declares: I saw this man in Teblinka. The name Federenko, mentioned to me, is unknown to me. I did see him, I believe, in Camp I, but cannot tell you anything about him. I am willing

(End of page 6 of the original))

to repeat my testimony before American authorities.

Finished, read, approved, signed.

(-) M. Radiwker (-) Schlomo Helman

ek

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Kahl OCT 20 1976
(Interpreter) (Date)

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(b)(6)

הודעה מס' _____ גליון מס' _____

הודעתו של Schlomo H e l m a n (שם המשפחה (לנקד) / השם הפרטי) השם באותיות לטיניות _____

השם הקודם – שם האב Schmarjahu מס' הזהות [redacted] שנת הלידה 13.3.1907

מקום הלידה Warschau המען הקבוע [redacted] המיקוד _____

מס' הטלפון [redacted] המקצוע Rentner מקום העבודה – מס' הטלפון –

M.Radiwker מספרו, דרגתו ושמו של החוקר Hauptquart המקום 09.30 השעה 28.9.76 התאריך

Es wurde heute zum Gegenstand der Ermittlungen gegen ukrainische Naziverbrecher,welche zur Zeit in Amerika leben,Herr Schlomo Helman vernommen. Er sagt folgend aus:
Seit Sommer 1942- wie ich glaube seit Ende Juli 1942 - war ich im Vernichtungslager Treblinka bis zum Aufstand im August 1943 inhaftiert. Die ganze Zeit war ich arbeitsmaessig im Lager II eingesetzt und nur zeitweilig war ich im Lager I bei Bauarbeiten beschaeftigt. Das Lager II war das eigentliche Vernichtungslager,wo die Gaskammern waren. Ich war beim Bau der grossen (Ende Seite 1 d.Originals)
Gaskammern beschaeftigt. Als die grossen Gaskammern fertig und im Gebrauch waren,war ich beim Leichentragen und Leichenverbrennen taetig. Auf Frage,ob ich mich an Ukrainer erinnere,welche in Treblinka taetig waren,erklaere ich wie folgt:
Im Lager Treblinka waren in der Besatzung Deutsche und auch Ukrainer. Die Ukrainer waren,meiner Erinnerung nach im Lager I untergebracht,aber jeden Morgen kam eine Abteilung der ukrainischen Wachleute ins Lager II. Meistenteils waren es immer dieselben. (Ende Seite 2 d.Originals)
Es waren vielleicht Faelle,dass die ukrainischen Wachleute getauscht wurden aber jedenfalls zwei wurden nie getauscht. Einer war ein Ukrainer,welchen man "Ivan Grozny" nannte und der Zweite mit einem Rang,den man glaube ich K o l k a nannte. Die Ukrainer waren meistens in schwarzen Uniformen aber manchmal auch in gray-gruenen Uniformen mit Schiffmuetze. Wenn ich ueber den Ukrainer "Ivan Grozny" befragt werde,so kann ich nur sagen,dass er diesen Spitznamen
(Ende Seite 3 d.Originals)
"Grozny" - "der Schreckliche" wirklich verdient. Das war ein grauenhafter Mann. Er war immer im Lager II beschaeftigt. Ich habe mit meinen Augen gesehen,wie er mit einem Saebel in der Hand beim Eingang in die Gaskammer stand und mit dem Saebel auf die ungluecklichen Opfer einhieb,damit sie schneller in die Gaskammer hereingehen. Es musste doch zu einem Vergasungsprozess in eine grosse Kabine 1200 Menschen,in eine kleine an die 600 Menschen hereingehen. Wer das Gas in die
(Ende Seite 4 d.Originals)
Kabinen geliefert hat als schon die Tuer geschlossen war,habe ich nicht gesehen. Man sprach,dass Ivan dabei beschaeftigt war.

(-) M.Radiwker (-) Schlomo Helman

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ich habe es aber nicht gesehen. Ich habe gesehen wie Ivan in sadistischer Weise,ohne jeden Grund die juedischen Arbeiter geschlagen hat,mich persoenlich hat er nicht geschlagen. Der mir vorgehaltene Namen D e m j a n j u k sagt mir nichts
Auf Frage: Ivan war grossgewachsen,meiner Erinnerung nach konnte er an die 30 Jahre alt sein. An Rangabzeichen kann ich mich

(Ende Seite 5 d.Originals)

nicht erinnern.
Dem Zeugen wurden 5 Lichtbilder von Ukrainern,auf einem braunen Kartonblatt angeklebt,vorgezeigt. Der Zeuge kann den Ivan Demjanjuk nicht identifizieren. Er weist nur auf das Lichtbild Nr.17 (das Foto von FEDORENKO) und erklaert. Diesen Mann habe ich in Treblinka gesehen. Auch der mir vorgehaltene Name Fedorenko ist mir nicht bekannt. Ich habe ihn,wie ich glaube, im Lager I gesehen kann aber ueber ihn nichts sagen. Meine Aussagen

(Ende Seite 6 d.Originals)

bin ich bereit vor amerikanischen Behoerden zu wiederholen.
Beendet,gelesen,genehmigt,unterschrieben.

(-) M.Radiwker (-) Schlomo Helman

ek

EXHIBIT 13

Exhibit Identification Form G 166-B (1-1-54) FPI—3S—9-10-59—1M—4349

(b)(6)

EXHIBIT 9
Cleveland, O.; 11/19/76
A
Exhibit Identification Form GI66-B (1-1-84)
GPO 866-426

(b)(6)

Translation # 35089

[redacted] Josef C z a r n y
Abraham

282211 [redacted] Employee Warschau [redacted]

M. Radiwker Headquarters 2.15 P.M./9/21/76

To the subject of investigations against the Ukranian Nazi criminal Ivan D e m j a n j u k, Mr. Josef Czarny was questioned today. He testifies as follows:
I was in the annihilation camp Treblinka from the fall of 1942, to the uprising of August 2, 1943. I was working in Camp I at sorting the belongings of the gassed persons, at transport arrivals and for a time I was also a so-called "Chard-Jew", I worked in the chicken-coop. This occurred in the last days of my imprisonment. The crwe of the camp consisted of German SS-men and

(End of page 1, of original)

Ukranians. To a question: When you mention the name of Ivan DEMJANJUK, I can state that I remember the Ukranian well, who was called "Ivan Grozny". If his last name was DEMJANJUK, I don't know. The witness is shown three brown cardboard pages with 17 photographs pasted on them. The witness points, at first glance, to photo 16, the photograph of Ivan DEMJANJUK and declares: "This is Ivan, yes, it is the Ivan, the infamous Ivan. 33 years have gone by, but I

(End of page 2, of the orig.)

recognize him at first glance with complete certainty. I would know him, I believe, even at night (darkness). He was very tall, of sturdy frame, his face at the time was not as full and fat from gorging himself with food, as on this picture. However, it is the same face construction, the same nose, the same eyes and forehead, as he had at that time. A mistake is out of the question. The witness is told that according to information we have from American authorities, this man was not in Treblinka, but in Sobibor. The witness declares: "this is not so. This man the "Ivan Grozny" was in Treblinka to the lat minute, until the uprising. Ivan Grozny was a young man. I was 16 years old, he was perhaps at the most 4-5 years older than I. He was almost always drunk. His real place of activity was in Camp II, where the gas chambers were located, in the real "Deathcamp". He released gas into the gas chambers,

End of page 3 of the original

(-) M. Radiwker (-) Josef Czarny

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(cont'd)

when they were already stuffed full with people. This was known in the camp. It was no secret. I saw him, however sometimes

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at transport arrivals. I also saw him as he, together with "Lalka" Kurt Franz, on transport arrivals, shot people to death right then and there. He was the right hand of SS-man "Lalka". They were two good comrades. Ivan Grozny was known as a sadist. The Jews who worked in Camp II and with whom we had some contact, related that he stuffed so many people into the gas chambers that the door could not be closed. while doing this, he mistraetade the victims inhumanly. He served

(End of page 5 of the original)

the Germans body and soul in the matter of annihilation of human beings. His gruesome cruelty surpassed to a great extent that of the Germans', wherefore he was called in camp "Ivan Grozny" - Ivan the Terrible -.

To a question:"Why did you retain the memory of exactly this man so well?" the witness declares: Because he openly excelled, he made himself conspicuous, his horribl/e function was known, his sadism was known. He was one of the most horribly gruesome figures in Camp Treblinka. This is ~~why~~ why he remains forever in my memory.

(End of page 6, of the original)

Whereupon the hearing was completed, read, approved, signed.

(-) Josef Czarny

Addition: I am willing to repeat my testimony before American authorities.

(-) M. Radiwker

(-) Josef Czarny

(End of page 7, of the original)

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Wahl — OCT 6 1976
(Interpreter) (Date)

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(b)(6)

הודעה מס' _____ גליון מס' 1

הודעתו של Josef Czarny (שם המשפחה (לנקד)) השם באותיות לטיניות

השם הקודם _____ שם האב Abraham (השם הפרטי) מס' הזהות [redacted] שנת הלידה [redacted]

מקום הלידה Warschau המען הקבוע [redacted] המיקוד [redacted]

מס' הטלפון [redacted] המקצוע Beamter מקום העבודה Tel Aviv מס' הטלפון [redacted]

התאריך 21.9.76 השעה 14.15 המקום Hauptquart מספרו, דרגתו ושמו של החוקר M.Radiwker

Es wurde heute zum Gegenstand der Ermittlungen gegen den ukrainischen Naziverbrecher Ivan D e m jan j u k Herr Josef Czarny vernommen. Er sagt folgend aus:

Ich war im Vernichtungslager Treblinka seit Herbst 1942 bis zum Aufstand am 2.8.1943. Ich war arbeitsmaessig im Lager Nr. I beschaeftigt - ich arbeitete beim Sortieren von Sachen der Vergasten, beim Transportenempfang und eine Zeitlang war ich auch ein sogn."Hofjude",ich arbeitete im Huehnerstall. Das war schon in der letzten Zeit meiner Inhaftierung. Die Besatzung des Lagers bestand aus deutschen SS-Leuten und

(Ende Seite 1 d.Originals)

Ukrainern. Auf Frage: Wenn mir der Namen Ivan DEMJANJUK vorgehalten wird,so kann ich erklaeren,dass ich mich gut an den Ukrainer erinnere,welchen man "Ivan Grozny" nannte. Ob sein Nachnamen D e m j a n j u k lautete,weiss ich nicht.

Dem Zeugen wurden drei braune Kartonblaetter mit 17 angeklebten Lichtbildern vorgezeigt. Der Zeuge weist auf den ersten Blick auf das Lichtbild Nr.16 - das Foto des Ivan Demjanjuk und erklaert:"Das ist ja der Ivan Grozny,das ist der Ivan,der beruechtigte Ivan. Es sind 33 Jahre vergangen,aber ich

(Ende Seite 2 d.Originals)

erkenne ihn auf den ersten Blick mit voller Sicherheit. Ich wuerde ihn,glaube ich,auch bei Nacht erkennen. Er war sehr gross gewachsen,fest gebaut,sein Gesicht war damals nicht so dick und ausgefressen,wie auf diesem Bild. Es ist aber derselbe Gesichtsbau,dieselbe Nase,dieselben Augen und Stirn,wie er sie hatte. Einen Irrtum schliesse ich aus.

Dem Zeugen wurde vorgehalten,dass laut Informationen,welche wir von amerikanischen Behoerden haben,war dieser Mann nicht in Treblinka sondern in Sobibor. Der Zeuge erklaert: das ist

(Ende Seite 3 d.Originals)

nicht richtig. Dieser Mann "der Ivan Grozny" war in Treblinka als ich dorthin kam. Er wqr in Treblinak bis zur letzten Minute,bis zum Aufstand. Ivan Grozny war ein junger Mann. Ich war 16 Jahre alt,er konnte vielleicht maximum 4-5 Jahre aelter sein als ich. Er war fast immer besoffen. Sein eigentlicher Taetigkeitplatz war im Lager II,wo die Gaskammern waren,im eigentlichen"Totenlager". Er lieferte Gas in die Gaskammern,

(-) M.Radiwker (-) Josef Czarny

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als sie schon mit Menschen vollgestopft waren. Das war im Lager bekannt. Es war kein Geheimnis. Ich habe ihn aber manchmal

(Ende Seite 4 d.Originals)

beim Transporteempfang gesehen. Ich habe ihn auch gesehen, wie er zusammen mit "Lakka" - dem Kurt F r a n z, beim Empfangen der Transporte dort an Ort und Stelle Menschen erschossen hat. Er war die rechte Hand vom SS-Mann "Lalka". Sie waren zwei gute Kameraden. Ivan Grozny war ein bekannter Sadist. Die Juden, welche im Lager II arbeiteten, mit denen wir manchmal Kontakt hatten, erzaehlten, dass er soviel Menschen in die Gaskammern hereinstopfte, dass man die Tuer nicht zumachen konnte. Er misshandelte dabei die Opfer unmenschlich. Er diente

(Ende Seite 5 d.Originals)

den Deutschen mit Leib und Seele im Gegenstand der Menschenvernichtung. Mit seiner Grausamkeit uebertraf er viel die Deutschen, darum wurde er im Lager der "Ivan Grozny" - Ivan der Schreckliche - genannt.

Auf Frage, warum der Zeuge gerade ihn so im Gedaechtnis behalten hat, erklaert der Zeuge: Weil er sich vorgetan hat, hat sich bemerkbar gemacht, seine schreckliche Funktion war bekannt, sein Sadismus war bekannt. Es war eine der grauenhaftesten Gestalten im Lager Treblinka. Darum ist er mir auf ewig im Gedaechtnis geblieben.

(Ende Seite 6 d.Originals)

Darauf wurde die Vernehmung beendet, gelesen, genehmigt, unterschrieben.

(-) Josef Czarny

Zusaetzlich: Meine Aussagen bin ich bereit vor amerikanischen Behoerden zu wiederholen.

(-) M.Radiwker (-) Josef Czarny

ek

EXHIBIT 12

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—1M—4349

EXHIBIT J

Cleveland, O.; 11/19/76
A [redacted]

Exhibit Identification Form G166-B (1-1-54)

GPO 866-426

(b)(6)

Translation # 34410 (b)(6)

10/12/1909 [redacted] Schalom K o h n
David
Praszka
Office employee [redacted]

M. Radiwker Headquarters 11.10, 6/7/76
Recorder: E. Kozlowski

Today, in re of investigations against ~~kkk~~ Ukranian Nazi criminals - here D e m j a n j u k Ivan Nikolajewitsch, Mr. Schalom Kohn was heard.

I was an inmate in Camp Treblinka from Oct. 1, 1942, to Aug.2, 1943. I was in Camp II was working in Camp I, sorting out the things of the gassed and later also with the Camouflage Commando, which wlso worked in Camp I. The gas chambers were in Camp II, which I could not enter. In Camp Treblinka, the personnel consisted of Germans and Ukrainians.

To a question: I cannot remember a Ukranian by the name of D e m - j a n j u k Ivan Nikolajewitsch. Rather - the name Demjanjuk does not mean anything to me. I remeber that there was a Ukranian active in Camp Treblinka whom they called "Ivan Grozny" (Ivan the Terrible). He was a terror that man. However, he was active in Camp II, where the gas chambers were and I could have had only a fleeting view of him in Camp I. I am not able to describe him. Among the pictures shown to me on six cardboards, the man in picture 16 seems to be somehow familiar, but I can't identify him and cannot say anything specific about him.

Terminated, read aloud, signed

M. Radiwker Schalom Kohn
E. Kozlowski

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Kahl JUN 21 1976
(Interpreter) .... (Date)

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(b)(6)

הודעה מס' _____ גליון 1

הודעתו של Schalom K o h n (שם המשפחה (לנקד)) השם הפרטי — השם באותיות לטיניות

השם הקודם _____ שם האב David מס' הזהות _____ שנת הלידה 12.10.1909

מקום הלידה Praszka המען הקבוע _____ המיקוד _____

מס' הטלפון _____ המקצוע Bueroangestellter מקום העבודה " מס' הטלפון _____

התאריך 7.6.76 השעה 11.10 המקום Hauptquart מספרו, דרגתו ושמו של החוקר M. Radiwker

Protokollfuehrerin: E.Kozlowski

Es wurde heute zum Gegenstand der Ermittlungen gegen ukrainische Naziverbrecher - hier D e m j a n j u k Ivan Nikolajewitsch, Herr Schalom K o h n vernommen.

Im Lager Treblinka war ich vom 1.Okt.1942 bis zum 2.Aug.1943 inhaftiert. Ich war im Lager I beim Sortieren der Sachen der Vergasten und spaeter auch im Warnungskommando, welches auch im Lager I arbeitete, beschaeftigt. Im Lager II waren die Gaskammern und dorthin hatte ich keinen Zutritt. Im Lager Treblinka bestand die Besatzung aus Deutschen und Ukrainern.

Auf Frage: An einen Ukrainern namens D e m j a n j u k Ivan Nikolajewitsch kann ich mich nicht erinnern. Richtiger - der Name Demjanjuk sagt mir nichts. Ich erinnere mich, dass im Lager Treblinka ein Ukrainer taetig war, welchen man "Ivan Grozny ("Ivan der Schreckliche") nannte. Es war ein Schrecken, dieser Mensch. Er war aber im Lager II taetig, dort wo die Gaskammern waren und ich konnte ihn im Lager I nur fluechtig gesehen haben. Ich bin nicht imstande ihn zu beschreiben. Auf mir vorgezeigten Lichtbildern auf sechs Kartonblaettern, scheint mir der Mann auf Bild Nr.16 irgendwie bekannt, ich kann ihn aber nicht identifizieren und kann nichts Naeheres ueber ihn sagen.

Beendet, laut diktiert, unterschrieben

M. Radiwker
(M.Radiwker)

Kohn Schalom
(Schalom Kohn)

E.Kozlowski
(E.Kozlowski)

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EXHIBIT 11

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—IM—4349

EXHIBIT I

Cleveland, O.; 11/19/76

A [redacted]

Exhibit Identification Form G146-B (1-2-24)

GPO 943-662

(b)(6)

Translation # 3441O

Office Memorandum

(b)(6)

Today on May 30, 1976, Mr. Mejer Z i s s, born [redacted] at Lublin, residing at Haifa, [redacted] was heard for information against Ivan D e m i a n u k. He states:

From the end of May, beginning of June 1942, until 10/14/1943, I was an inmate in the annihilation camp Sobibor. In Sobibor there was Camp I, where the laborers lived, Camp II, where they were working and Camp III, where the gas chambers were located and where the Jews were annihilated. I worked in Camp II, sorting and burning documents, which had been found in the suits of the gassed and burn- other refuse.

I remember Ukranians who excelled in brutality or special activities. I remeber Taras Malinowski, Holosnoj, Szewczenko Feliks, one by the nickname "Retreat". The chief guard was Kaiser. I don't rember a Ukranian called Ivan Demianuk. On the pictures shown to me, I can not identify anyone. There were Ukranians who worked only in Camp III and I did'nt know them.

That is all I can say.

M. Radiwker

Meyer Ziss

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata S. Wahl — (Interpreter)

JUN 21 1976 — (Date)

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D i e n s t n o t i z

(b)(6)

Es wurde heute,am 30.5.1976 Herr Mejer Z i s s,geb. [redacted]
in Lublin,wohnhaft in Haifa [redacted]
zum Gegenstand der Ermittlungen gegen Ivan D e m i a n i u k
informatorisch vernommen. Er erklaert:

Ich war im Vernichtungslager Sobibor von Ende Mai,Anfang Juni 1942 bis zum 14.10.1943 inhaftiert. In Sobibor war das Lager I wo die Arbeiter gewohnt haben,Lager II,wo gearbeitet wurde und Lager III,wo die Gaskammern waren und wo die Juden vernichtet wurden. Ich arbeitete im Lager II beim Sortieren und Verbrennen von Dokumenten,welche in den Anzuegen der Vergasten gefunden wurden und Verbrennen anderer Abfaelle.
Ich erinnere mich an Ukrainer,die sich durch ihre Brutalitaet oder besondere Aktivitaet auszeichneten. Ich erinnere mich an Taras Malinowski,Holosnoj,Szewczenko Feliks,einer mit Spitznamen "Ruckzug". Der Oberwachmann war Kaiser. An einen Ukrainer mit Namen Ivan Demianiuk erinnere ich mich nicht. Auf vorgezeigten Bildern kann ich niemanden identifizieren. Es waren auch Ukrainer, welche nur im Lager IIIarbeiteten und diese habe ich nicht gekannt.
Das ist alles,was ich sagen kann.

(-) M.Radiwker (-) Meyer Zisa

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EXHIBIT 10

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—1M—4349

(b)(6)

EXHIBIT H

Cleveland, O.; 11/19/76

Exhibit Identification Form GSA-B (1-1-68)

GPO 943-662

Translation # 34410

(b)(6)

[redacted]

Dow F r e i b e r g
Freiberg Berek
Warsaw
Production manager [redacted]

M. Radiwker 26454 Headquarters 9 A.M. May 30,76

Today, in re investigations against the Ukranian Nazi criminal D e m a n i u k Ivan, Mr. Dow Freiberg was questioned. He states as follows:

I was in the annihilation camp Sobibor from May 1942 to October 1943, as an inmate. After I fled the Warsaw Ghetto I was in the little township of Turolin and from there I came to Sobibor in a large transport of Jews - men, women and children. Of my transport which numbered about 3.000 people, about 80-100 healthy young men were selected for work in Sobibor, all the others went to the gas chambers. I was placed in Camp I,

(End of page 1 of the original)

worked in Camp II at the sorting of belongings of the murdered and other jobs. For about one year, I worked as a porter in the barracks of the Ukranian guards. There were about 100 Ukranians employed in Camp Sobibor. They wore black uniforms. Part of the Ukranians, that is, those Ukranians who at the moment were not on guard duty, took part in all annihilation activities, just as the Germans. In connection with my work as a cleaner, I knew all the Ukranians. Even today, I remember many names. The name D e m i a n i u k however, which was mentioned to me,

(End of page 2, of the original)

I can't recall. Several Ukranians had the first name Ivan, but that is a very popular Ukranian name.

The witness is shown 6 cardboards with photographs of Ukranians. The witness says: The men in pictures 4 and 19 (Minuenko and Przyniazniuk), resemble some Ukranians whom I had known in Sobibor. When shown picture No. 16 (Demianiuk) witness says: "This one too seems familiar, but I can't identify anybody on these pictures with certainty". When asked: Yes, I remeber that Ukranians were transferred from Sobibor to Treblinka.

(End of page 3 of the original)

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(cont'd)

How many Ukranians were sent to Treblinka and when this occurred, I can't recall. I am unable to say anything more in this matter. At any rate, when I now

(-) M. Radiwker (-) Freiberg Berek Dow

should remember anything concerning the Ukranians, I will report to you.

Terminated, read, subscribed. (-) Freiberg Berek

In addition: It seems to me that the transfer of the Ukranians to Treblinka occurred a few months after my arrival.

(-) M. Radiwker (-) Freiberg Berek Dow

ek

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Wahl JUN 21 1976
(Interpreter) (Date)

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(b)(6)

הודעה מס' _____ גליון מס' 1

הודעתו של Dow Freiberg (נקבה) שם המשפחה השם הפרטי השם באותיות לטיניות

השם הקודם Freiberg Berek שם האב _____ מס' הזהות _____ שנת הלידה [redacted]

מקום הלידה Warschau המען הקבוע _____ המיקוד [redacted]

מס' הטלפון _____ המקצוע Produktionsleiter מקום העב [redacted] מס' הטלפון [redacted]

התאריך 30.5.76 השעה 0900 המקום Hauptquart מספרו, דרגתו ושמו של החוקר M.Radiwker 26454

Es wurde heute zum Gegenstand der Ermittlungen gegen den ukrainischen Naziverbrecher D e m i a n i u k Ivan Herr Dow Freiberg vernommen. Er sagt folhend aus:

Ich war im Vernichtungslager Sobibor von Mai 1942 bis Oktober 1943 inhaftiert. Nach meiner Flucht aus dem Ghetto Warschau befand ich mich im Staedtchen Turolin und von dort kam ich in einem grossen Transport von Juden - Maenner, Frauen und Kinder nach Sobibor. Von meinem Transport, welcher ungefaehr 3.000 Menschen zaehlte, wurden in Sobibor an die 80-100 gesunde, junge Maenner zur Arbeit ausgesondert, alle anderen gingen in die Gaskammern. Ich war im Lager I unter-

(Ende Seite 1 d. Originals)

gebracht, arbeitete im Lager II beim Sortieren von Sachen der Umgebrachten und bei anderen Arbeiten. Zirca ein Jahr arbeitete ich als Putzer in der Baracke der ukrainschen Wachleute. Im Lager Sobibor waren an die 100 Ukrainer taetig. Sie waren schwarz uniformiert. Ein Teil der Ukrainer, oder richtiger - diese Ukrainer, welche im Moment keine Wache hatten, beteiligten sich an allen Vernichtungstaetigkeiten, gerade so wie die Deutschen. Im Zusammenhang mit meiner Arbeit als Putzer, habe ich alle Ukrainer gekannt. Noch heute erinnere ich mich an viele Namen. Der mir vorgehaltene Namen D e mi a n i u k ist mir aber nicht

(Ende Seite 2 d.Originals)

erinnerlich. Den Vornamen I v a n hatten einige Ukrainer, aber das ist bei den Ukrainern ein sehr populaerer Vornamen.

Dem Zeugen wurden 6 Kartonblaetter mit Lichtbildern von Ukrainern vorgezeigt. Der Zeuge erklaert: Die Maenner auf Bilder 4 und 19 (Bild von Przyzniazniuk), sind etwas aehnlich Ukrainern, welche ich in Sobibor kannte. Auf Vorhalt des Bildes Nr. 16 (Bild vom Demianiuk) erklaert der Zeuge: auch dieser scheint mir bekannt, ich kann aber niemanden auf diesen Bildern mit Sicherheit identifizieren! Auf Frage: Ja, ich erinnere mich, dass Ukrainer aus Sobibor nach Treblinka versetzt wurden.

(Ende Seite 3 d.Originals)

Wieviel Ukrainer nach Treblinka geschickt wurden und wann es war, kann ich mich nicht erinnern. Mehr bin ich nicht imstande zu diesem Sachverhalt zu sagen. Jedenfalls jetzt, wenn ich

(-) M.Radiwker (-) Freiberg Berek Dow

12.72/10.000/100 משטרת ישראל מ 3007

mich an etwas bezueglich der Ukrainer erinnern werde, werde ich mich melden.
Beendet, gelesen, unterschrieben. (-) Freiberg Berek

Zusaetzlich: Es scheint mir, dass die Ueberfuehrung der Ukrainer nach Treblinka ein paar Monate nach meiner Ankunft war.

(-) M.Radiwker (-) Freiberg Berek Dow
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PHOTO COPY
TO
[redacted]
7/22/86
[redacted]

(b)(7)(c)

EXHIBIT 9

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—1M—4349

EXHIBIT F

Cleveland O.; 11/19/76

A [redacted]

Exhibit Identification Form G166-B (1-1-54)

GPO 943-662

[illegible]

Office: Hartford, Connecticut File No.: [illegible]

Statement by: FEODOR FEDORENKO AT [redacted] (b)(6)

In the case of: FEODOR FEDORENKO AT [redacted]

At: Hartford, Connecticut Date: May 25, [illegible]

(b)(7)(c)

Before: [redacted] Criminal Investigator
(Name and Title)

In the Russian language. Interpreter was used.
(Mrs. Helen Apuchtin, 13 Girard Avenue, Hartford, Connecticut 06105)

ESTIGATOR PEGEVICH, TO RESPONDENT:

I am an officer of the United States Immigration and Naturalization Service, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take your sworn statement regarding; your working as a guard in the concentration camp called Treblinka.

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court, or in any immigration or administrative proceeding.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

Q. Do you wish to have a lawyer or any other person present to advise you?
A. Yes, I would like to have ROMAN DOMENCHUK, who speaks Ukrainian and English, to be present.
Q. Are you willing to answer my questions at this time?
A. Yes.

Q. Do you swear that all the statements you are about to make will be the truth, the whole truth and nothing but the truth, so help you God?
A. I do.

Q. What is your true and correct name?
A. FEODOR FEDORENKO.

F. F.

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Form I-263E (Rev. 4-1-68)

Q. Where and when were you born?
A. 17 September 1907, in the village Sivasch, Ukraine, U.S.S.R.

Q. When and where did you enter the United States the first time as a displaced person?
A. The ship came to Boston, Massachusetts, on November 5, 1949.

Q. Were you subsequently granted United States citizenship?
A. Yes, only five years ago in 1970.

Q. You received your citizenship based upon an "Application to File Petition for Naturalization" which you filed on October 7, 1965, is that correct?
A. Yes.

Q. How long did you live in the village of Sivasch in Russia?
A. 26 years. I was born there and lived for 26 years in that village.

Q. What happened to cause you to leave the village of Sivasch?
A. At that time they have formed these co-ops, farms, and I did not like those farms, so I left.

Q. In what year was that?
A. 1933.

Q. Where did you go?
A. District of Crimea.

Q. What was the name of the town?
A. Djankoy.

Q. How long did you stay in Djankoy?
A. Until the beginning of the Second World War.

Q. What did you do in Djankoy?
A. Truck driver.

Q. For whom?
A. It was a delivery truck for the state.

Q. Why did you leave Djankoy when the war broke out?
A. I was mobilized into the army. I was drafted, and my truck also.

7 7.

Q. [illegible] Statement by [illegible] (Cont'd)
[illegible] [redacted] (b)(6)

Q. Were you drafted into the Russian Army?
A. Yes.

Q. How long did you stay in the Russian Army?
A. Starting in June 1941 until July 1941. Only for one month.

Q. Then what happened?
A. We were surrounded by the German Army. Thousands and thousands of ~~[illegible]~~ US.

Q. What happened as a result of your being surrounded by Germans? What happened to you specifically?
A. We were taken as war prisoners.

Q. Where were you taken to?
A. Jitomir, Russia, Ukraine.

Q. How long did you stay at Jitomir?
A. About two weeks.

Q. Then what happened?
A. Then German trucks came and took us along. For one week we stayed at Rovno, a small town.

Q. Then where did you go?
A. Again they took us in a truck to a town in Poland called Lolmo.

Q. Approximately when were you in Holmo?
A. November 1941.

Q. How long did you stay in Holmo?
A. Two months.

Q. Then where did you go?
A. We were lined up and the Germans picked out who could be useful to them as drivers and technicians.

Q. Were you picked out by the Germans?
A. Yes, they did.

Q. Why were you picked out?
A. They did not ask any consent, they just picked out and said you come and you come and put us aside.

7.7.

Q. Did you then move from Holma?
A. Yes, to Travniki, Poland.

Q. How long did you stay At Travniki?
A. About eight months.

Q. Where did you go from Travniki?
A. Lublin, Poland.

Q. How long did you stay at Lublin?
A. About three or four months.

Q. Then where did you go?
A. They picked some of us out and transported us to Treblinka.

Q. Approximately when did you arrive in Treblinka?
A. About the end of 1942.

Q. What were your actual duties at Treblinka?
A. In Treblinka we were given weapons and were told that we will be like watching the whole camp. We were camp guards.

Q. How long were you a guard at Treblinka?
A. Close to one year.

Q. Were you aware of the fact that thousands of Jews were being exterminated in Treblinka?
A. Yes, I know.

Q. Did you go to Treblinka voluntarily, or were you ordered to go?
A. I don't think that anybody would have gone willingly. It was ordered.

Q. Were you at any time a member of the German "SS" Forces?
A. No, never.

Q. Did you at any time perform duties other than guard duties?
A. Working in the kitchen and building barracks.

Q. Did you at any time have anything to do with killing any of the Jews at Treblinka?
A. Not only there, but never in my life did I kill anybody.

Q. Were you in Treblinka No. 1 or Treblinka No. 2.
A. I don't even know which was the first one and which was the second. I think one, but I don't remember.

F. F.

Q. Treblinka No. 1 was mainly a forced labor camp, Treblinka No. 2 is where they had the gas chambers. Which were you guarding, No. 1 or No. 2?
A. No. 2. I was where the gas chambers were.

(At this point in the proceedings, the Respondent was shown a picture of a model of Treblinka Concentration Camp at the Holocaust Museum Kibbutz Lohamei ha-Getta'ot. The Respondent stated that it looks kind of familiar to him but he really doesn't remember.)

INVESTIGATOR PECEVICH TO RESPONDENT:

Q. When you were at the camp, was KURT FRANZ the Director of the camp?
A. Yes, I remember the name FRANZ.

Q. Do you also remember the name MAX BIELAS?
A. No.

Q. You left Treblinka about the latter part of 1943?
A. Yes.

Q. Do you remember the Jewish uprising in Treblinka?
A. Yes.

Q. Were you there at that time?
A. Yes, very soon afterwards, I don't remember how many days, I left this camp.

Q. Where did you then go?
A. We were taken to Danzig, Prussia, and there were ~~representatives~~ PRISONERS from all the nations there, Germans, Jews, in Danzig. It was a camp. The guards directed them while they worked

Q. How long did you stay at Danzig?
A. About one year.

Q. Were you in Danzig as an actual prisoner of war?
A. We were protecting the camp for the Germans.

Q. Were you given the rank of oberwachmann by the Germans?
A. I can't say that I got the title, but I never drank and I always did my duty and the Germans liked this attitude.

Q. Do you understand what the rank of oberwachmann is?
A. I was a guard as everybody else and as I was very good behavior and never got drunk and did my duty, therefore I got this rank oberwachmann. I did not give any orders.

7, 7.

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Q. What type of uniform did you wear?
A. Dark blue.

Q. Was the camp at Danzig set up to exterminate Jews also?
A. No, it was something quite different. It was a camp for those who had committed some kind of crime and it was international. There were French war prisoners and all nationalities.

Q. Did Treblinka close down after you left?
A. I don't remember how long it was, but it was not closing yet.

Q. Have you ever seen any of the other Ukrainian guards who worked at Treblinka since then, especially in the United States?
A. Nobody. I did not meet anybody.

Q. Approximately how many Ukrainian guards were stationed at Treblinka?
A. About the same number of Russians and Ukrainians. There were some camps where there were only Ukrainians. They just took workers, not taking into consideration whether they were Russian or Ukrainian.

Q. About how many was the total guards, Russians and Ukrainians?
A. It is very hard to say because they were brought and taken away so frequently. It is very hard to give a definite number.

Q. I understand that there were around 200 Ukrainian and Russian guards at the camp. Is that correct?
A. I think 100 to 150.

Q. How many German troops were stationed there?
A. Close to 20. They had higher grades. They were not privates.

Q. Then below 200 Ukrainians, Russians and Germans controlled Treblinka?
A. Yes.

Q. Approximately how many Jews per day were being killed in Treblinka?
A. I don't know because I didn't watch how many. I couldn't see. I was not interested.

Q. Who was helping the Nazis get the Jews undressed and marched into the gas chambers?
A. Only Germans. We were not allowed to even approach, but there were two of them, NIKOLAI and IVAN, who were exceptions, who worked with the Germans. NIKOLAI was a Russian guard and IVAN was Ukrainian.

Q. Then approximately 30 Germans and one Russian and one Ukrainian were the only ones who performed the functions at Treblinka?
A. Yes.

Q. Did any of the Jews help in any way as workers?
A. When new Jews were brought to this camp, then they were beaten and they were some of them who helped the Germans, but there were very few. The Germans watched over the Jews to see that they worked well. If he did not work, he was beaten immediately. Constantly there were about 200 to 300 Jews that made the work in the camp.

Q. Do you know the name GALEWSKI as the head of the Jews?
A. No, I don't remember.

Q. When you applied for admission into the United States, you claimed that you were a farmer from Sarny, Poland. Is that correct?
A. I think I did not say it. Nobody asked me about it.

Q. I have a Declaration of Intent in Lieu of an Oath which was signed by you on January 28, 1949, stating that you were born in Sarny, Poland, on September 17, 1907. Did you file this document or didn't you?
A. Yes, it is my signature. I lived there.

Q. But this document states that you were born in Sarny, Poland.
A. We had to state where we were and the part where I was born became Poland. It was originally the Ukraine, but when I was signing, it had become Poland.

Q. Did you state that you were born in Sarny, Poland, to cover up the fact that you worked at Treblinka and might be questioned about your work at Treblinka?
A. If I had not said that I was born in Poland, I would have been sent back to Soviet Russia.

Q. Why didn't you want to go back to Russia at that time?
A. It was before the Second World War, it was a very hard, difficult life in the Soviet Union.

Q. When you were in Treblinka working as a guard, did you get paid a salary per week?
A. Very little. Something, but very little. There was nothing to be bought. They gave only food. There was nothing else we could buy, even if we got it.

F. F.

(b)(6)

Q. Did you get money per week?
A. A little. I don't remember how much.

Q. Who was your immediate boss in Treblinka?
A. NIKOLAI ROHOZA.

Q. Was he Ukrainian?
A. Of German ancestry.

Q. Was he a member of the "SS"?
A. I think so, but I cannot say for sure.

Q. Was he a regular member of the German Army?
A. He was with us, but I don't know. He was not permanent. I don't know if he was a member of the German Army. My boss did not have any insignia, but a higher rank than my boss, they all had insignia.

Q. Did you wear a German uniform?
A. Yes, it was a German uniform, but another color. It was special for foreigners.

Q. Did your uniform have "SS" insignia on it?
A. No.

Q. When you applied for United States citizenship, one of the questions was that "The law provides that you may not be regarded as qualified for naturalization under certain conditions, if you knowingly committed offenses or crimes, even though you may not have been arrested therefor." I shall ask you again, have you knowingly committed any crime for which you were not arrested?
A. Never, I was never arrested and have done nothing wrong.

Q. Approximately how many Jews arrived per day into Treblinka?
A. I couldn't say because there were days when there came two trains full of them, and there were days when there were none. It was not regular. I tried always to avoid the moment when the trains came because it was a terrible picture. I tried to do my work as far away from where they were unloading these trains as I could. They were not only shouting, but they had beaten them with sticks and whips so I tried to stay as far away as I could. We were even forbidden to come into contact with them. We were punished if we had personal contact with the Jews who were brought.

F. F.

Q. Is there anything you wish to add to this statement?
A. I don't think anybody can accuse me of being a collaborator with the Germans. I did not like the Germans. My father had been killed in the First World War by the Germans and the family was ruined when my father was killed because there was a wife and three children alone. I did not want, after the Second World War I did not want to show I was born in Russia because the Soviets returned the people to the Soviet Union by force, whether they wanted to return or not. Therefore, I showed that I was born in Poland and not in the Soviet Union.

Q. Did you go to the Ukraine in May 1975 and return to the United States May 16, 1976, at New York, New York?
A. Yes.

Q. Was this your only trip to the Ukraine since World War II?
A. It was the third one.

Q. Were you granted visas by Russia to enter the Ukraine?
A. Yes, the first time I went as a private tourist for three weeks. The second time I got a visa for three months stay there. The third time was for 18 months.

Statement concluded at 12:05 p.m.

I, being unable to read, speak, and understand the English language sufficiently, but being able to read, speak, and understand the Russian language, have had the foregoing statement consisting of -9- pages read to me in the Russian language. I state that the answers made therein by me are true and correct to the best of my knowledge and belief, and that this statement is a full, true, and correct record of my interrogation on the date indicated by below named officer of the Immigration and Naturalization Service. I have initialed each page of this statement and the corrections noted.

Signature: Feodor Fedorenko

I, being able to read, speak, and understand both the English language and the Russian language, do hereby certify that I have read the foregoing statement consisting of -9- pages to FEODOR FEDORENKO in the Russian language and he stated that the same was true and correct in all respects.

Signature [illegible]

PHOTO COPY
TO
[redacted]
7/22/86
[redacted]

(b)(7)(c)

EXHIBIT 8

Exhibit Identification Form G 166-B (1-1-54)

FPI—SS—9-10-69—1M—4349

EXHIBIT C

(b)(6) Cleveland, O.; 11/19/76

[redacted]

Exhibit Identification Form G146-B (1-1-54)

GPO 943-662

Translation # 34292 (b)(6)

Elijahu ROSENBERG

[redacted] Chaim

Warsaw

Warehouse owner [redacted]

M. Radiwker 26454 Ashdod 11.00 5/11/76

Today, to the subject of investigations against DEMJANJUK Ivan, Mr. Elijahu Rosenberg was given a hearing. He states as follows: I came to the annihilation camp Treblinka from the Warsaw Ghetto on the day of the Jewish New Year in 1942. I was an inmate of Camp Treblinka until the uprising of August 2, 1943. I arrived with a large transport - about 6000 Jews - together with my mother and siblings. From the entire transport, 30 people were selected for work, I among them, all others went to their destruction in the gas chambers. I spent only 1 day in camp 1 in Treblinka, then was taken to camp 2, the annihilation camp proper, where the gas chambers were located. My

(End of page 1, of the original)

work consisted in taking the corpses of the gassed men, women and children, after each gassing process, from the gas chamber, I and other Jewish workers had to drag them out and throw them from the so-called ramp to the ground. After we finished with this work, we also had to drag the bodies to the pit and in 1943, to be burned on the pyre. To your question if there were Ukranians active besides Germans in camp 2, I will tell you that I have testified at the time of the Eichmann trial about the activities of the Ukranians at the annihilation ~~of~~ in the Treblinka Camp itself. Twice in Duesseldorf-

(End of page 2 of the original)

trials, in the Treblinka trials. I was also questioned at Warsaw for the Nuernberg-trial. I repeat now: The Ukranians participated with the German SS-people in the annihilation of the Jews in Treblinka. The transports arrived at camp No. 1, from there, already naked, they were chased through "Himmelstrasse" (Heaven Street) to camp No. 2. In "Himmelstrasse" already, Ukranians stood on both sides (of the street) with bayonets on their rifles and beat and mistreated and thrust the bayonets into the hunted people. The Ukranian stuffed with horrible brutality the last rows of the victims at the entrance into the gas chamber, in order

(End of page 3, of the original)

to stuff even more victims into it. The Ukranian shoved the door to the gas chamber closed. Two Ukranians, Ivan and Nikolaj, worked steadily at the gas releasing from the Diesel motors into the gas chambers. Ukranians together with SS-people stood on the way from the gas chambers to the pit, they chased, beat and reguently shot the Jewish laborers, who had carried the bodies.

(-) M. Radiwker (-) Rosenberg

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(cont'd)

The witness was shown 17 photographs of Ukranians glued on three brown cardboards.
The witness points at picture No. 16 (the likeness of Demjanjuk) and states: I see a great resemblance to the Ukranian IVAN who was active in camp 2, and who was called "Ivan Grozny" (Ivan the Terrible). It is the same face construction, he had a round full face, around the eyes and forehead. He had a high forehead with the beginning of baldness, at any rate, a very high forehead and very short hair. He had a short, thick neck, stocky build and swarthy skin. I remember that his ears were standing away from his face. I decline, however to identifiy him with (absolute) certainty. He was very young, maybe 22-23 years old. This

(End of pge 4,o.orig.)

(End of page 5, of the original)

picture must have been taken much later. Here, he is in civilian clothes, I always saw him in uniform. He wore a black uniform with a seaman's cap, always wore a revolver on his side, though he had no rank. should I see Ivan alive before me, I would - I believe - recognize him now. I would also certainly recognize him on a picture of that time. I did'nt know his surname. When told that according to our information, Ivan Demjanjuk whom the witness is pointing to, was in Sobibor, not in Treblinka, the witness states: In the course of the year 1942, a few

(End of page 6, of the original)

inmates, masons, were sent to Sobibor, together with some Ukranians, who did'nt return. I saw Ivan, however, until the last day in Treblinka. When I am asked if Ivan acted independently or on orders of higher officials I can state with certainty that such cruelties and such sadistic murders as he perpetrated each and every day, were certainly not done by orders. I remember one case, one among thousands; he pulled a naked religious Jew with a long beard out from the "Himmelstrasse".

(End of page 7, of the original)

He pulled the barbed wire at the gas chamber apart and put the head of the Jew in the barbed wire. He began horsewhipping the Jew in the most horrible way, the man moved because of the pain, the barbed wire pressed into his neck, more and more, until he suffocated. At the entrance to the gas chamber, he (Ivan) always stood together with the others. He had a Polish police sword and I saw from a distance of about 4 meters, as he cut up people with his sword, mostly women on their naked bodies. This he certainly did on his own initiative. As

(End of page 8, of the original)

(-) M. Radiwker (-) Rosenberg

(cont'd)

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the door to the gas chamber was shut, he went to the Diesel motor and let the gas run into the gas chambers. He, therefore, directly participated in the gassing. This I saw each and every day from the nearest proximity. I was not farther away than one or two meters from him. It was there I worked. I saw when he shot a worker carrying corpses. He derived pleasure from 30 whippings to a laborer. I personally received 30 whippings at roll call, because I had purloined a small piece of bread. There was the time when he ordered

(End of page 9, of the original)

me to perform a sexual act with a dead woman, who had been pulled out from the gas chamber. He was drunk at the time and I knew that it meant my death, because I was unable to commit such an act. The German Scharfuhrer (staff sergeant) LOEFFLER saved me from him. I could, were it necessary, tell more cases of Ivan's, however, what I told you already, is sufficient to prove that he was a terrible criminal. I can tell you (the names) of the following people who were eye-witnesses: 1) Lindwasser, Abraham, Tel Aviv, he has a phone; 2) Epstein, Pinkas or Pinchas, who lives at Petach Tiqua, telephone:

(b)(6) [redacted]

I am willing to repeat my statement before American authorities.

Terminated, read, signed.

(-) M. Radiwker

(-) Rosenberg

U.S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Hall — MAY 24 1976

(Interpreter) (Date)

(b)(6)

הודעה מס' _____ גליון מס' _____

הודעתו של Elijahu ROSENBERG השם באותיות לטיניות (שם הנשפחה (לנקד) השם הפרטי)

השם הקודם – שם האב Chaim מס' הזהות [redacted] שנת הלידה [redacted]

מקום הלידה Warschau המען הקבוע [redacted] המיקוד

מס' הטלפון [redacted] המקצוע Magazineur מקום העבודה [redacted]

התאריך 11.5.76 השעה 1100 המקום Ashdod מספרו, דרגתו ושמו של החוקר M.Radiwker 26454

Es wurde heute zum Gegenstand der Ermittlungen gegen DEMJANJUK Ivan ,Herr Elijahu Rosenberg vernommen. Er sagt folgend aus: Vom Ghetto Warschau kam ich ins Vernichtungslager Treblinka am Tage des juedischen Neujahrsfestes des Jahres 1942. Ich war im Lager Treblinka bis zum Aufstand am 2.8.1943 inhaftiert. Ich kam in einem grossen Transport - zirka 6000 Juden - zusammen mit meiner Mutter und Geschwistern. Aus dem ganzen Transport wurden 30 Menschen zur Arbeit ausgesondert,ich unter ihnen,alle anderen gingen zur Vernichtung in die Gaskammern. Ich war nur einen Tag im Lager 1 von Treblinka und kam anschliessend ins Lager 2,das eigentliche Vernichtungslager,wo die Gaskammern waren.Meine

(Ende Seite 1 d.Originals)

~~Arbeit bestand darin,dass ich nach jedem Vergasungsprozess die Leichen der vergasten Maenner,Frauen und Kinder aus der Gaskammer zusammen mit anderen juedischen Arbeitern herausschleppen musste und von der sogenannten Rampe auf die Erde schmiss.Nach Beenden dieser Arbeit mussten wir auch die Leichen in die Grube schleppen und im Jahre 1943 zum Verbrennen auf Scheiterhaufen.~~ Wenn ich befragt werde,ob im Lager Nr.2ausser Deutschen auch Ukrainer taetig waren,kann ich folgendes erklaeren: Ueber die Taetigkeit der Ukrainer bei der Vernichtung selbst im Lager Treblinka habe ich seinerzeit im Eichmann-Prozess ausgesagt. Zwei Mal in Duesseldorf-

(Ende Seite 2 d.Originals)

prozessen - in den Treblinkaprozessen.Ich wurde sogar noch in Warschau fuer den Nuernberg-Prozess vernommen. Ich wiederhole jetzt: Die Ukrainer waren zusammen mit den deutschen SS-Leuten an der Vernichtung der Juden in Treblinka beteiligt. Die Transporte kamen ins Lager Nr.1 von dort schon nackt wurden sie durch die "Himmelstrasse" ins Lager Nr.2 gejagt. Schon in der "Himmelstrasse" ~~standen von beiden Seiten Ukrainer mit Bajonetten auf den Gewehren und schlugen und misshandelten und versetzten Bajonettstiche den gejagten Menschen. Die Ukrianer stopften mit schrecklicher Brutalitaet die letzten Reihen der Opfer beim Eingang in die Gaskammer hinein,um~~

(Ende Seite 3 d.Originals)

~~mehr Opfer dorhin hineinzustopfen.~~ Die Tuer zur Gaskammer klappten die Ukrainer zu. Zwei Ukrainer,Ivan und Nikolaj arbeiteten stabil bei der Gaslieferung von Dieselmotoren in die Gaskammern. Ukrainer zusammen mit SS-Leuten standen auf dem Weg von den Gaskammern zur Grube,schlugen,jagten und oft erschossen sie die juedischen Arbeiter,welche die Leichen getragen haben.

12.72/10.000/100 (-) M.Radiwker (-) Rosenberg משטרת ישראל מ 3007

Dem Zeugen wurden 17 Lichtbilder von Ukrainern auf drei braunen Kartonblaettern aufgeklebt, vorgelegt.
Der Zeuge weist auf das Bild Nr.16 (das Bild von Demjanjuk) und erklaert: Dieser Mann ist dem Ukrainer (Ende Seite 4 d. Originals) I v a n sehr aehnlich. Ich sehe eine grosse Aehnlichkeit zu dem Ivan, welcher im Lager zwei taetig war und welchen man "Ivan Grozny" (Ivan der Schreckliche) genannt hat. Die Aehnlichkeit besteht im Gesichtsbau, er hatte ein rundes, volles Gesicht, in den Augen und der Stirnpartie. Er hatte eine hohe Stirn mit Anfang von Glatze, jedenfalls eine sehr hohe Stirn und ganz kurze Haare. Er hatte einen kurzen, dicken Hals, war ~~f~~ kraeftig gebaut, war dunkelhäutig. Ich erinnere mich, dass er abstehende Ohren hatte. Ich weigere mich jedoch zu sagen, dass ich ihn mit Sicherheit identifiziere. Er war sehr jung, konnte 22-23 Jahre alt sein. Dieses (Ende Seite 5 d. Originals) Bild muss von einer viel spaeteren Zeit sein. Er ist hier in zivil, ich habe ihn immer in Uniform gesehen. Er trug eine schwarze Uniform mit Schiffmuetze, hatte immer eine Pistole an der Seite, obwohl er ~~xxxx~~ keinen Rang hatte. Wenn ich den Ivan vor mir lebendig sehen wuerde, wuerde ich ihn - wie ich glaube - auch jetzt erkennen. Auch auf einem Bild von damals wuerde ich ihn bestimmt erkennen. Seinen Familiennnamen haben ich nicht gekannt. Auf Vorhalt, dass laut unseren Informationen war Ivan Demjanjuk, auf welchen der Zeuge weist, in Sobibor, nicht in Treblinka, erklaert der Zeuge wie folgt: Im Laufe des Jahres 1942 wurden einige (Ende Seite 6 d. Originals) Haeftlinge, Maurer, nach Sobibor geschickt, zusammen mit einigen Ukrainern, welche nicht mehr zurueckkamen. Den I va n habe ich aber bis zum letzten Tag in Treblinka gesehen. Wenn ich befragt werde, ob der Ivan selbstaendig gehandelt hat oder auf Befehl hoeherer Amtstraeger, so kann ich mit Sicherheit erklaeren, dass solche Grausamkeiten, solche sadistischen Morde, wie er tagtaeglich veruebte, ihm bestimmt nicht befohlen wurden. Ich erinnere mich an einen Fall, einen von tausenden; aus der "Himmelstrasse" zog er einen nackten, frommen Juden mit einem langen Bart heraus. (Ende Seite 7 d. Originals)
Er zog auseinander den Stacheldraht bei der Gaskammer und steckte den Kopf des Juden in den Stacheldraht. Er begann den Juden in schrecklichster Weise mit der Peitsche zu schlagen, vor Schmerzen bewegte sich der Mann, der Stacheldraht drueckte ihm immer mehr den Hals bis er erstickte. Bei der Gaskammer beim Eingang stand er immer zusammen mit anderen. Er hatte einen polnischen Polizeisaebel und ich habe von Entfernung, von etwa 4 m gesehen, wie er den Menschen, meistens Frauen Saebelschnitte in die nackten Koerper versetzte. Das war bestimmt seine eigene Initiative. Als
(Ende Seite 8 d. Originals)

(-) M. Radiwker (-) Rosenberg

die Tuer der Gaskammer zugeklappt wurde, ging er zum Dieselmotor und liess das Gas in die Gaskammern laufen. Hatte also einen direkten Anteil an der Vergasung. Das habe ich tagtaeglich von naechster Naehe gesehen. Ich war nicht mehr wie ein Meter bis zwei Meter von ihm entfernt. Dort war mein Arbeitsplatz. Ich habe gesehen, wie er Arbeiter beim Leichentragen erschossen hat. Er hatte eine Freude wenn er einen Arbeiter 30 Peitschenhiebe versetzen konnte. Ich persoenlich habe von ihm 30 Peitschenhiebe auf dem Appell bekommen, weil ich ein Stueckchen Brot entwendet habe. Es war ein Fall, dass er mir

(Ende Seite 9 d.Originals)

befahl einen Geschlechtsakt mit einer toten Frau zu vollziehen, welche aus der Gaskammer herausgezogen wurde. Er war besoffen damals und ich wusste, dass es meinen Tod bedeute, weil ich zu so einer Tat nicht faehig war. Es rettete mich vor ihm der deutsche Scharfuehrer LOEFFLER. Ich koennte, wenn es noetig sein wird, noch Faelle von Ivan berichten, dass was ich aber sagte, ist genug um zu beweisen, dass er ein fuerchterlicher Verbrecher war. Als Augenzeugen kann ich folgende Personen angeben: 1) Lindwasser Abraham, Tel Aviv, hat ein Telefon, 2) Epstein Pinchas, wohnt in Petach Tiqua, Tel. [redacted] (b)(6)
Meine Aussagen bin ich bereit vor amerikanischen Behoerden zu wiederholen.
Beendet, gelesen, unterschrieben.

(-) M.Radiwker (-) Rosenberg

ek

PHOTOCOPY
TO
[redacted]
7/22/86
[redacted]

(b)(7)(c)

EXHIBIT 7

Exhibit Identification Form G 166-B (1-1-64)

FPI—35—9-10-69—1M—4349

EXHIBIT B

Cleveland, O.; 11/19/76

A [redacted]

(b)(6)

Exhibit Identification Form G166-B (1-1-64)

GPO 943-662

Translation # 34291 (b)(6)

Eugen T u r o w s k i

1/14/1914 [redacted] Aleksander

[redacted] Lodz/Poland

[redacted] Technician [redacted]

M. Radiwker 26454 Headquarters 12.00 5/10/76

To the subject of investigations against the Ukranian Nazi criminal Demjanjuk, Ivan, Mr. Eugen Turowski was heard. He states as follows:

I was in the annihilation camp Treblinka from September 1942 to the uprising on August 2, 1943 as an inmate. In the beginning I worked at the taking off (people) from transports and then as machanic in the shops and on repair work in the quarters of the Germans and Ukranians.
To a question: In the garrison of Concentration Camp Treblinka, there were Germans and Ukranians. Germans as well as Ukranians came to me in the shops and I had in connection with my work the possibility

(End of page 1, of the original.)

to move about freely in camp. In camp No. 1, naturally. in camp No. 2, were the gas chambers and the pits. Only SS-people and Ukranian guards could enter there, also a Jewish work commando, which was completely isolated. Only when they came to the shop in order to pick up something, could we speak to some of them. When asked if I knew an Ukranian by the name of D e m j a n j u k, Ivan, I declare as follows: I know the name Demjanjuk and even better, the first name of Ivan. To me, he was the Ivan. This Ukranian

(End of page 2, of the original)

I can well remember, I knew him personally, because at times he came to the shop to have things repaired. The witness is shown 17 photographs, all pasted on three brown cardboards. At first glance the witness points at photo No.16 (photo of Demjanjuk) and declares: This is the Ivan. Him I recognize immediately and with full assurance. He was of medium build, stockily built and had a round, full face. He had a short, wide neck and even then his hair looked like here on this photograph, a high forehead with a bald pate starting.

(End of page 3, of the original)

He was still a very young man, could have been 23-24 at the most. He had a black uniform, but as I remember, he sometimes wore a khaki one. I don't remember an insignia. I don't remember his rank.

(-) M. Radiwker (-) Turowski, Eugen

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(cont'd)

He was, of course, a subordinate to the German commander's office, he was quite independent in his brutalities, he did'nt wait for orders. I knew that Ivan worked in camp No. 2, at the gassing of the transports. I could'nt enter there and can, therefore, not describe his activity from my own observation. His activity there as I heard, was horrible.

(End of page 4, of the original)

He tortured and was inordinately brutal when driving the victims into the gas chambers. I also heard that he took part himself at the gassings, but as I said, I personally did'nt see it. He was known by his cruelty, when one knew the first name of a Ukranian, he certainly had excelled in brutality. I only saw him in passing through the shop and near his quarters. I did'nt see him when transports were recieved. I saw, however, and even many times, as he with other Ukranians dragged apprehended Jews, already half dead,

(End of page 5, of the original)

beaten half dead from the woods to the camp. I did'nt see him at the hangings and shootings of these apprehended Jews. He probably took his victims directly to camp 2, to be killed. I believe that those who used to be in camp 2, in the working commando naturally, could testify to the particularly gruesome activities of this Ukranian. In camp 2, there were Zalman TEIGMAN, who lives in Bath Yam (I believe), Elijahu Rosenberg and Mrs. Sonia Lewkowicz. I cannot say anything more in this matter.

Whereupon the hearing was terminated, read and signed.

(-) M. Radiwker (-) Eugen Turowski

I am prepared to repeat my statement before American authorities.
(-) M. Radiwker (-) Turowski, Eugen

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Wahl MAY 25 1976

(Interpreter) (Date)

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(b)(6)

הודעה מס' _____ גליון מס' 1

הודעתו של Eugen T u r o w s k i (שם המשפחה (לנקד)) השם באותיות לטיניות

השם הקודם – שם האב Aleksander (השם הפרטי) מס' הזהות [redacted] שנת הלידה 14.1.1914

מקום הלידה Lodz/Polen המען הקבוע [redacted] המיקוד

מס' הטלפון [redacted] המקצוע Techniker מקום העבודה [redacted] מס' הטלפון [redacted]

M.Radiwker 26454 מספרו, דרגתו ושמו של החוקר Hauptquart המקום 1200 השעה 10.5.76 התאריך

Es wurde heute zum Gegenstand der Ermittlungen gegen den ukrainischen Nazuverbrecher Demjanjuk Ivan, Herr Eugen Turowski vernommen. Er sagt folgend aus:

Ich war im Vernichtungslager Treblinka von September 1942 bis zum Aufstand am 2.8.1943 inhaftiert. Ich arbeitete anfangs beim Transportabnehmen und dann als Mechaniker in den Werkstaetten und bei Reparaturen in den Unterkuenften der Deutschen und der Ukrainer.

Auf Frage: In der Besetzung des KL Treblinka waren Deutsche und Ukrainer. In die Werkstaette kamen zu mir sowohl Deutsche als auch Ukrainer und ich hatte auch im Zusammenhang mit meiner Arbeit die Moeglichkeit (Ende Seite 1 d.Originals) mich im Lager frei zu bewegen. Natuerlich im Lager Nr.1. Im Lager Nr.2 waren die Gaskammern und die Gruben. Dort hatten Zutritt nur die SS-Leute und die ukrainischen Wachleute und ein juedisches Arbeitskommando, welches ganz isoliert war. Nur wenn sie um etwas zu holen in die Werkstaette kamen, konnten wir mit einzelnen von ihnen sprechen. Auf Frage, ob mir ein Ukrainer mit Namen D e m j a n j u k Ivan bekannt ~~xxx~~ war – erklaere ich wie folgt: Der Name Demjanjuk ist mir bekannt und noch besser ist mir der Vorname I v a n bekannt. Fuer mich war er der Ivan. An diesen Ukrainer

(Ende Seite 2 d.Originals)

kann ich mich gut erinnern, ich kannte ihn persoenlich, weil er manchmal in die Werkstaette kam um etwas zu reparieren.

Dem Zeugen wurden 17 Lichtbilder von Ukrainern vorgelegt – alle auf drei braunen Kartonblaettern aufgeklebt. Der Zeuge weist auf den ersten Blick auf das Lichtbild Nr.16 (Foto von Demjanjuk) und erklaert: Das ist der Ivan. Den erkenne ich sofort und mit voller Sicherheit. Er war mittelgross, fest gebaut, hatte ein rundes, volles Gesicht. Er hatte einen kurzen breiten Hals und schon damals hat sein Haar so ausgeschaut wie ~~xxxxxx~~ hier auf dem Lichtbild, eine hohe Stirn mit Anfang einer Glatze. (Ende Seite 3 d.Originals)

Er war noch ein sehr junger Mann, koennte hoechstens 23-24 Jahre alt sein. Er hatte eine schwarze Uniform, wie ich mich aber erinnere ging er manchmal in khaki Uniform. An Abzeichen erinnere ich mich nicht. An seinen Rang erinnere ich mich

(-) M.Radiwker (-) Turowski Eugen

12.72/10.000/100 משטרת ישראל מ 3007

nicht. Er war natuerlich der deutschen Kommandantur unterstellt, in seinen Grausamkeiten war er ganz selbstaendig, auf Befehle wartete er nicht. Ich wusste, dass Ivan im Lager Nr.2 beim Vergasen der Transporte taetig war . Ich hatte dorthin keinen Zutritt, kann daher seine Taetigkeit dort aus eigener Wahrnehmung nicht schildern. Seine Taetigkeit dort war, wie ich hoerte, grauenhaft,

(Ende Seite 4 d.Originals)

er peinigte und war ungewoehnlich grausam beim Hereintreiebn der Opfer in die Gaskammern. Ich hoerte auch, dass er am Vergasen selbst Anteil nahm, aber wie gesagt, ich konnte es persoenlich nicht sehen. Er war von seiner Grausamkeit bekannt, wenn man schon den Vornamen eines Ukrainers kannte, so hat er sich bestimmt in Grausamkeit besonders ausgezeichnet. Ich habe ihn nur im Vorueber-gehen gesehen in der Werkstaette und neben seiner Unterkunft. Beim Transportempfangen habe ich ihn nicht gesehen. Ich habe aber gesehen und sogar mehrmals, wie er zusammen mit anderen Ukrainern ergriffene Juden schon halb tot

(Ende Seite 5 d.Originals)

geschlagene aus dem Wald ins Lager schleppte. Bei Haengen und Erschiessen dieser ergriffenen Juden habe ich ihn nicht gesehen. Wahrscheinlich hat er seine Opfer direkt ins Lager 2 zum Toetenx gefuehrt. Ich glaube, dass ueber die besonders schreckliche Taetigkeit dieses Ukrainers diejenigen aussagen koennen, welche im Lager 2 gwesen sind, im Arbeitskommando natuerlich. Im Lager 2xwar Zalman Teigman, wohnt in Bath Yam, (so scheint mir), Elijahu Rosenberg und Frau Sonia Lewkowicz. Mehr kann ich zu diesem Sachverhalt nicht aussagen.

Darauf wurde die Vernehmung beendet, gelesen, unterschrieben.

(-) M.Radiwker (-) Eugen Turowski

Meine Aussagen bin ich bereit vor xxxxx amerikanischen Behoerden zu wiederholen.

(-) M.Radiwker (-) Turowski Eugen

ek

PHOTOCOPY

TO

[redacted]

7/22/86

[redacted]

(b)(7)(c)

EXHIBIT 6

Exhibit Identification Form G 166-B (1-1-54)

FPI—53—9-10-69—1M—4349

EXHIBIT A

Cleveland, O.; 11/19/76

(b)(6) A [redacted]

Exhibit Identification Form G166-B (1-1-54)

GPO 943-662

Translation # 34290

(b)(6)

Abraham G o l d f a r b
Izchak

Oct.7,1909 [redacted] Szczucin/District Bialystok

- - Pensioner [redacted]

M. Radiwker 26454 Headquarters 2.30 P.M. 5/9/76

Nazi

To the subject of investigations against the Ukranian ~~war~~ criminal Demjaniuk, Ivan, Mr. Abraham Goldfarb was given a hearing, today. He states as follows: I was imprisoned from August 1942 to Aug.43, in the annihilation camp of Treblinka. I worked in camp 2, where the gas chambers were located. During 18 weeks, I was working at slaking lime and from this place of work I saw everything that went on in the then active gas chambers. Even after the doors of the gas chambers were closed, I heard the wailing of the victims. Later, I worked right at the gaschambers,

(End of page 1, of the original)

I carried the bodies from the gas chambers to the cave and then to the funeral pile. Germans and Ukranians were doing the gassing. To ~~the~~ *a* question: I don't remember the names of the Ukranians - the name of Demianiuk I don't recall. I do remember a Ukranian whose first name was Ivan. He may have been 23-24 years old, was rather tall, had a full, round face. He wore a black uniform, a seaman's cap, he had no rank, I did'nt see a rank insignia on him. At least I don't remember having seen one. On the 17 photos shown to me, I believe

(End of page 2, of the original)

I recognize this Ivan on picture No. 16. When you tell me that this Ukranian was allegedly in Trawniki and Sobibor, I can say that during 1942/43 he had to be in Treblinka, but before the uprising in the summer of 1943, he was no longer, I believe, in Treblinka. The man depicted on picture 16, I remember from the gas chambers. His functtiion at the gas chambers was, together with a German SS-man, the "machinist" of the gas chambers whose name I have forgotten, to release the gas from the Diesel motor

(End of page 3, of the original)

into the gas chambers. This motor carried the gas into the small gas chambers (where in each chamber 400-500 people were gassed at a time). It was a Diesel motor which worked on Soler (sic!). The motor stood near the well where I took water for the lime slaking. I approached the well at the time Ivan was busy stuffing people into the gas chambers. He did this in

(-) M. Radiwker (-) A. Goldfarb

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(cont'd)

the most cruel way. We laborers called him "Ivan Grozny" (Ivan the Terrible). When the doors to the gas chambers were closed, he went to the motor. We did not go near the well then. I saw it clearly as he shoved the victims

(End of page 4, of the original)

into the gas chambers with pieces of iron and bayonets. He even cut living people with his knife. I saw it with my own eyes as he cut off pieces of flesh from people at the entrance to the gas chambers. I also saw him cut off the ears of laborers who worked at the gas chambers carrying corpses. One of these laborers was shot soon after this. I was lucky, he did'nt touch me. That which I have described, I have seen from nearby, from a distance of a few meters. That is all I can say.

Terminated, read, signed.

(-) M. Radiwker

(-) A. Goldfarb

ek

U. S. Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

The above translation from the German language was made by the undersigned.

Kata Sz. Wahl — MAY 21 1976

(Interpreter) (Date)

(b)(6)

הודעה מס' _____ גליון _____

הודעתו של Abraham G o l d f a r b השם באותיות לטיניות — שם המשפחה (לנקב) — השם הפרטי

השם הקודם _____ שם האב Izchak מס' הזהות _____ שנת הלידה 7.10.1909

מקום הלידה Szczucin/Kreis Bialystok המצע הקבוע _____ המיקוד _____

מס' הטלפון _____ המקצוע Rentner מקום העבודה _____ מס' הטלפון _____

התאריך 9.5.76 השעה 14.30 המקום Hauptquart מספרו, דרגתו ושמו של החוקר M.Radiwker 26454

Es wurde heute zum Gegenstand der Ermittlungen gegen den ukrainischen Naziverbrecher Demjaniuk Ivan Herr Abraham Goldfarb vernommen. Er sagt folgend aus: Ich war im Vernichtungslager Treblinka von August 1942 bis August 1943 inhaftiert. Ich arbeitete im Lager Nr.2, dort wo die Gaskammern waren. Im Laufe von 18 Wochen war ich beim Bau der neuen grossen Gaskammer beschaeftigt und habe von meiner Arbeitsstelle beim Kalkloeschen alles gesehen, was bei den damals taetigen Gaskammern vorging. Ich habe sogar nach dem Schliessen der Tuere der Gaskammern das Jammern der Opfer gehoert. Spaeter arbeitete ich bei den Gaskammern selbst, (Ende Seite 1 d.Originals) ich trug die Leichen von den Gaskammern zur Grube und dann zum Scheiterhaufen. Bei der Vergasung waren Deutsche und Ukrainer taetig. Auf Frage: Ich erinnere mich nicht an Namen der Ukrainer - der Namen Demianiuk ist mir nicht erinnerlich. Ich erinnere mich an einen Ukrainer mit Vornamen I v a n. Er konnte 23-24 Jahre alt sein, war ziemlich gross, hatte ein volles, rundes Gesicht. Er hatte eine schwarze Uniform, eine Schiffmuetze, er hatte keinen Rang, ich habe keine Rangabzeichen auf ihm gesehen. Jedenfalls erinnere ich mich nicht, es gesehen zu haben. Auf mir vorgezeigten 17 Lichtbildern glaube (Ende Seite 2 d.Originals) ich diesen Ivan auf Bild Nr.16 zu erkennen. Auf Vorhalt, dass dieser Ukrainer angeblich in Trawniki und Sobibor war, kann ich sagen, dass er in der Zeit 1942/43 in Treblinka sein musste aber vor dem Aufstand im Sommer 1943, war er, wie ich glaube, nicht mehr in Treblinka. Dieser Mann, welcher auf dem Bild Nr. 16 dargestellt ist, ist mir von den Gaskammern erinnerlich. Bei den Gaskammern hat er eine Funktion gehabt, naemlich zusammen mit einem deutschen SS-Mann, dem "Maschinist" von den Gaskammern, dessen Namen ich vergessen habe hat er das Gas vom Dieselmotor in die (Ende Seite 3 d.Originals) Gaskammern hereingelassen. Dieser Motor befoerdete das Gas in die kleinen Gaskammern (wo in jeder Kammer 400-500 Menschen auf einmal vergast wurden). Es war ein Dieselmotor, welcher auf Soler arbeitet. Der Motor stand nahe zum Brunnen wo ich Wasser zum Kalkloeschen nahm . Ich naeherte mich dem Brunnen in der Zeit wo der Ivan beim Hereinstopfen der Menschen in die Gaskammern beschaeftigt war. Er tat es in

(-) M.Radiwker (-) A.Goldfarb

grausamster Weise. Wir Arbeiter nannten ihn "Ivan Grozny" (Ivan der Schreckliche). Als die Tueren der Gaskammern geschlossen waren, kam er zum Motor. Damals naeherten wir uns schon nicht dem Brunnen. Ich habe genau gesehen, wie er mit Eisenstuecken und Bajonett

(Ende Seite 4 d.Originals)

die Opfer in die Gaskammer hineingestossen hat. Sogar mit seinem Messer hat er noch lebendige Menschen geschnitten. Ich habe allein mit meinen Augen gesehen wie er beim Eingang in die Gaskammern Stuecke Fleisch von Menschen mit seinem Messer geschnitten hat. Ich habe auch gesehen, wie er den Arbeitern, welche bei den Gaskammern arbeiteten, beim Leichentragen die Ohren abgeschnitten hat. So ein Arbeiter wurde bald nachdem erschossen. Ich habe Glueck gehabt, mich hat er nicht angeruehrt. Das was ich vorhin geschildert habe, habe ich von der Naehe, von Entfernung einiger Meter gesehen. Das ist alles, was ich sagen kann.
Beendet, gelesen, unterschrieben.

(-) M.Radiwker (-) A.Goldfarb

ek

ORIG TO
FINDER
4/21/86

RRB

PHOTOCOPY
TO
[redacted]
7/22/86
[redacted]

(b)(7)(c)

THE UNITED STATES OF AMERICA

DUPLICATE

TO BE FORWARDED TO

IMMIGRATION AND NATURALIZATION SERVICE

CERTIFICATE OF NATURALIZATION

(b)(6) No. [redacted]

Petition No. [redacted]

Personal description of holder as of date of naturalization: Date of birth April 3, 1920; sex male; complexion fair; color of eyes blue; color of hair brown; height 6 feet 0 inches; weight 182 pounds; visible distinctive marks scar left wrist.

Marital status married; former nationality Ukraine

I certify that the description above given is true, and that the photograph affixed hereto is a likeness of me.

Sign here

/ John Demjanjuk

(Complete and true Signature of holder)

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF OHIO } ss:

Be it known, that at a term of the District Court of The United States held pursuant to law at Cleveland, Ohio on November 4th, 1958 the Court having found that John Demjanjuk then residing at [redacted] Cleveland, Ohio intends to reside permanently in the United States (when so required by the Naturalization Laws of the United States), had in all other respects complied with the applicable provisions of such naturalization laws, and was entitled to be admitted to citizenship thereupon ordered that such person be and (s)he was admitted as a citizen of the United States of America.

In testimony whereof the seal of the court is hereunto affixed this 4th day of November in the year of our Lord nineteen hundred and fifty-eight and of our Independence the one hundred and eighty-three.

C.B. WATKINS, Clerk of the U.S. District Court. 36

By [signature] Deputy Clerk.

It is a violation of the U.S. Code (and punishable as such) to copy, print, photograph, or otherwise illegally use this certificate.

DEPARTMENT OF JUSTICE

Name changed by decree of Court, from

Ivan Demjanjuk, as part of naturalization.

November 14th, 1958

C.B. Watkins, Clerk

Deputy Clerk

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(b)(6)

Form Approved
Budget Bureau No. 43-R399

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Cleveland, Ohio

October 23, 1958

Petition No. [redacted]

A- [redacted]

Iwan Demjanjuk
[redacted]
Cleveland, Ohio

Dear Sir:
To the Petitioner:

In connection with the final hearing on your Petition for Naturalization, it is necessary that you furnish additional current information. Accordingly, you must insert your name and present address on the lines below, and answer "Yes" or "No" to each of the questions listed below. These questions apply only to events which have taken place since the date you filed your petition.

After you have filled in the form, sign your name on the line reading "Sign here". Do not swear to the form, but bring it with you when you are advised to appear for final hearing and present it to the naturalization examiner before the hearing.

Name Iwan Demjanjuk

Address [redacted] Cleveland 13 Ohio

Since the date you filed your Petition for Naturalization:

1. Has your marital status changed? Answer No
2. Have you been absent from the United States for a year or more? Answer No
3. Have you been arrested, or fined, or charged with the violation of any law whatsoever? Answer No
4. Have you joined any organization? _____ Answer No
5. Have you been a member of the Communist Party? Answer No

Form N-445
(7-1-58)

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(Over)

6. Have you claimed exemption from military service? Answer No

7. Has there been any change in your willingness to bear arms on behalf of the United States; to perform non-combatant service in the Armed Forces of the United States; to perform work of national importance under civil direction, if the law requires it? Answer No

8. The law provides that no person shall be regarded as a person of good moral character who, during the period of residence required for naturalization, is or was an habitual drunkard; has committed adultery; derived income principally from illegal gambling activities; has given false testimony for the purpose of obtaining any benefits under the immigration and naturalization laws; is or was a polygamist, or practiced or advocated polygamy; is or was a prostitute, or engaged in or received support or the proceeds from prostitution or procured or imported or attempted to procure or import persons for prostitution or any other immoral purposes or who came to the United States to engage in any other unlawful commercialized vice; knowingly and for gain encouraged or aided any alien to enter the United States illegally; has committed a crime involving moral turpitude; or is or has been an illicit trafficker of narcotic drugs. Have you been such a person or committed any of these acts? Answer No

Sign here Ivan Demjanjuk

DO NOT FILL IN THIS BLOCK

I swear (affirm) that the answers I have given to the questions in this form subscribed by me are true to the best of my knowledge and belief; so help me, God.

John Demjanjuk

Subscribed and sworn to (affirmed) before me at Cleveland, Ohio
this _____ day of NOV 14 1958
19

E. J. Scantland

U. S. Naturalization Examiner
(Title of Officer)

GPO 862183

SE-114
5/24/57 (30

PLEASE REFER TO THIS FILE NUMBER

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

(b)(6)

NAME OF PETITIONER Ivan Dmytryuk File No.

The following is a demonstration of the ability of the above-named petitioner for naturalization to write words in ordinary usage in the English language. Excerpt therefor dictated by me from Federal Textbook on Citizenship -

( ) Rights of the People, Book 2, page _____

( ) On the Way to Democracy, Book 2, page _____

(✓) The Day Family (Literacy Reader) Book 1, page 8

(Demonstrate here)

We go home in the car

Ability to write the English language found to be ( ) Satisfactory

( ) Unsatisfactory

Above-named petitioner requested to demonstrate ability to read words in ordinary usage in the English language by reading excerpt from Federal Textbook on Citizenship -

( ) Rights of the People, Book 2, page _____

( ) On the Way to Democracy, Book 2, page _____

( ) The Day Family (Literacy Reader) Book 1, page 8

Ability to read the English language found to be (✓) Satisfactory

( ) Unsatisfactory

30

(Examiner)

8-12-57
(Date)

GPO 941044

(Print or Type) NP

(b)(6) [redacted]

Alien Registration No. [redacted]
(Copy from registration receipt)

Name Ivan Demjanjuk

My present address is [redacted]
(Street address or rural route)

CHECKED

Cleveland 9 13 Ohio
(City or post office) (State)

My last address was [redacted]
(Street address or rural route)

Cleveland 9 13 Ohio
(City or post office) (County) (State)

I work for Fo. Mo. Co. 21
(Employer's name)

Brook Park R. Berea Ohio.
(Street address) (City or post office) (County) (State)

Date May. 12. 54. Signature Ivan Demjanjuk

U. S. GOVERNMENT PRINTING OFFICE 16—67216-1

85

98

ALIEN'S CHANGE OF ADDRESS CARD

(This card is not to be used for the annual address report required under the Immigration and Nationality Act between January 1 and January 31 of each year.)

Form AR–11
(6–11–52)

Form Approved.
Budget Bureau No. 43–R038.4.

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
19TH AND EAST CAPITOL STREETS NE.,
WASHINGTON 25, D. C.

16—67216–1

PHS-124 (FQ)
REV. 8-49
FEDERAL SECURITY AGENCY
PUBLIC HEALTH SERVICE

CLASS B MEDICAL CERTIFICATE

STATION NEW YORK, N. Y. DATE FEB 9 - 1952

NAME DEMJANJUK IWAN

AGE	SEX	DATE OF ARRIVAL
32	M	FEB 9 - 1952

PORT OF ARRIVAL
NEW YORK, N. Y.

CARRIER (Identifying marks)
U.S.A.T. "GENERAL W. G. HAAN"

CLASS	MANIFEST NO.	LINE
Q4.	7	8

The above-described person has this day been examined and found to be afflicted with (diagnosis, including statutory classification when applicable):

Pul. tuberculosis

Type of disease or defect, or organ affected (when appropriate):

DISPLACED PERSON

Substantiating data:

1. Laboratory reports:

2. Other medical data, including results of special diagnostic procedures:

V-Light

RB

BREMERHAVEN, GERMANY

EXAMINERS:

NAME	TITLE
[illegible]	[illegible] 02

U. S. GOVERNMENT PRINTING OFFICE 16—59868-1

Form 1-144
United States Dept. of Justice
Immigration & Natz. Service

Budget Bureau No. R299
Approval expires Dec. 31, 1951

AFFIDAVIT AS TO SUBVERSIVE ORGANIZATIONS OR MOVEMENTS.

I, DEMJANJUK, IWAN an applicant for admission to the United States under the Displaced Persons Act of 1948, as amended do hereby solemny swear (or affirm) that : I am not and have not ever been the member of the Communist Party of any Country; I do not adhere to, advocate, or follow and I have never adhered to, advocated orfollowed the principles of any political or economic system or philosophy directed towards the distruction of free competitive enterprise and the revolutionary overthrow of representative governments;
I am not and have never been a member of any organization mentioned on the attached list on Form 1-144a, which has been designated by the Attorney General of the United States or the form of government of the United States; I have never advocated or assisted in the persecution of any person because of race, religion, or national origin; I have not voluntarely borne arms against the United States during World War II .

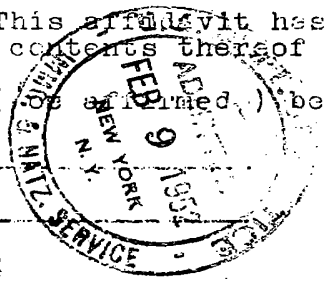
This affidavit has been read by (to) me and I fully understand the contents thereof and the warning stated below.

Sworn to (or affirmed) before

me this _____

at _____

IMMIGRATION & NATZ. SERVICE
FEB 9 1952
NEW YORK N.Y.



Iwan Demjanjuk
Applicant

United States Immigrant Inspector

WARNING

Any person who willfully makes any false statement in this affidavit may be subject to a criminal prosecution for perjury and upon conviction may be sentenced to prison for five years and fined $ 2.000. If such a person nevertheless enters the United States he may be deported at any time thereafter if it is discovered that any a statement in this affidavit is false.

Read by and explained to the applicant named above at LUDWIGSBURG, GER.

on 29. Dez. 1951 in Ukrainian

H S Brickle
United States Immigrant Inspector

01

Demjanjuk Dep. Ex 6

Form 1-144a
United States dept. of Justice
Immigration & Natz. Service

Budget Bureau No. 43-R299
Approval expires Dec. 31, 1952

ORGANIZATIONS WHICH HAVE BEEN DESIGNATED BY THE ATTORNEY GENERAL AS COMMUNISTNORGANIZATIONS .

(To be attached to and made part of Form 1-144)

Abraham Lincoln Brigade.
Abraham Lincoln School, Chicago, Ill.
Action Committee to Free Spain now.
American Association for Reconstruction in Yugoslavia, Inc.
American Committee for Europian Worker's relief.
American Committee for Foreign Born and their Protection.
American Committee For Spanish Freedom.
American Committee for Yugoslav Relief, Inc.
American Council for a Democratic Greece.
American Council on Soviet Relations.
American Croatian Congress.
American Jewish Labor Council.
American League against War and Fascism.
American League for Peace and Democracy.
American Peace Mobilization.
American Polish Labor Council.
American Rescue Ship Mission (a project of the United American Spanish Aid Committee.)
American Russian Institute, New York.
American Russian Institute of Souther California, Los Angeles.
American Russian Institute, Philadelphia, Pa.
American Russian Institue of San Francisco.
American Slave Congress.
American Youth Congress.
American Youth for Democracy.
Armenian Progressive League for America.
California Labor School inc 216 Market Street, San Francisco, Cal.
California Labor School.
Central Council of American Women of Croatian Descent, also known as Central Council of American Croatian of National Council of Croatian Women.)
Citizens Committee to Free Earl Browder.
Citizens Committee for Harry Bridges.
Citizens Committee of the Upper West Side (New York City)
Citizens Committee.
Civil Rights Congress and its Affiliates.
Comite Coordinador pro Republica Espanola.
Committee to Aid the Fighting South.
Committee for a Democratic Far Eastern Policy.
Commonwealth College, Mena, Ark.
Communist Party USA.
Communist Political Association.
Congress of American Revulutionary Writers.
Congress of American Women.
Connecticut State Youth Conference.
Council on African Affairs.
Council,for Pan-American Democracy.
Daily Workers Press Club.
Dennis Defense Committee.
Detroit Youth Assembly.
Emergency Conference to Save Spanish Refugees (founding body of the North American Aid Committee.)
Florida Press and Education League.
Friends of the Sovie Union.
George Washington Carver School, New York City.
Hawaii Civil Liberties Committee.
Hollywood Writers Mobilization for defense
Hungarian American Council for Democracy.

Independent Socialist League. International Labor Defense.
International Workers Order, incl. People's Radio Foundation, Inc.
Jefferson School of Social Science, New York City.
Jewish Peoples Committee. Labor Research Association, Inc.
League of American Writers. Macedonian-American Peoples League.
Michigan Civil Rights Federation. Michigan School Of Social Science.
National Committee for the Defense of Political Prisoners.
National Committee to Win the Peace.
National Conference on American Policy in China and the Far East,
a Conference Called By the Committee for a Democratic Far East.
National Council of Americans of Croatian Descent.
National Council of American Soviet Friendship.
National Federation for Constitutional Liberties.
National Negro Congress. Nature Friends of America (since 1935)
Negro Labor Victory Committee. New Committee for Publications.
North American Committee to Aid Spanish Democracy.
North American Aid Committee. Ohio School Of Social Sciences.
Oklahoma Committee to Defend Political Prisoners.
People's Education Association. Peple's Institute of Applied Relig.
People's Radio Foundation, Inc. Philadelphia School of Social Science.
Photo League New York,N.Y.
Progressive German-American, also known as Progressive German-Americans
Revolutionary Workers League. of Chicago.
Samuel Adams School, Boston, Mass. Schappes Defense Committee.
Schneiderman Darcy Defense Committee.
School of Jewish Study, New York City. Seattle Labor School, Seattle.
Serbian Vidovdan Council. Slowanian-American National Council
Socialist's Workers Party incl. American Committee for Europian
Socialist Youth League. Workers Relief.
Southern Negro Youth Congress. Tom Paine School of Science.Philad.
United American Aid Committee. United Committee of South Slavic
United Harlem Tenants and Consumers Organization. Americans.
United May Day Committee. United Negro & Allied Veterans of America.
United Spanish Aid Committee. Veterans of the Abraham Lincoln's Brig.
Walt Whitman School of Social Science, Newark, N.J.
Washington Bookshop Association. Washington Committee for Democr. Act.
Washington Commonwealth Federation.
Wisconsin Conference on Social Legislation.
Workers Alliance. Workers Party inc. Socialist Youth League.
Yiddisher Kulturverband. Young Communist League.
American-Russian Peoples Society. Croatian Benevelent Fraternity.
Finnish-American Fraternal Society. Hellenic-American Brotherhood.
Hungerian Brotherhood. Jewish People Fraternal Order.
Polonia Society of the IC. Rumanian-American Fraternal Society.
Serbian-American Fraternal Society. Slovak Workers Society.
Ukrainian-American Fraternal Union.
Joseph Wedemeyer School of Social Science , St. Louis.
Boston Scholl For Marxist Studies.
Pacific Northwest Labor School Seattle, Wash.
Partido del Pueblo of Panama.
Union of American Croatians.
American of the Federation of Greek Unions. (Branch)
Virginia League for Peoples Education.
Labor Youth League.

(b)(6)

Form AR-4
(Revised)

OFFICE USE ONLY

ALIEN REGISTRATION ONLY

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

VISA APPLICATION No. I-1272219

Stuttgart, Germany
(American Consulate issuing visa)

FULL AND TRUE NAME: Iwan DEMJANJUK	OCCUPATION: driver
ALIASES: XX	
LAST PERMANENT RESIDENCE: Camp Feldafing/Munich, Germany	
DATE AND PLACE OF BIRTH: April 3, 1920 at KIEW, USSR	AGE: 31
NATIONALITY: Polish	RACE: Ukrainian
HAIR: brown	EYES: grey
HEIGHT: 6'1"	COMPLEXION: med
MARKS OF IDENTIFICATION: scar on left hand	
FINAL DESTINATION IN UNITED STATES: Decatur, Indiana	
DATES OF PREVIOUS SOJOURN IN THE UNITED STATES: none	
THE NAMES AND ADDRESSES OF MY PARENTS ARE: Mother Olga nee MARTSCHENKO Address unknown; Father Nikolaj DEMJANJUK Address unknown	
NEITHER OF MY PARENTS ARE LIVING AND THE NAME, RELATIONSHIP, AND ADDRESS OF NEAREST RELATIVE IN COUNTRY WHENCE I COME IS: XX	

OFFICIAL STAMP

DEC 27 1951

16—38748-1

Please Do Not Fold This Card

RECEIVED
APR 25 1952
IMMIGRATION & NATURALIZATION SERVICE
DETROIT, MICHIGAN

ALIEN

RETURN 2-5
LEAVE THIS SPACE BLANK

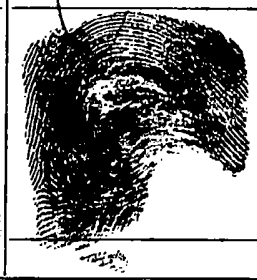
Name DEMJANJUK Iwan
(Surname) (First) (Middle)

Classification

PLEASE TYPE OR PRINT PLAINLY

Nationality Polish (Quota: Soviet) Color white Sex male Reference

RIGHT HAND

1. THUMB	2. INDEX FINGER	3. MIDDLE FINGER	4. RING FINGER	5. LITTLE FINGER
				

LEFT HAND

6. THUMB	7. INDEX FINGER	8. MIDDLE FINGER	9. RING FINGER	10. LITTLE FINGER

IMPRESSIONS TAKEN BY:

(Signature of official taking prints)

Date impressions taken

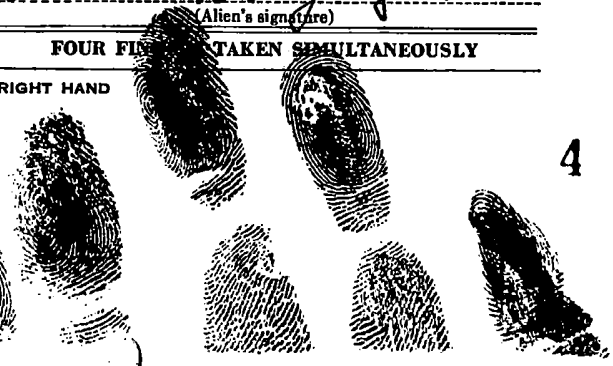
NOTE AMPUTATIONS

Iwan Demjanjuk
(Alien's signature)

FOUR FINGERS TAKEN SIMULTANEOUSLY — LEFT HAND

LEFT THUMB RIGHT THUMB

FOUR FINGERS TAKEN SIMULTANEOUSLY — RIGHT HAND



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Please Do Not Fold This Card

16—46748-1 U. S. GOVERNMENT PRINTING OFFICE

Ortspolizeibehörde
(Ausstellende Behörde)

Feldafing

Feldafing den 17.12.51

Polizeiliches Führungszeugnis *)

zur Vorlage bei den Auswanderungsbehörden

Ueber Herrn — ~~XXXXXXXXXX~~ DEMJANUK Iwan

in Feldafing polizeilich gemeldet — seit**) 13.11.51 bis und noch

geboren am 3.4.1920 in Kiew

sind — ~~lt. Strafregisterauszug~~ — hier — keine ~~XXXXXX~~ Strafen vermerkt:

Bayern Gemeinde Feldafing

Ortspolizeibehörde

(Wolf)

Gebühr: . . 2.— DM

16

*) Zur Beachtung! In polizeilichen Führungszeugnissen werden Strafen und Entscheidungen in dem durch Gesetze und Verwaltungsvorschriften bestimmten Umfang vermerkt. Im übrigen geben polizeiliche Führungszeugnisse keinen Aufschluß über das Allgemeinverhalten des Inhabers.

**) Eine Aufenthaltsdauer ist nicht anzugeben, wenn ein Strafregisterauszug erholt wurde.

Nr. 159. Verlag J. Maiß, München, Kanalstr. 1

Demjanjuk Def. Ex 4A 9591

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T r a n s l a t i o n

Local Police Authority
of Feldafing — Feldafing, 17/12/1951

Police Certificate of Conduct

for the purpose of being submitted to the emigration authorities

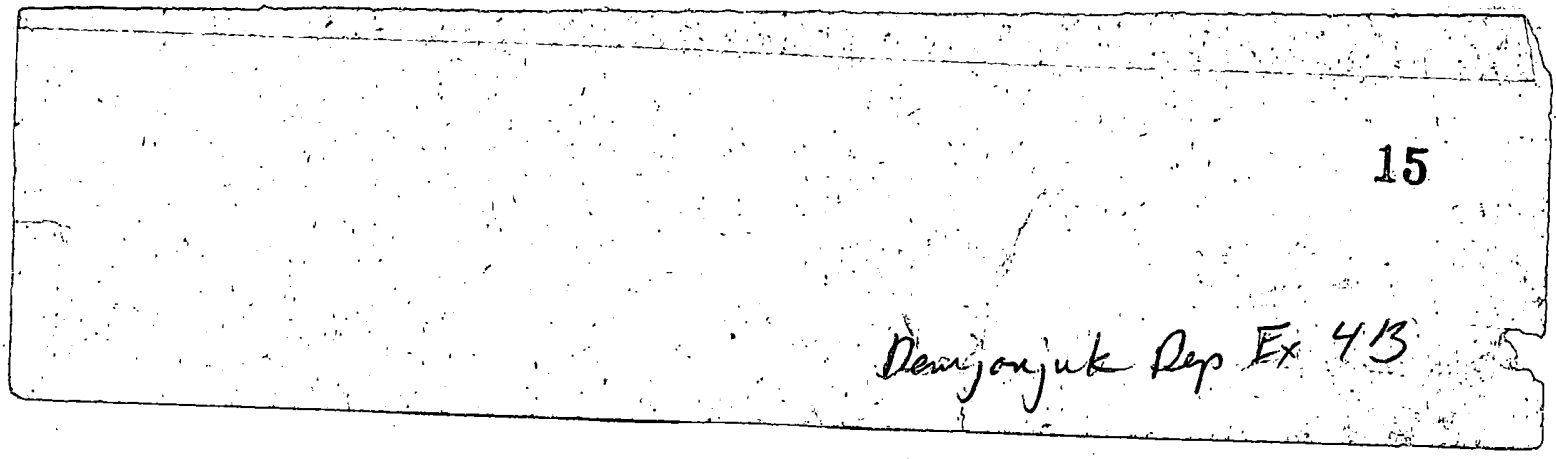
No punishments are entered here on Mr. D e m j a n u k Iwan, registered with the police in Feldafing from 13/11/1951 to date, born on 3/4/1920 in K i e w .

Local Police Authority:
(signed) W o l f .

Official seal

Note: In police certificates of conduct punishments and decisions are entered to the extent required by law and by administrative regulations. For the rest police certificates of conduct do not give an information on the general conduct of the bearer.
A period of stay is not to be stated, if an extract from the penal register was obtained.

Büro für schriftliche Arbeiten
Ludwigsburg, Remsweg 3


15
Demjanjuk Dep Ex 413

INTERNATIONAL REFUGEE ORGANIZATION

Office of Protective Service
IRO HQ US ZONE APO 407

Telephone 28311, Ext. 12

Date 17. Dec. 1951

GOOD CONDUCT CERTIFICATE

THIS IS TO CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE

MR. MRS. MISS DEMJANJUK, Iwan

(b)(6) ID. CARD [redacted] BORN 3.4.1920 AT Ucrainia

HAS NOT BEEN ARRESTED, IMPRISONED OR INVOLVED IN ANY CRIMINAL ACTIVITY DURING HIS/HER PERIOD OF RESIDENCE IN UNRRA AND/OR IRO CAMPS

FROM May 1945 TO present time

GOOD CONDUCT CERTIFICATES FOR OTHER PERIODS AS MENTIONED ABOVE ARE NOT AVAILABLE.

INTERNATIONAL REFUGEE ORGANIZATION OFFICE OF PROTECTIVE SERVICE US ZONE HQ

RANDOLPH K. STONE
Chief, Office of
Protective Service

NO.: 6028

SEAL

14

1783 IRO - X - 51 10000

Demjanjuk Dep Ex 4C

DPC FORM NO. 27
GOOD FAITH AFFIDAVIT

UNITED STATES OF AMERICA

DISPLACED PERSONS COMMISSION

DEMJANIUK, Iwan
Name of applicant

[redacted] (b)(6)
E. C. No.

[redacted]
Assurance No.

I swear or affirm that:

I have read or had translated to me and understand the terms of the employment indicated in the assurance above specified under which I am being considered for immigration into the United States; I accept and agree in good faith to abide by such terms of employment.

I understand that I may be deported if the foregoing statement is false.

Signed Demjanjuk Iwan
Applicant

Subscribed and sworn to or affirmed before me at Ludwigsburg, Germany

this 17th day of October 1950

Vincent Rotundo
Authorized Officer, Displaced Persons Commission

VINCENT ROTUNDO

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Demjanjuk Dep. Ex 5

DPC FORM NO. 268

GOOD FAITH AFFIDAVIT

UNITED STATES OF AMERICA

DISPLACED PERSONS COMMISSION

7. 19 50

I swear or affirm that:
I have read or had translated to me and understand the terms of the employment indicated in the assurance above specified under which I am being considered for immigration into the United States; I accept and agree in good faith to abide by such terms of employment.
I understand that I may be deported if the foregoing statement is false.

Ich schwöre bzw. erkläre an Eides Statt, wie folgt:
Die Arbeitsbedingungen, die in der obig bezeichneten Zusicherung enthalten sind, unter der ich zur Einwanderung nach den Vereinigten Staaten in Betracht gezogen werde, habe ich gelesen oder mir übersetzen lassen und sie verstanden; ich nehme diese Arbeitsbedingungen an und verpflichte mich, sie treu und redlich einzuhalten.
Ich habe zur Kenntnis genommen, dass ich der Landesverweisung fällig werde, falls die obige Erklärung falsch ist.

Przysięgam, albo stwierdzam, że:
Przeczytałem, albo przetłumaczono mi i zrozumiałem warunki zatrudnienia podane w wyżej wyszczególnionej ofercie zatrudnienia, na podstawie której jestem brany pod uwagę jako imigrant do Stanów Zjednoczonych. Przyjmuję powyższe warunki i w dobrej wierze zgadzam się na ich dotrzymanie.
Zdaję sobie sprawę, że mogę podlegać deportacji, jeżeli powyższe moje oświadczenie okaże się fałszywe.

Es zvēru vai apliecinu ka:
Es izlasīju vai man pārtulkoja un es saprotu darba noteikumus augšminētā apliecinājumā uz kura pamata mani pielaiž immigrācijai Savienotās Valstīs; es pieņēmu un apņemos labā ticībā pildīt šos darba noteikumus.
Es saprotu ka mani var deportēt ja es neizpildu šo zvērastu vai solījumu.

Я клянусь или утверждаю, что
Я прочел или прочла, или что мне перевели, и что я понимаю условия работы, указанной в вышеозначенном поручительстве, на основании которого рассматривается вопрос о моем в'езде в Соединенные Штаты в качестве иммигранта или иммигрантки. Я принимаю оказанные условия работы и добросовестно соглашаюсь твердо придерживаться их.
Я понимаю, что я могу быть выслан или выслана из Соединенных Штатов, если вышесказанное заявление окажется ложным.

Giuro o dichiaro:
Che ho letto (o mi son fatto tradurre) e che comprendo le condizioni di lavoro esposte nell'offerta d'impiego di cui sopra, in base alla quale si sta considerando la mia immigrazione negli Stati Uniti. Accetto tali condizioni e mi impegno in buona fede ad attenermi ad esse.
Sono pienamente consapevole che nel dichiarare il falso sono soggetto alla deportazione dagli Stati Uniti.

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Benjamins Juran.

Benjamin L. Dep. Ex SA

HIGOG R-1411 L August 50 100 M

Copy

Stamdesamt Regensburg

F 2

HEIRATSURKUNDE

(Standesamt Regensburg, Nr. 924/1947).

Der Kraftfahrer Iwan D e m j a n j u k , wohnhaft in Regensburg, geboren am 3. April 192o in Kiew/Ukraine, und

die Wera Delakowska, geborene [redacted] ohne Beruf, wohnhaft in Landshut, geboren am 8. [redacted] Polen,

haben am 1. September 1947 vor dem Standesamt Regensburg die Ehe geschlossen.

(b)(6)

Vermerke : keine.

Regensburg, den 1. September 1947.

(Oval seal of the Registry Regensburg)

Der Standesbeamte :
In Vertretung : Steuer.

G

Reg.No....2261./50 Ulm/Donau, April..27,1950
This is a true and faithful copy of the German original document submitted.

IRO AREA 2 Assembly Center Legal Counsellor W.C. 235 ULM/D. Sedan-Kaserne

E. MULA
Legal Counsellor
IRO Area 2, Assembly Center W.C. 235
Sedan-Kaserne Ulm/D.

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Demijonjuk Dep. Ex 3

Translation from German

Registry Regensburg F 2

CERTIFICATE OF MARRIAGE

(Registry Regensburg, No. 924/1947).

Iwan D e m j a n j u k , driver, resident of Regensburg, born on April 3, 1920, in Kiew/Ukraine, and

Wera, D e l a k o w s k a, nee [redacted] without profession, resident of Landshut, born on [redacted] Poland, (b)(6)

were married on September 1, 1947, at the Registry Regensburg.

Remarks : none.

Regensburg, on September 1, 1947.

(Oval seal of the Registry Regensburg) The Registrar : by: Steuar

Reg.No. 2268/50 Ulm/Donau, April 27, 1950
This is a true and faithful translation of the German original document submitted.

E. MULA
Legal Counsellor
IRO Area 2, Assembly Center WG. 235
Sedan-Kaserne Ulm/D.

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Demjanjuk Dep. Ex 3A

Ausfertigung.

Urk.R.Nr.1601.

Eidesstattliche Erklärung.

Heute, den vierten August neunzehnhundertachtundvierzig
4. August 1948
erscheint vor mir, Dr.Ernst R e i s e r , Notar mit dem Amtssitz in Regensburg, in meiner Geschäftsstelle Neupfarrplatz 14/I in Regensburg:

(b)(6) Herr Iwan D e m j a n j u k , Kraftfahrer in Regensburg, [redacted] ausgewiesen durch seine von der I.O. Amberg am 11. Februar 1948 ausgestellte DP-Karte Nr. [redacted].

Auf Ersuchen des Erschienenen, der von mir über die Bedeutung einer eidesstattlichen Versicherung belehrt wurde, beurkunde ich seine nachstehenden Erklärungen:

I.

Ich benötige zur Vorlage an Behörden meine Geburtsurkunde. Da ich eine solche nicht besitze und mir infolge der Zeitverhältnisse auch nicht beschaffen kann, gebe ich folgende eidesstattliche Erklärung ab:

Ich, Ø Iwan Demjanjuk, bin geboren am 3. April 1920 in Kiew (Ukraine) als Sohn der Eheleute Nikolaj und Olga Demjanjuk, letztere eine geb. Martschenko.
Ich bin nach orthodoxem Ritus getauft. Ich bin Ukrainer.

II.

Herr Demjanjuk ersucht, ihm von dieser Urkunde 3 Ausfertigungen zu erteilen.

Vorgelesen vom Notar, von dem Beteiligten genehmigt und eigenhändig unterschrieben:

Iwan Demjanjuk

Siegel Dr.Reiser,Notar.

Wert: 1500.-DM
§ 43 10.— DM
§ 138 -.50 DM
Ums.St. -.32 DM
Dr.Reiser.

Vorstehende mit der Urschrift übereinstimmende Ausfertigung wird Herrn Iwan D e m j a n j u k als Beteiligtem auf Antrag erteilt.

Regensburg, den 4.August 1948.

Dr. Ernst Reiser Notar in Regensburg

Dr. Reiser 18
Notar.

Demjanjuk Dep Ex 2

Translation from German

Execution.
Doc.Roll No. 1601.

S W O R N S T A T E M E N T

Today, on August fourth, nineteenhundred fortyeight,
August 4, 1948,
appears before me, Dr. Ernst Reiser, notary with official residence in Regensburg, in my office on Neupfarrplatz 14/I, in Regensburg :

(b)(6) Mr. Iwan D e m j a n j u k, driver of Regensburg, [redacted] identified through his DP Identity Card No. [redacted], issued by IRO Amberg on February 11, 1948.

On the request of the person appeared who was informed by me about the significance of a sworn statement, I herewith documentate the following declaration :

I.

I require, for presentation to an authority, my birth certificate. Since I do not possess such a certificate and, because of the present circumstances, am not in a position to obtain one, I submit the following declaration in lieu of an oath :

I, Iwan D e m j a n j u k, was born on April 3, 1920, in Kiew, Ukraine, as son of the married couple Nikolaj and Olga Demjanjuk, nee Martschenko. I am baptized according to the orthodox rite. I am a Ukrainian.

II.

Mr. Demjanjuk asks to be issued three copies of the document.
Read aloud by the notary, approved and signed with own hand by the persons concerned :

Iwan Demjanjuk

Value:1500.-DM Seal. Dr.Reiser, Notary.
§ 43 10.-- DM
§ 138 -.50 DM
Tax -.32 DM

The above execution which is conform with the original is given to Mr. Iwan Demjanjuk on his request as percon concerned.

Regensburg, on August 4, 1948.

(Round seal of the notary Dr. Reiser in Regensburg)

signed Dr. Reiser
Notary.

Reg.No 2.2.81../50 Ulm/Donau, April 27, 1950
This is a true and faithful translation of the German original document submitted.

IRO AREA 2 Assembly Center Legal Counsellor OM 235 ULM/D. Sedan-Kaserne

E. MULA
Legal Counsellor
IRO Area 2, Assembly Center WG. 235
Sedan-Kaserne Ulm/D.

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Demjanjuk. Dep. Ex 2A

John H. Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of John Demjanjuk	)	File No. A [redacted] (b)(6)
In removal proceedings	)	

RESPONDENT'S MOTION TO REOPEN

John Demjanjuk, the respondent, by his undersigned attorneys, hereby moves the Board of Immigration Appeals ("Board") for an order reopening the removal proceedings against him to hear evidence of changed country conditions in Germany, one of the countries to which he has been ordered removed, that warrant deferral of removal pursuant to the Convention Against Torture.

1. Prior Proceedings

The Chief Immigration Judge entered a final order December 28, 2005 that Mr. Demjanjuk be removed to Ukraine, Poland or Germany and denied Mr. Demjanjuk's application for deferral of removal to Ukraine pursuant to the Convention Against Torture. That decision was upheld by the Board of Immigration Appeals on December 21, 2006 (*see* Attachment No. 1), and affirmed by the United States Court of Appeals for the Sixth Circuit on January 30, 2008, *Demjanjuk v. Mukasey*, 514 F.3d 616 (6th Cir. 2008). The Supreme Court denied certiorari on May 19, 2008, *Demjanjuk v. Mukasey*, 128 S.Ct. 2491 (mem.), 171 L.Ed.2d 780.

Mr. Demjanjuk is not a subject of any pending criminal proceeding under the Act. As is more fully set forth below, Mr. Demjanjuk appears to be the subject of a criminal investigation in Germany which has led to the issuance of an arrest warrant by a German court in Munich, Germany.

2. Jurisdiction of the Board[1]

This is a motion to reopen the removal proceeding for the sole purpose of hearing evidence of changed country conditions in Germany, one of the countries to which the Immigration Court ordered Mr. Demjanjuk removed. Because the Immigration Court's removal order was appealed to the Board, the Board has jurisdiction to reopen a case in which it has

[1] Respondent mistakenly filed his Motion to Reopen and Emergency Motion for a Stay with the Immigration Court.

rendered a decision. 8 CFR 1003.2(a). This interpretation is supported by Section 5.2(a)(iii)(A) of the BIA Practice Manual which says that:

> As a general rule, where an appeal has been decided by the Board and no case is currently pending, a motion to reopen or a motion to reconsider may be filed with the Board. . . .

Pursuant to 8 CFR 1003.2(c)(3)(ii) the time limits of 8 CFR 1003.2(c)(2) do not apply when reopening is sought to assert changed country circumstances applicable to a claim under the Convention Against Torture. Moreover, no filing fee is required for a motion to reopen solely on these grounds. 8 CFR 1003.8.

3. Changed country circumstances

The Immigration Court decided Mr. Demjanjuk's Convention Against Torture ("CAT") claim in its December 28, 2005 decision. Mr. Demjanjuk's CAT claim at that time related only to removal to Ukraine. As will be outlined below, at that time there was no reason for Mr. Demjanjuk to believe that if he were removed to Germany he would be subject to arrest, imprisonment, or prosecution. Moreover, even if he had been arrested and imprisoned at that time, while his health was not good and certainly would not have withstood the harsh conditions in Ukrainian jails, there was no reason to believe that his physical condition was such that the incarceration or trial in Germany would have inflicted severe physical and mental anguish on him amounting to torture within the meaning of the regulations. Both of these conditions have changed.

Changed German Intentions

The first change since adjudication of the 2005 CAT claim is in German intentions. The German authorities have made it clear that they intend to arrest, incarcerate and try Mr. Demjanjuk if he is removed to Germany. On March 10, 2009 a German Judge issued an arrest

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order for Mr. Demjanjuk on suspicion of assistance in murder.[2] It is now clear that unlike the situation that existed in 2005, Mr. Demjanjuk now faces the prospect of arrest, incarceration and trial if he is removed to Germany.

Changed Health Conditions

While Mr. Demjanjuk's health was not good at the time of the 2005 CAT claim for withholding removal to Ukraine, it has deteriorated significantly in the intervening four years. Attached hereto are medical reports on Mr. Demjanjuk that show the serious state of his health (*see* Attachment No. 2):

A. Dr. Wei Lin (MD at the Cleveland Clinic Cancer Center) showing that Mr. Demjanjuk is suffering from and being treated for *Myelodysplastic Syndrome (MDS), Persistent Anemia and Chronic Renal Failure.*

B. Dr. Keck Chang, MD who diagnosed Mr. Demjanjuk with *Chronic Kidney Disease* (CKD Stage 3), *Anemia* associated with MDS and CKD, *Hyperoxaluria* and *Kidney Stones.*

C. Dr. Timmappa Bidari, MD confirms that Mr. Demjanjuk has *Myelodysplastic Syndrome, Anemia and leucopenia* secondary to the MDS.

D. Dr. Giuseppe Antonelli (an arthritis specialist) reports that Mr. Demjanjuk is suffering from *arthritis* and *severe spinal stenosis.*

On April 2, 2009, the Immigration and Customs Enforcement Division of the Homeland Security Department ("ICE") sent a doctor to Mr. Demjanjuk's home to give him a medical examination to determine whether it would be safe for him to travel to Germany. While ICE has not provided Mr. Demjanjuk with a copy of the medical report, Mr. John Demjanjuk, Jr., Respondent's son, video taped the examination. In addition to the ICE doctor, other representatives of ICE were present at the examination and video taping. Mr. Demjanjuk Jr. has

[2] Mr. Demjanjuk does not have a certified English translation of this document. The Office of Special Investigations has admitted this, however, in its filing with the Immigration Court on April 3, 2009 in opposition to Respondent's Motion to Reopen mistakenly filed there. See Government's Opposition at p. 4.

submitted a video clip showing the final stages of that examination. *See* Declaration of John Demjanjuk, Jr. (Attachment No. 3) and the attached video clip attached thereto.

4. Planned German actions will amount to torture

It is plain from viewing the video clip that Mr. Demjanjuk is in very poor health generally, and that his back problems (severe spinal stenosis) are causing him severe pain making it difficult if not impossible for him to move himself around. It is equally clear that putting someone in that state of health in a jail environment will subject him to very severe physical pain, and that forcing him to attend court for weeks or months of a trial will be an excruciating ordeal. The video clip alone makes it clear that the physical requirements for torture, "infliction of severe pain or suffering" (8 CFR 1208.18), would be met by confinement of Mr. Demjanjuk in jail conditions and compounded if he were required to attend a protracted trial.

There is also a "purpose" and an "intent" requirement in the regulations defining torture. The purpose and intent of the German authorities obviously must be inferred by the Board from the surrounding circumstances. The German authorities are scarcely going to announce to the press that they have decided to throw Mr. Demjanjuk in jail and force him to stand trial in order to subject him to excruciating pain and that they are doing this in order to be seen to be punishing him because they think he worked for the Germans in 1942 and 1943 at a German death camp. The Board can, however, draw reasonable inferences regarding German intentions from several facts.

In its Opposition filed in the Immigration Court on April 3, the Government argued (Government Opposition p.10) (emphasis added):

> Any argument that Demjanjuk wishes to make about capacity to stand trial is properly made to the German authorities after arrival

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> in Germany. German courts have the authority to dismiss prosecutions on health grounds. Indeed, in Nazi cases, such outcomes have been commonplace in Germany for many decades. [citation omitted]

Accepting the truth of the Government's contention in the underscored language, the Board must ask itself, why the German authorities are now seeking to accept deportation of Mr. Demjanjuk, an 89 year old man who is obviously in poor health. Even a casual review of the video clip must raise serious doubts about Mr. Demjanjuk's ability to withstand a trial. If Mr. Demjanjuk cannot withstand the rigors of a trial (and the *innuendo* in the Government's statement above is that a generous standard has historically been applied in Germany to "Nazi cases"), why does the German government want to bring him to Germany where he is likely ultimately to be found unable to stand trial and then would become a ward of the German taxpayer? Why has the German government not availed itself of the opportunity to have an German official doctor conduct a medical examination to determine whether Mr. Demjanjuk is capable of standing trial in Germany before it accepts his deportation.[3]

There are two possible logical conclusions that the Board can draw from these facts. The first is that the German government simply wants to relieve the United States of the burden of supporting a sick, 89 year old man who has no connection with Germany other than that he was taken prisoner by the Germans in 1942 and is alleged to have worked for the Germans in 1942 - 1945. Under this analysis, the German authorities will (i) apply what the Government views as their generous standard to determine whether Mr. Demjanjuk is capable of standing trial, (ii) find him unable to do so, and (iii) turn the burden of supporting Mr. Demjanjuk for the rest of his life

[3] Both Mr. Demjanjuk's German counsel and his United States counsel have made it clear to the German authorities that Mr. Demjanjuk is available for a medical exam by the German authorities at any time, either at his home or at a suitable Cleveland hospital. The German authorities have not responded to the offer.

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over to the German taxpayer. Respondent suggests that such a conclusion, while consistent with the facts as we know them, would be fanciful.

The other conclusion that the Board can draw from the facts is that the German authorities do not care whether Mr. Demjanjuk is ultimately convicted or acquitted or even whether he is actually brought to trial. The German authorities want to bring him to Germany, arrest him, incarcerate him and bring him to trial if possible in order to be seen to be punishing Mr. Demjanjuk, at least to the extent of subjecting him to the severe physical and mental pain that pre-trial incarceration and a trial will cause. While a medical exam at some point before trial may well result in the dismissal of the case (at least if the *innuendo* in the Government's statement about German practice in this respect is correct), for many months and perhaps years Mr. Demjanjuk would be subjected to the severe physical and mental pain of incarceration and the German authorities would be viewed favorably in some quarters for "punishing" him for his alleged crimes. The Board can fairly conclude from the facts that the German authorities have both the purpose (punishment) and the specific intent to inflict severe physical and mental pain on Mr. Demjanjuk for that purpose.

Accompanying this Motion to Reopen is an Application for Deferral of Removal Pursuant to the Convention Against Torture on Form. I-589. (*See* Attachment No. 4) Part C5 of that sworn Application explains why Mr. Demjanjuk did not make this claim with respect to torture in Germany at the time the original Application for Deferral of Removal was filed on October 7, 2005. Part B4 of that standard form application further explains the changed circumstances. Those parts of Mr. Demjanjuk's Application are reproduced below for the convenience of the Board. The entire new I-589 is submitted in support of this Motion to Reopen.

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Supplementary Response to Part C5

Removal proceedings were commenced against me in 2004 to remove me to Ukraine, Poland or Germany. I applied for deferral of removal to Ukraine under the Convention Against Torture based on the climate of hate that the Department of Justice had created against me, and Ukraine's history and practice of torture in its prisons. At that time, I had no reason to believe that if I were removed to Germany I would be arrested or in the event of arrest subjected to severe mistreatment amounting to torture. Within the past few weeks it has become apparent that the German government has decided to accept deportation and to arrest, imprison and try me for some of the same crimes for which I was tried and acquitted in Israel. Arrest, imprisonment and trial in Germany for crimes for which I have already been acquitted would amount to severe mistreatment amounting to torture under the Convention Against Torture in view of my age (89 on 4/3/09) and my poor health as outlined in the attached medical reports. On information and belief, these changed circumstances in Germany which will result in my torture have been brought about by actions of representatives of the Department of Justice.

In summary, at the time I filed my original application for deferral of removal, I had no reason to believe that removal to Germany (as opposed to Ukraine) would result in actions by the German authorities that would amount to torture.

Supplementary Response to Part B 4

New Developments and Changed Conditions Since Original Application for Deferral

Since I filed my original application for deferral of removal pursuant to the Convention Against Torture ("CAT") on October 7, 2005 several developments have occurred that require the filing of an additional application, or the substantial amendment of the original application. These new developments are treated as the basis for a new application. If the proper procedural avenue is to seek to reopen the proceeding and amend the existing application, I request that this I-596 be treated as a motion to reopen and an amendment to the CAT application filed with the Immigration Court on October 7, 2005.

1. Decision by the German authorities to arrest, jail and prosecute. Since my October 7, 2005 application, on information and belief, the Federal Republic of Germany has decided to accept my deportation to Germany. In addition, the State prosecutor in Munich has issued a warrant for my arrest and, again on information and belief, the State prosecutor intends to have me arrested when I enter Germany, jailed, and tried as an accessory to murder. Based on information I have received from my attorney in Germany, the State prosecutor's theory is novel and has not previously been used by the German authorities in any prosecution of alleged concentration camp guards in that country. In 2005 there appeared little or no chance that even if I were deported to Germany the German authorities would either arrest, jail or prosecute me. Developments in the past several weeks have changed that situation as I have outlined above.

2. Significant health deterioration since October 2005. Since my October 7, 2005 application my health has deteriorated significantly as follows:

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- I am now almost four years older, which at age 89 is a significant change.
- I am suffering from and being treated for Myelodysplastic Syndrome (MDS) which is a disorder of the bone marrow and a pre-cursor to leukemia. I receive weekly treatment with Procrit for this condition and periodically have required blood transfusions.
- I am suffering from and being treated for Chronic Kidney Disease (CKD Stage 3).
- I am suffering from anemia and leucopenia associated with the MDS and CKD conditions.
- I am suffering from and being treated for hyperoxaluria and kidney stones.
- I am suffering from and being treated for arthritis, gout and spinal stenosis.

With the exception of the arthritis, gout and spinal stenosis, these conditions have manifested themselves since my October 2005 CAT application. The arthritis, gout and spinal stenosis have become much worse and seriously impede my ability to move and take care of myself. I frequently need assistance in rising from a chair and extended sitting is very painful. Copies of the most recent medical reports supporting this description of my present state of health are attached.

Why Arrest, Incarceration and Trial in Germany would be Torture

My present physical condition is described above. I will be 89 years old on April 3, 2009 and in general my health is poor. I suffer from the conditions described above. I am physically very weak and experience severe spinal, hip and leg pain which limits mobility and causes me to require assistance to stand up and move about. Spending 8 to 12 hours in an airplane seat flying to Germany would be unbearably painful for me.

I am very familiar with life as a prisoner. First I was a prisoner-of-war of the Germans after my capture in 1942, and subsequently I was a prisoner of the Israelis held in solitary confinement in an Israeli jail cell from early 1986 to 1993. During my time in solitary in an Israeli jail, they tried me, sentenced me to death, and ultimately acquitted me when incontrovertible evidence was presented that "Ivan the Terrible" was an individual named "Ivan Marchenko." As a prisoner of the Germans I was aged 22 - 25. As a prisoner of the Israelis I was aged 56 - 63 and in reasonably good physical and mental health. I am now age 89 and my health is poor. I could not look after myself in an ordinary jail cell as I need assistance to perform many functions, particularly those requiring rising, standing, and moving around. Incarceration under conditions similar to those I experienced in Israel would subject me to severe physical pain and suffering.

Spending 8 years in solitary confinement, 6 of them under sentence of death, is a psychological experience that leaves permanent scars, fears and vulnerabilities. I have serious doubts whether I could withstand incarceration and the terrible psychological strain of another trial at my age and in my weakened physical state. After my experience in Israel, the prospect of another "show trial," complete with emotional witnesses testifying to what they want to be true, not to what is true, is a nightmare that is unimaginable to someone who has not experienced it.

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Finally, I will raise the issue of the effect of another round of arrest, jail and trials on my family. The effect of the events from 1976 to today on my wife of over 60 years, and my three children and their families has been traumatic. My son, John Demjanjuk, Jr., has lived with the Justice Department's vendetta against me since he was 11 years old, through his teenage years and for all of his adult life. He is now 43 years old. My daughters were older when it began in 1976, but the impact on their lives and families may have been even more severe. I have been subjected to three major trials. The first of these was from 1977 when the Justice Department filed its denaturalization complaint to early 1986 which I was extradited to Israel. The second of these was from early 1986 when I was extradited to Israel and tried and convicted of murder to 1993 when the Israeli Supreme Court acquitted me and sent me back to the United States. The third was from 1999 when the Justice Department filed its second denaturalization complaint against me to today when I am facing the prospect of deportation to Germany and a likely fourth major trial there. The prospect of my family having to go through this experience for a fourth time is intensely painful to me.

Why Would the German Authorities Subject Me to this Treatment

This question calls for some speculation on the motives of the German authorities. I understand that the Office of Special Investigations (OSI), which has been the center of the Justice Department vendetta against me, has been trying to induce other countries (including Germany) to accept my deportation and to prosecute me. After the US Court of Appeals found that Office of Special Investigations' attorneys had committed a fraud on the court by withholding exculpatory evidence from the defense (and from the Israeli prosecutors), I did not expect OSI to rest until they had denaturalized me, deported me and put me on trial somewhere for something. I am sure that the record of the efforts of OSI to do this will eventually come to light.

The motivation of the German authorities is more difficult to understand. We have read in the press that certain organizations have been bringing pressure on the German authorities to undertake proceedings against me. This is consistent with the activities of these same organizations in promoting my extradition to Israel and trial there as "Ivan the Terrible." Why the German authorities should have yielded to such pressure is more difficult to understand. One possible reason is that the German authorities have not aggressively prosecuted German war criminals and have been subjected to considerable criticism on this account. It is possible that the German authorities see a prosecution of me as means to draw attention away from their past approach. Whether the German authorities are responding to outside pressure (including pressure from OSI) or are trying to divert attention from their own prior practices, they appear determined to arrest, jail and prosecute me despite the pain and suffering it will cause, and it can be inferred because of the pain and suffering it will cause me and my family.

Summary

In summary, the German authorities appear determined to arrest, incarcerate and try me again for alleged war crimes, notwithstanding the Israeli Supreme Court acquitted me of charges that included the same factual allegations that the German prosecutor appears to be planning. At my age, in light of my poor physical condition and the traumatic experiences I have undergone at

the hands of the US Justice Department, the Israelis, and the US Justice Department a second time, this will expose me to severe physical and mental pain that clearly amounts to torture under any reasonable definition of the term. The effect is magnified by the serious adverse effect that further proceedings will have on my family.

Mr. Demjanjuk's statements in response to Question C5 and B4 of the form I-589 adequately explain the changed country circumstances that clearly show that his deportation to Germany under those changed circumstances would now violate the Convention Against Torture.

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CONCLUSION

Wherefore, John Demjanjuk respectfully requests that the Board reopen this removal proceeding to consider his request for deferral of removal to Germany under the Convention Against Torture based on changed country circumstances as set forth above and in the accompanying exhibits and grant that request.

Respectfully submitted,

JOHN DEMJANJUK

By: John Broadley
One of his attorneys

John Broadley
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Dated: April 7, 2009

ATTACHMENT NO. 1

BIA DECISION IN THE CASE

FAX TRANSMISSION

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
5107 LEESBURG PIKE, SUITE 2000
FALLS CHURCH, VA 22041

PHONE.....703-605-1007

TO: John Broadley	DATE: 12-21-06
OFFICE: Attorney for Respondent	PAGES: 20
FAX#: (202) 333-5685	TIME: 2:42p.m.
PHONE#: (202) 333-6025	
FROM: CAMELLA , DOCKET TEAM	

Board Of Immigration Appeals/Clerks Office
Docket Team

Phone: (703) 305-0445
Fax: (703) 605-5235

(b)(6)

SUBJECT: COPY OF BOARD DECISION FOR A[redacted], DEMJANJUK, John

COMMENTS:

Confidentiality Notice: The information contained in this fax and any attachments may be legally privileged and confidential. IF you are not an intended recipient, you are hereby notified that any dissemination, distribution or copying of this fax is strictly prohibited. If you have received this fax in error, please notify the sender and permanently destroy the fax and any attachments immediately. You should not retain, copy or use this fax or any attachments for any purpose, nor disclose all or any part of the contents to any other person. Thank you

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U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Broadley, John, Esquire
1054 31st Street NW, Suite 200
Washington, DC 20007-0000

ICE Office of Chief Counsel/CLE
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN A [redacted] (b)(6)

Date of this notice: 12/21/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
HURWITZ, GERALD S.
MILLER, NEIL P.
OSUNA, JUAN P.

gilmorec

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [redacted] Cleveland (b)(6) Date:

DEC 2 1 2006

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

APPLICATION: Deferral of removal under the Convention Against Torture

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec."). By decision dated December 28, 2005, the Immigration Judge denied the respondent's application for deferral of removal under the Convention Against Torture, and ordered him

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removed from the United States to Ukraine, or in the alternative to Germany or Poland ("CIJ Deferral Dec."). On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

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forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. The Chief Immigration Judge also held that, as an alien who assisted in Nazi persecution, the respondent was barred as a matter of law from all forms of relief from removal other than deferral of removal under the Convention Against Torture. Exh. 20.

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[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

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A [redacted] (b)(6)

Thereafter, the respondent filed an application for deferral of removal. Exh. 31. On December 28, 2005, the Chief Immigration Judge denied the respondent's application for deferral of removal on the ground that he failed to meet his burden of proving: 1) that he was likely to be prosecuted if removed to Ukraine; 2) that if prosecuted he was likely to be detained; and 3) that if prosecuted and detained, he was likely to be tortured. The Chief Immigration Judge ordered the respondent removed to Ukraine, with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

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denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

C. The Immigration Judge's December 28, 2005, Decision Regarding Relief from Removal

The Immigration Judge noted that the respondent's application for deferral of removal is based on three underlying premises: 1) prisoners in Ukraine are frequently subjected to serious abuse or torture, 2) persons who are potentially embarrassing to the Ukranian government are at risk of physical harm and death, and 3) he is uniquely at risk of torture if he is removed to Ukraine. The Immigration Judge found that the evidence of record did not support a finding that the respondent would be prosecuted in Ukraine because of his Nazi past. In reaching this decision, the Immigration Judge noted that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany. The Immigration Judge also found that the evidence of record did not support a finding that the respondent would likely be detained while awaiting trial or as a result of conviction. Finally, the Immigration Judge found the respondent's assertion that he would likely be tortured if taken into custody in Ukraine to be speculative and not supported by the record. For these reasons, the Immigration Judge denied the respondent's application for deferral of removal because he found that he had not established that he was more likely than not to be tortured if removed to Ukraine.

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

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relevant to the removability issue had been established by collateral estoppel; and 5) the Chief Immigration Judge erroneously found that the respondent was not eligible for deferral of removal pursuant to the Convention Against Torture. Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

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Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(1), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd. Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

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because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himself to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

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> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal,' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

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because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

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We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

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law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hammer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstauswels*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

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In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as "'issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived ....'" *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

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2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112; NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

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respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

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appeals," 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko, supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

E. Deferral of Removal under the Convention Against Torture

Finally, the respondent argues that the Chief Immigration Judge erred in denying his application for deferral of removal under the Convention Against Torture. A person seeking deferral of removal must prove that it is more likely than not that he or she would be tortured if removed to a particular country. 8 C.F.R. §§ 208.16(c)(2) and 208.17(a). It is not sufficient for an applicant to claim a subjective fear of torture, rather, the applicant must prove, through objective evidence, that he or she is likely to be tortured in a particular country. *Matter of J-E-*, 23 I&N Dec. 291, 302 (BIA 2002). For purposes of the Convention Against Torture, "torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for a specific purpose, such as extracting a confession or punishing the victim. 8 C.F.R. § 208.18(a)(1). To qualify as torture, the act must also be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," at a time when the victim is in the offender's "custody or physical control." 8 C.F.R. §§ 208.18(a)(1) and (6). "Torture is an extreme form of cruel and inhumane treatment and does not include lesser forms of cruel, inhumane, or degrading treatment or punishment...." 8 C.F.R. § 208.18(a)(2). Moreover, "[a]n act that results in unanticipated or unintended severity of pain and suffering is not torture." 8 C.F.R. § 208.18(a)(5).

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The thrust of the respondent's claim for deferral is that: 1) the United States Government created a widespread public perception that he is responsible for crimes committed against Jewish prisoners by "Ivan the Terrible" at the Treblinka death camp; 2) the United States will encourage Ukraine to arrest, detain, and prosecute him if he is removed to Ukraine; 3) it is "irrational" to believe that the Ukrainian government will not comply with such requests; 4) many prisoners in Ukraine are subjected to mistreatment and/or torture; and 5) the respondent is especially "vulnerable" to mistreatment and torture because of his age. In denying the respondent's application, the Chief Immigration Judge concluded that the respondent failed to prove three key facts: 1) that as a result of the government's previous assertion that he was "Ivan the Terrible" (an assertion that the government has not made in more than a decade), he is likely to be prosecuted if removed to Ukraine; 2) that if prosecuted, he is likely to be detained; and 3) that if prosecuted and detained, he is likely to be tortured.

The Chief Immigration Judge relied on numerous exhibits showing that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. CIJ Deferral Dec. at 10 (citing Exhibits 35 at 1-2, 36, 37A at 15-22, 37C, 37G, 37H). Moreover, we note that the respondent stipulated that several Ukranian nationals who assisted in Nazi persecution had not been indicted or prosecuted, nor had Ukraine requested their extradition, despite the U.S. government's efforts to encourage Ukraine to do so. Exh. 35 §§ 1-20. We reject the respondent's speculation that because of his notoriety, his case is markedly different from others who have been returned to Ukraine. Instead, the State Department's advisory opinion letter[7] rebuts this claim by expressing the opposite opinion: that the government of Ukraine is "very unlikely" to mistreat a "high-profile individual[]" such as the respondent. Exhs. 39A and 45. For these reasons, and given the absence of *any* evidence of a Nazi war criminal facing prosecution in Ukraine, the respondant's speculative argument is not persuasive. Therefore, we agree with the Chief Immigration Judge that the respondent failed to establish that he is likely to be prosecuted if removed to Ukraine.

We also agree with the Chief Immigration Judge's finding that the respondent has not established that he is likely to be detained even in the unlikely event that he is prosecuted in Ukraine. As set forth in the stipulations between the parties, Ukranian law allows for pre-trial release of criminal defendants, and large numbers of Ukranian criminal defendants are released from custody while awaiting trial. CIJ Deferral Dec. at 11 (citing Exh. 35).

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[7] We reject the respondent's argument that the State Department's advisory opinion is inadmissible. In this regard, we note that the Federal Rules of Evidence do not apply in immigration court proceedings. Because the letter from the State Department is probative and its use is not unfair to the respondent, we find no error in the Chief Immigration Judge's consideration of the letter. *See Matter of K-S-*, 20 I&N Dec. 715, 722 (BIA 1993) (relying on State department advisory opinion letter as "expert" evidence); *Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785 (BIA 1999) (noting that the test for admissibility of evidence is whether the evidence is probative and whether its use is fundamentally fair so as to not deprive the alien of due process); 8 C.F.R. §§ 1208.11(a) and (b) (the State Department may provide an assessment of the accuracy of an applicant's claims, information about the treatment of similarly-situated persons or "[s]uch other information as it deems relevant").

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Finally, we agree with the Chief Immigration Judge's finding that although conditions in Ukranian prisons may be harsh, it is unlikely that the respondent would be tortured if detained. In this context we note that the evidence of record indicates that the government of Ukraine has permitted international monitoring of its prisons and has engaged in improvement efforts. CIJ Deferral Dec. at 12 (citing Exhs. 39A and 45). Moreover, we note that even if the respondent were to face harsh prison conditions in the unlikely event that he faces detention, generally harsh prison conditions do not constitute torture. *See Matter of J-E-*, 23 I&N Dec. at 301-04; *see generally, Alemu v. Gonzales*, 403 F.3d 572, 576 (8th Cir. 2005) (noting that substandard prison conditions are not a basis for relief under the Convention Against Torture unless they are intentionally and deliberately created and maintained in order to inflict torture); *Auguste v. Ridge*, 395 F.3d 123, 152-53 (3rd Cir. 2005).

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). Simply put, the respondent's arguments regarding the likelihood of torture are speculative and not based on evidence in the record. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006) (applicant fails to carry burden of proof if evidence is speculative or inconclusive). Therefore, we reject the respondent's arguments, and conclude that the Chief Immigration Judge correctly decided that the respondent failed to prove that he is likely to be prosecuted in Ukraine; that if prosecuted, he is likely to be detained either prior to trial or as a result of a conviction; and, that if prosecuted and detained, he is more likely than not to be tortured.

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

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ATTACHMENT NO. 2

MEDICAL REPORTS

CLEVELAND CLINIC CANCER CENTER
AT PARMA COMMUNITY GENERAL HOSPITAL
6525 Powers Blvd., Parma, OH 44129
Ph: 440-743-4747 Fax 440-743-4715

NAME: DEMJANJUK, John
CLINIC NO: 48648207
DATE OF SERVICE: 07/16/2008

DIAGNOSIS:
1. Myelodysplastic syndrome
2. Persistent anemia secondary to above

John Demjanjuk returned to clinic for follow up with his wife. He stated he is still weak despite receiving 2 units of blood transfusion around a month ago. He has received 2 doses of Procrit injection (every 2 weeks) since last visit. Symptom wise, he does not feel much different. He denies any fever, chills, night sweats or weight loss. His main complaint is weakness and his knee bothers him. His knee problem is pre-existing. He denies any chest pain, shortness of breath at rest or palpitations. No GI or GU complaints. No bleeding at all. No easy bruising.

His past medical history, personal/social history, medications and allergies were all reviewed.

REVIEW OF SYSTEMS: All 10 systems were reviewed. Except what is described above, the rest of the review of systems was completely unremarkable.

PHYSICAL EXAM: GENERAL: Patient appears at his baseline, comfortable, not in distress. He is afebrile with temperature 96, pulse 64, respiratory rate 20, blood pressure 122/64, weight 225 pounds. HEENT: Pale, no jaundice. Normal oropharynx on visual exam. RESPIRATORY SYSTEM: Lungs clear to auscultation bilaterally. No wheezing, rhonchi or crackles. Chest movement symmetrical. Trachea midline. CARDIOVASCULAR SYSTEM: Heart sounds S1, S2 with regular rate and rhythm. No gallops or additional heart sounds. GASTROINTESTINAL SYSTEM: Abdomen is soft, obese and nontender, nondistended. Normal active bowel sounds. No palpable mass or hepatosplenomegaly. MUSCULOSKELETAL SYSTEM: Decreased range of motion in major joints, symmetrical. No asymmetrical muscle weakness. Trace edema in lower extremities.

LABORATORY TESTS: WBC 2.4, hemoglobin 9.5, hematocrit 28.3, platelet count 210,000. Creatinine 1.8, BUN 38, total bilirubin 0.6.

ASSESSMENT/PLAN:
1. Myelodysplasia, responding poorly to Procrit therapy, although he only received 2 doses so far. I will continue the treatment and increase frequency of Procrit injection to every week if possible.
2. Chronic renal failure. I will refer him to nephrologist for nephrology consultation.
3. I advised the patient and his wife to bring his son with him during the next visit in one month. I will discuss chemotherapy with hypermethylating agent with them. Patient does not really understand much English, therefore, I feel that the language barrier is really affecting his informed decision-making ability. He will probably benefit from hypermethylating agent like Vidaza or Dacogen, if he could tolerate. We will discuss more in detail next time.
4. Given his symptomatic anemia, I offered the patient another 2 units of blood transfusion. He understood my recommendation, however, he could not make any decision when I asked him whether he would like to have a blood transfusion, his answer was "I do not know". This is quite frustrating. I advised him and his wife to go home and talk to his son and if he changes his mind on blood transfusion he will call and let me know. I will be happy to schedule it for him.

Total counseling time was about 40 minutes. This apparently is a difficult patient to take care of.

Wei Lin, M.D.

cc:
Date Dictated: 07/16/2008

Date Typed: jlb 07/17/2008 09:00

OFFICE HOURS BY APPOINTMENT

KEUCK CHANG, M.D.
DIPLOMATE IN NEPHROLOGY

6789 RIDGE RD., SUITE 203
PARMA, OHIO 44129

TEL: 440-888-4426
FAX: 440-888-5033

NAME: Demjanjuk, John
Birth date:04/03/1920 Age: 88 Gender: Male

Emergency contact:
Privacy:familv. Marital status/Occup:
Insurance: I
Chart No:8903a 8/08 727 160-170/70 Prob:

DATE: 09/08/2008 WT 227 BP 152/70 HT 6'9 TEMP
consult office visit with lab, us renal
99214
Follow up with Dr. Gollat for primary care
Follow up with Dr. Lin

x 72 inches / 3131
Body Surface 2.284
72.1 ml/min → 54.6 ml/min/1.73

Entitled for Social security → Medicare refused to pay for present
→ Had Ford Co. to assume primary provider: HMO health Ch.
received present 4 wks ago

130/60 both arms.
JVD ⊖
Heart lungs clear:
abd. soft, Kidney, liver not palpable
Pitty ⊖

1. To call result of Vit D Lab
2. Turn one c̄ each meal

1. CKD. (Stage 3.) 54.6 ml/min/1.73.
2. Hyperoxaluria
Hyperoxaluria.

return date: signature:

Wife answered.
9/9 Talked to pt
Vit D 400 IU/d

3. Anemia — MDS
CKD.
4. Kidney stones. Hyperoxaluria?
(Turn) ↑ Calcium
4(M) Renal fat pal

1-12-09
4:30

TIMMAPPA P. BIDARI, MD., INC.

JANUARY 19, 2009

DEMJANJUK, JOHN

DIAGNOSIS:
1. Myelodysplastic syndrome.
2. Anemia and leukopenia secondary to above.
3. Acute gout in the right big toe and the mid foot.

HISTORY OF PRESENT ILLNESS: He says he was coming along okay he started having severe pain in the right big toe and the middle of the foot since yesterday he has taken Colchicine but has run out of the medication.

REVIEW OF THE SYSTEMS:
Musculoskeletal System: As above.
General and Constitutional Symptoms: Has moderate degree of fatigue, denies fever and chills, night sweats, or weight loss.
Cardiovascular System: Has shortness of breath on exertion, no leg edema, or chest pain.
Head: Denies pressure or pain.
Eyes: Denies blurred vision.
ENT and Respiratory System: Unremarkable.
Skin: Denies rash, itching, or easy bruising. He has redness of the skin over the right big toe due to gout.
GI System: Denies abdominal pain, nausea, or vomiting.
Hemic and Lymphatic System: Has not felt any lumps under the arms, in the neck, or groins.
GU System: No dysuria or burning micturition has urinary frequency.
CNS: Has occasional lightheadedness.

SOCIAL HISTORY: As recorded previously.

PAST HISTORY: As recorded previously.

FAMILY HISTORY: As recorded previously.

PHYSICAL EXAM: Today reveals a B/P of 140/60; pulse rate is 72, respirations 18, temperature normal. Weight. 218 pounds. Head. Normal. Eyes. Conjunctival pallor noted no jaundice. ENT: Unremarkable. Neck. No lymphadenopathy. Chest. No sternal tenderness. Heart: Sounds normal. Lungs: Clear. Abdomen: No tenderness, no distention. Extremities: No leg edema, redness of the skin noted over the dorsum of the right big toe.

LABORATORY DATA: Today CBC shows hemoglobin of 9.8, hematocrit 29.2, WBC 3,100, and platelets 277,000.

TREATMENT PLANS: Give Procrit 60,000 units subcutaneously today.

I have prescribed him Colchicine 0.6 mg to take 1 daily for gouty arthritis in the right big toe and the foot.

Continue weekly Procrit and CBC, re-exam in two week's time.

TIMMAPPA P. BIDARI
TPB/djk

TIMMAPPA P. BIDARI, M.D., INC.
PHOENIX MEDICAL CENTRE
6020 RIDGE RD., SUITE 204
PARMA, OH 44129
TELEPHONE: (440) 887-9570

DIPLOMATE AMERICAN BOARD OF
INTERNAL MEDICINE
DIPLOMATE IN THE SUBSPECIALITY OF
1. ONCOLOGY
2. HEMATOLOGY

4/6/09.

Ref: John Demjanjuk.

To Whom it may concern:

This 88 yr old Gentleman is under my care since 29th Sept 2008. He has established Diagnosis of Myelo Dysplastic Syndrome since oct 2004. Previously he was under care of Different Hematologists and apparently one of them Dr. Li had suggested possible chemotherapy He has received Procrit injections in the past. In my office he initially received 40,000 units once a wk, which was not effective in improving his Hemoglobin & Hematocrit. For the past few months he is getting PROCRIT inj 60,000 units once weekly. Family raised the issue of whether John needs chemotherapy. We briefly talked about it. I suggested a Bone marrow test and Chromosome studies before deciding about it.

Yours sincerely

Timmappa P. Bidari

GIUSEPPE ANTONELLI, M.D.
Rheumatology and Internal Medicine
6789 Ridge Rd., Suite 108
Parma, Ohio 44129
(440)743-7100
Fax (440)743-7101

April 6, 2009

RE: John Demjannuk
DOB: 4-3-20

To Whom It May Concern,

Mr. Demjannuk is under my care for severe spinal stenosis and arthritis with chronic back and leg pains which requires supervision and analgesics.

If you have any questions, please contact my office.

Sincerely,

Giuseppe Antonelli, M.D.

ATTACHMENT NO. 3

DECLARATION OF JOHN DEMJANJUK, JR.

VIDEO CLIP

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	File No. A[redacted] (b)(6)
In removal proceedings	

DECLARATION OF JOHN DEMJANJUK, JR

My father, John Demjanjuk, the Respondent in this removal proceeding, was examined by a doctor from the Department of Homeland Security on Thursday April 2, 2009. I was present during that examination and videotaped the examination.

I have prepared a video clip of the concluding part of that examination, a copy of which I have given to my father's attorney. I prepared that video clip from the entire video recording of the examination. Representatives of the Immigration and Customs Enforcement Division of the Department of Homeland Security were present throughout the examination and throughout the videotaping.

The video clip is a true and exact copy of the last part of the medical examination. The entire video tape is available. I made a clip simply because the entire video tape file is very large, over 6,000 MB.

Declaration Pursuant to 28 USC 1746

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

Executed April 3, 2009

ATTACHMENT NO. 4

NEW I-589 APPLICATION FOR DEFERRAL OF REMOVAL UNDER CONVENTION AGAINST TORTURE

Department of Homeland Security
U.S. Citizenship and Immigration Services

U.S. Department of Justice
Executive Office for Immigration Review

OMB No. 1615-0067; Expires 12/31/07

I-589, Application for Asylum and for Withholding of Removal

START HERE - Please type or print in black ink. See the Instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Please check this box if you also want to apply for withholding of removal under the Convention Against Torture. ☒

Part A. I. Information about you.

(b)(6)

1. Alien Registration Number(s) (A#s) *(If any)*	2. U.S. Social Security Number *(If any)*
[redacted]	[redacted]

3. Complete Last Name	4. First Name	5. Middle Name
Demjanjuk	John	None

6. What other names have you used? *(Include maiden name and aliases.)*
Iwan Demjanjuk

7. Residence in the U.S. *(Where you physically reside.)*		Telephone Number
		([redacted]
Street Number and Name		Apt. Number
[redacted]		
City	State	Zip Code
[redacted]	Ohio	[redacted]

8. Mailing Address in the U.S. *(If different than the address in No. 7)* SAME		Telephone Number
In Care Of *(If applicable)*:		( )
Street Number and Name		Apt. Number
City	State	Zip Code

9. Gender: ☒ Male ☐ Female	10. Marital Status: ☐ Single ☒ Married ☐ Divorced ☐ Widowed		
11. Date of Birth *(mm/dd/yyyy)* 04/03/1920	12. City and Country of Birth Dub Macharenzi, Ukrainian SSR		
13. Present Nationality *(Citizenship)* None	14. Nationality at Birth Soviet Citizen	15. Race, Ethnic or Tribal Group Ukrainian	16. Religion Orthodox

17. *Check the box, a through c, that applies:* a. ☐ I have never been in Immigration Court proceedings.
b. ☒ I am now in Immigration Court proceedings. c. ☐ I am not now in Immigration Court proceedings, but I have been in the past.

18. *Complete 18 a through c.*
a. When did you last leave your country? *(mmm/dd/yyyy)* ??/??/1942 b. What is your current I-94 Number, if any? N/A

c. Please list each entry into the U.S. beginning with your most recent entry.
List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)

Date	9/22/1993	Place	New York City	Status Parolee	Date Status Expires: N/A
Date	2/??/1952	Place	New York City	Status Immigration	
Date		Place		Status	

19. What country issued your last passport or travel document?	20. Passport # / Travel Document #	21. Expiration Date *(mm/dd/yyyy)*
United States		Confiscated 7/2005

22. What is your native language? *(Include dialect, if applicable.)*	23. Are you fluent in English? ☐ Yes ☒ No	24. What other languages do you speak fluently?
Ukrainian		None

For EOIR use only.

For USCIS use only.
Action: **Decision:**
Interview Date: Approval Date:
Asylum Officer ID#: Denial Date:
Referral Date:

(b)(6)

Part A. II. Information about your spouse and children.

Your spouse. ☐ I am not married. (Skip to **Your children**, below.)

1. Alien Registration Number (A#) *(If any)*	2. Passport/ID Card No. *(If any)*	3. Date of Birth *(mm/dd/yyyy)*	4. U.S. Social Security No. *(If any)*
	[redacted]	[redacted]	[redacted]

5. Complete Last Name	6. First Name	7. Middle Name	8. Maiden Name
Demjanjuk	Vera		[redacted]

9. Date of Marriage *(mm/dd/yyyy)*	10. Place of Marriage	11. City and Country of Birth
09/1947	Germany	[redacted]

12. Nationality *(Citizenship)*	13. Race, Ethnic or Tribal Group	14. Gender
[redacted]		☐ Male ☒ Female

15. Is this person in the U.S. ?

[redacted]

16. Place of last entry in the U.S.	17. Date of last entry in the	18. I-94 No. *(If any)*	19. Status when last admitted *if any)*
[redacted]			

20. What is your spouse's current status?	21. What is the expiration date of his/her authorized stay, if any? *(mm/dd/yyyy)*	22. Is your spouse in Immigration Court proceedings?	23. If previously in the U.S., date of previous arrival *(mm/dd/yyyy)*
[redacted]			

24. If in the U.S., is your spouse to be included in this application? *(Check the appropriate box.)*

☐ Yes *(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)*

☒ No

Your children. Please list all of your children, regardless of age, location or marital status.

☐ I do not have any children. *(Skip to Part A. III., Information about your background.)*

☒ I have children. Total number of children: 3

(NOTE: *Use Supplement A Form I-589 or attach additional sheets of paper and documentation if you have more than four children.)*

1. Alien Registration Number (A#) *(If any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married, Single, Divorced, Widowed)*	4. U.S. Social Security No. *(If any)*
		Married	[redacted]

5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(mm/dd/yyyy)*
Demjanjuk	John	Jr.	[redacted]

9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Gender
[redacted]			

13. Is this child in the U.S. ?

[redacted]

14. Place of last entry in the U.S.	15. Date of last entry in the	16. I-94 No. *(If any)*	17. Status when last admitted
[redacted]			

18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? *(mm/dd/yyyy)*	20. Is your child in Immigration Court proceedings?
[redacted]		

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box.)*

☐ Yes *(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)*

☒ No

(b)(6)

Part A. II. Information about your spouse and children. (Continued.)

1. Alien Registration Number (A#) *(If any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married, Single, Divorced, Widowed)*	4. U.S. Social Security No. *(If any)*

5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(mm/dd/yyyy)*
	Irene	Anastasia	

9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Gender

13. Is this child in the U.S.?

14. Place of last entry in the U.S.	15. Date of last entry in the U.S. *(mm/dd/yyyy)*	16. I-94 No. *(If any)*	17. Status when last admitted

18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? *(mm/dd/yyyy)*	20. Is your child in Immigration Court proceedings?

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box.)*

☐ Yes *(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)*

☒ No

1. Alien Registration Number (A#) *(If any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married, Single, Divorced, Widowed)*	4. U.S. Social Security No. *(If any)*
n/a	n/a		

5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(mm/dd/yyyy)*
	Lydia	n/a	

9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Gender

13. Is this child in the U.S.?

14. Place of last entry in the U.S.	15. Date of last entry in the U.S. *(mm/dd/yyyy)*	16. I-94 No. *(If any)*	17. Status when last admitted

18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? *(mm/dd/yyyy)*	20. Is your child in Immigration Court proceedings?

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box.)*

☐ Yes *(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)*

☒ No

1. Alien Registration Number (A#) *(If any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married, Single, Divorced, Widowed)*	4. U.S. Social Security No. *(If any)*

5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(mm/dd/yyyy)*

9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Gender
			☐ Male ☐ Female

13. Is this child in the U.S.? ☐ Yes *(Complete Blocks 14 to 21.)* ☐ No *(Specify location.)*

14. Place of last entry in the U.S.	15. Date of last entry in the U.S. *(mm/dd/yyyy)*	16. I-94 No. *(If any)*	17. Status when last admitted *(Visa type, if any)*

18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any ? *(mm/dd/yyyy)*	20. Is your child in Immigration Court proceedings?
		☐ Yes ☐ No

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box.)*

☐ Yes *(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)*

☐ No

Part A. III. Information about your background

1. Please list your last address where you lived before coming to the U.S. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. *(List Address, City/Town, Department, Province, or State and Country.)*
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Number and Street *(Provide if available)*	City/Town	Department, Province or State	Country	Dates From *(Mo/Yr)*	To *(Mo/Yr)*
	Dub Macharenzi	Vinnitsa	Ukrainian SSR	03/1920	01/42
	Feldafing		Germany	01/51	01/52

2. Provide the following information about your residences during the past five years. List your present address first.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

(b)(6)

Number and Street	City/Town	Department, Province or State	Country	Dates From *(Mo/Yr)*	To *(Mo/Yr)*
[redacted]		Ohio	USA	09/1993	Present

3. Provide the following information about your education, beginning with the most recent.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Name of School	Type of School	Location *(Address)*	Attended From *(Mo/Yr)*	To *(Mo/Yr)*
Unknown	Village School	Dub Macharenzi, Ukrainian SSR	01/27	1931,2

4. Provide the following information about your employment during the past five years. List your present employment first.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates From *(Mo/Yr)*	To *(Mo/Yr)*
Ford Motor Co.	Retired	01/52	10/1982

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Olga	Ukrainian SSR	☒ Deceased
Father Mykola	Ukrainian SSR	☒ Deceased
Sibling Stefa	Ukrainian SSR	☒ Deceased
Sibling		☐ Deceased
Sibling		☐ Deceased
Sibling		☐ Deceased

Part B. Information about your application.

(NOTE: Use Supplement B, Form I-589 or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture) you should provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places and descriptions about each event or action described. You should attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, please explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- ☐ Race
- ☐ Religion
- ☐ Nationality
- ☐ Political opinion
- ☐ Membership in a particular social group
- ☒ Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

(1) What happened;

(2) When the harm or mistreatment or threats occurred;

(3) Who caused the harm or mistreatment or threats; and

(4) Why you believe the harm or mistreatment or threats occurred.

See attached Supplementary Response to Part B1A

B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

(1) What harm or mistreatment you fear;

(2) Who you believe would harm or mistreat you; and

(3) Why you believe you would or could be harmed or mistreated.

See attached Supplementary Response to Part B1B

Part B. Information about your application. (Continued.)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☐ No ☒ Yes

If "Yes," explain the circumstances and reasons for the action.

See attached Supplementary Response to Part B 2

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No ☒ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

See attached Supplementary Response to Part B 3 A

B. Do you or your family members continue to participate in any way in these organizations or groups?

☒ No ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

See attached Supplementary Response to Part B 4

Part C. Additional information about your application.

(NOTE: ***Use Supplement B, Form I-589 or attach additonal sheets of paper as needed to complete your responses to the questions contained in Part C.)***

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U. S. Government for refugee status, asylum or withholding of removal?

☐ No ☒ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents or your siblings received as a result of that decision. Please indicate whether or not you were included in a parent or spouse's application. If so, please include your parent or spouse's A-number in your response. If you have been denied asylum by an Immigration Judge or the Board of Immigration Appeals, please describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

I applied for deferral of removal to Ukraine under the Convention Against Torture on the grounds that if removed to Ukraine I would be subjected to severe mistreatment as a result of the climate of hate and hostility towards me created by the United States Department of Justice's false allegations that I was "Ivan the Terrible" of Treblinka. Allegations that the Department of Justice knew or should have known were false at the time they were made, which were disproved in Israel and which the Department of Justice has failed to repudiate. The application for deferral of removal to Ukraine was denied by the Immigration Court and its decision was sustained by the Board of Immigration Appeals.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States? ☒ No ☐ Yes

B. Have you, your spouse, your child(ren) or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☐ No ☒ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

My wife and children are US citizens as was I until denaturalized in 2001.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's or your child(ren)'s involvement.

Part C. Additional information about your application. (Continued.)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☒ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s) and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than one year after your last arrival in the United States?

☐ No ☒ Yes

If "Yes," explain why you did not file within the first year after you arrived. You should be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

See attached Supplementary Response C 5

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted and sentenced for any crimes in the United States?

☐ No ☒ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, the reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

See attached Supplementary Response to Part C 6

Part D. Your Signature

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

WARNING: **Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.**

Print your complete name.	Write your name in your native alphabet.
JOHN DEMJANJUK	IBAH ДЕМ'ЯНЮК

Did your spouse, parent or child(ren) assist you in completing this application? ☐ No ☒ Yes *(If "Yes," list the name and relationship.)*

JOHN DEMJANJUK JR	SON		
(Name)	*(Relationship)*	*(Name)*	*(Relationship)*

Did someone other than your spouse, parent or child(ren) prepare this application? ☐ No ☒ Yes *(If "Yes," complete Part E.)*

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? ☐ No ☒ Yes

Signature of Applicant *(The person in Part A.1.)*

[+ John Demjanjuk]
Sign your name so it all appears within the brackets

04/02/2009
Date *(mm/dd/yyyy)*

Part E. Declaration of person preparing form, if other than applicant, spouse, parent or child.

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application ~~in my presence.~~ I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a). SEE ATTACHED DECLARATION OF JOHN DEMJANJUK, JR.

Signature of Preparer	Print Complete Name of Preparer
John Broadley	John Howard Broadley

Daytime Telephone Number	Address of Preparer: Street Number and Name
(202) 333-6025	1054 31st Street, Suite 200

Apt. No.	City	State	Zip Code
	Washington	DC	20007

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A # (If available)	Date
(b)(6) A [redacted]	~~9/6/2005~~ 4-2-2009
Applicant's Name John Demjanjuk	Applicant's Signature John Demjanjuk

Use this as a continuation page for any information requested. Please copy and complete as needed.

PART B

QUESTION 1A

Beginning in the late 1970's and continuing through the 1990's I have received anonymous death threats. One of the attorneys defending me was attacked with acid which did permanent damage to one eye. The acid attack on my attorney occurred in 1988 in Israel. The individual who attacked my attorney was arrested but received only a light sentence. I have attached hereto a copy of the August 3, 1993 bench ruling and order of the United States Court of Appeals for the Sixth Circuit that recognized these threats to my life up to that date. In that bench ruling, the court found that "members of his family have been stoned as they left the court proceedings in Israel."

The death threats and attacks have resulted directly from the Office of Special Investigations (U.S. Department of Justice) false allegations that I was the notorious "Ivan the Terrible" of Treblinka. Not only did the Office of Special Investigations make the false allegations, it knowingly withheld from the US courts information that it had in its possession that established that I was not "Ivan the Terrible" of Treblinka. See Demjanjuk v. Petrovsky, 10 F.3d 337 (6th Cir. 1993).

After it extradited me to Israel in 1986 to be tried as "Ivan the Terrible" of Treblinka for the murder of 900,000 holocaust victims, the Office of Special Investigations withheld from the Israeli authorities information that it had in its possession that established that I was not "Ivan the Terrible" of Treblinka. The failure of the Office of Special Investigations to disclose its exculpatory materials to the Israeli prosecution (and to me) led directly to my being convicted of murder by the Jerusalem District Court and sentenced to death in 1988. This was a "trial" held in a converted movie theater and broadcast and reported daily on a global basis for nearly a full year. The Office of Special Investigations' continuing failure to disclose the exculpatory evidence it had in its possession led to my spending eight years in solitary confinement, including five years under sentence of death in Israel.

I attribute the death threats I have received directly to the Office of Special Investigations' false accusations that I was "Ivan the Terrible" of Treblinka, and to its continued failure and refusal to publicly stand and acknowledge that its allegations were false.

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A # (If available) A [redacted] (b)(6)	Date ~~9/6/2005~~ 4-2-2009
Applicant's Name John Demjanjuk	Applicant's Signature John Demjanjuk

Use this as a continuation page for any information requested. Please copy and complete as needed.

PART B

QUESTION 1B

The Office of Special Investigations has never publicly admitted or acknowledged that its charges that I was "Ivan the Terrible" of Treblinka were false and that it withheld exculpatory evidence from the Israeli prosecution and my defense in Israel which resulted in my initial conviction there. I am greatly concerned that the Office of Special Investigations has applied or will apply pressure on the Ukrainian authorities to prosecute me as Ivan the Terrible of Treblinka, and will use its influence to create a seriously hostile and dangerous environment for me in Ukraine in the same manner it did in Israel. In the course of settlement negotiations that occurred in 1998 - 1999 between the Office of Special Investigations and my attorneys, the Director of the Office of Special Investigations threatened, in the presence of my counsel, my family members, and of the government's attorneys, that if I did not enter into a settlement agreement and were subsequently denaturalized and deported, the Office of Special Investigations would attempt to persuade the country to which I was deported to arrest and prosecute me. I understand that the Director of that office has recently met with the Ukrainian authorities regarding my case and I have no reason to believe that he has changed that intent in the intervening years.

Ukraine suffered under Soviet rule for 70 years and during that time Soviet attitudes towards human rights, and the treatment of individuals and prisoners were adopted in Ukraine and have not yet been eradicated. I have attached a February 28, 2005 Report on Human Rights Practices in Ukraine prepared by the United States Department of State. In that Report, the Department of State cites numerous credible reports that torture and other cruel, inhuman and degrading punishments are widespread in Ukraine. The Report also shows that arbitrary or unlawful deprivation of life occurs, including when persons are in police custody.

I have also attached three recent reports from Amnesty USA which show both the extent to which persons in Ukraine have been subjected to torture, and also that those conditions continued past the Soviet era and exist today. These Amnesty reports lend further weight to the Department of State Report discussed above.

The combination of the climate of extreme hostility that has been created by the Office of Special Investigations' false allegations that I was "Ivan the Terrible" of Treblinka, and the hold-over of Soviet attitudes toward human rights, and the treatment of individuals and prisoners in Ukraine confirmed by the Department of State and Amnesty will subject me to a very serious risk of abuse by the authorities there. In light of my age (85) and generally poor physical condition this will put my life at risk.

(b)(6)

SUPPLEMENT B FORM I-589

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A # *(If available)* A [redacted]	Date 9/6/2005 4-2-2009
Applicant's Name John Demjanjuk	Applicant's Signature John Demjanjuk

Use this as a continuation page for any information requested. Please copy and complete as needed.

PART B

QUESTION 2

I was detained, accused, charged, convicted and sentenced to death in Israel in 1986 - 1988 for murder and war crimes based on information provided to the Israeli government by the Office of Special Investigations that I was "Ivan the Terrible" of Treblinka. The Israeli Supreme Court reversed the conviction when exculpatory evidence, some of which had been in the possession of the Office of Special Investigations for many years, was obtained from the former Soviet Union in 1993.

There have been several accusations made against me in other countries that show the widespread impact of the Office of Special Investigations' false charges that I was "Ivan the Terrible" of Treblinka. I have attached copies of some reports of such accusations.

Edward W. Nishnic who has assisted in my defense for many years was investigated, questioned and cleared of charges of obstruction of justice in Israel in connection with the testimony of one of the defense witnesses.

(b)(6)

SUPPLEMENT B FORM I-589

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A # (If available) A [redacted]	Date ~~9/6/2005~~ 4-2-2009
Applicant's Name John Demjanjuk	Applicant's Signature John Demjanjuk

Use this as a continuation page for any information requested. Please copy and complete as needed.

PART B

QUESTION 3A

Komsomol: While a teenager in Ukraine I was a member of the Komsomol, the youth wing of the Communist Party of Ukraine. I remained a member of the Komsomol while I was in the Red Army after 1940 until I was captured by the Germans in the spring of 1942. I held no leadership position.

Red Army: I was drafted into the Red Army in 1940 and served in the Artillery until the spring of 1942 when I was captured by the Germans. During the entire time my rank was the equivalent of private. I was neither a commissioned nor a non-commissioned officer.

Supplement B, Form I-589

Additional information about your claim to asylum.

A# *(If available)*	Date
A [redacted] (b)(6)	4/1/2009
Applicant's Name	**Applicant's Signature**
John Demjanjuk	John Demjanjuk

NOTE: *Use this as a continuation page for any additional information requested. Please copy and complete as needed.*

Part B

Question 4

See Attached Statement.

Supplementary Response to Part B 4

Are you afraid of being subjected to torture in your home country or any other country to which you may be returned? If yes, explain the nature of torture you fear, by whom, and why it would be inflicted.

New Developments and Changed Conditions Since Original Application for Deferral

Since I filed my original application for deferral of removal pursuant to the Convention Against Torture ("CAT") on October 7, 2005 several developments have occurred that require the filing of an additional application, or the substantial amendment of the original application. These new developments are treated as the basis for a new application. If the proper procedural avenue is to seek to reopen the proceeding and amend the existing application, I request that this I-596 be treated as a motion to reopen and an amendment to the CAT application filed with the Immigration Court on October 7, 2005.

1. Decision by the German authorities to arrest, jail and prosecute. Since my October 7, 2005 application, on information and belief, the Federal Republic of Germany has decided to accept my deportation to Germany. In addition, the State prosecutor in Munich has issued a warrant for my arrest and, again on information and belief, the State prosecutor intends to have me arrested when I enter Germany, jailed, and tried as an accessory to murder. Based on information I have received from my attorney in Germany, the State prosecutor's theory is novel and has not previously been used by the German authorities in any prosecution of alleged concentration camp guards in that country. In 2005 there appeared little or no chance that even if I were deported to Germany the German authorities would either arrest, jail or prosecute me. Developments in the past several weeks have changed that situation as I have outlined above.

2. Significant health deterioration since October 2005. Since my October 7, 2005 application my health has deteriorated significantly as follows:

- I am now almost four years older, which at age 89 is a significant change.
- I am suffering from and being treated for Myelodysplastic Syndrome (MDS) which is a disorder of the bone marrow and a pre-cursor to leukemia. I receive weekly treatment with Procrit for this condition and periodically have required blood transfusions.
- I am suffering from and being treated for Chronic Kidney Disease (CKD Stage 3).
- I am suffering from anemia and leucopenia associated with the MDS and CKD conditions.
- I am suffering from and being treated for hyperoxaluria and kidney stones.
- I am suffering from and being treated for arthritis, gout and spinal stenosis.

With the exception of the arthritis, gout and spinal stenosis, these conditions have manifested themselves since my October 2005 CAT application. The arthritis, gout and spinal stenosis have become much worse and seriously impede my ability to move and take care of myself. I frequently need assistance in rising from a chair and extended sitting is very painful. Copies of the most recent medical reports supporting this description of my present state of health are attached.

Why Arrest, Incarceration and Trial in Germany would be Torture

My present physical condition is described above. I will be 89 years old on April 3, 2009 and in general my health is poor. I suffer from the conditions described above. I am physically very weak and experience severe spinal, hip and leg pain which limits mobility and causes me to require assistance to stand up and move about. Spending 8 to 12 hours in an airplane seat flying to Germany would be unbearably painful for me.

I am very familiar with life as a prisoner. First I was a prisoner-of-war of the Germans after my capture in 1942, and subsequently I was a prisoner of the Israelis held in solitary confinement in an Israeli jail cell from early 1986 to 1993. During my time in solitary in an Israeli jail, they tried me, sentenced me to death, and ultimately acquitted me when incontrovertible evidence was presented that "Ivan the Terrible" was an individual named "Ivan Marchenko." As a prisoner of the Germans I was aged 22 - 25. As a prisoner of the Israelis I was aged 66 - 73 and in reasonably good physical and mental health. I am now age 89 and my health is poor. I could not care for myself in an ordinary jail cell as I need assistance to perform many functions, particularly those requiring rising, standing, and moving around. I spend many hours each day laying in bed to provide some relief to my lower back pain. Incarceration under conditions similar to those I experienced in Israel would subject me to severe physical pain and suffering.

Spending 8 years in solitary confinement, 6 of them under sentence of death, is a psychological experience that leaves permanent scars, fears and vulnerabilities. I have serious doubts whether I could withstand incarceration and the terrible psychological strain of another trial at my age and in my weakened physical state. After my experience in Israel, the prospect of another "show trial," complete with emotional witnesses testifying to what they want to be true, not to what is true, is a nightmare that is unimaginable to someone who has not experienced it.

Finally, I will raise the issue of the effect of another round of arrest, jail and trials on my family. The effect of the events from 1976 to today on my wife of over 60 years, and my three children and their families has been traumatic. My son, John Demjanjuk, Jr., has lived with the Justice Department's vendetta against me since he was 11 years old, through his teenage years and for all of his adult life. He is now 43 years old. My daughters were older when it began in 1976, but the impact on their lives and families may have been even more severe. I have been subjected to three major trials. The first of these was from 1977 when the Justice Department filed its denaturalization complaint to early 1986 which I was extradited to Israel. The second of these was from early 1986 when I was extradited to Israel and tried and convicted of murder to 1993 when the Israeli Supreme Court acquitted me and sent me back to the United States. The third was from 1999 when the Justice Department filed its second denaturalization complaint against me to today when I am facing the prospect of deportation to Germany and a likely fourth major trial there. The prospect of my family having to go through this experience for a fourth time is intensely painful to me.

Why Would the German Authorities Subject Me to this Treatment

This question calls for some speculation on the motives of the German authorities. I understand that the Office of Special Investigations (OSI), which has been the center of the Justice Department vendetta against me, has been trying to induce other countries (including Germany) to accept my deportation and to prosecute me. After the US Court of Appeals found that Office of Special Investigations' attorneys had committed a fraud on the court by withholding exculpatory evidence from the defense (and from the Israeli prosecutors), I did not expect OSI to rest until they had denaturalized me, deported me and put me on trial somewhere for something. I am sure that the record of the efforts of OSI to do this will eventually come to light.

The motivation of the German authorities is more difficult to understand. We have read in the press that certain organizations have been bringing pressure on the German authorities to undertake proceedings against me. This is consistent with the activities of these same organizations in promoting my extradition to Israel and trial there as "Ivan the Terrible." Why the German authorities should have yielded to such pressure is more difficult to understand. One possible reason is that the German authorities have not aggressively prosecuted German war criminals and have been subjected to considerable criticism on this account. It is possible that the German authorities see a prosecution of me as means to draw attention away from their past approach. Whether the German authorities are responding to outside pressure (including pressure from OSI) or are trying to divert attention from their own prior practices, they appear determined to arrest, jail and prosecute me despite the pain and suffering it will cause, and it can be inferred <u>because</u> of the pain and suffering it will cause me and my family.

<u>Summary</u>

In summary, the German authorities appear determined to arrest, incarcerate and try me again for alleged war crimes, notwithstanding the Israeli Supreme Court acquitted me of charges that included the same factual allegations that the German prosecutor appears to be planning. At my age, in light of my poor physical condition and the traumatic experiences I have undergone at the hands of the US Justice Department, the Israelis, and the US Justice Department a second time, this will expose me to severe physical and mental pain that clearly amounts to torture under any reasonable definition of the term. The effect is magnified by the serious adverse effect that further proceedings will have on my family.

+ John Demjanjuk

CLEVELAND CLINIC CANCER CENTER
AT PARMA COMMUNITY GENERAL HOSPITAL
6525 Powers Blvd., Parma, OH 44129
Ph: 440-743-4747 Fax: 440-743-4715

NAME: DEMJANJUK, John
CLINIC NO: 48648207
DATE OF SERVICE: 07/15/2008

DIAGNOSIS:
1. Myelodysplastic syndrome
2. Persistent anemia secondary to above

John Demjanjuk returned to clinic for follow up with his wife. He stated he is still weak despite receiving 2 units of blood transfusion around a month ago. He has received 2 doses of Procrit injection (every 2 weeks) since last visit. Symptom wise, he does not feel much different. He denies any fever, chills, night sweats or weight loss. His main complaint is weakness and his knee bothers him. His knee problem is pre-existing. He denies any chest pain, shortness of breath at rest or palpitations. No GI or GU complaints. No bleeding at all. No easy bruising.

His past medical history, personal/social history, medications and allergies were all reviewed.

REVIEW OF SYSTEMS: All 10 systems were reviewed. Except what is described above, the rest of the review of systems was completely unremarkable.

PHYSICAL EXAM: GENERAL: Patient appears at his baseline, comfortable, not in distress. He is afebrile with temperature 96, pulse 64, respiratory rate 20, blood pressure 122/64, weight 225 pounds. HEENT: Pale, no jaundice. Normal oropharynx on visual exam. RESPIRATORY SYSTEM: Lungs clear to auscultation bilaterally. No wheezing, rhonchi or crackles. Chest movement symmetrical. Trachea midline. CARDIOVASCULAR SYSTEM: Heart sounds S1, S2 with regular rate and rhythm. No gallops or additional heart sounds. GASTROINTESTINAL SYSTEM: Abdomen is soft, obese and nontender, nondistended. Normal active bowel sounds. No palpable mass or hepatosplenomegaly. MUSCULOSKELETAL SYSTEM: Decreased range of motion in major joints, symmetrical. No asymmetrical muscle weakness. Trace edema in lower extremities.

LABORATORY TESTS: WBC 2.4, hemoglobin 9.5, hematocrit 28.3, platelet count 210,000. Creatinine 1.8, BUN 36, total bilirubin 0.6.

ASSESSMENT/PLAN:
1. Myelodysplasia, responding poorly to Procrit therapy, although he only received 2 doses so far. I will continue the treatment and increase frequency of Procrit injection to every week if possible.
2. Chronic renal failure. I will refer him to nephrologist for nephrology consultation.
3. I advised the patient and his wife to bring his son with him during the next visit in one month. I will discuss chemotherapy with hypermethylating agent with them. Patient does not really understand much English, therefore, I feel that the language barrier is really affecting his informed decision-making ability. He will probably benefit from hypermethylating agent like Vidaza or Dacogen, if he could tolerate. We will discuss more in detail next time.
4. Given his symptomatic anemia, I offered the patient another 2 units of blood transfusion. He understood my recommendation, however, he could not make any decision when I asked him whether he would like to have a blood transfusion, his answer was "I do not know". This is quite frustrating. I advised him and his wife to go home and talk to his son and if he changes his mind on blood transfusion he will call and let me know. I will be happy to schedule it for him.

Total counseling time was about 40 minutes. This apparently is a difficult patient to take care of.

Wei Lin, M.D.

cc:
Date Dictated: 07/16/2008 Date Typed: jlb 07/17/2008 09:00

OFFICE HOURS BY APPOINTMENT

KEUCK CHANG, M.D.
DIPLOMATE IN NEPHROLOGY

6789 RIDGE RD., SUITE 203
PARMA, OHIO 44129

TEL: 440-888-4426
FAX: 440-888-5033

NAME: Demjanjuk, John
Birth date:04/03/1920 Age: 88 Gender: Male

Emergency contact:
Privacy:family. Marital status/Occup:
Insurance: I
Chart No:8903a 8/08 727 160-170/70 Prob:

DATE: 09/08/2008 WT 227 BP 152/70 HT 6'9 TEMP
consult office visit with lab, us renal
99214
Follow up with Dr. Goliat for primary care
Follow up with Dr. Lin

X 72 inches / 3131
Body Surface 2.284
72.1 ml/min → 54.6 ml/m/1.73

Entitled of Social security → Medicare refused to pay for present
→ Had Ford Co. to assume primary provider. HMO health Ch. received present 4 wks ago

130/60 both arms.
JVD ⊖
Heart lungs Clear:
abd. soft, Kidney, liver not palpable
Pitty ⊖

1. To call result of Vit D Lab
2. Turn one c each meal

1. CKD. (Stage 3.) 54.6 ml/min/1.73.
2. Hyperoxaluria
Hyperoxaluria.
3. Anemia — MDS, CKD.
4. Kidney stones. Hyperoxaluria?
(Turn) ↑ Calcium
Renal fuck pal
4(M)

Wife answered.
9/9 Talked to pt
Vit D 400 IU/d

return date: signature:

1-12-09
4:30

TIMMAPPA P. BIDARI, MD., INC.

JANUARY 19, 2009

DEMJANJUK, JOHN

DIAGNOSIS:
1. Myelodysplastic syndrome.
2. Anemia and leukopenia secondary to above.
3. Acute gout in the right big toe and the mid foot.

HISTORY OF PRESENT ILLNESS: He says he was coming along okay he started having severe pain in the right big toe and the middle of the foot since yesterday he has taken Colchicine but has run out of the medication.

REVIEW OF THE SYSTEMS:
Musculoskeletal System: As above.
General and Constitutional Symptoms: Has moderate degree of fatigue, denies fever and chills, night sweats, or weight loss.
Cardiovascular System: Has shortness of breath on exertion, no leg edema, or chest pain.
Head: Denies pressure or pain.
Eyes: Denies blurred vision.
ENT and Respiratory System: Unremarkable.
Skin: Denies rash, itching, or easy bruising. He has redness of the skin over the right big toe due to gout.
GI System: Denies abdominal pain, nausea, or vomiting.
Hemic and Lymphatic System: Has not felt any lumps under the arms, in the neck, or groins.
GU System: No dysuria or burning micturition has urinary frequency.
CNS: Has occasional lightheadedness.

SOCIAL HISTORY: As recorded previously.

PAST HISTORY: As recorded previously.

FAMILY HISTORY: As recorded previously.

PHYSICAL EXAM: Today reveals a B/P of 140/60; pulse rate is 72, respirations 18, temperature normal. Weight. 218 pounds. Head. Normal. Eyes. Conjunctival pallor noted no jaundice. ENT: Unremarkable. Neck. No lymphadenopathy. Chest. No sternal tenderness. Heart: Sounds normal. Lungs: Clear. Abdomen: No tenderness, no distention. Extremities: No leg edema, redness of the skin noted over the dorsum of the right big toe.

LABORATORY DATA: Today CBC shows hemoglobin of 9.8, hematocrit 29.2, WBC 3,100, and platelets 277,000.

TREATMENT PLANS: Give Procrit 60,000 units subcutaneously today.

I have prescribed him Colchicine 0.6 mg to take 1 daily for gouty arthritis in the right big toe and the foot.

Continue weekly Procrit and CBC, re-exam in two week's time.

TIMMAPPA P. BIDARI
TPB/djk

TIMMAPPA P. BIDARI, M.D., INC.
PHOENIX MEDICAL CENTRE
6020 RIDGE RD., SUITE 204
PARMA, OH 44129
TELEPHONE: (440) 887-9570

DIPLOMATE AMERICAN BOARD OF
INTERNAL MEDICINE
DIPLOMATE IN THE SUBSPECIALTY OF
1. ONCOLOGY
2. HEMATOLOGY

4/6/09.

Ref: John Demjanjuk.

To whom it may concern:

This 88 yr old Gentleman is under my care since 29th Sept 2008. He has established Diagnosis of Myelo Dysplastic Syndrome since oct 2004. Previously he was under care of Different Hematologists and apparently one of them Dr. Liu had suggested possible chemotherapy He has received Procrit injections in the past. In my office he initially received 40,000 units once a wk, which was not effective in improving his Hemoglobin & Hematocrit. For the past few months he is getting PROCRIT inj 60,000 units once wkly. Family raised the issue of whether John needs chemotherapy. We briefly talked about it. I suggested a Bone marrow test and Chromosome studies before deciding about it.

Yours sincerely

Timmappa P. Bidari

GIUSEPPE ANTONELLI, M.D.
Rheumatology and Internal Medicine
6789 Ridge Rd., Suite 108
Parma, Ohio 44129
(440)743-7100
Fax (440)743-7101

April 6, 2009

RE: John Demjannuk
DOB: 4-3-20

To Whom It May Concern,

Mr. Demjannuk is under my care for severe spinal stenosis and arthritis with chronic back and leg pains which requires supervision and analgesics.

If you have any questions, please conctact my office.

Sincerely,

Giuseppe Antonelli, M.D.

Additional information about your claim to asylum

A# (If available)	Date
[redacted] (b)(6)	4/1/2009
Applicant's Name	**Applicant's Signature**
John Demjanjuk	John Demjanjuk

NOTE: *Use this as a continuation page for any additional information requested. Please copy and complete as needed.*

Part C

Question 5

Removal proceedings were commenced against me in 2004 to remove me to Ukraine, Poland or Germany. I applied for deferral of removal to Ukraine under the Convention Against Torture based on the climate of hate that the Department of Justice had created against me, and Ukraine's history and practice of torture in its prisons. At that time, I had no reason to believe that if I were removed to Germany I would be arrested or in the event of arrest subjected to severe mistreatment amounting to torture. Within the past few weeks it has become apparent that the German government has decided to accept deportation and to arrest, imprison and try me for some of the same crimes for which I was tried and acquitted in Israel. Arrest, imprisonment and trial in Germany for crimes for which I have already been acquitted would amount to severe mistreatment amounting to torture under the Convention Against Torture in view of my age (89 on 4/3/09) and my poor health as outlined in the attached medical reports. On information and belief, these changed circumstances in Germany which will result in my torture have been brought about by actions of representatives of the Department of Justice.

In summary, at the time I filed my original application for deferral of removal, I had no reason to believe that removal to Germany (as opposed to Ukraine) would result in actions by the German authorities that would amount to torture.

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A # (If available) A [redacted] (b)(6)	Date ~~9/6/2005~~ 4-2-2009
Applicant's Name John Demjanjuk	Applicant's Signature John Demjanjuk

Use this as a continuation page for any information requested. Please copy and complete as needed.

PART C

QUESTION 6

I was arrested in the United States in 1985 for extradition to the State of Israel pursuant to an extradition order.

As a result of my arrest and extradition, as noted above, I was indicted, tried and convicted of murder by the Jerusalem district court and sentenced to death. The verdict was overturned by the Israeli Supreme Court when evidence was produced from the former Soviet Union that "Ivan the Terrible" of Treblinka was someone other than me. The extradition order was subsequently overturned in 1993 (see Demjanjuk v. Petrovsky, 10 F.3d 337 (6th Cir. 1993)) because the court found that the Office of Special Investigations had committed a fraud on the court. The Sixth Circuit paroled me back to the United States. See August 3, 1993 Bench Ruling attached to B1A hereto. The US District Court for the Northern District of Ohio subsequently overturned the denaturalization order it had entered against me in 1981 on the grounds that the Office of Special Investigations had committed the same frauds on the court identified by the Sixth Circuit Court of Appeals, and had also committed additional frauds identified by the district court. See United States v. Demjanjuk, N.D. Ohio No. C77-923 (1998 U.S. Dist. LEXIS 4047, Feb. 20, 1998).

As a result of the fraudulent conduct of the Office of Special Investigations I spent 8 years in jail, one year in US custody prior to my extradition, two years in Israeli custody prior to my conviction of murder and sentence to death, and five years under sentence of death in Israel, all in solitary confinement.

The documents relating to the foregoing events are numerous and extensive. They are summarized or described in numerous reported decisions of the US district courts and the Sixth Circuit Court of appeals, particularly (though not exclusively) the following:

1. United States v. Demjanjuk, 518 F.Supp. 1362 (N.D. Ohio 1981) (revoking my citizenship and naturalization);
2. United States v. Demjanjuk, 680 F.2d 32 (6th Cir. 1982) (per curiam) (affirming Demjanjuk 1.)
3. Demjanjuk v. Petrovsky, 612 F. Supp. 571 (N.D. Ohio 1985) (denying habeas, thus allowing the executive branch to extradite me to Israel);
4. Demjanjuk v. Petrovsky, 776 F.2d 571 (6th Cir. 1985) (affirming Demjanjuk 3);
5. Demjanjuk v. Petrovsky, 10 F.3d 337 (6th Cir. 1993) (reopening the case sua sponte, after I was extradited to Israel and there acquitted of all crimes, and holding that the Government perpetrated a fraud on the court in its discovery, and accordingly vacated Demjanjuk 3); and
6. United States v. Demjanjuk, No. C77-923, 1998 U.S. Dist. LEXIS 4047 (N.D. Ohio 1998) (setting aside Demjanjuk 1, on the basis of the findings of prosecutorial misconduct in Demjanjuk 5 and other prosecutorial misconduct).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	File No. A [redacted]
In removal proceedings	(b)(6)

DECLARATION OF JOHN DEMJANJUK, JR.

On April 2, 2009 I reviewed the I-589 Application to which this Declaration is attached with my father and read to him in Ukrainian the sections he could not understand in English. I was careful to review all the sections that differ from the I-589 that Mr. Demjanjuk signed in October 2005, specifically Supplemental Responses B 4 and C 5.

Mr. Demjanjuk signed the I-589 form in my presence and I transmitted the signed form to Mr. Demjanjuk's attorney, John Broadley, by e-mail.

Certification Pursuant to 28 USC 1746

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

Executed on April 2, 2009: _____
John Demjanjuk, Jr.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB#1125-0005

Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

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

DATE (mm/dd/yy): 4/6/09

NAME: JOHN (First) DEMJANJUK (Middle Initial) (Last)

ALIEN NUMBER(S) (List lead alien number and all family member alien numbers and names, if applicable. Continue on next page as needed.)

A [redacted]

(b)(6) ADDRESS: [redacted] (Number and Street) (Apt. No.)

[redacted] (City) OHIO (State) (Zip Code)

For a disciplinary case, check box ■ and write in case number in space above.

Please check one of the following:

☒ 1. I am a member in good standing of the bar of the highest court(s) of the following state(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia:

Full Name of Court	State Bar No. (if applicable)
DISTRICT OF COLUMBIA	238089
CALIFORNIA	47506

(Please use space on reverse side to list additional jurisdictions.)

■ am not (or ■ am - explain fully on reverse side) subject to any order of any court or administrative agency disbarring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law and the courts listed above comprise all of the jurisdictions (other than federal courts) where I am licensed to practice law.

☐ 2. I am an accredited representative of the following qualified non-profit religious, charitable, social service, or similar organization established in the United States, so recognized by the Executive Office for Immigration Review pursuant to 8 C.F.R. § 1292.2 (provide name of organization and expiration date of accreditation):

☐ 3. I am a law student or law graduate, reputable individual, accredited official, or other person authorized to represent individuals pursuant to 8 C.F.R. § 1292.1 (explain fully on reverse side).

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representation before the Board of Immigration Appeals. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE: X John Broadley

EOIR ID#:

DATE (mm/dd/yy): 4/6/09

NAME OF ATTORNEY OR REPRESENTATIVE (type or print): JOHN BROADLEY

ADDRESS: 1054 31ST ST NW STE 200
WASHINGTON, DC 20007

■ Check here if new address

PHONE NUMBER (with area code): 202-333-6025

FAX NUMBER (with area code): 301-942-0676

Form EOIR - 27
Rev. May 2006

Proof of Service

I JOHN BROADLEY (Name) mailed or delivered a copy of the foregoing Form EOIR-27 on 4/7/05 (Date-mm/dd/yy)

to the DHS (U.S. Immigration and Customs Enforcement - ICE) at 1240 EAST 9th ST CLEVELAND, OH 44199 (Number and Street, City, State, Zip Code)

X John Broadley
Signature of Attorney or Representative

APPEARANCES - An appearance shall be filed on a Form EOIR-27 by the attorney or representative appearing in each appeal or motion to reopen or motion to reconsider before the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)), even though the attorney or representative may have appeared in the case before the Immigration Judge or the U.S. Citizenship and Immigration Services. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals. Thereafter, substitution or withdrawal may be permitted upon the approval of the Board of a request by the attorney or representative of record in accordance with *Matter of Rosales*, 19 I&N Dec. 655 (1988). Please note that appearances for limited purposes are not permitted. *See Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). Further proof of authority to act in a representative capacity may be required.

REPRESENTATION - A person entitled to representation may be represented by any of the following:

(1) Attorneys in the United States as defined in 8 C.F.R. § 1001.1(f).

(2) Law students and law graduates not yet admitted to the bar as defined in 8 C.F.R. § 1292.1(a)(2).

(3) Reputable individuals as defined in 8 C.F.R. § 1292.1(a)(3).

(4) Accredited representatives as defined in 8 C.F.R. § 1292.1(a)(4).

(5) Accredited officials as defined in 8 C.F.R. § 1292.1(a)(5).

All representatives must comply with the specific requirements to represent aliens before the Board of Immigration Appeals. For more information on the requirements, see 8 C.F.R. § 1292.1 and the particular subsections referenced above as applicable. Note that law students and law graduates must submit additional materials pursuant to 8 C.F.R. § 1292.1(a)(2).

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 28 C.F.R. §§ 16.1 - 16.11 and appendices. For further information about requesting records from the EOIR under the Freedom of Information Act, see How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review, available through the EOIR's website at http://www.usdoj.gov/eoir.

CASES BEFORE THE EOIR - Automated information about cases before the EOIR is available by calling 1-800-898-7180.

ADDITIONAL INFORMATION:

(Please attach additional sheets of paper if necessary.)

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of John Demjanjuk	File No. A[redacted]	(b)(6)
In removal proceedings		

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April I caused a copy of the foregoing MOTION TO REOPEN in the captioned proceeding to be served on the District Counsel of the Department of Homeland Security (ICE) by hand delivery at:

Office of Chief Counsel, DHS/ICE
1240 East 9th Street, Room 585
Cleveland, Ohio 44199

and on the Office of Special Investigations which has handled the case before the Board by hand delivery of a copy thereof to:

Eli Rosenbaum
Director
Office of Special Investigations
1301 New York Avenue, Suite 200
Washington, D.C.

John Broadley

Dated April 7, 2009

John H. Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of John Demjanjuk	File No. A [redacted]	(b)(6)
In removal proceedings		

EMERGENCY MOTION TO STAY REMOVAL

John Demjanjuk, the respondent, by his undersigned attorneys, hereby moves the Board for an order staying the removal order entered against him on December 28, 2005 and affirmed by the Board on December 21, 2006. A Motion to Reopen these proceedings has been filed simultaneously with this Motion for a Stay seeking to reopen the removal proceedings against him to hear evidence of changed country conditions in Germany, one of the countries to which he has been ordered removed, that warrant deferral of removal pursuant to the Convention Against Torture.

1. Prior Proceedings

The Chief Immigration Judge entered a final order December 28, 2005 that Mr. Demjanjuk be removed to Ukraine, Poland or Germany and denied Mr. Demjanjuk's application for deferral of removal to Ukraine pursuant to the Convention Against Torture. That decision was upheld by the Board of Immigration Appeals on December 21, 2006, and affirmed by the United States Court of Appeals for the Sixth Circuit on January 30, 2008, *Demjanjuk v. Mukasey*, 514 F.3d 616 (6th Cir. 2008). The Supreme Court denied certiorari on May 19, 2008, *Demjanjuk v. Mukasey*, 128 S.Ct. 2491 (mem.), 171 L.Ed.2d 780. A copy of the Board's December 21, 2006 decision is attached hereto as Attachment No. 1.

2. Changed Country Conditions Justifying Reopening

At the time the Immigration Judge ordered Mr. Demjanjuk's removal to Germany in December 2005 he had no reason to expect that he would be subject to any action by the German authorities that would amount to torture under the Convention Against Torture and the implementing regulations (8 CFR 1208.18). Specifically, there was no reason to believe that the German authorities would seek to arrest, jail or prosecute him if he were removed to Germany. To the best of Mr. Demjanjuk's knowledge and the knowledge of his attorneys at the time the

German judicial authorities undertook prosecutions only for specific acts for which they had evidence and which would constitute a crime. Mr. Demjanjuk has denied participating or being present at any death camps or concentration camps including Sobibor, Treblinka, Majdanek or Flossenbürg.

Since the original removal order was entered, Mr. Demjanjuk's health has seriously deteriorated to the point where arrest, incarceration and trial would subject him to severe physical and mental pain. The surrounding circumstances strongly support an inference that this is the purpose of the German authorities and their specific intent. The Board is respectfully referred to the accompanying Motion to Reopen for an elaboration of the changed country circumstances that warrant reopening and demonstrate the substantial probability of success on the merits.

3. Execution of the removal order is imminent

The German authorities issued an arrest order for Mr. Demjanjuk on March 10, 2009. On information and belief, the Respondent believes that the German authorities have notified the United States that they will accept Mr. Demjanjuk's deportation. In its Opposition to Respondent's Motion to Reopen mistakenly filed in the Immigration Court, the Government conceded that the German authorities had done so. (Government Opposition p. 4). that the Respondent has reason to believe that the execution of the removal order is imminent.

On April 2, 2009 CNN Wire reported that the German Justice Ministry spokesman Ulrich Standigl said that they expect Mr. Demjanjuk "to arrive in Germany Monday" (April 6, 2009). There were reports from the State Prosecutor's office in Munich to the same effect and similar reports in the United States and German Press. Mr. Demjanjuk filed a Motion to Reopen and an Emergency Motion for a Stay with the Immigration Court on April 2, 2009. On April 3, 2009

the Immigration Court issued a stay but withheld decision on the Motion to Reopen. On April 6, 2009 the Immigration Court returned the Motion to Reopen on the grounds that the Immigration Court did not have jurisdiction and the Motion should have been filed with the Board. The Immigration Court continued the stay in effect until April 8, 2009.

The Immigration and Customs Enforcement division of the Department of Homeland Security (ICE) conducted a physical examination of Mr. Demjanjuk on April 2, 2009 to determine whether he is fit for travel to Germany and the medical report appears to have been consistent with that conclusion.[1] Attached is a copy of the ICE decision denying an administrative stay of removal. (Attachment No. 2).

4. An emergency stay is warranted

An emergency stay is warranted in these circumstances to permit the Board to consider Respondent's Motion to Reopen.

The Respondent is effectively "in custody." He is primarily bed-ridden at home as can be easily seen from the video clip attached to the Motion to Reopen and ICE has affixed a GPS Monitor to him. (*See* Government Opposition at p.4). Respondent is facing imminent removal when the Immigration Court's stay expires on April 8, 2009.

The traditional four part test for the granting of a stay looks at (i) probability of success on the merits, (ii) the risk of irreparable harm to the applicant, (iii) the harm to other parties, and (iv) the public interest. Under these criteria a stay is warranted.

A. The Board is respectfully referred to Respondent's Motion to Reopen for argument on the probability of success on the merits.

[1] No copy of the medical report has been provided to Respondent.

B. Failure of the Board to stay his removal pending disposition of the Motion to Reopen will clearly cause him irreparable harm. Once Respondent is removed the Board's regulations treat the Motion to Reopen as withdrawn. 8 CFR 1003.2(d). Respondent's right to obtain a review of his Convention Against Torture claim would be permanently lost and he would be exposed to the very conditions he fears.

C. No other party would be injured. Mr. Demjanjuk has lived a blameless life since immigrating to the United States in 1952. He is currently bed ridden and cannot take care of himself. He poses a threat to no one. The proposition that any other party could be injured if a stay is granted is ludicrous.

D. The public interest would not be harmed if a stay is granted to permit the Board to consider Respondent's Convention Against Torture claim. While Congress has withdrawn most rights for relieving Respondent from removal, it has expressly permitted deferral of removal where the Respondent would face torture in the country to which he would be removed. Granting of the stay would further precisely the public policy that Congress established in permitting a deferral of removal under such circumstances.

Moreover, the Government's contentions regarding the overwhelming public interest in removing persons accused of assisting the Germans in their death camps and concentration camps are belied by the actions of the very same Office of Special Investigations here arguing for removal of a sick old man. In the Tannenbaum case, the Department of Justice allowed another sick old man to remain in the United States who had *admitted* to mistreatment of prisoners in a forced labor camp. *See* Attachment No. 3.

CONCLUSION

It is clear from the above that ICE is prepared to execute the removal order within days if not hours of the expiration on April 8 of the Immigration Court's stay of removal. It is also clear from the above and from the accompanying Motion to Reopen that the removal of Mr. Demjanjuk to Germany where he will be arrested, jailed and prosecuted will subject him to severe physical and mental pain that amounts to torture under the Convention Against Torture as implemented in the United States.

In order to give the Board time to review the Motion to Reopen the Board should grant an emergency stay of the order of removal against the Respondent.

Respectfully submitted,

JOHN DEMJANJUK

By: John Broadley
One of his attorneys

John Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 301-942-0676
E-mail Jbroadley@alum.mit.edu

Dated: April 7, 2009

ATTACHMENT NO. 1

BOARD DECISION OF DECEMBER 21, 2006

FAX TRANSMISSION

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
5107 LEESBURG PIKE, SUITE 2000
FALLS CHURCH, VA 22041

PHONE.....703-605-1007

TO: John Broadley	DATE: 12-21-06
OFFICE: Attorney for Respondent	PAGES: 20
FAX#: (202) 333-5685	TIME: 2:42p.m.
PHONE#: (202) 333-6025	
FROM: CAMELLA , DOCKET TEAM	

Board Of Immigration Appeals/Clerks Office
Docket Team

Phone: (703) 305-0445
Fax: (703) 605-5235

SUBJECT: COPY OF BOARD DECISION FOR A [redacted], DEMJANJUK, John

(b)(6)

COMMENTS:

Confidentiality Notice: The information contained in this fax and any attachments may be legally privileged and confidential. IF you are not an intended recipient, you are hereby notified that any dissemination, distribution or copying of this fax is strictly prohibited. If you have received this fax in error, please notify the sender and permanently destroy the fax and any attachments immediately. You should not retain, copy or use this fax or any attachments for any purpose, nor disclose all or any part of the contents to any other person. Thank you

DEC-21-2006 THU 02:40 PM BIA Clerks/Office FAX NO. 703 605 5235 P. 01

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

3107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Broadley, John, Esquire
1054 31st Street NW, Suite 200
Washington, DC 20007-0000

ICE Office of Chief Counsel/CLE
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN

A [redacted] (b)(6)

Date of this notice: 12/21/2008

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
HURWITZ, GERALD S.
MILLER, NEIL P.
OSUNA, JUAN P.

gilmorec

DEC-21-2008 THU 02:40 PM BIA Clerks' Office FAX NO. 703 605 5235 P. 02

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

(b)(6) File: A [redacted] - Cleveland Date: DEC 21 2006

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

APPLICATION: Deferral of removal under the Convention Against Torture

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec."). By decision dated December 28, 2005, the Immigration Judge denied the respondent's application for deferral of removal under the Convention Against Torture, and ordered him

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(b)(6)

removed from the United States to Ukraine, or in the alternative to Germany or Poland ("CIJ Deferral Dec."). On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

DEC-21-2008 THU 02:40 PM BIA Clerk's Office FAX NO. 703 605 6235 P. 04

(b)(6)

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. The Chief Immigration Judge also held that, as an alien who assisted in Nazi persecution, the respondent was barred as a matter of law from all forms of relief from removal other than deferral of removal under the Convention Against Torture. Exh. 20.

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[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

DEC-21-2006 THU 02:41 PM BIA Clerks'Office FAX NO. 703 605 5235 P. 05

(b)(6)

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

C. The Immigration Judge's December 28, 2005, Decision Regarding Relief from Removal

The Immigration Judge noted that the respondent's application for deferral of removal is based on three underlying premises: 1) prisoners in Ukraine are frequently subjected to serious abuse or torture, 2) persons who are potentially embarrassing to the Ukranian government are at risk of physical harm and death, and 3) he is uniquely at risk of torture if he is removed to Ukraine. The Immigration Judge found that the evidence of record did not support a finding that the respondent would be prosecuted in Ukraine because of his Nazi past. In reaching this decision, the Immigration Judge noted that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany. The Immigration Judge also found that the evidence of record did not support a finding that the respondent would likely be detained while awaiting trial or as a result of conviction. Finally, the Immigration Judge found the respondent's assertion that he would likely be tortured if taken into custody in Ukraine to be speculative and not supported by the record. For these reasons, the Immigration Judge denied the respondent's application for deferral of removal because he found that he had not established that he was more likely than not to be tortured if removed to Ukraine.

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

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relevant to the removability issue had been established by collateral estoppel; and 5) the Chief Immigration Judge erroneously found that the respondent was not eligible for deferral of removal pursuant to the Convention Against Torture. Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

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Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(1), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd. Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

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because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himself to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

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> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal,' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

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because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Ballar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

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We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

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law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hammer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

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In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as '"issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived . . . ."' *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case--rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

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2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112; NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

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respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

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A [redacted] (b)(6)

Thereafter, the respondent filed an application for deferral of removal. Exh. 31. On December 28, 2005, the Chief Immigration Judge denied the respondent's application for deferral of removal on the ground that he failed to meet his burden of proving: 1) that he was likely to be prosecuted if removed to Ukraine; 2) that if prosecuted he was likely to be detained; and 3) that if prosecuted and detained, he was likely to be tortured. The Chief Immigration Judge ordered the respondent removed to Ukraine, with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

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appeals," 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko, supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

E. Deferral of Removal under the Convention Against Torture

Finally, the respondent argues that the Chief Immigration Judge erred in denying his application for deferral of removal under the Convention Against Torture. A person seeking deferral of removal must prove that it is more likely than not that he or she would be tortured if removed to a particular country. 8 C.F.R. §§ 208.16(c)(2) and 208.17(a). It is not sufficient for an applicant to claim a subjective fear of torture, rather, the applicant must prove, through objective evidence, that he or she is likely to be tortured in a particular country. *Matter of J-E-*, 23 I&N Dec. 291, 302 (BIA 2002). For purposes of the Convention Against Torture, "torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for a specific purpose, such as extracting a confession or punishing the victim. 8 C.F.R. § 208.18(a)(1). To qualify as torture, the act must also be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," at a time when the victim is in the offender's "custody or physical control." 8 C.F.R. §§ 208.18(a)(1) and (6). "Torture is an extreme form of cruel and inhumane treatment and does not include lesser forms of cruel, inhumane, or degrading treatment or punishment...." 8 C.F.R. § 208.18(a)(2). Moreover, "[a]n act that results in unanticipated or unintended severity of pain and suffering is not torture." 8 C.F.R. § 208.18(a)(5).

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The thrust of the respondent's claim for deferral is that: 1) the United States Government created a widespread public perception that he is responsible for crimes committed against Jewish prisoners by "Ivan the Terrible" at the Treblinka death camp; 2) the United States will encourage Ukraine to arrest, detain, and prosecute him if he is removed to Ukraine; 3) it is "irrational" to believe that the Ukrainian government will not comply with such requests; 4) many prisoners in Ukraine are subjected to mistreatment and/or torture; and 5) the respondent is especially "vulnerable" to mistreatment and torture because of his age. In denying the respondent's application, the Chief Immigration Judge concluded that the respondent failed to prove three key facts: 1) that as a result of the government's previous assertion that he was "Ivan the Terrible" (an assertion that the government has not made in more than a decade), he is likely to be prosecuted if removed to Ukraine; 2) that if prosecuted, he is likely to be detained; and 3) that if prosecuted and detained, he is likely to be tortured.

The Chief Immigration Judge relied on numerous exhibits showing that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. CIJ Deferral Dec. at 10 (citing *Exhibits* 35 at 1-2, 36, 37A at 15-22, 37C, 37G, 37H). Moreover, we note that the respondent stipulated that several Ukranian nationals who assisted in Nazi persecution had not been indicted or prosecuted, nor had Ukraine requested their extradition, despite the U.S. government's efforts to encourage Ukraine to do so. Exh. 35 §§ 1-20. We reject the respondent's speculation that because of his notoriety, his case is markedly different from others who have been returned to Ukraine. Instead, the State Department's advisory opinion letter[7] rebuts this claim by expressing the opposite opinion: that the government of Ukraine is "very unlikely" to mistreat a "high-profile individual[]" such as the respondent. Exhs. 39A and 45. For these reasons, and given the absence of *any* evidence of a Nazi war criminal facing prosecution in Ukraine, the respondent's speculative argument is not persuasive. Therefore, we agree with the Chief Immigration Judge that the respondent failed to establish that he is likely to be prosecuted if removed to Ukraine.

We also agree with the Chief Immigration Judge's finding that the respondent has not established that he is likely to be detained even in the unlikely event that he is prosecuted in Ukraine. As set forth in the stipulations between the parties, Ukranian law allows for pre-trial release of criminal defendants, and large numbers of Ukranian criminal defendants are released from custody while awaiting trial. CIJ Deferral Dec. at 11 (citing Exh. 35).

---

[7] We reject the respondent's argument that the State Department's advisory opinion is inadmissible. In this regard, we note that the Federal Rules of Evidence do not apply in immigration court proceedings. Because the letter from the State Department is probative and its use is not unfair to the respondent, we find no error in the Chief Immigration Judge's consideration of the letter. *See Matter of K-S-*, 20 I&N Dec. 715, 722 (BIA 1993) (relying on State department advisory opinion letter as "expert" evidence); *Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785 (BIA 1999) (noting that the test for admissibility of evidence is whether the evidence is probative and whether its use is fundamentally fair so as to not deprive the alien of due process); 8 C.F.R. §§ 1208.11(a) and (b) (the State Department may provide an assessment of the accuracy of an applicant's claims, information about the treatment of similarly-situated persons or "[s]uch other information as it deems relevant").

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A [redacted] (b)(6)

Finally, we agree with the Chief Immigration Judge's finding that although conditions in Ukranian prisons may be harsh, it is unlikely that the respondent would be tortured if detained. In this context we note that the evidence of record indicates that the government of Ukraine has permitted international monitoring of its prisons and has engaged in improvement efforts. CIJ Deferral Dec. at 12 (citing Exhs. 39A and 45). Moreover, we note that even if the respondent were to face harsh prison conditions in the unlikely event that he faces detention, generally harsh prison conditions do not constitute torture. *See Matter of J-E-*, 23 I&N Dec. at 301-04; *see generally, Alemu v. Gonzales*, 403 F.3d 572, 576 (8th Cir. 2005) (noting that substandard prison conditions are not a basis for relief under the Convention Against Torture unless they are intentionally and deliberately created and maintained in order to inflict torture); *Auguste v. Ridge*, 395 F.3d 123, 152-53 (3rd Cir. 2005).

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). Simply put, the respondent's arguments regarding the likelihood of torture are speculative and not based on evidence in the record. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006) (applicant fails to carry burden of proof if evidence is speculative or inconclusive). Therefore, we reject the respondent's arguments, and conclude that the Chief Immigration Judge correctly decided that the respondent failed to prove that he is likely to be prosecuted in Ukraine; that if prosecuted, he is likely to be detained either prior to trial or as a result of a conviction; and, that if prosecuted and detained, he is more likely than not to be tortured.

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

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ATTACHMENT NO. 2

DENIAL OF ADMINISTRATIVE STAY OF REMOVAL

Office of Detention and Removal Operations
Cleveland, Ohio
U.S. Department of Homeland Security
1240 E. 9th Street, Room 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

April 3, 2009

John H. Broadley, Esq.
John H. Broadley & Associates, P.C.
Canal Square
1054 Thirty-First St., N.W.
Washington D.C. 20007

(b)(6)

Re: John Demjanjuk, A [redacted]

Dear Mr. Broadley:

This letter is in response to your client's, Mr. John Demjanjuk, A [redacted] submission of ICE Form I-246, Application for a Stay of Deportation or Removal (Application),[1] with U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), on April 1, 2009. The Application requests that ICE stay Mr. Demjanjuk's removal from the United States for one year because it "would not be 'practicable or proper'" under 8 C.F.R. § 241.6 due to his current medical condition. He further claims "urgent humanitarian reasons" under 8 C.F.R. § 212.5 in support of his Application on the ground that his removal, followed by the Federal Republic of Germany (FRG)'s arrest, detention, and confinement pending trial, would be "such stressful events" that would amount to "inhuman and degrading treatment to myself and my family."

As you are aware, Mr. Demjanjuk has exhausted his administrative and judicial remedies to review his removal from the United States under INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D) (inadmissible at time of entry or adjustment of status under INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i) (participated in Nazi persecution); INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under §§ 10 and 13 of the Displaced Persons Act, 62 Stat. at 1013 (1948)); and INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A) (inadmissible at time of entry or adjustment of status under § 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)). He therefore became subject to removal to Ukraine, Poland, or the FRG. See INA § 241(a), 8 U.S.C. § 1231(a). The FRG has agreed to accept him and on March 10, 2009, issued an arrest warrant for him, alleging that he was an accessory to 29,000 counts of murder as a guard at the Sobibor extermination camp from March to September 1943.

---

[1] Your March 31, 2009 cover letter requests that ICE waive the requirements that Mr. Demjanjuk file his Application in person and pay the $155 filing fee. Please be advised that the INA regulations prescribe that an applicant "seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, . . . and stating that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay." 8 C.F.R. § 103.7(c)(1). Although your client has not substantiated his inability to pay the fee, the agency agrees to waive his appearance and the prescribed remittance.

On April 2, 2009, an ICE Division of Immigration Health Services (DIHS) physician conducted a physical examination and concluded that Mr. Demjanjuk is medically stable to travel from the United States to the FRG. A DIHS physician and nurse will be available to assist him during the flight. Medical personnel will monitor his medical condition while en route from Cleveland, Ohio, to Munich, FRG.

In summary, after reviewing Mr. Demjanjuk's Application and DIHS's assessment of his ability to travel in light of the factors enumerated in 8 C.F.R. § 212.5 and INA § 241(c)(2)(A), 8 U.S.C. § 1231(c)(2)(A), I have concluded that your client can safely fly from the United States to the FRG. Accordingly, his Application is denied and no stay of removal will be granted. Please note that a denial of a request for a stay is not subject to administrative or judicial review. 8 C.F.R. § 241.6(b) ("[denial . . . of a request for a stay is not appealable"); Moussa v. Jenifer, 389 F.3d 550, 555 (6th Cir. 2004) (field office director's discretionary decision "is thus unreviewable by [the Court of Appeals.]"). Please contact Supervisory Detention and Deportation Officer [redacted] if you have any further questions.

(b)(7)(c)

Sincerely,

Vincent Clausen
Field Office Director

cc: John Demjanjuk

ATTACHMENT NO. 3

NEW YORK TIME 2/5/88 ARTICLE JACOB TANNENBAUM

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A Jew Who Beat Jews in a Nazi Camp Is Stripped of His Citizenship

By ROBERT D. McFADDEN
Published: Friday, February 5, 1988

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A Polish-born Jew accused of wartime atrocities surrendered his United States citizenship before a Federal judge in Brooklyn yesterday and admitted that he brutalized Jewish prisoners in a Nazi forced-labor camp and later entered this country illegally.

But under an agreement with the Justice Department, the 77-year-old Brooklyn resident, Jacob Tannenbaum, will not be deported - an action the Government had sought for a year - because doctors for both sides agreed that his age and failing health would make it life-threatening.

Mr. Tannenbaum, who apparently suffered a stroke last August while testifying in the case, acknowledged yesterday that he had beaten fellow prisoners, even out of the presence of Nazi guards, while serving as a kapo, or inmate overseer, at the Gorlitz concentration camp in what is now East Germany in 1944 and 1945.

He also acknowledged the Government's main deportation charge, that when he entered this country in 1949 he lied about his background, concealing that he had been a kapo in a camp and had participated in acts of persecution. Only three other Jews had been accused by the United States of war crimes, all in the 1950's, but none were deported.

"I think frankly that this was a fair resolution of the case," Neal M. Sher, director of the Justice Department's Office of Special Investigations, which brought the case, said after Judge I. Leo Glasser of Federal District Court signed an order stripping Mr. Tannenbaum of the citizenship he had held since 1955.

"It's the best solution for all concerned," said Mr. Tannenbaum's attorney, Elihu S. Massel. "It will also avoid a truly ghastly trial, in which Jews would have had to testify against Jews, none of whom really want to remember."

Elan Steinberg, the executive director of the World Jewish Congress, said in a statement that his organization "feels that the Justice Department handled a very sensitive matter in a most fair and equitable way, insuring that justice was applied in a firm but proper manner."

The case of Mr. Tannenbaum had provoked what many war-crimes experts and Jewish leaders called deep complexities and passions, raising such questions as why a Jew would have collaborated with the Nazis, whether the persecuted can also be the persecutor and how such questions can be answered more than 40 years after the fact.

Some Jewish leaders, while disavowing sympathy for any collaboration with the Nazis, drew distinctions between those who volunteered to help the Nazis and those who thought they were saving their own lives by cooperating, often with the intention of easing the brutal life of fellow prisoners.

Focus E-Mail

Kapos - from the German word Lagerkapo, or camp captain - were appointed by the SS, which supervised the camps, and enjoyed special privileges such as better food, clothing and housing. In return, they supervised the work of other inmates.

E-MAILED | BLOGGED | SEARCHED

According to members of his family, Mr. Tannenbaum, a retired dairy worker with three children who has lived in Brighton Beach for almost 40 years and has been a respected member of a synagogue, was born in Sieniawa, Poland. Conscripted into the Polish Army, he was sent to three Nazi camps during World War II.

After some time in a Polish camp in 1942, he was sent with other relatively healthy prisoners to the forced-labor camp in Galicia, where his Nazi captors blinded him in one eye and severely injured his back in a beating.

Finally, for eight months in 1944 and 1945, he served as a kapo in Gorlitz, supervising 1,000 prisoners who worked there in an armaments factory. His children have said that, far from persecuting Jews, Mr. Tannenbaum - the sole wartime survivor of a family of 12 - protected fellow prisoners from far worse treatment by Nazi officers. Admitted All Allegations

But the Government, relying on what it called eyewitness accounts of camp survivors now living in the United States and Israel, accused Mr. Tannenbaum in a detailed complaint of "brutalizing and physically abusing prisoners" and of sometimes doing so "outside the presence of German SS personnel."

Mr. Sher, of the Office of Special Investigations, said yesterday that Mr. Tannenbaum had "admitted each and every allegation in the complaint, specifically that while he was a kapo he engaged in physical abuses against prisoners even outside the presence of Germans."

A version of this article appeared in print on Friday, February 5, 1988, on section B page 1 of the New York edition.

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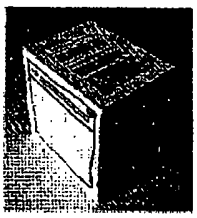

Op-Ed: How the Internet Got Its Rules

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of John Demjanjuk	File No. A[redacted]	(b)(6)
In removal proceedings		

CERTIFICATE OF SERVICE

I hereby certify on that April 7, 2009 I caused a copy of the foregoing EMERGENCY MOTION TO STAY REMOVAL to be served on the District Counsel of the Department of Homeland Security (ICE) by hand delivery at:

Office of Chief Counsel, DHS/ICE
1240 East 9th Street, Room 585
Cleveland, Ohio 44199

and on the Office of Special Investigations which has handled the case before the Board by hand delivery of a copy thereof to:

Eli Rosenbaum[2]
Director
Office of Special Investigations
1301 New York Avenue, Suite 200
Washington, D.C.

John Broadley

Dated April 7, 2009

[2] Counsel has been informed that Stephen Paskey who formerly acted on behalf of the Office of Special Investigations has left the Department of Justice.

Form G-590 (Rev. 2-1-67)
United States Department of Justice
Immigration and Naturalization Service

PROPERTY ENVELOPE

FACILITY: _____

ALIEN'S NAME	G-589 NUMBER
Demjanjuk - submitted DVD "Torture" with Motion to Submit Add'l Evi 4-3-09	

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TORTURE

John H. Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted] (b)(6)
In removal proceedings	)	

Judge ISKRA **No Hearing Scheduled**

MOTION TO SUBMIT ADDITIONAL EVIDENCE

On April 2, 2009 at approximately 1:00 PM, the Immigration and Customs Enforcement branch of the Department of Homeland Security conducted a medical examination of Mr. Demjanjuk to determine whether his physical condition would prevent his being transported to Germany pursuant to the outstanding deportation order. Mr. John Demjanjuk Jr. videotaped that physical examination.

Attached for filing in this proceeding is a DVD-R which contains the concluding portion of that physical examination. The video is dramatic evidence of the pain caused to Mr. Demjanjuk by his spinal stenosis. The video makes clear in stark terms what awaits Mr. Demjanjuk, not only during the proposed transportation to Germany but also the trauma and pain that arrest, jail and a trial will cause him. Also attached is John Demjanjuk Jr's declaration regarding the authenticity of the video clip.

Wherefore, Respondent respectfully requests that the video tape be admitted and made a part of the record of this proceeding.

Respectfully submitted,

JOHN DEMJANJUK

By: _____
One of his attorneys

John Broadley
John H. Broadley & Associates
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 301-942-0676
E-mail Jbroadley@alum.mit.edu

Dated: April 3, 2009

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
In removal proceedings	)	(b)(6)

DECLARATION OF JOHN DEMJANJUK, JR

My father, John Demjanjuk, the Respondent in this removal proceeding, was examined by a doctor from the Department of Homeland Security on Thursday April 2, 2009. I was present during that examination and videotaped the examination.

I have prepared a video clip of the concluding part of that examination, a copy of which I have given to my father's attorney. I prepared that video clip from the entire video recording of the examination. Representatives of the Immigration and Customs Enforcement Division of the Department of Homeland Security were present throughout the examination and throughout the videotaping.

The video clip is a true and exact copy of the last part of the medical examination. The entire video tape is available. I made a clip simply because the entire video tape file is very large, over 6,000 MB.

Declaration Pursuant to 28 USC 1746

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

Executed April 3, 2009

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	
In removal proceedings	)	(b)(6)
	)	

I hereby certify that on this 3rd day of April 2009 I caused a copy of the foregoing Motion to Submit Additional Evidence to be served on the government by hand delivery to:

Eli Rosenbaum
Director, Office of Special Investigations
1301 New York Avenue, NW Suite 200
Washington, D.C. 20530

AND

Office of Chief Counsel, DHS/ICE
1240 East 9th Street, Room 585
Cleveland, OH 44199

John Broadley

Dated: April 3, 2009

General Inquiry For A [redacted]

File #	Seq	Office	Status/Last Action	Location
A [redacted]	000	CLE	**Status:** RECORD IN USE **Audit Date:** 12/29/2008 02:56:47 PM **Last Action:** 03/20/2009 02:53:15 PM Re-Assign	**Sect:** DP - ICE/ DR[redacted] **Resp:** 0011 - SDDO [redacted]

(b)(7)(c)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted] (b)(6)
In removal proceedings	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 2009 I caused copies of the foregoing Motion to Supplement Filing to be served on counsel for the government by hand delivery of copies thereof to :

Eli Rosenbaum
Director, Office of Special Investigations
US Department of Justice
1301 New York Avenue NW, Suite 200
Washington, D.C. 20530

And

Office of Chief Counsel, DHS/ICE
1240 East 9th Street, Room 585
Cleveland, OH 44199

John Broadley

Dated: April 3, 2009

DHS-ICE
CHIEF COUNSEL
CLEVELAND, OH

2009 APR -3 PM 12: 17

RECEIVED

John H. Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	(b)(6)
In removal proceedings	)	

Former Chief Immigration Judge Creppy **Next Hearing: None**

RESPONDENT'S MOTION TO SUPPLEMENT FILING

John Demjanjuk, by his undersigned attorneys, hereby moves the Court to permit him to correct the filing he made yesterday, April 2, 2009, by supplementing the Form I-589 filed in support of his Motion to Reopen and in support of his Emergency Motion for a Stay.

Inadvertently, when the final version of the I-589 was assembled for copying three medical reports supporting Mr. Demjanjuk's answer to Question B4 were not attached to that answer. The error was discovered yesterday evening. The three pages of medical reports are attached hereto.

Wherefore, Respondent respectfully requests that the Court issue an order directing the supplementation of the Form I-589 by attaching the three medical reports to Mr. Demjanjuk's answer to question B4.

Respectfully submitted,

JOHN DEMJANJUK

By: John Broadley
One of his attorneys

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Dated: April 3, 2009

CLEVELAND CLINIC CANCER CENTER
AT PARMA COMMUNITY GENERAL HOSPITAL
6525 Powers Blvd., Parma, OH 44129
Ph: 440-743-4747 Fax: 440-743-4715

NAME: DEMJANJUK, John
CLINIC NO: 48648207
DATE OF SERVICE: 07/15/2008

DIAGNOSIS:
1. Myelodysplastic syndrome
2. Persistent anemia secondary to above

John Demjanjuk returned to clinic for follow up with his wife. He stated he is still weak despite receiving 2 units of blood transfusion around a month ago. He has received 2 doses of Procrit injection (every 2 weeks) since last visit. Symptom wise, he does not feel much different. He denies any fever, chills, night sweats or weight loss. His main complaint is weakness and his knee bothers him. His knee problem is pre-existing. He denies any chest pain, shortness of breath at rest or palpitations. No GI or GU complaints. No bleeding at all. No easy bruising.

His past medical history, personal/social history, medications and allergies were all reviewed.

REVIEW OF SYSTEMS: All 10 systems were reviewed. Except what is described above, the rest of the review of systems was completely unremarkable.

PHYSICAL EXAM: GENERAL: Patient appears at his baseline, comfortable, not in distress. He is afebrile with temperature 96, pulse 64, respiratory rate 20, blood pressure 122/64, weight 225 pounds. HEENT: Pale, no jaundice. Normal oropharynx on visual exam. RESPIRATORY SYSTEM: Lungs clear to auscultation bilaterally. No wheezing, rhonchi or crackles. Chest movement symmetrical. Trachea midline. CARDIOVASCULAR SYSTEM: Heart sounds S1, S2 with regular rate and rhythm. No gallops or additional heart sounds. GASTROINTESTINAL SYSTEM: Abdomen is soft, obese and nontender, nondistended. Normal active bowel sounds. No palpable mass or hepatosplenomegaly. MUSCULOSKELETAL SYSTEM: Decreased range of motion in major joints, symmetrical. No asymmetrical muscle weakness. Trace edema in lower extremities.

LABORATORY TESTS: WBC 2.4, hemoglobin 9.5, hematocrit 28.3, platelet count 210,000. Creatinine 1.8, BUN 36, total bilirubin 0.6.

ASSESSMENT/PLAN:
1. Myelodysplasia, responding poorly to Procrit therapy, although he only received 2 doses so far. I will continue the treatment and increase frequency of Procrit injection to every week if possible.
2. Chronic renal failure. I will refer him to nephrologist for nephrology consultation.
3. I advised the patient and his wife to bring his son with him during the next visit in one month. I will discuss chemotherapy with hypermethylating agent with them. Patient does not really understand much English, therefore, I feel that the language barrier is really affecting his informed decision-making ability. He will probably benefit from hypermethylating agent like Vidaza or Dacogen, if he could tolerate. We will discuss more in detail next time.
4. Given his symptomatic anemia, I offered the patient another 2 units of blood transfusion. He understood my recommendation, however, he could not make any decision when I asked him whether he would like to have a blood transfusion, his answer was "I do not know". This is quite frustrating. I advised him and his wife to go home and talk to his son and if he changes his mind on blood transfusion he will call and let me know. I will be happy to schedule it for him.

Total counseling time was about 40 minutes. This apparently is a difficult patient to take care of.

Wei Lin, M.D.

cc:
Date Dictated: 07/15/2008

Date Typed: jlb 07/17/2008 09:00

OFFICE HOURS BY APPOINTMENT

KEUCK CHANG, M.D.
DIPLOMATE IN NEPHROLOGY

6769 RIDGE RD., SUITE 203
PARMA, OHIO 44129

TEL: 440-888-4426
FAX: 440-888-5033

NAME: Demjanjuk, John
Birth date:04/03/1920 Age: 88 Gender: Male

Emergency contact:
Privacy:family. Marital status/Occup:
Insurance: I
Chart No:8903a 8/08 717 160-170/70 Prob:

DATE: 09/08/2008 WT 227 BP 152/70 HT 6'9 TEMP
consult office visit with lab, US renal
99214
Follow up with Dr. Goliat for primary care
Follow up with Dr. Lin

x 72 inches / 3131
Body Surface 2.284
72.1 ml/min → 54.6 ml/min/1.73

Entitled for social security → Medicare refused to pay for present
→ Had Ford Co. to assume primary provider. HMO health Ch. received print 4 wks ago

130/60 both arms
JVD ⊖
Heart lungs clear:
Abd. soft, Kidney, liver not palpable
Pitty ⊖

1. To call result of Vit D level
2. Turn one c each need

1. CKD (Stage 3) 54.6 ml/min/1.73
2. Hyperoxaluria
3. Anemia — MDS CKD
4. Kidney stones Hyperoxaluria? (Turn) ↑ Calcium Renal function pl 4(M)

Wife answered 9/9 Talked to pt Vit D 400 IU/d

return date: signature:

1-12-09 4:30

5 CS

TIMMAPPA P. BIDARI, MD., INC.

JANUARY 19, 2009

DEMJANJUK, JOHN

DIAGNOSIS:
1. Myelodysplastic syndrome.
2. Anemia and leukopenia secondary to above.
3. Acute gout in the right big toe and the mid foot.

HISTORY OF PRESENT ILLNESS: He says he was coming along okay he started having severe pain in the right big toe and the middle of the foot since yesterday he has taken Colchicine but has run out of the medication.

REVIEW OF THE SYSTEMS:
Musculoskeletal System: As above.
General and Constitutional Symptoms: Has moderate degree of fatigue, denies fever and chills, night sweats, or weight loss.
Cardiovascular System: Has shortness of breath on exertion, no leg edema, or chest pain.
Head: Denies pressure or pain.
Eyes: Denies blurred vision.
ENT and Respiratory System: Unremarkable.
Skin: Denies rash, itching, or easy bruising. He has redness of the skin over the right big toe due to gout.
GI System: Denies abdominal pain, nausea, or vomiting.
Hemic and Lymphatic System: Has not felt any lumps under the arms, in the neck, or groins.
GU System: No dysuria or burning micturition has urinary frequency.
CNS: Has occasional lightheadedness.

SOCIAL HISTORY: As recorded previously.

PAST HISTORY: As recorded previously.

FAMILY HISTORY: As recorded previously.

PHYSICAL EXAM: Today reveals a B/P of 140/60; pulse rate is 72, respirations 18, temperature normal. Weight. 218 pounds. Head. Normal. Eyes. Conjunctival pallor noted no jaundice. ENT: Unremarkable. Neck. No lymphadenopathy. Chest. No sternal tenderness. Heart: Sounds normal. Lungs: Clear. Abdomen: No tenderness, no distention. Extremities: No leg edema, redness of the skin noted over the dorsum of the right big toe.

LABORATORY DATA: Today CBC shows hemoglobin of 9.8, hematocrit 29.2, WBC 3,100, and platelets 277,000.

TREATMENT PLANS: Give Procrit 60,000 units subcutaneously today.

I have prescribed him Colchicine 0.6 mg to take 1 daily for gouty arthritis in the right big toe and the foot.

Continue weekly Procrit and CBC, re-exam in two week's time.

TIMMAPPA P. BIDARI
TPB/djk

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	
In removal proceedings	)	(b)(6)

ORDER

Respondent's Motion to Supplement Filing is granted. The Clerk is directed to append to the form I-589 Respondent filed on April 2, 2009 the three medical reports Respondent submitted with his motion on April 3, 2009.

Immigration Judge

John H. Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	(b)(6)
In removal proceedings	)	

Former Chief Immigration Judge Creppy **Next Hearing: None**

MOTION TO REOPEN

John Demjanjuk, the respondent, by his undersigned attorneys, hereby moves the Immigration Court for an order reopening the removal proceedings against him to hear evidence of changed country conditions in Germany, one of the countries to which he has been ordered removed, that warrant deferral of removal pursuant to the Convention Against Torture.

1. Prior Proceedings

The Chief Immigration Judge entered a final order December 28, 2005 that Mr. Demjanjuk be removed to Ukraine, Poland or Germany and denied Mr. Demjanjuk's application for deferral of removal to Ukraine pursuant to the Convention Against Torture. That decision was upheld by the Board of Immigration Appeals on December 21, 2006, and affirmed by the United States Court of Appeals for the Sixth Circuit on January 30, 2008, *Demjanjuk v. Mukasey*, 514 F.3d 616 (6th Cir. 2008). The Supreme Court denied certiorari on May 19, 2008, *Demjanjuk v. Mukasey*, 128 S.Ct. 2491 (mem.), 171 L.Ed.2d 780.

Mr. Demjanjuk is not a subject of any pending criminal proceeding under the Act. As is more fully set forth below, Mr. Demjanjuk appears to be the subject of a criminal investigation in Germany which has led to the issuance of an arrest warrant.

2. Jurisdiction of the Court

Former Chief Immigration Judge Michael J. Creppy assigned this case to himself. Respondent assumes that the case remains assigned to the Chief Immigration Judge who replace Michael J. Creppy.

This is a motion to reopen the underlying removal proceeding for the sole purpose of hearing evidence of changed country conditions in Germany, one of the countries to which the Court ordered Mr. Demjanjuk removed. Pursuant to 8 CFR 1003.23(b)(4)(1) the time limits of 8

CFR 1003.23(b)(3) do not apply. Moreover, no filing fee is required for a reopening solely on these grounds. 8 CFR 1003.24.

3. Changed country circumstances

Accompanying this motion is an Application for Deferral of Removal Pursuant to the Convention Against Torture on Form. I-589. Part C 5 of that Application explains why Mr. Demjanjuk did not make this claim with respect to torture in Germany at the time the original Application for Deferral of Removal was filed on October 7, 2005. Part B 4 of that standard form application further explains the changed circumstances. Those parts of Mr. Demjanjuk's Application are reproduced below.

Supplementary Response to Part C 5

Removal proceedings were commenced against me in 2004 to remove me to Ukraine, Poland or Germany. I applied for deferral of removal to Ukraine under the Convention Against Torture based on the climate of hate that the Department of Justice had created against me, and Ukraine's history and practice of torture in its prisons. At that time, I had no reason to believe that if I were removed to Germany I would be arrested or in the event of arrest subjected to severe mistreatment amounting to torture. Within the past few weeks it has become apparent that the German government has decided to accept deportation and to arrest, imprison and try me for some of the same crimes for which I was tried and acquitted in Israel. Arrest, imprisonment and trial in Germany for crimes for which I have already been acquitted would amount to severe mistreatment amounting to torture under the Convention Against Torture in view of my age (89 on 4/3/09) and my poor health as outlined in the attached medical reports. On information and belief, these changed circumstances in Germany which will result in my torture have been brought about by actions of representatives of the Department of Justice.

In summary, at the time I filed my original application for deferral of removal, I had no reason to believe that removal to Germany (as opposed to Ukraine) would result in actions by the German authorities that would amount to torture.

Why Arrest, Incarceration and Trial in Germany would be Torture

Supplementary Response to Part B 4

My present physical condition is described above. I will be 89 years old on April 3, 2009 and in general my health is poor. I suffer from the conditions described above. I am physically very weak and experience severe spinal, hip and leg pain which limits mobility and causes me to

require assistance to stand up and move about. Spending 8 to 12 hours in an airplane seat flying to Germany would be unbearably painful for me.

I am very familiar with life as a prisoner. First I was a prisoner-of-war of the Germans after my capture in 1942, and subsequently I was a prisoner of the Israelis held in solitary confinement in an Israeli jail cell from early 1986 to 1993. During my time in solitary in an Israeli jail, they tried me, sentenced me to death, and ultimately acquitted me when incontrovertible evidence was presented that "Ivan the Terrible" was an individual named "Ivan Marchenko." As a prisoner of the Germans I was aged 22 - 25. As a prisoner of the Israelis I was aged 66 - 73 and in reasonably good physical and mental health. I am now age 89 and my health is poor. I could not care for myself in an ordinary jail cell as I need assistance to perform many functions, particularly those requiring rising, standing, and moving around. I spend many hours each day laying in bed to provide some relief to my lower back pain. Incarceration under conditions similar to those I experienced in Israel would subject me to severe physical pain and suffering.

Spending 8 years in solitary confinement, 6 of them under sentence of death, is a psychological experience that leaves permanent scars, fears and vulnerabilities. I have serious doubts whether I could withstand incarceration and the terrible psychological strain of another trial at my age and in my weakened physical state. After my experience in Israel, the prospect of another "show trial," complete with emotional witnesses testifying to what they want to be true, not to what is true, is a nightmare that is unimaginable to someone who has not experienced it.

Finally, I will raise the issue of the effect of another round of arrest, jail and trials on my family. The effect of the events from 1976 to today on my wife of over 60 years, and my three children and their families has been traumatic. My son, John Demjanjuk, Jr., has lived with the Justice Department's vendetta against me since he was 11 years old, through his teenage years and for all of his adult life. He is now 43 years old. My daughters were older when it began in 1976, but the impact on their lives and families may have been even more severe. I have been subjected to three major trials. The first of these was from 1977 when the Justice Department filed its denaturalization complaint to early 1986 which I was extradited to Israel. The second of these was from early 1986 when I was extradited to Israel and tried and convicted of murder to 1993 when the Israeli Supreme Court acquitted me and sent me back to the United States. The third was from 1999 when the Justice Department filed its second denaturalization complaint against me to today when I am facing the prospect of deportation to Germany and a likely fourth major trial there. The prospect of my family having to go through this experience for a fourth time is intensely painful to me.

Why Would the German Authorities Subject Me to this Treatment

This question calls for some speculation on the motives of the German authorities. I understand that the Office of Special Investigations (OSI), which has been the center of the Justice Department vendetta against me, has been trying to induce other countries (including Germany) to accept my deportation and to prosecute me. After the US Court of Appeals found that Office of Special Investigations' attorneys had committed a fraud on the court by

withholding exculpatory evidence from the defense (and from the Israeli prosecutors), I did not expect OSI to rest until they had denaturalized me, deported me and put me on trial somewhere for something. I am sure that the record of the efforts of OSI to do this will eventually come to light.

The motivation of the German authorities is more difficult to understand. We have read in the press that certain organizations have been bringing pressure on the German authorities to undertake proceedings against me. This is consistent with the activities of these same organizations in promoting my extradition to Israel and trial there as "Ivan the Terrible." Why the German authorities should have yielded to such pressure is more difficult to understand. One possible reason is that the German authorities have not aggressively prosecuted German war criminals and have been subjected to considerable criticism on this account. It is possible that the German authorities see a prosecution of me as means to draw attention away from their past approach. Whether the German authorities are responding to outside pressure (including pressure from OSI) or are trying to divert attention from their own prior practices, they appear determined to arrest, jail and prosecute me despite the pain and suffering it will cause, and it can be inferred <u>because</u> of the pain and suffering it will cause me and my family.

<u>Summary</u>

In summary, the German authorities appear determined to arrest, incarcerate and try me again for alleged war crimes, notwithstanding the Israeli Supreme Court acquitted me of charges that included the same factual allegations that the German prosecutor appears to be planning. At my age, in light of my poor physical condition and the traumatic experiences I have undergone at the hands of the US Justice Department, the Israelis, and the US Justice Department a second time, this will expose me to severe physical and mental pain that clearly amounts to torture under any reasonable definition of the term. The effect is magnified by the serious adverse effect that further proceedings will have on my family.

Mr. Demjanjuk's statements in response to Question C5 and B4 of the form I-589 adequately explain the changed country circumstances that clearly show that his deportation to Germany under those changed circumstances would now violate the Convention Against Torture.

CONCLUSION

Wherefore, John Demjanjuk respectfully requests that the Immigration Court reopen this removal proceeding to consider his request for deferral of removal to Germany under the Convention Against Torture based on changed country circumstances.

Respectfully submitted,

JOHN DEMJANJUK

By: _____
One of his attorneys

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Dated: April 2, 2009

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.: A** [redacted]
	)	(b)(6)
RESPONDENT	)	

CHARGES: Section 237(a)(4)(D) of the Immigration and Nationality Act (INA or Act), as amended, as an alien described in INA § 212(a)(3)(E)(i) (the "Holtzman Amendment"), who ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany,

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of Section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948); and

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: alien immigrants who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of Section 10 of the DPA, 62 Stat. at 1013 (1948); and

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by Section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

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[1] Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

APPLICATION: Deferral of Removal under the Convention Against Torture

APPEARANCES

ON BEHALF OF RESPONDENT
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ON BEHALF OF THE GOVERNMENT
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DECISION AND ORDER OF THE CHIEF IMMIGRATION JUDGE

I. STATEMENT OF THE CASE

The respondent is an eighty-five year old former citizen of the United States and national of the Ukraine. He was born on April 3, 1920, at Dubovye Makharintsy, Ukraine. He was first admitted to the United States at New York, New York, on or about February 9, 1952, on an immigrant visa issued under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch.647, 62 Stat. 1009 (*amended* June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219).[1] He became a naturalized citizen of the United States in 1958. *See* Exhibit 5.

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. Exhibit 5B. The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. Exhibit 5B.[2] While that appeal was pending, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b) in the district court on February 12, 2003. *U.S. v. Demjanjuk*, 128 Fed. App. 496, 2005 WL 910738 (6th Cir. 2005) (unpublished decision). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *See id.*

The Office of Special Investigations, U.S. Department of Justice, (*hereinafter*, the government) commenced these removal proceedings against the respondent by filing a Notice to Appear (NTA), dated December 17, 2004, with this Court. Exhibit 1.

On February 25, 2005, the government filed a motion for the application of collateral estoppel and judgment as a matter of law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA had been litigated and decided during the respondent's denaturalization proceedings and that, with the exception of allegation #22, the respondent should be precluded from relitigating those issues in these removal proceedings. *See* Exhibit 5.

On February 28, 2005, the Court conducted a Master Calendar hearing in this matter. The Court issued an Order, instructing the respondent to file written pleadings and opposition to the government's motion for collateral estoppel and judgment as a matter of law by May 31, 2005. In addition, the respondent was requested to submit any applications for relief by June 30, 2005.

On May 31, 2005, the respondent filed his written pleadings to the allegations of fact and

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[1] The DPA was enacted to assist in alleviating the problem of World War II refugees. The DPA permitted the admission into the United States of over 400,000 displaced persons by 1951.

[2] The United States Court of Appeals for the Sixth Circuit discussed the six decisions issued in matters related to Respondent's citizenship prior to the denaturalization proceedings. *Id.* at 627.

charges of removability, as set forth in the NTA, and his opposition to the government's motion for application of collateral estoppel and judgment as a matter of law, and moved the Court to terminate the proceedings. Exhibit 14. The respondent denied all four charges of removability, and argued that the government's motion should be denied because he did not have "a full and fair opportunity to litigate substantive issues that go to the heart of these removal proceedings." *See id.*

On June 10, 2005, the Government filed its reply brief in support of its motion for the application of collateral estoppel and judgment as a matter of law.

On June 16, 2005, the Court issued an Order granting the government's motion for application of collateral estoppel and judgment as a matter of law and denying the respondent's motion to terminate proceedings, which is incorporated into this decision by reference. Exhibit 20. The Court sustained all four charges contained in the NTA, and found the respondent removable from the United States. *See id.* Further, the Court found that the respondent was not eligible to apply for any form of relief other than deferral of removal pursuant to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter* CAT). *See* Exhibit 20.

On June 23, 2005, the Court issued an Interim Order, canceling the June 30, 2005 hearing and granting the respondent until July 20, 2005 to comply with the Department of Homeland Security's (*hereinafter, DHS*) biometrics requirements. In addition, the Court granted the respondent until September 7, 2005 to submit any applications for relief, and required that the parties file a joint pre-hearing statement by September 21, 2005. *See* Exhibit 23. On July 5, 2005, the Court amended its June 23, 2005 order and granted the parties until October 5, 2005 to submit the joint pre-hearing statement and designated the Ukraine, or in the alternative Germany or Poland, as the country of removal. *See* Exhibit 28.

On September 7, 2005, the respondent submitted his application for deferral of removal and proof of compliance with instructions for providing biometrics. Exhibit 31.

On September 14, 2005, the Court conducted a status conference with the parties. The Court admitted Exhibits 1 - 32. The Court reaffirmed that the parties must submit the joint pre-hearing statement on or before October 5, 2005.

On October 4, 2005, the Court issued an Order granting the respondent's September 29, 2005 motion for an enlargement of time to file the joint pre-hearing statement and ordered the parties to file the joint pre-hearing statement on or before October 12, 2005. *See* Exhibit 34.

On October 12, 2005, the parties jointly filed a statement of stipulated facts not at issue and each party submitted an individual pre-hearing statement. *See* Exhibits 35 - 37ZZ. The respondent submitted nineteen exhibits in support of his pre-hearing statement. *See* Exhibits 36A - 36X. The government submitted fifty-two exhibits in support of its pre-hearing statement. *See* Exhibits 37A - 37ZZ.

On October 18, 2005, the Court issued an Order requiring each party to submit a supplemental memorandum addressing the exhibits submitted on October 12, 2005. *See* Exhibit 38. The Court

ordered that, in the supplemental memorandum, each party must address each proposed exhibit and specify which portion of that exhibit is relevant to the adjudication of the respondent's application for deferral of removal under CAT. *Id.* The Court advised that failure to comply with this order with respect to any exhibit would result in that exhibit not being considered. *Id.*

On October 27, 2005, the Court issued an Order requesting objections or rebuttal evidence regarding the admission of the Department of State opinion dated October 13, 2005 addressing the likelihood that the respondent will be tortured if removed to the Ukraine. *See* Exhibit 39 and 39A.

On November 1, 2005, both parties submitted their supplemental memoranda addressing the exhibits submitted on October 12, 2005. Exhibits 40 and 41.

On November 3, 2005, both parties submitted arguments regarding the admission of the October 13, 2005 Department of State opinion. The respondent filed an opposition to the admission of the Department of State opinion. Exhibit 42. The respondent objected on both procedural and substantive grounds, arguing that the letter was not properly authenticated and that the conclusory assertions contained in the opinion were not support by the Department of State's Country Report dated February 28, 2005. *See* Exhibit 42; *but see* Exhibit 31C. The government filed a position statement supporting the admission of the October 13, 2005 Department of State opinion, stating that it was properly submitted to the Court, it was highly relevant and highly probative, and its use would not be fundamentally unfair. *See* Exhibit 43.

On November 16, 2005, the Court issued an Order regarding the admission of proposed exhibits. Exhibit 44. The Court, based on the explanations provided by each party regarding the relevance of the proposed exhibits and having duly considered the parties' objections, admitted all proposed exhibits submitted by the parties. Exhibits 36A - 36X and Exhibits 37A - 37ZZ. The Court also, upon careful consideration of the arguments made by the parties, admitted into evidence the Department of State opinion dated October 13, 2005. Exhibit 39A. The Court also provided a full list of the exhibits admitted into evidence. Exhibit 44A.

On November 29, 2005, the Court conducted a merits hearing. The respondent, through his attorney, appeared before the Immigration Court in Cleveland, Ohio. The Court stated that the respondent had been found removable by the Court in an earlier written Order and sought relief from removal in the form of deferral of removal under CAT. *See* Exhibit 20. The respondent reviewed his application for relief, having it read to him through the Court's interpreter in his native language of Ukrainian. The respondent then swore or affirmed that he knew the contents of his application and that those contents were true to the best of his knowledge. *See* Exhibit 31 at 9. The Court, after duly considering the respondent's renewed objection to the October 13, 2005 Department of State opinion, admitted into evidence, without objection, the supplementary Department of State letter and certificate of authenticity submitted on November 22, 2005. *See* Exhibits 45.

Neither the respondent nor the government called any witnesses in this case. However, each side submitted a brief closing argument and the Court took the matter under advisement.

II. STATEMENT OF THE FACTS

A. The Respondent's Argument in Support of his Application for Deferral of Removal

Although the respondent was given an opportunity to present testimony at the merits hearing on November 29, 2005, he presented no testimony but relied on his written application and supporting documents. The respondent has stated in his application that the Ukrainian government will likely prosecute him as Ivan the Terrible of Treblinka. Although not clearly laid out in Respondent's application, he implies that he will at some point be imprisoned as a result of prosecution, where he will be subjected to harsh prison conditions and likely abuse. He claims that because of the Ukraine's perception of him as Ivan the Terrible, or simply as a Nazi war criminal, he will be singled out for torture in the Ukraine. The respondent supports his position by stating in his application that the government previously stated its intent to encourage the country of removal to arrest and prosecute him. He further states that, based upon information allegedly obtained in a Freedom of Information Act request, the government has been in contact with the Ukrainian government. He also bases this argument on his past treatment in Israel during his detention and trial there. *See* Exhibit 31.

In support of his application for deferral of removal the respondent relies solely on the documentary evidence submitted. *See* Exhibits 31, 31A - 31G, 36, 36A - 36X, and 40. The respondent bases his application for relief on three underlying premises: (1) prisoners in the Ukraine are frequently subjected to serious abuse or torture, (2) persons who are potentially embarrassing to the Ukrainian government are at risk of physical harm and death, and (3) he is uniquely at risk of torture if he is removed to the Ukraine. *See* Exhibit 36.

First, the respondent asserts that prisoners in the Ukraine are frequently subjected to serious abuse and torture. *See* Exhibits 31 and 36. To support this contention, the respondent references the 2005 Department of State Country Report on Human Rights Practices in the Ukraine, the Amnesty International 2005 Annual Report on the Ukraine and subsequent press releases and articles published in 2005, and a December 1, 2004 report by the European Committee for the Prevention of Torture (*hereinafter*, CPT). The respondent cites the 2005 Department of State report, which quotes the Ukrainian Human Rights Ombudsman as stating "that during her nearly 7 year tenure, she has received approximately 12,000 complaints from persons who asserted that they were tortured while in police custody." Exhibit 31C at 21. The respondent notes that the Department of State report also states that a television program, "Fifth Channel," reported that "police officers frequently beat detainees with rubber batons, hung them upside down and doused them with cold water" and "tortured individuals in order to extract confessions or simply to get money." *Id.* Finally, the respondent notes that the Department of State report states that "an October 2002 report by the CPT stated that individuals in detention ran a significant risk of physical mistreatment, including beating, electric shock, pistol whipping, and asphyxiation." *Id.* The respondent quotes the article "Ukraine- Time for Action: Torture and Ill-treatment in Police Detention," in which Amnesty International expresses concern that "despite promising words allegations of torture and ill-treatment in police detention persist" and that such allegations have been received under the new government that came to power in January 2005. *See* Exhibit 36B.

The respondent also cites the CPT report from December 1, 2004, which states that people deprived of liberty by the Militia were at "significant risk of physical ill-treatment" during apprehension and while in custody, "particularly when being questioned," and that, "on occasion, resort may be had to severe ill-treatment/ torture." *See* Exhibit 36A at 72.

Second, the respondent avers that people who are potentially embarrassing to the Ukrainian government are at risk of physical harm or death. *See* Exhibit 36 at 10. The respondent cites the 2005 Department of State Report, which lists numerous journalists who have suffered physical attacks and/or unexplained deaths in recent years. *See* Exhibit 31C at 30-36. The respondent details the investigation of the death of a prominent journalist, Heorhiy Gongadze, whose kidnapping and subsequent death were instigated by then President Kuchma and other high-ranking officials in the Ukrainian government. *See* Exhibit 31C at 20-21.

Third, the respondent contends that he is uniquely at risk of torture if he is removed to the Ukraine. *See* Exhibit 36, page 12. The respondent asserts that the government has "painted a target on his back" identifying him as Ivan the Terrible of Treblinka. *Id.* at 12-13. Further, the respondent argues that the government has maintained this target by withholding exculpatory evidence from his trial in Israel, and by refusing to acknowledge the falsity of *its* previous allegations that he was Ivan the Terrible. *Id.* at 15. The respondent claims that, as a direct result of the government's misconduct, the government has created a worldwide hatred for him, which will likely lead the Ukrainian authorities to take action against him if he is removed. *Id.* Further, the respondent argues that the government has taken steps to encourage the Ukraine to prosecute him, which substantially increases the risk of his arrest and prosecution. *Id.* at 29. He also claims that, as a result of his age and health, any detention would constitute torture.

The respondent asserts that, in light of these facts and circumstances, it is more likely than not that he will be tortured if removed to the Ukraine.

B. Government's Opposition to the Respondent's Application for Deferral of Removal

First, the government asserts that the respondent has not shown that it is more likely than not that he will be charged or prosecuted in the Ukraine, either on the basis of his activities as set forth in the 2002 denaturalization decision, or on the basis of allegations that he was Ivan the Terrible of Treblinka. Exhibit 37 at 5. The government argues that evidence submitted in this case, to which the respondent has stipulated, indisputably demonstrates that the Ukraine has not prosecuted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. *Id.*; *see also* Exhibit 37A at 15-22, 34, and 36. Further, the government argues that the respondent's claim must fail because the respondent has argued that he will be "detained and tortured if - and only if - he is investigated and prosecuted as Ivan the Terrible." Exhibit 37 at 6.

Second, the government avers that the respondent has not established that it is more likely than not that, if charged or prosecuted in the Ukraine, he will be held in custody, either prior to trial or after a conviction. Exhibit 37 at 7-8. The government contends that the evidence submitted shows that (1) Ukrainian law favors release rather than pre-trial detention, (2) the majority of

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	(b)(6)
In removal proceedings	)	

CERTIFICATE OF SERVICE

I hereby certify on that April 2, 2009 I caused a copy of the foregoing MOTION TO REOPEN in the captioned proceeding to be served on the District Counsel of the Department of Homeland Security (ICE) by hand delivery at:

Office of Chief Counsel, DHS/ICE
1240 East 9th Street, Room 585
Cleveland, Ohio 44199

and on the Office of Special Investigations which has handled the case before this Court by hand delivery of a copy thereof to:

Eli Rosenbaum[1]
Director
Office of Special Investigations
1301 New York Avenue, Suite 200
Washington, D.C.

John Broadley

Dated April 2, 2009

[1] Counsel has been informed that Stephen Paskey who formerly acted on behalf of the Office of Special Investigations has left the Department of Justice.

criminal suspects in the Ukraine are released pending trial, and (3) the statutory factors concerning release would work in the respondent's favor. *Id.* at 7. The government argues that there is "no evidence whatsoever as to how the Ukrainian government treats persons convicted of Nazi-related war crimes, because no person has been tried, much less convicted, of such a crime in post-independence Ukraine." *Id.* at 8.

Third, the government asserts that the respondent has not shown that it is more likely than not that, if taken into custody in the Ukraine, he will be intentionally subjected to mistreatment sufficiently severe to qualify as "torture" for the purposes of deferral of removal under CAT. *Id.* at 8, 12-13.

The government argues that the respondent's application for deferral of removal under CAT depends "entirely on a chain of speculative claims, each of which must be proven in order to establish his eligibility." Exhibit 37 at 3. The government then asserts that the respondent's application should be denied "because he cannot meet his burden of proof with respect to even a single link in this chain." *Id.*

Fourth, the government contends that the respondent has not established that it is more likely than not that a typical inmate in a Ukrainian jail or prison will be subjected to "torture" as defined under CAT. *Id.* at 8. The government states that the evidence submitted regarding ill-treatment of prisoners in the Ukraine falls into three categories: (1) general substandard conditions, such as overcrowding and inadequate food and medical care; (2) incidents involving beatings and other intentional abuse that are not sufficient to qualify as torture; and (3) torture. *Id.* at 9-10. The government contends that the general substandard conditions do not amount to torture because there is no evidence that these conditions have been created and maintained with the necessary intent. *Id.* at 10. The government further contends that, while the record contains considerable evidence concerning beatings and other ill-treatment, "most such incidents are not sufficiently severe to qualify as torture." Exhibit 37 at 10.

The government notes that the Ukrainian government has permitted international monitoring of the conditions in its jails and prisons. *Id.* at 10. Further, the government argues that, although materials from the Department of State and Amnesty International provided specific examples of persons who allegedly suffered torture in the Ukraine, those examples were few in number and anecdotal and the record in this matter does not support a conclusion that torture was more likely than not for the average prisoner. Exhibit 37 at 10. According to the government, the October 13, 2005 Department of State Opinion supports its contention that the respondent has no basis to believe that he would be tortured if removed to the Ukraine. *See* Exhibits 39A and 45. The October 13, 2005 Department of State Opinion specified that, despite the "widespread nature" of police regularly beating detainees and prisoners in the Ukraine, the "Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union." *See* Exhibits 39A and 45. The Department of State further opined that "such mistreatment would be very unlikely in cases involving high profile individuals such as this one," and noted that this view was "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." *Id.*

The government asserts that the respondent "cannot show that he possesses any trait or characteristic that would cause Ukrainian authorities to single him out for mistreatment" nor can he show that the Ukraine "uses torture pervasively as a matter of government policy." Exhibit 37 at 13.

The government argues that, for those reasons, the respondent cannot establish that it is more likely than not that, if removed to the Ukraine, he will be prosecuted, detained, or subjected to torture, and that his application for deferral of removal under CAT should be denied.

C. Stipulated Facts Not At Issue

In conjunction with their submission of pre-trial statements, the parties stipulated to numerous facts not at issue. *See* Exhibit 35.

First, the parties stipulated to facts relating to the Ukraine's record concerning the investigation and prosecution of alleged Nazi war criminals. *Id.* at 1-4. The parties agreed that, since the Ukraine's independence in 1991, the Ukraine has not charged, indicted, prosecuted, or convicted any person for any crime that was committed under the direction of or in association with the Nazi government of Germany. Exhibit 37A at 34. The parties stipulated that Wasyl Lytwyn, an admitted Nazi war criminal who was denaturalized by the United States in 1995, has resided in the Ukraine since 1996 and, in spite of the United States offers of assistance, has not been charged, indicted, prosecuted, or convicted for any crime committed under the direction of or in association with the Nazi government of Germany. *See* Exhibit 35 at 1-2; *see also* Exhibits 37M - 37T. The parties stipulated that Bohdan Koziy, a Nazi war criminal who was denaturalized by the United States and fled to Costa Rica, was made known to the Ukraine as a Nazi war criminal, and the Ukraine took no steps from 1982 until his death in 2003 to extradite Koziy or initiate prosecution. *See* Exhibit 35 at 2-3; *see also* Exhibits 37D - 37H. The parties stipulated that the Ukraine has not agreed to admit Mykola Wasylyk, a Nazi war criminal denaturalized by the United States in 2001, nor has the Ukraine charged, indicted, prosecuted, or convicted him for any crime that he committed under the direction of or in association with the Nazi government. *See* Exhibit 35 at 3-4; *see also* Exhibits 37I - 37L.

The parties also stipulated to facts concerning pre-trial detention in the Ukraine. Exhibit 35 at 5. The parties agreed that Ukrainian law allows for pre-trial release of individuals awaiting trial, and that in 1996, the Ukrainian Parliament passed an amendment to the Code of Criminal Procedure allowing individuals awaiting trial to seek release on bail. *Id.* The parties stipulated that Ukrainian prosecutors, in determining whether pre-trial release is warranted, have a statutory obligation to consider whether there is sufficient reason to believe a criminal defendant will evade investigation or trial, interfere with investigation, or continue engaging in criminal conduct. *Id.* Further, the parties stipulated to reports that, in practice, large numbers of Ukrainian criminal defendants are released from custody while awaiting trial at the initiative of prosecutors, and that the defendants are only required to sign a promise to return. *Id.*

The parties further stipulated to facts concerning the detention of Nazi war criminals in countries other than the Ukraine. *Id.* at 5-6. The parties agreed that, in Lithuania, a ninety-three year old man convicted of war crimes was not sentenced to a term of incarceration because of his poor health. *Id.* at 5. The parties stipulated that another Nazi war criminal in Lithuania died prior to trial,

but was not detained while his case was pending. *Id.* The parties agreed that, after Germany vacated the conviction of a ninety-three year old man accused of Nazi war crimes, the German government ruled that the case be suspended because of his age. *Id.* at 6.

The parties also stipulated to facts concerning the conditions for prisoners in the Ukraine and the international monitoring of those conditions. *Id.* at 6-8. The parties stipulated that the Ukraine was a member of the European Convention Against Torture, which established the CPT. *Id.* at 6. The parties agreed that CPT conducts periodic visits of prison facilities, for which governments have no more than three days notice, during which the CPT examines conditions, conducts interviews of detainees and prison officials, and then publishes those findings. *Id.* at 6-7. The parties stipulated that the CPT visited the Ukraine in 1998, 1999, 2000, and 2002, and issued reports for each visit and that a visit was planned in 2005. *Id.* at 7. The parties stipulated to information contained in the CPT report from December 1, 2004, which states that people deprived of liberty by the Militia were at "significant risk of physical ill-treatment" during apprehension and while in custody; "particularly when being questioned," and that, "on occasion, resort may be had to severe ill-treatment/ torture." *Id.* at 7; *see also* Exhibit 36A at 72. The parties stipulated that a September 2005 Amnesty International Report stated that the problem of ill-treatment and torture in the Ukraine is "most acute" at the pre-trial detention phase. Exhibit 35 at 8.

Finally, the parties stipulated to specific facts regarding the respondent's case. The parties agreed that, since the respondent's conviction by the Supreme Court of Israel was overturned, the United States government has not asserted that the respondent is Ivan the Terrible of Treblinka and no allegation of such facts were made during the denaturalization proceedings instituted in 1999. *Id.* at 8. The parties stipulated that it is the government's position that perpetrators of Nazi war crimes should be prosecuted, whenever possible, by countries with jurisdiction over such offenses and that, if the respondent is removed to the Ukraine, it is likely that the government will encourage the Ukraine to prosecute him. *Id.* Finally, the parties agreed that the denaturalization proceedings that ended in 2002 and these removal proceedings are high profile cases, and that, if the respondent is removed to the Ukraine, his case may well be a high profile matter for the Ukrainian government and attract considerable public interest. *Id.* 8-9; *see also* Exhibit 36.

III. STATEMENT OF THE LAW: DEFERRAL OF REMOVAL UNDER CAT

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or CAT) and its implementing regulations at 8 C.F.R. Part 1208, particularly sections 1208.16, 1208.17, and 1208.18, sets forth the legal basis for adjudicating a request for deferral of removal under the CAT. *See* 64 Fed. Reg. 42247 (1999). "An alien who is in exclusion, deportation, or removal proceedings on or after March 22, 1999, may apply for withholding of removal under section 1208.16(c), and, if applicable, may be considered for deferral of removal under section 1208.17(a)." 8 C.F.R. §1208.18(b)(1).

A. Burden of Proof for Deferral of Removal under CAT

An applicant for relief bears the burden of proving that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2).

In assessing whether it is "more likely than not" that an applicant would be tortured upon removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: evidence of past torture inflicted on applicant; evidence that applicant could relocate to a part of the country where he or she is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information on country conditions. 8 C.F.R. § 1208.16(c)(3)(i) - (iv).

B. Elements of Deferral of Removal under CAT

In *Ali v. Reno*, the Sixth Circuit addressed CAT relief, and used the definitions and elements found in 8 C.F.R. § 1208.18(a) verbatim. 237 F. 3d 591, 596-97 (6th Cir. 2001); *cf. Zheng v. Ashcroft*, 332 F.3d 1186, 1195 (9th Cir. 2003). Thus, the definitions articulated in the regulations govern these proceedings.

Torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... ." 8 C.F.R. § 1208.18(a)(1). Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture. *Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002).

For an act to constitute "torture," it must satisfy each of the following five elements set forth at 8 C.F.R. § 1208.18(a). *See Matter of J-E-*, at 297-299 (BIA 2002). First, the act must cause severe physical or mental pain and suffering. 8 C.F.R. § 1208.18(a)(1). Second, the act must be specifically intended to inflict severe physical or mental pain and suffering. 8 C.F.R.1208.18(a)(5). An act that results in unanticipated or unintended severity is not torture. *Id.* Third, the act must be inflicted for a proscribed purpose. 8 C.F.R. § 1208.18(a)(1). Examples of such purposes include: obtaining information or a confession; punishing for an act committed or suspected of having been committed; intimidating or coercing; or for any reason based on discrimination of any kind. *Id.* Fourth, the act must be inflicted at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim. 8 C.F.R. § 1208.18(a)(7). The term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity. *Id.* Fifth, the torture cannot arise from suffering inherent in or incidental to lawful sanctions. 8 C.F.R. § 1208.18(a)(3). "Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture." *Id.* Noncompliance with applicable legal procedural standards does not *per se* constitute torture. 8 C.F.R. § 1208.18(a)(6).

IV. APPLICATION OF THE LAW TO THE FACTS

Regarding the issue of credibility, while the respondent's application for deferral of removal is internally consistent, as will be discussed, the evidence submitted in this case does not support a finding that the respondent would more likely than not be tortured, as defined under the CAT, if he is returned to the Ukraine.

In order for the respondent to meet his burden and succeed in his claim for deferral under the CAT given his assertions, he must show that he (1) would likely be prosecuted upon his removal to the Ukraine, (2) would likely be taken into custody while standing trial or imprisoned as a result of a conviction; and (3) would likely be tortured while in custody or prison. All of the elements enunciated in 8 C.F.R. § 1208.18(a) must be established as more likely than not in order for the respondent to be eligible for relief.

A. *Likelihood that the Respondent Will Be Subject to Prosecution In The Ukraine*

The respondent asserts that he is likely to be prosecuted if removed to the Ukraine because the United States government would pressure the Ukrainian government to prosecute, the matter would be a high profile case, and people still believe that he is Ivan the Terrible of Treblinka and would try him as "Ivan the Terrible."

While the evidence established that if the respondent is removed to the Ukraine his case may well be a high profile case, *see* Exhibits 35 at 8-9 and 36, the Court does not find the remainder of his argument, that he would be prosecuted because of this and other reasons aforementioned, to be supported by the evidence in the record.

The evidence establishes that since the Ukraine's independence in 1991, the Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so, and despite the United States offers of assistance for such prosecutions. Exhibits 34, 35 at 1 - 2, 36, 37A at 15-22, 37C, and 37G-37H.

Moreover, the evidence does not support the respondent's contention that he will be prosecuted as Ivan the Terrible in the Ukraine. At the height of the publicity following his trial in Israel, the respondent applied for and was granted a visa to the Ukraine in 1993, a time when prison conditions were demonstrably worse in the Ukraine and the death penalty was still a form of punishment. Exhibits 37VV - 37WW. At that time, there was a Ukrainian Demjanjuk Defense Committee working on his behalf. Exhibit 37WW. This committee issued the following statement upon conferral of a Ukrainian visa to the respondent: "We consider that until Demjanjuk goes to the United States, he should be accepted as a Ukrainian citizen in his Ukrainian homeland and thank the hundreds of people who struggled for his freedom." *Id.* Moreover, the committee called on Kiev citizens to welcome Demjanjuk upon his arrival at the Ukrainian airport. *Id.* Upon his acquittal as Ivan the Terrible of Treblinka in Israel, the aforementioned actions taken by the Ukrainian government and Ukrainian citizens vitiate the respondent's argument that he will be prosecuted as Ivan the Terrible. This is especially true, in light of the fact that the Ukraine has never charged, indicted,

prosecuted or convicted a single person as a Nazi war criminal despite the United States government's encouragement and willingness to assist.

B. Likelihood that the Respondent Will Be Detained Awaiting Trial or as a Result of Conviction

The respondent contends that he will likely be taken into custody while standing trial or imprisoned as a result of a conviction. This Court finds that this argument is speculative, not supported by the record and without merit.

The Court acknowledges that there are harsh conditions in Ukrainian pre-trial detention facilities. *See* Exhibits 31C and 36A. However, evidence of harsh prison conditions does not establish a likelihood of detention. The respondent presented no evidence to show that he would likely be detained.

The parties stipulated to numerous facts concerning pre-trial detention in the Ukraine. Exhibit 35 at 5. The parties agreed that Ukrainian law allows for pre-trial release of individuals awaiting trial, and that in 1996, the Ukrainian Parliament passed an amendment to the Code of Criminal Procedure allowing individuals awaiting trial to seek release on bail. *Id.* The parties stipulated that Ukrainian prosecutors, in determining whether pre-trial release is warranted, have a statutory obligation to consider whether there is sufficient reason to believe a criminal defendant will evade investigation or trial, interfere with investigation, or continue engaging in criminal conduct. *Id.* Further, the parties stipulated to reports that, in practice, large numbers of Ukrainian criminal defendants are released from custody while awaiting trial at the initiative of prosecutors, and that the defendants are only required to sign a promise to return. *Id.*

The respondent attempts to liken his situation to that of a journalist who embarrassed the Ukrainian government and was subsequently killed. *See* Exhibit 31C at 20-21 and Exhibit 36 at 10-12. This analogy is not persuasive, because the respondent is not akin to a journalist who has published unflattering or inflammatory remarks regarding the Ukrainian government. The respondent is one who has been found by the United States to have participated in persecution at the direction of the Nazi party. There is no evidence in the record that the Ukrainian government has expressed embarrassment regarding those proven to have participated in persecution through activities at the direction of the Nazi party of Germany. To the contrary, such individuals have been brought to the attention of the Ukrainian government, and no action has been taken to arrest, detain, or prosecute these known persecutors of others. *See* Exhibit 37A at 15-22, 34, and 36.

C. Likelihood that the Respondent Will Be Tortured While in Custody or Prison

The respondent also asserts that, once taken into custody in the Ukraine, he will likely be tortured. The Court finds that this assertion is speculative, not supported by the record, and without merit.

The Board examined prison conditions in the context of CAT claims in *Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002) and *Matter of G-A-*, 23 I. & N. Dec. 366 (BIA 2002). In *Matter of J-E-*,

the Board denied the respondent's CAT claim holding that: the indefinite detention of criminal deportees by Haitian authorities does not constitute torture where there is no evidence that the authorities intentionally and deliberately detain deportees in order to inflict torture; substandard prison conditions in Haiti do not constitute torture where there is no evidence that the authorities intentionally create such conditions in order to inflict torture; and evidence of occurrence in Haitian prisons of isolated instances of mistreatment that may rise to the level of torture is insufficient to establish that it is more likely than not that the respondent will be tortured if returned to Haiti. *Matter of J-E-, supra* at 304. In so holding, the Board found no evidence that (1) deliberately inflicted acts of torture were pervasive and widespread; (2) the Haitian authorities use torture as a matter of policy; or (3) meaningful international oversight or intervention was lacking. *Id.* at 303. The Board further concluded that the Haitian government was attempting to improve its prison system, preventing the respondent from demonstrating a likelihood of torture in prison in Haiti. *Id.* at 301.

In contrast, in *Matter of G-A-, supra*, the Board granted CAT relief to the respondent, a native of Iran, where the respondent established that deliberate acts of torture were pervasive and widespread in Iranian prisons, that the authorities use torture as a matter of policy, that meaningful international oversight or intervention was lacking, and that a detainee with the respondent's specific characteristics (his religion, ethnicity, duration of his residence in the United States, and his drug-related convictions in the United States) would likely to be subject to torture, as opposed to other acts of cruel, inhuman, or degrading punishment or treatment. *Matter of G-A-, supra*, at 372.

In assessing the respondent's claims of torture in the instant case, the Court finds his claims more closely resemble those in *Matter of J-E-* rather than *Matter of G-A-*. The harsh conditions in Ukrainian prisons has been established. However, like Haiti in *Matter of J-E-*, the Ukraine has permitted international monitoring of its prison facilities and has engaged in improvement efforts. *Matter of J-E-, supra* at 301. The Department of State opinion submitted in this matter specifies that, while there was a "widespread nature" of police regularly beating detainees and prisoners in the Ukraine, "Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union." *See* Exhibits 39A and 45. The respondent, unlike the respondent in *Matter of G-A-*, has not established that he possesses specific characteristics that would make him likely be subject to torture. *Matter of G-A-, supra*, at 372. The respondent's claim of vulnerability to torture based upon age and alleged poor health is wholly unsubstantiated, as no evidence was submitted to such facts, and counsel's self serving statements during closing argument are not considered part of the evidentiary record. *See Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). The Department of State stated that "such mistreatment would be very unlikely in cases involving high profile individuals such as this one" and that this view was "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." *See* Exhibits 39A and 45.

V. DECISION AND ORDER

The Court finds that the respondent has not established a likelihood of prosecution, let alone a likelihood of torture as defined for purposes of deferral of removal under CAT. As clearly evinced

by the evidence in the record, the respondent has not sustained his burden of proof. The respondent has not shown that he will be subjected to an act, intentionally inflicted at the instigation of, or with the consent or acquiescence of a public official who has custody or physical control of the respondent, for a proscribed purpose, that would result in severe physical or mental pain or suffering, not arising from suffering inherent in or incidental to lawful sanctions. *See* 8 C.F.R. § 1208.18(a).

In view of the foregoing, the Court finds that the respondent has not established that it is more likely than not that he will be tortured if removed to the Ukraine. Therefore, the respondent's application for deferral of removal under CAT is denied.

ORDER

IT IS HEREBY ORDERED that the respondent's application for deferral of removal under CAT is **DENIED**.

IT IS FURTHER ORDERED that the respondent be removed from the United States to the Ukraine, or in the alternative to Germany or Poland, on the charges contained in the Notice to Appear.

MICHAEL J. CREPPY
CHIEF IMMIGRATION JUDGE

DATE: 12/28/05

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	(b)(6)
In removal proceedings	)	

ORDER

The removal proceedings against John Demjanjuk are hereby reopened to consider evidence of changed country conditions.

_____
Immigration Judge

Dated:_____

John H. Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
In removal proceedings	)	(b)(6)

Former Chief Immigration Judge Creppy **Next Hearing: None**

EMERGENCY MOTION FOR A STAY OF REMOVAL

John Demjanjuk, the respondent, by his undersigned attorneys, hereby moves the Immigration Court for an order staying the removal order entered against him on December 28, 2006. A Motion to Reopen these proceedings has been filed simultaneously with this Motion for a Stay seeking to reopen the removal proceedings against him to hear evidence of changed country conditions in Germany, one of the countries to which he has been ordered removed, that warrant deferral of removal pursuant to the Convention Against Torture.

1. Prior Proceedings

The Chief Immigration Judge entered a final order December 28, 2005 that Mr. Demjanjuk be removed to Ukraine, Poland or Germany and denied Mr. Demjanjuk's application for deferral of removal to Ukraine pursuant to the Convention Against Torture. A copy of that decision is attached to the Motion to Reopen filed today. That decision was upheld by the Board of Immigration Appeals on December 21, 2006, and affirmed by the United States Court of Appeals for the Sixth Circuit on January 30, 2008, *Demjanjuk v. Mukasey*, 514 F.3d 616 (6th Cir. 2008). The Supreme Court denied certiorari on May 19, 2008, *Demjanjuk v. Mukasey*, 128 S.Ct. 2491 (mem.), 171 L.Ed.2d 780.

2. Changed Country Conditions

At the time the Immigration Judge ordered Mr. Demjanjuk's removal to Germany he had no reason to expect that he would be subject to any action by the German authorities that would amount to torture under the Convention Against Torture. Specifically, there was no reason to believe that the German authorities would seek to arrest, jail and prosecute him if he were removed to Germany. To the best of Mr. Demjanjuk's knowledge and the knowledge of his attorneys at the time the German judicial authorities undertook prosecutions only for specific acts for which they had evidence and which would constitute a crime. Mr. Demjanjuk has

denied participating or being present at any death camps or concentration camps including Sobibor, Treblinka, Majdanek or Flossenbürg.

The German authorities appear to have changed their standards and have issued an arrest warrant that suggest they are considering arresting, jailing, indicting and prosecuting him without any evidence that he committed unlawful acts. The German authorities now appear to have adopted a new theory, not previously adopted in Germany or in any civilized country, that they can secure a conviction for murder on the basis of World War II documents which they believe place Mr. Demjanjuk at one or more of those camps. This may be described as a "conviction by association" theory.

The German authorities have decided to accept Mr. Demjanjuk's deportation and to begin the criminal process against him. Attached is an April 2, 2009 CNN Wire report that the German Justice Ministry spokesman Ulrich Standigl said that they expect Mr. Demjanjuk "to arrive in Germany Monday" (April 6, 2009). There have been reports from the State Prosecutor's office in Munich to the same effect and reports in the United States and German Press.

The Immigration and Customs Enforcement division of the Department of Homeland Security has requested that Mr. Demjanjuk be made available for a physical examination by an ICE doctor. See attached e-mail from Ajay Bhatt of the Department of Homeland Security dated April 1, 2009 at 7:40 PM to John Broadley and John Broadley's e-mail response to Mr. Bhatt of the same date at 7:54 PM. The undersigned received a subsequent telephone call at home from Mr. Bhatt saying that ICE is considering examining Mr. Demjanjuk today (April 2). Mr. John Demjanjuk Jr. was informed this morning that an ICE doctor is flying to Cleveland to examine Mr. Demjanjuk this morning.

Deportation of Mr. Demjanjuk to Germany will Subject him to Torture

The basis for Mr. Demjanjuk's contention that deportation to Germany and his arrest, jailing and prosecution there will subject him to torture is set forth in Supplemental Responses C5 and B4 to the revised Form I-589 that is filed simultaneously with this motion and the Motion to Reopen. We will set out the text below.

Supplementary Response to Part C 5

Removal proceedings were commenced against me in 2004 to remove me to Ukraine, Poland or Germany. I applied for deferral of removal to Ukraine under the Convention Against Torture based on the climate of hate that the Department of Justice had created against me, and Ukraine's history and practice of torture in its prisons. At that time, I had no reason to believe that if I were removed to Germany I would be arrested or in the event of arrest subjected to severe mistreatment amounting to torture. Within the past few weeks it has become apparent that the German government has decided to accept deportation and to arrest, imprison and try me for some of the same crimes for which I was tried and acquitted in Israel. Arrest, imprisonment and trial in Germany for crimes for which I have already been acquitted would amount to severe mistreatment amounting to torture under the Convention Against Torture in view of my age (89 on 4/3/09) and my poor health as outlined in the attached medical reports. On information and belief, these changed circumstances in Germany which will result in my torture have been brought about by actions of representatives of the Department of Justice.

In summary, at the time I filed my original application for deferral of removal, I had no reason to believe that removal to Germany (as opposed to Ukraine) would result in actions by the German authorities that would amount to torture.

Why Arrest, Incarceration and Trial in Germany would be Torture

Supplementary Response to Part B 4

My present physical condition is described above. I will be 89 years old on April 3, 2009 and in general my health is poor. I suffer from the conditions described above. I am physically very weak and experience severe spinal, hip and leg pain which limits mobility and causes me to require assistance to stand up and move about. Spending 8 to 12 hours in an airplane seat flying to Germany would be unbearably painful for me.

I am very familiar with life as a prisoner. First I was a prisoner-of-war of the Germans after my capture in 1942, and subsequently I was a prisoner of the Israelis held in solitary confinement in an Israeli jail cell from early 1986 to 1993. During my time in solitary in an Israeli jail, they tried me, sentenced me to death, and ultimately acquitted me when incontrovertible evidence was presented that "Ivan the Terrible" was an individual named "Ivan Marchenko." As a prisoner of the Germans I was aged 22 - 25. As a prisoner of the Israelis I was aged 66 - 73 and in reasonably good physical and mental health. I am now age 89 and my

health is poor. I could not care for myself in an ordinary jail cell as I need assistance to perform many functions, particularly those requiring rising, standing, and moving around. I spend many hours each day laying in bed to provide some relief to my lower back pain. Incarceration under conditions similar to those I experienced in Israel would subject me to severe physical pain and suffering.

Spending 8 years in solitary confinement, 6 of them under sentence of death, is a psychological experience that leaves permanent scars, fears and vulnerabilities. I have serious doubts whether I could withstand incarceration and the terrible psychological strain of another trial at my age and in my weakened physical state. After my experience in Israel, the prospect of another "show trial," complete with emotional witnesses testifying to what they want to be true, not to what is true, is a nightmare that is unimaginable to someone who has not experienced it.

Finally, I will raise the issue of the effect of another round of arrest, jail and trials on my family. The effect of the events from 1976 to today on my wife of over 60 years, and my three children and their families has been traumatic. My son, John Demjanjuk, Jr., has lived with the Justice Department's vendetta against me since he was 11 years old, through his teenage years and for all of his adult life. He is now 43 years old. My daughters were older when it began in 1976, but the impact on their lives and families may have been even more severe. I have been subjected to three major trials. The first of these was from 1977 when the Justice Department filed its denaturalization complaint to early 1986 which I was extradited to Israel. The second of these was from early 1986 when I was extradited to Israel and tried and convicted of murder to 1993 when the Israeli Supreme Court acquitted me and sent me back to the United States. The third was from 1999 when the Justice Department filed its second denaturalization complaint against me to today when I am facing the prospect of deportation to Germany and a likely fourth major trial there. The prospect of my family having to go through this experience for a fourth time is intensely painful to me.

Why Would the German Authorities Subject Me to this Treatment

This question calls for some speculation on the motives of the German authorities. I understand that the Office of Special Investigations (OSI), which has been the center of the Justice Department vendetta against me, has been trying to induce other countries (including Germany) to accept my deportation and to prosecute me. After the US Court of Appeals found that Office of Special Investigations' attorneys had committed a fraud on the court by withholding exculpatory evidence from the defense (and from the Israeli prosecutors), I did not expect OSI to rest until they had denaturalized me, deported me and put me on trial somewhere for something. I am sure that the record of the efforts of OSI to do this will eventually come to light.

The motivation of the German authorities is more difficult to understand. We have read in the press that certain organizations have been bringing pressure on the German authorities to undertake proceedings against me. This is consistent with the activities of these same organizations in promoting my extradition to Israel and trial there as "Ivan the Terrible." Why the German authorities should have yielded to such pressure is more difficult to understand. One

possible reason is that the German authorities have not aggressively prosecuted German war criminals and have been subjected to considerable criticism on this account. It is possible that the German authorities see a prosecution of me as means to draw attention away from their past approach. Whether the German authorities are responding to outside pressure (including pressure from OSI) or are trying to divert attention from their own prior practices, they appear determined to arrest, jail and prosecute me despite the pain and suffering it will cause, and it can be inferred because of the pain and suffering it will cause me and my family.

Summary

In summary, the German authorities appear determined to arrest, incarcerate and try me again for alleged war crimes, notwithstanding the Israeli Supreme Court acquitted me of charges that included the same factual allegations that the German prosecutor appears to be planning. At my age, in light of my poor physical condition and the traumatic experiences I have undergone at the hands of the US Justice Department, the Israelis, and the US Justice Department a second time, this will expose me to severe physical and mental pain that clearly amounts to torture under any reasonable definition of the term. The effect is magnified by the serious adverse effect that further proceedings will have on my family.

CONCLUSION

It is clear from the above that ICE is prepared to execute the removal order within days if not hours. It is also clear from the above and from the accompanying I-589 that the deportation of Mr. Demjanjuk to Germany where he will be arrested, jailed and prosecuted will subject him to severe physical and mental pain that amounts to torture under the Convention Against Torture as implemented in the United States.

In order to give this Court time to review the revised Convention Against Torture Application that takes account of changed country circumstances in Germany, this Court should stay the order of removal it entered on December 28, 2005.

Respectfully submitted,

JOHN DEMJANJUK

By: _____
One of his attorneys

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Dated: April 2, 2009

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	(b)(6)
In removal proceedings	)	

CERTIFICATE OF SERVICE

I hereby certify on that April 2, 2009 I caused a copy of the foregoing EMERGENCY MOTION FOR A STAY in the captioned proceeding to be served on the District Counsel of the Department of Homeland Security (ICE) by hand delivery at:

Office of Chief Counsel, DHS/ICE
1240 East 9th Street, Room 585
Cleveland, Ohio 44199

and on the Office of Special Investigations which has handled the case before this Court by hand delivery of a copy thereof to:

Eli Rosenbaum[1]
Director
Office of Special Investigations
1301 New York Avenue, Suite 200
Washington, D.C.

John Broadley

Dated April 2, 2009

[1] Counsel has been informed that Stephen Paskey who formerly acted on behalf of the Office of Special Investigations has left the Department of Justice.

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April 2nd, 2009

Former Nazi camp guard to be extradited to Germany

Posted: 09:24 AM ET

BERLIN, Germany (CNN) — Former Nazi death camp guard John Demjanjuk will be extradited from the United States to Germany Sunday, a spokesman for the Germany Justice Ministry told CNN Thursday.

German authorities issued an arrest warrant for Demjanjuk on March 19, accusing him of being an accessory to 27,900 counts of murder as a guard at the Sobibor death camp from March to September 1943.

He is expected to arrive in Germany Monday, Justice Ministry spokesman Ulrich Steinigt said. Munich state prosecutors will question him with a view to bringing charges against him, they said in a statement on March 11.

Efraim Zuroff of the Simon Wiesenthal Center told CNN that he was "thrilled" at the news of Demjanjuk's extradition, which has long been dependent on which country was prepared to accept him.

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Continued protests, heavy security on G-20 summit day

Editor's notes

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20 militants killed in southern Afghanistan

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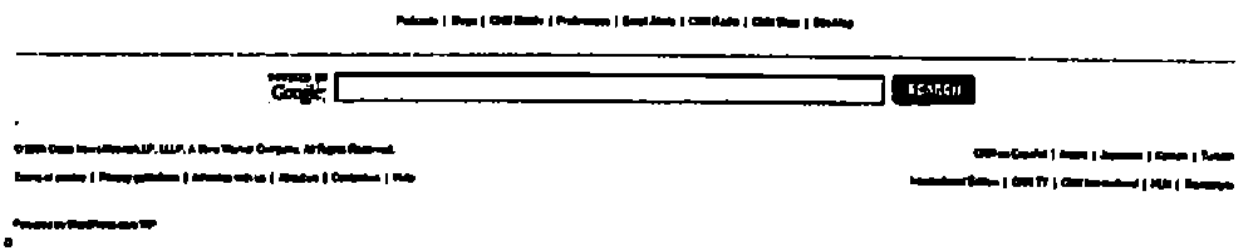

BERLIN, Germany (CNN) — Former Nazi death camp guard John Demjanjuk will be extradited from the United States to Germany Sunday, a spokesman for the Germany Justice Ministry told CNN Thursday.

German authorities issued an arrest warrant for Demjanjuk on March 10, accusing him of being an accessory to 29,000 counts of murder as a guard at the Sobibor death camp from March to September 1943.

He is expected to arrive in Germany Monday, Justice Ministry spokesman Ulrich Standigl said. Munich state prosecutors will question him with a view to bringing charges against him, they said in a statement on March 11.

Nazi hunter Efraim Zuroff of the Simon Wiesenthal Center told CNN that he was "thrilled" at the news of Demjanjuk's extradition, which has long been dependent on which country was prepared to accept him.

THIS IS AN ENLARGEMENT OF THE FOREGOING CNN REPORT TO MAKE THE TEXT MORE READABLE.

John Broadley

From: Bhatt, Ajay M [redacted] (b)(7)(c)
Sent: Wednesday, April 01, 2009 7:40 PM
To: jbroadley@alum.mit.edu
Subject: Demjanjuk

Importance: High

Dear Mr. Broadley –

Thank you for taking my call and for your time this evening. We discussed the option of scheduling a medical evaluation/examination of your client, Mr. John Demjanjuk, for Thursday, which you suggested was a possibility. You also stated that Friday was perhaps a more likely possibility. You stated that you would discuss this question with your client this evening, and you offered to call me in the next thirty minutes. As we agreed, we shall communicate via e-mail, but thank you for your various phone numbers. If you should not get a definitive answer from your client this evening, I would be grateful if you could e-mail me tomorrow morning as soon as possible.

It was a pleasure to talk to you.

Sincerely,

Ajay Bhatt

[redacted]
Ajay Bhatt
Human Rights Law Division
U.S. Immigration and Customs Enforcement (b)(7)(c)
500 12th St., SW
Washington, D.C. 20024
[redacted]

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John Broadley

From:	John Broadley [jbroadley@verizon.net]
Sent:	Wednesday, April 01, 2009 7:54 PM
To:	Ajay Bhatt [redacted] (b)(7)(c)
Cc:	'John D'
Subject:	ICE Medical Exam of John Demjanjuk

Dear Mr. Bhatt:

I have discussed the question of the timing of an ICE medical exam of John Demjanjuk with Mr. John Demjanjuk, Jr. Thursday (tomorrow) would be very difficult for us, however, Friday would be ok.

Mr. Demjanjuk, Jr. told me that his father is having a bad period with his spinal stenosis and is having difficulty moving and could not be moved by car. He suggested that the medical exam would be most convenient if it took place at Mr. Demjanjuk's house at 1:00 PM on Friday.

If the ICE doctor believes that tests need to be made that cannot be done at the house, it may be necessary for ICE to arrange for transportation to a suitable hospital or clinic where the equipment is available. Please let me know if ICE wants to do this. In such a case we could accept other times on Friday.

As I told you on the phone, our interest is in ensuring that Mr. Demjanjuk is not exposed to travel stresses that will adversely affect his already serious medical conditions.

jhb

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.: A#** [redacted]
	)	
RESPONDENT	)	(b)(6)
	)	

CHARGES:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA or Act), as amended, as an alien described in INA § 212(a)(3)(E)(i) (the "Holtzman Amendment"), who ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany;

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of Section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948); and

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: alien immigrants who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of Section 10 of the DPA, 62 Stat. at 1013 (1948); and

Section 237(a)(1)(A) of the Act, as amended, as an alien who, at the time of entry or adjustment of status, was within one or more of the classes of aliens inadmissible by law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by Section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

---

[1] Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

APPLICATION: Deferral of Removal under the Convention Against Torture

APPEARANCES

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DECISION AND ORDER OF THE CHIEF IMMIGRATION JUDGE

I. STATEMENT OF THE CASE

The respondent is an eighty-five year old former citizen of the United States and national of the Ukraine. He was born on April 3, 1920, at Dubovye Makharintsy, Ukraine. He was first admitted to the United States at New York, New York, on or about February 9, 1952, on an immigrant visa issued under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch.647, 62 Stat. 1009 (*amended* June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219).[1] He became a naturalized citizen of the United States in 1958. *See* Exhibit 5.

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. Exhibit 5B. The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. Exhibit 5B.[2] While that appeal was pending, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b) in the district court on February 12, 2003. *U.S. v. Demjanjuk*, 128 Fed. App. 496, 2005 WL 910738 (6th Cir. 2005) (unpublished decision). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *See id.*

The Office of Special Investigations, U.S. Department of Justice, (*hereinafter*, the government) commenced these removal proceedings against the respondent by filing a Notice to Appear (NTA), dated December 17, 2004, with this Court. Exhibit 1.

On February 25, 2005, the government filed a motion for the application of collateral estoppel and judgment as a matter of law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA had been litigated and decided during the respondent's denaturalization proceedings and that, with the exception of allegation #22, the respondent should be precluded from relitigating those issues in these removal proceedings. *See* Exhibit 5.

On February 28, 2005, the Court conducted a Master Calendar hearing in this matter. The Court issued an Order, instructing the respondent to file written pleadings and opposition to the government's motion for collateral estoppel and judgment as a matter of law by May 31, 2005. In addition, the respondent was requested to submit any applications for relief by June 30, 2005.

On May 31, 2005, the respondent filed his written pleadings to the allegations of fact and

---

[1] The DPA was enacted to assist in alleviating the problem of World War II refugees. The DPA permitted the admission into the United States of over 400,000 displaced persons by 1951.

[2] The United States Court of Appeals for the Sixth Circuit discussed the six decisions issued in matters related to Respondent's citizenship prior to the denaturalization proceedings. *Id.* at 627.

charges of removability, as set forth in the NTA, and his opposition to the government's motion for application of collateral estoppel and judgment as a matter of law, and moved the Court to terminate the proceedings. Exhibit 14. The respondent denied all four charges of removability, and argued that the government's motion should be denied because he did not have "a full and fair opportunity to litigate substantive issues that go to the heart of these removal proceedings." *See id.*

On June 10, 2005, the Government filed its reply brief in support of its motion for the application of collateral estoppel and judgment as a matter of law.

On June 16, 2005, the Court issued an Order granting the government's motion for application of collateral estoppel and judgment as a matter of law and denying the respondent's motion to terminate proceedings, which is incorporated into this decision by reference. Exhibit 20. The Court sustained all four charges contained in the NTA, and found the respondent removable from the United States. *See id.* Further, the Court found that the respondent was not eligible to apply for any form of relief other than deferral of removal pursuant to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter* CAT). *See* Exhibit 20.

On June 23, 2005, the Court issued an Interim Order, canceling the June 30, 2005 hearing and granting the respondent until July 20, 2005 to comply with the Department of Homeland Security's (*hereinafter*, DHS) biometrics requirements. In addition, the Court granted the respondent until September 7, 2005 to submit any applications for relief, and required that the parties file a joint pre-hearing statement by September 21, 2005. *See* Exhibit 23. On July 5, 2005, the Court amended its June 23, 2005 order and granted the parties until October 5, 2005 to submit the joint pre-hearing statement and designated the Ukraine, or in the alternative Germany or Poland, as the country of removal. *See* Exhibit 28.

On September 7, 2005, the respondent submitted his application for deferral of removal and proof of compliance with instructions for providing biometrics. Exhibit 31.

On September 14, 2005, the Court conducted a status conference with the parties. The Court admitted Exhibits 1 - 32. The Court reaffirmed that the parties must submit the joint pre-hearing statement on or before October 5, 2005.

On October 4, 2005, the Court issued an Order granting the respondent's September 29, 2005 motion for an enlargement of time to file the joint pre-hearing statement and ordered the parties to file the joint pre-hearing statement on or before October 12, 2005. *See* Exhibit 34.

On October 12, 2005, the parties jointly filed a statement of stipulated facts not at issue and each party submitted an individual pre-hearing statement. *See* Exhibits 35 - 37ZZ. The respondent submitted nineteen exhibits in support of his pre-hearing statement. *See* Exhibits 36A - 36X. The government submitted fifty-two exhibits in support of its pre-hearing statement. *See* Exhibits 37A - 37ZZ.

On October 18, 2005, the Court issued an Order requiring each party to submit a supplemental memorandum addressing the exhibits submitted on October 12, 2005. See Exhibit 38. The Court

ordered that, in the supplemental memorandum, each party must address each proposed exhibit and specify which portion of that exhibit is relevant to the adjudication of the respondent's application for deferral of removal under CAT. *Id.* The Court advised that failure to comply with this order with respect to any exhibit would result in that exhibit not being considered. *Id.*

On October 27, 2005, the Court issued an Order requesting objections or rebuttal evidence regarding the admission of the Department of State opinion dated October 13, 2005 addressing the likelihood that the respondent will be tortured if removed to the Ukraine. *See* Exhibit 39 and 39A.

On November 1, 2005, both parties submitted their supplemental memoranda addressing the exhibits submitted on October 12, 2005. Exhibits 40 and 41.

On November 3, 2005, both parties submitted arguments regarding the admission of the October 13, 2005 Department of State opinion. The respondent filed an opposition to the admission of the Department of State opinion. Exhibit 42. The respondent objected on both procedural and substantive grounds, arguing that the letter was not properly authenticated and that the conclusory assertions contained in the opinion were not support by the Department of State's Country Report dated February 28, 2005. *See* Exhibit 42; *but see* Exhibit 31C. The government filed a position statement supporting the admission of the October 13, 2005 Department of State opinion, stating that it was properly submitted to the Court, it was highly relevant and highly probative, and its use would not be fundamentally unfair. *See* Exhibit 43.

On November 16, 2005, the Court issued an Order regarding the admission of proposed exhibits. Exhibit 44. The Court, based on the explanations provided by each party regarding the relevance of the proposed exhibits and having duly considered the parties' objections, admitted all proposed exhibits submitted by the parties. Exhibits 36A - 36X and Exhibits 37A - 37ZZ. The Court also, upon careful consideration of the arguments made by the parties, admitted into evidence the Department of State opinion dated October 13, 2005. Exhibit 39A. The Court also provided a full list of the exhibits admitted into evidence. Exhibit 44A.

On November 29, 2005, the Court conducted a merits hearing. The respondent, through his attorney, appeared before the Immigration Court in Cleveland, Ohio. The Court stated that the respondent had been found removable by the Court in an earlier written Order and sought relief from removal in the form of deferral of removal under CAT. *See* Exhibit 20. The respondent reviewed his application for relief, having it read to him through the Court's interpreter in his native language of Ukrainian. The respondent then swore or affirmed that he knew the contents of his application and that those contents were true to the best of his knowledge. *See* Exhibit 31 at 9. The Court, after duly considering the respondent's renewed objection to the October 13, 2005 Department of State opinion, admitted into evidence, without objection, the supplementary Department of State letter and certificate of authenticity submitted on November 22, 2005. *See* Exhibits 45.

Neither the respondent nor the government called any witnesses in this case. However, each side submitted a brief closing argument and the Court took the matter under advisement.

II. STATEMENT OF THE FACTS

A. The Respondent's Argument in Support of his Application for Deferral of Removal

Although the respondent was given an opportunity to present testimony at the merits hearing on November 29, 2005, he presented no testimony but relied on his written application and supporting documents. The respondent has stated in his application that the Ukrainian government will likely prosecute him as Ivan the Terrible of Treblinka. Although not clearly laid out in Respondent's application, he implies that he will at some point be imprisoned as a result of prosecution, where he will be subjected to harsh prison conditions and likely abuse. He claims that because of the Ukraine's perception of him as Ivan the Terrible, or simply as a Nazi war criminal, he will be singled out for torture in the Ukraine. The respondent supports his position by stating in his application that the government previously stated its intent to encourage the country of removal to arrest and prosecute him. He further states that, based upon information allegedly obtained in a Freedom of Information Act request, the government has been in contact with the Ukrainian government. He also bases this argument on his past treatment in Israel during his detention and trial there. *See* Exhibit 31.

In support of his application for deferral of removal the respondent relies solely on the documentary evidence submitted. *See* Exhibits 31, 31A - 31G, 36, 36A - 36X, and 40. The respondent bases his application for relief on three underlying premises: (1) prisoners in the Ukraine are frequently subjected to serious abuse or torture, (2) persons who are potentially embarrassing to the Ukrainian government are at risk of physical harm and death, and (3) he is uniquely at risk of torture if he is removed to the Ukraine. *See* Exhibit 36.

First, the respondent asserts that prisoners in the Ukraine are frequently subjected to serious abuse and torture. *See* Exhibits 31 and 36. To support this contention, the respondent references the 2005 Department of State Country Report on Human Rights Practices in the Ukraine, the Amnesty International 2005 Annual Report on the Ukraine and subsequent press releases and articles published in 2005, and a December 1, 2004 report by the European Committee for the Prevention of Torture (*hereinafter*, CPT). The respondent cites the 2005 Department of State report, which quotes the Ukrainian Human Rights Ombudsman as stating "that during her nearly 7 year tenure, she has received approximately 12,000 complaints from persons who asserted that they were tortured while in police custody." Exhibit 31C at 21. The respondent notes that the Department of State report also states that a television program, "Fifth Channel," reported that "police officers frequently beat detainees with rubber batons, hung them upside down and doused them with cold water" and "tortured individuals in order to extract confessions or simply to get money." *Id.* Finally, the respondent notes that the Department of State report states that "an October 2002 report by the CPT stated that individuals in detention ran a significant risk of physical mistreatment, including beating, electric shock, pistol whipping, and asphyxiation." *Id.* The respondent quotes the article "Ukraine- Time for Action: Torture and Ill-treatment in Police Detention," in which Amnesty International expresses concern that "despite promising words allegations of torture and ill-treatment in police detention persist" and that such allegations have been received under the new government that came to power in January 2005. *See* Exhibit 36B.

The respondent also cites the CPT report from December 1, 2004, which states that people deprived of liberty by the Militia were at "significant risk of physical ill-treatment" during apprehension and while in custody, "particularly when being questioned," and that, "on occasion, resort may be had to severe ill-treatment/ torture." *See* Exhibit 36A at 72.

Second, the respondent avers that people who are potentially embarrassing to the Ukrainian government are at risk of physical harm or death. *See* Exhibit 36 at 10. The respondent cites the 2005 Department of State Report, which lists numerous journalists who have suffered physical attacks and/or unexplained deaths in recent years. *See* Exhibit 31C at 30-36. The respondent details the investigation of the death of a prominent journalist, Heorthiy Gongadze, whose kidnapping and subsequent death were instigated by then President Kuchma and other high-ranking officials in the Ukrainian government. *See* Exhibit 31C at 20-21.

Third, the respondent contends that he is uniquely at risk of torture if he is removed to the Ukraine. *See* Exhibit 36, page 12. The respondent asserts that the government has "painted a target on his back" identifying him as Ivan the Terrible of Treblinka. *Id.* at 12-13. Further, the respondent argues that the government has maintained this target by withholding exculpatory evidence from his trial in Israel, and by refusing to acknowledge the falsity of its previous allegations that he was Ivan the Terrible. *Id.* at 15. The respondent claims that, as a direct result of the government's misconduct, the government has created a worldwide hatred for him, which will likely lead the Ukrainian authorities to take action against him if he is removed. *Id.* Further, the respondent argues that the government has taken steps to encourage the Ukraine to prosecute him, which substantially increases the risk of his arrest and prosecution. *Id.* at 29. He also claims that, as a result of his age and health, any detention would constitute torture.

The respondent asserts that, in light of these facts and circumstances, it is more likely than not that he will be tortured if removed to the Ukraine.

B. Government's Opposition to the Respondent's Application for Deferral of Removal

First, the government asserts that the respondent has not shown that it is more likely than not that he will be charged or prosecuted in the Ukraine, either on the basis of his activities as set forth in the 2002 denaturalization decision, or on the basis of allegations that he was Ivan the Terrible of Treblinka. Exhibit 37 at 5. The government argues that evidence submitted in this case, to which the respondent has stipulated, indisputably demonstrates that the Ukraine has not prosecuted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. *Id.*; *see also* Exhibit 37A at 15-22, 34, and 36. Further, the government argues that the respondent's claim must fail because the respondent has argued that he will be "detained and tortured if - and only if - he is investigated and prosecuted as Ivan the Terrible." Exhibit 37 at 6.

Second, the government avers that the respondent has not established that it is more likely than not that, if charged or prosecuted in the Ukraine, he will be held in custody, either prior to trial or after a conviction. Exhibit 37 at 7-8. The government contends that the evidence submitted shows that (1) Ukrainian law favors release rather than pre-trial detention, (2) the majority of

criminal suspects in the Ukraine are released pending trial, and (3) the statutory factors concerning release would work in the respondent's favor. *Id.* at 7. The government argues that there is "no evidence whatsoever as to how the Ukrainian government treats persons convicted of Nazi-related war crimes, because no person has been tried, much less convicted, of such a crime in post-independence Ukraine." *Id.* at 8.

Third, the government asserts that the respondent has not shown that it is more likely than not that, if taken into custody in the Ukraine, he will be intentionally subjected to mistreatment sufficiently severe to qualify as "torture" for the purposes of deferral of removal under CAT. *Id.* at 8, 12-13.

The government argues that the respondent's application for deferral of removal under CAT depends "entirely on a chain of speculative claims, each of which must be proven in order to establish his eligibility." Exhibit 37 at 3. The government then asserts that the respondent's application should be denied "because he cannot meet his burden of proof with respect to even a single link in this chain." *Id.*

Fourth, the government contends that the respondent has not established that it is more likely than not that a typical inmate in a Ukrainian jail or prison will be subjected to "torture" as defined under CAT. *Id.* at 8. The government states that the evidence submitted regarding ill-treatment of prisoners in the Ukraine falls into three categories: (1) general substandard conditions, such as overcrowding and inadequate food and medical care; (2) incidents involving beatings and other intentional abuse that are not sufficient to qualify as torture, and (3) torture. *Id.* at 9-10. The government contends that the general substandard conditions do not amount to torture because there is no evidence that these conditions have been created and maintained with the necessary intent. *Id.* at 10. The government further contends that, while the record contains considerable evidence concerning beatings and other ill-treatment, "most such incidents are not sufficiently severe to qualify as torture." Exhibit 37 at 10.

The government notes that the Ukrainian government has permitted international monitoring of the conditions in its jails and prisons. *Id.* at 10. Further, the government argues that, although materials from the Department of State and Amnesty International provided specific examples of persons who allegedly suffered torture in the Ukraine, those examples were few in number and anecdotal and the record in this matter does not support a conclusion that torture was more likely than not for the average prisoner. Exhibit 37 at 10. According to the government, the October 13, 2005 Department of State Opinion supports its contention that the respondent has no basis to believe that he would be tortured if removed to the Ukraine. *See* Exhibits 39A and 45. The October 13, 2005 Department of State Opinion specified that, despite the "widespread nature" of police regularly beating detainees and prisoners in the Ukraine, the "Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union." *See* Exhibits 39A and 45. The Department of State further opined that "such mistreatment would be very unlikely in cases involving high profile individuals such as this one," and noted that this view was "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." *Id.*

The government asserts that the respondent "cannot show that he possesses any trait or characteristic that would cause Ukrainian authorities to single him out for mistreatment" nor can he show that the Ukraine "uses torture pervasively as a matter of government policy." Exhibit 37 at 13.

The government argues that, for those reasons, the respondent cannot establish that it is more likely than not that, if removed to the Ukraine, he will be prosecuted, detained, or subjected to torture, and that his application for deferral of removal under CAT should be denied.

C. Stipulated Facts Not At Issue

In conjunction with their submission of pre-trial statements, the parties stipulated to numerous facts not at issue. *See* Exhibit 35.

First, the parties stipulated to facts relating to the Ukraine's record concerning the investigation and prosecution of alleged Nazi war criminals. *Id.* at 1-4. The parties agreed that, since the Ukraine's independence in 1991, the Ukraine has not charged, indicted, prosecuted, or convicted any person for any crime that was committed under the direction of or in association with the Nazi government of Germany. Exhibit 37A at 34. The parties stipulated that Wasyl Lytwyn, an admitted Nazi war criminal who was denaturalized by the United States in 1995, has resided in the Ukraine since 1996 and, in spite of the United States offers of assistance, has not been charged, indicted, prosecuted, or convicted for any crime committed under the direction of or in association with the Nazi government of Germany. *See* Exhibit 35 at 1-2; *see also* Exhibits 37M - 37T. The parties stipulated that Bohdan Koziy, a Nazi war criminal who was denaturalized by the United States and fled to Costa Rica, was made known to the Ukraine as a Nazi war criminal, and the Ukraine took no steps from 1982 until his death in 2003 to extradite Koziy or initiate prosecution. *See* Exhibit 35 at 2-3; *see also* Exhibits 37D - 37H. The parties stipulated that the Ukraine has not agreed to admit Mykola Wasylyk, a Nazi war criminal denaturalized by the United States in 2001, nor has the Ukraine charged, indicted, prosecuted, or convicted him for any crime that he committed under the direction of or in association with the Nazi government. *See* Exhibit 35 at 3-4; *see also* Exhibits 37I - 37L.

The parties also stipulated to facts concerning pre-trial detention in the Ukraine. Exhibit 35 at 5. The parties agreed that Ukrainian law allows for pre-trial release of individuals awaiting trial, and that in 1996, the Ukrainian Parliament passed an amendment to the Code of Criminal Procedure allowing individuals awaiting trial to seek release on bail. *Id.* The parties stipulated that Ukrainian prosecutors, in determining whether pre-trial release is warranted, have a statutory obligation to consider whether there is sufficient reason to believe a criminal defendant will evade investigation or trial, interfere with investigation, or continue engaging in criminal conduct. *Id.* Further, the parties stipulated to reports that, in practice, large numbers of Ukrainian criminal defendants are released from custody while awaiting trial at the initiative of prosecutors, and that the defendants are only required to sign a promise to return. *Id.*

The parties further stipulated to facts concerning the detention of Nazi war criminals in countries other than the Ukraine. *Id.* at 5-6. The parties agreed that, in Lithuania, a ninety-three year old man convicted of war crimes was not sentenced to a term of incarceration because of his poor health. *Id.* at 5. The parties stipulated that another Nazi war criminal in Lithuania died prior to trial,

but was not detained while his case was pending. *Id.* The parties agreed that, after Germany vacated the conviction of a ninety-three year old man accused of Nazi war crimes, the German government ruled that the case be suspended because of his age. *Id.* at 6.

The parties also stipulated to facts concerning the conditions for prisoners in the Ukraine and the international monitoring of those conditions. *Id.* at 6-8. The parties stipulated that the Ukraine was a member of the European Convention Against Torture, which established the CPT. *Id.* at 6. The parties agreed that CPT conducts periodic visits of prison facilities, for which governments have no more than three days notice, during which the CPT examines conditions, conducts interviews of detainees and prison officials, and then publishes those findings. *Id.* at 6-7. The parties stipulated that the CPT visited the Ukraine in 1998, 1999, 2000, and 2002, and issued reports for each visit and that a visit was planned in 2005. *Id.* at 7. The parties stipulated to information contained in the CPT report from December 1, 2004, which states that people deprived of liberty by the Militia were at "significant risk of physical ill-treatment" during apprehension and while in custody, "particularly when being questioned," and that, "on occasion, resort may be had to severe ill-treatment/ torture." *Id.* at 7; *see also* Exhibit 36A at 72. The parties stipulated that a September 2005 Amnesty International Report stated that the problem of ill-treatment and torture in the Ukraine is "most acute" at the pre-trial detention phase. Exhibit 35 at 8.

Finally, the parties stipulated to specific facts regarding the respondent's case. The parties agreed that, since the respondent's conviction by the Supreme Court of Israel was overturned, the United States government has not asserted that the respondent is Ivan the Terrible of Treblinka and no allegation of such facts were made during the denaturalization proceedings instituted in 1999. *Id.* at 8. The parties stipulated that it is the government's position that perpetrators of Nazi war crimes should be prosecuted, whenever possible, by countries with jurisdiction over such offenses and that, if the respondent is removed to the Ukraine, it is likely that the government will encourage the Ukraine to prosecute him. *Id.* Finally, the parties agreed that the denaturalization proceedings that ended in 2002 and these removal proceedings are high profile cases, and that, if the respondent is removed to the Ukraine, his case may well be a high profile matter for the Ukrainian government and attract considerable public interest. *Id.* 8-9; *see also* Exhibit 36.

III. STATEMENT OF THE LAW: DEFERRAL OF REMOVAL UNDER CAT

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or CAT) and its implementing regulations at 8 C.F.R. Part 1208, particularly sections 1208.16, 1208.17, and 1208.18, sets forth the legal basis for adjudicating a request for deferral of removal under the CAT. *See* 64 Fed. Reg. 42247 (1999). "An alien who is in exclusion, deportation, or removal proceedings on or after March 22, 1999, may apply for withholding of removal under section 1208.16(c), and, if applicable, may be considered for deferral of removal under section 1208.17(a)." 8 C.F.R. §1208.18(b)(1).

A. Burden of Proof for Deferral of Removal under CAT

An applicant for relief bears the burden of proving that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2).

In assessing whether it is "more likely than not" that an applicant would be tortured upon removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: evidence of past torture inflicted on applicant; evidence that applicant could relocate to a part of the country where he or she is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information on country conditions. 8 C.F.R. § 1208.16(c)(3)(i) - (iv).

B. Elements of Deferral of Removal under CAT

In *Ali v. Reno*, the Sixth Circuit addressed CAT relief, and used the definitions and elements found in 8 C.F.R. § 1208.18(a) verbatim. 237 F. 3d 591, 596-97 (6th Cir. 2001); *cf. Zheng v. Ashcroft*, 332 F.3d 1186, 1195 (9th Cir. 2003). Thus, the definitions articulated in the regulations govern these proceedings.

Torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... ." 8 C.F.R. § 1208.18(a)(1). Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture. *Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002).

For an act to constitute "torture," it must satisfy each of the following five elements set forth at 8 C.F.R. § 1208.18(a). *See Matter of J-E-*, at 297-299 (BIA 2002). First, the act must cause severe physical or mental pain and suffering. 8 C.F.R. § 1208.18(a)(1). Second, the act must be specifically intended to inflict severe physical or mental pain and suffering. 8 C.F.R.1208.18(a)(5). An act that results in unanticipated or unintended severity is not torture. *Id.* Third, the act must be inflicted for a proscribed purpose. 8 C.F.R. § 1208.18(a)(1). Examples of such purposes include: obtaining information or a confession; punishing for an act committed or suspected of having been committed; intimidating or coercing; or for any reason based on discrimination of any kind. *Id.* Fourth, the act must be inflicted at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim. 8 C.F.R. § 1208.18(a)(7). The term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity. *Id.* Fifth, the torture cannot arise from suffering inherent in or incidental to lawful sanctions. 8 C.F.R. § 1208.18(a)(3). "Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture." *Id.* Noncompliance with applicable legal procedural standards does not *per se* constitute torture. 8 C.F.R. § 1208.18(a)(8).

IV. APPLICATION OF THE LAW TO THE FACTS

Regarding the issue of credibility, while the respondent's application for deferral of removal is internally consistent, as will be discussed, the evidence submitted in this case does not support a finding that the respondent would more likely than not be tortured, as defined under the CAT, if he is returned to the Ukraine.

In order for the respondent to meet his burden and succeed in his claim for deferral under the CAT given his assertions, he must show that he (1) would likely be prosecuted upon his removal to the Ukraine, (2) would likely be taken into custody while standing trial or imprisoned as a result of a conviction; and (3) would likely be tortured while in custody or prison. All of the elements enunciated in 8 C.F.R. § 1208.18(a) must be established as more likely than not in order for the respondent to be eligible for relief.

A. Likelihood that the Respondent Will Be Subject to Prosecution In The Ukraine

The respondent asserts that he is likely to be prosecuted if removed to the Ukraine because the United States government would pressure the Ukrainian government to prosecute, the matter would be a high profile case, and people still believe that he is Ivan the Terrible of Treblinka and would try him as "Ivan the Terrible."

While the evidence established that if the respondent is removed to the Ukraine his case may well be a high profile case, *see* Exhibits 35 at 8-9 and 36, the Court does not find the remainder of his argument, that he would be prosecuted because of this and other reasons aforementioned, to be supported by the evidence in the record.

The evidence establishes that since the Ukraine's independence in 1991, the Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so, and despite the United States offers of assistance for such prosecutions. Exhibits 34, 35 at 1 - 2, 36, 37A at 15-22, 37C, and 37G-37H.

Moreover, the evidence does not support the respondent's contention that he will be prosecuted as Ivan the Terrible in the Ukraine. At the height of the publicity following his trial in Israel, the respondent applied for and was granted a visa to the Ukraine in 1993, a time when prison conditions were demonstrably worse in the Ukraine and the death penalty was still a form of punishment. Exhibits 37VV - 37WW. At that time, there was a Ukrainian Demjanjuk Defense Committee working on his behalf. Exhibit 37WW. This committee issued the following statement upon conferral of a Ukrainian visa to the respondent: "We consider that until Demjanjuk goes to the United States, he should be accepted as a Ukrainian citizen in his Ukrainian homeland and thank the hundreds of people who struggled for his freedom." *Id.* Moreover, the committee called on Kiev citizens to welcome Demjanjuk upon his arrival at the Ukrainian airport. *Id.* Upon his acquittal as Ivan the Terrible of Treblinka in Israel, the aforementioned actions taken by the Ukrainian government and Ukrainian citizens vitiate the respondent's argument that he will be prosecuted as Ivan the Terrible. This is especially true, in light of the fact that the Ukraine has never charged, indicted,

prosecuted or convicted a single person as a Nazi war criminal despite the United States government's encouragement and willingness to assist.

B. Likelihood that the Respondent Will Be Detained Awaiting Trial or as a Result of Conviction

The respondent contends that he will likely be taken into custody while standing trial or imprisoned as a result of a conviction. This Court finds that this argument is speculative, not supported by the record and without merit.

The Court acknowledges that there are harsh conditions in Ukrainian pre-trial detention facilities. *See* Exhibits 31C and 36A. However, evidence of harsh prison conditions does not establish a likelihood of detention. The respondent presented no evidence to show that he would likely be detained.

The parties stipulated to numerous facts concerning pre-trial detention in the Ukraine. Exhibit 35 at 5. The parties agreed that Ukrainian law allows for pre-trial release of individuals awaiting trial, and that in 1996, the Ukrainian Parliament passed an amendment to the Code of Criminal Procedure allowing individuals awaiting trial to seek release on bail. *Id.* The parties stipulated that Ukrainian prosecutors, in determining whether pre-trial release is warranted, have a statutory obligation to consider whether there is sufficient reason to believe a criminal defendant will evade investigation or trial, interfere with investigation, or continue engaging in criminal conduct. *Id.* Further, the parties stipulated to reports that, in practice, large numbers of Ukrainian criminal defendants are released from custody while awaiting trial at the initiative of prosecutors, and that the defendants are only required to sign a promise to return. *Id.*

The respondent attempts to liken his situation to that of a journalist who embarrassed the Ukrainian government and was subsequently killed. *See* Exhibit 31C at 20-21 and Exhibit 36 at 10-12. This analogy is not persuasive, because the respondent is not akin to a journalist who has published unflattering or inflammatory remarks regarding the Ukrainian government. The respondent is one who has been found by the United States to have participated in persecution at the direction of the Nazi party. There is no evidence in the record that the Ukrainian government has expressed embarrassment regarding those proven to have participated in persecution through activities at the direction of the Nazi party of Germany. To the contrary, such individuals have been brought to the attention of the Ukrainian government, and no action has been taken to arrest, detain, or prosecute these known persecutors of others. *See* Exhibit 37A at 15-22, 34, and 36.

C. Likelihood that the Respondent Will Be Tortured While in Custody or Prison

The respondent also asserts that, once taken into custody in the Ukraine, he will likely be tortured. The Court finds that this assertion is speculative, not supported by the record, and without merit.

The Board examined prison conditions in the context of CAT claims in *Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002) and *Matter of G-A-*, 23 I. & N. Dec. 366 (BIA 2002). In *Matter of J-E-*,

the Board denied the respondent's CAT claim holding that: the indefinite detention of criminal deportees by Haitian authorities does not constitute torture where there is no evidence that the authorities intentionally and deliberately detain deportees in order to inflict torture; substandard prison conditions in Haiti do not constitute torture where there is no evidence that the authorities intentionally create such conditions in order to inflict torture; and evidence of occurrence in Haitian prisons of isolated instances of mistreatment that may rise to the level of torture is insufficient to establish that it is more likely than not that the respondent will be tortured if returned to Haiti. *Matter of J-E-, supra* at 304. In so holding, the Board found no evidence that (1) deliberately inflicted acts of torture were pervasive and widespread; (2) the Haitian authorities use torture as a matter of policy; or (3) meaningful international oversight or intervention was lacking. *Id.* at 303. The Board further concluded that the Haitian government was attempting to improve its prison system, preventing the respondent from demonstrating a likelihood of torture in prison in Haiti. *Id.* at 301.

In contrast, in *Matter of G-A-, supra*, the Board granted CAT relief to the respondent, a native of Iran, where the respondent established that deliberate acts of torture were pervasive and widespread in Iranian prisons, that the authorities use torture as a matter of policy, that meaningful international oversight or intervention was lacking, and that a detainee with the respondent's specific characteristics (his religion, ethnicity, duration of his residence in the United States, and his drug-related convictions in the United States) would likely to be subject to torture, as opposed to other acts of cruel, inhuman, or degrading punishment or treatment. *Matter of G-A-, supra*, at 372.

In assessing the respondent's claims of torture in the instant case, the Court finds his claims more closely resemble those in *Matter of J-E-* rather than *Matter of G-A-*. The harsh conditions in Ukrainian prisons has been established. However, like Haiti in *Matter of J-E-*, the Ukraine has permitted international monitoring of its prison facilities and has engaged in improvement efforts. *Matter of J-E-, supra* at 301. The Department of State opinion submitted in this matter specifies that, while there was a "widespread nature" of police regularly beating detainees and prisoners in the Ukraine, "Ukraine is engaged in a significant effort to improve the behavior of its police and prison officials as part of a broader effort to meet international human rights standards consistent with its aspirations to join NATO and the European Union." *See* Exhibits 39A and 45. The respondent, unlike the respondent in *Matter of G-A-*, has not established that he possesses specific characteristics that would make him likely be subject to torture. *Matter of G-A-, supra*, at 372. The respondent's claim of vulnerability to torture based upon age and alleged poor health is wholly unsubstantiated, as no evidence was submitted to such facts, and counsel's self serving statements during closing argument are not considered part of the evidentiary record. *See Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). The Department of State stated that "such mistreatment would be very unlikely in cases involving high profile individuals such as this one" and that this view was "shared by Ukrainian human rights leaders" consulted by the United States Embassy in Kiev about the "general pattern of treatment in such cases." *See* Exhibits 39A and 45.

V. DECISION AND ORDER

The Court finds that the respondent has not established a likelihood of prosecution, let alone a likelihood of torture as defined for purposes of deferral of removal under CAT. As clearly evinced

by the evidence in the record, the respondent has not sustained his burden of proof. The respondent has not shown that he will be subjected to an act, intentionally inflicted at the instigation of, or with the consent or acquiescence of a public official who has custody or physical control of the respondent, for a proscribed purpose, that would result in severe physical or mental pain or suffering, not arising from suffering inherent in or incidental to lawful sanctions. *See* 8 C.F.R. § 1208.18(a).

In view of the foregoing, the Court finds that the respondent has not established that it is more likely than not that he will be tortured if removed to the Ukraine. Therefore, the respondent's application for deferral of removal under CAT is denied.

ORDER

IT IS HEREBY ORDERED that the respondent's application for deferral of removal under CAT is **DENIED**.

IT IS FURTHER ORDERED that the respondent be removed from the United States to the Ukraine, or in the alternative to Germany or Poland, on the charges contained in the Notice to Appear.

MICHAEL J. CREPPY
CHIEF IMMIGRATION JUDGE

DATE: 12/28/05

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of John Demjanjuk	)	File No. A [redacted]
	)	
In removal proceedings	)	(b)(6)

ORDER

The Respondent's Emergency Motion for a Stay is granted and the order of removal issued by this Court on December 28, 2005 in this matter is hereby stayed. The Department of Homeland Security shall take no action to remove John Demjanjuk until this order is vacated.

Immigration Judge

Dated:

(b)(6)

DATE PREPARED	INFORMATION FOR TRAVEL DOCUMENT OR PASSPORT	FILE
06/11/08		[redacted]

1. NAME John DEMJANJUK						2. SEX M
3. OTHER NAMES USED OR KNOWN BY Iwan DEMJANJUK						4. CITIZENSHIP Ukraine
5. DATE OF BIRTH 04/03/1920	6. PLACE OF BIRTH Dubovye Makharintsy, Vynnitsky Oblast, Ukrainian S.S.R., Soviet Union					
7. HEIGHT 6'1	WEIGHT 230	EYES BLU	HAIR Gray	COMPLEXION Light	MARKS OR SCARS	
8. NEAREST LARGE CITY TO PLACE OF BIRTH KIEW					9. DISTANCE AND DIRECTION OF PLACE OF BIRTH FROM THIS LARGE CITY	

10. IF CITIZENSHIP IS DIFFERENT FROM COUNTRY OF BIRTH, EXPLAIN. IF NATURALIZED IN ANY COUNTRY, SHOW DATE AND PLACE OF NATURALIZATION, CERTIFICATE NUMBER, AND STATE HOW CITIZENSHIP WAS ACQUIRED

Naturalized U.S. Citizen, U.S. citizenship revoked 5/29/01

11. NAMES, LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN SCHOOLS	12. NAMES, EXACT LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN CHURCHES. INCLUDE DATE AND NATURE OF ANY RELIGIOUS CEREMONY WHICH MAY HAVE BEEN RECORDED
	Ukrainian Orthodox Church of USA, 50 + years Parma, Ohio, USA

13. LAST PERMANENT RESIDENCE IN COUNTRY OF CITIZENSHIP (Show dates of residence)
Unknown

14. ADDRESS IN COUNTRY OF LAST FOREIGN RESIDENCE (Show dates of residence, and immigration status there)
Regensburg, Germany Displaced Persons Camp, refugee

15. PLACE OF ENTRY INTO UNITED STATES	DATE OF ENTRY INTO UNITED STATES
New York, NY	02/09/1952

16. LIST DATE AND PLACE OF ISSUANCE AND NUMBER OF PASSPORT, BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR DOCUMENT OF IDENTITY. SPECIFY DATES OF MILITARY SERVICE, COUNTRY AND UNIT, RANK, SERIAL NUMBER, AND PLACES OF INDUCTION AND DISCHARGE.
No passport, no birth certificate. Conscripted into Soviet Red Army 1940, captured as prisoner of war in 1942, did not return to the Soviet Union.

17. IN POSSESSION OF TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY? ☒ YES ☐ NO. DESCRIBE DOCUMENT (S). IF SUBJECT DID NOT HAVE TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY, OR DOES NOT HAVE SUCH A DOCUMENT NOW, INDICATE WHETHER EVER OBTAINED ONE: ☐ YES ☐ NO. STATE HOW, WHEN, AND WHERE IT WAS OBTAINED; WHAT KIND OF DOCUMENT IT WAS, AND WHAT BECAME OF IT.
Immigrant visa to USA issued in 1952.

18. FATHER'S NAME	DATE OF BIRTH	PLACE OF BIRTH
Mikola DEMJANJUK		
PRESENT ADDRESS Deceased		

19. MOTHER'S MAIDEN NAME	DATE OF BIRTH	PLACE OF BIRTH
Tabachuk		
PRESENT ADDRESS Deceased		

20. NAME, RELATIONSHIP, AND ADDRESSES OF RELATIVES ABROAD
Unknown

21. PREVIOUSLY ☐ EXCLUDED ☐ DEPORTED ☐ REQUIRED TO DEPART FROM THE UNITED STATES

ON _____ (Date) VIA _____ (Port) TO _____ (Country)

22. INDICATE WHETHER EVER ARRESTED, IN PRISON OR A PUBLIC INSTITUTION IN THE COUNTRY OF WHICH A NATIONAL, SUBJECT OR CITIZEN: ☒ YES ☐ NO. IF SO, GIVE DATES AND PLACES
Arrested in 1985 in the United States pending extradition to Israel.

23. NAME, NATIONALITY AND PRESENT ADDRESS OF SPOUSE, AND DATE AND PLACE OF MARRIAGE
Vera DEMJANJUK ne[redacted] married 1948 at Regensburg, Germany

24. NAMES, AGES AND ADDRESSES OF ALL CHILDREN
Three children, Lydia, Irene and John, all adult age and living in the USA (b)(6)

25. IF NONCANADIAN DEPORTABLE TO CANADA, GIVE DATE AND PORT OF ARRIVAL IN CANADA, AND NAME OF VESSEL
N/A

Form I-217 (Rev. 3-30-77)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

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STAPLE HERE

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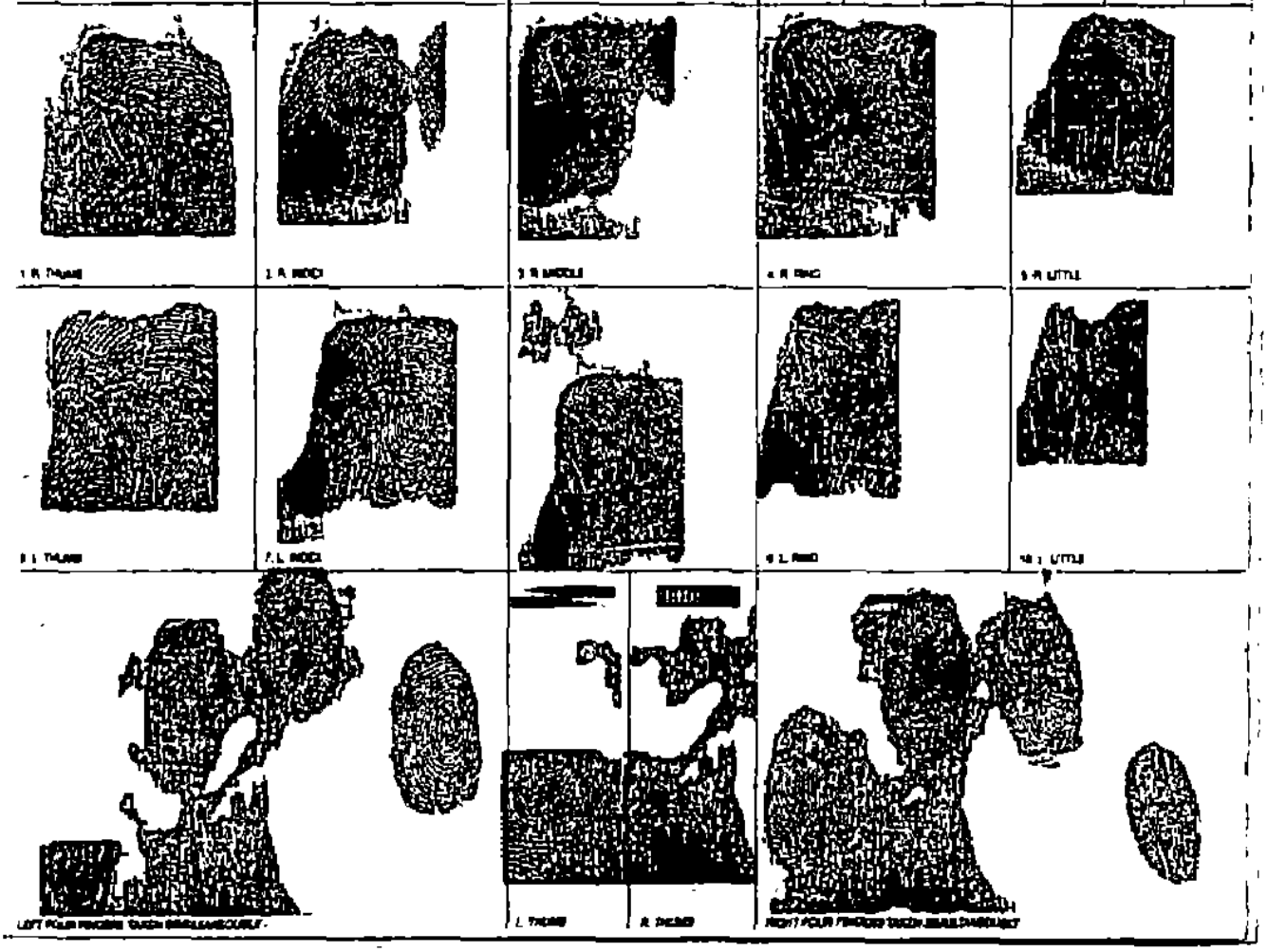
STATE USAGE

Demjanjuk,John

SIGNATURE OF PERSON FINGERPRINTED

John Demjanjuk

DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
19200403	M	W	5'74	230	BLU	BLN



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ORIGINAL

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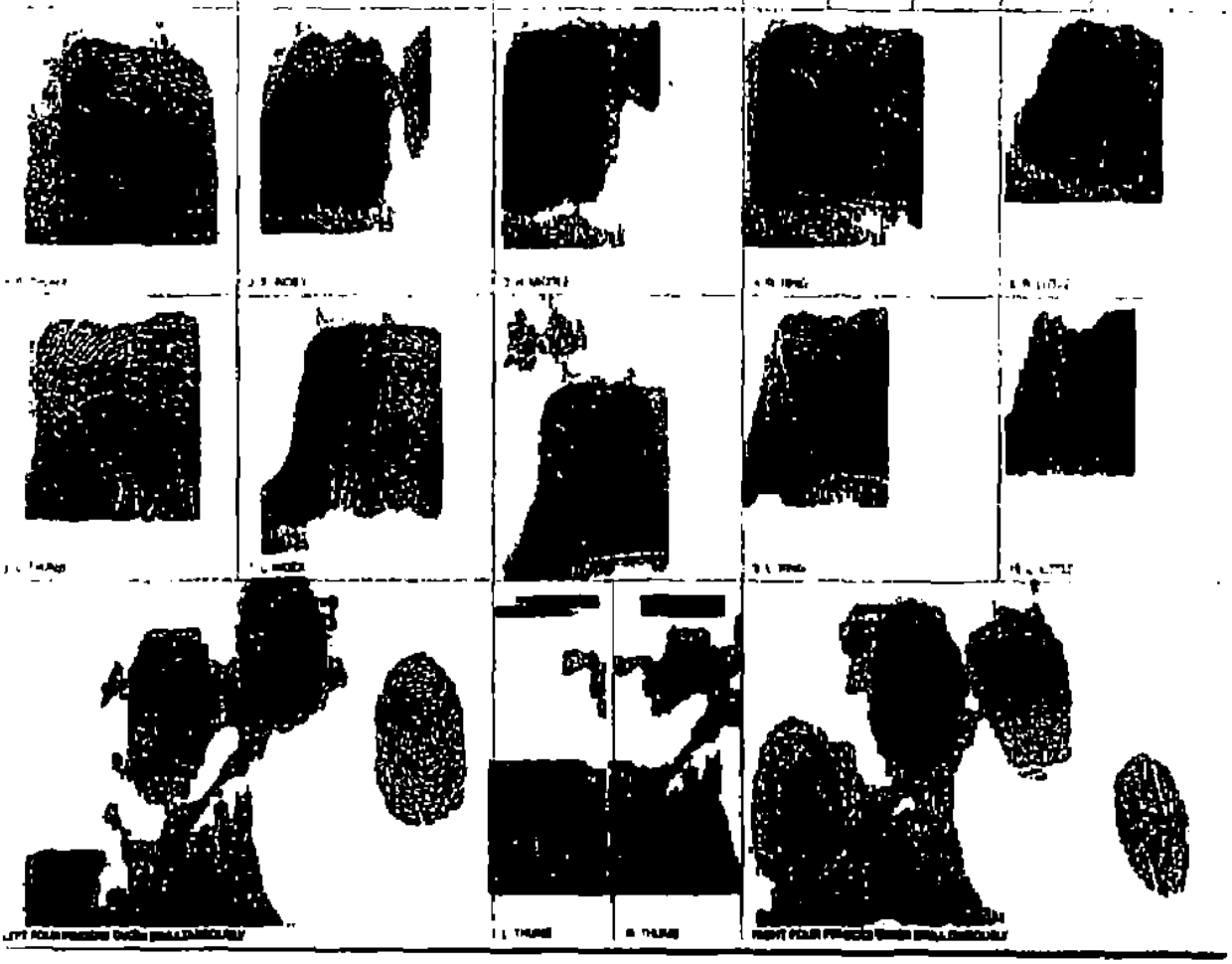
Demjanjuk, John

John Demjanjuk

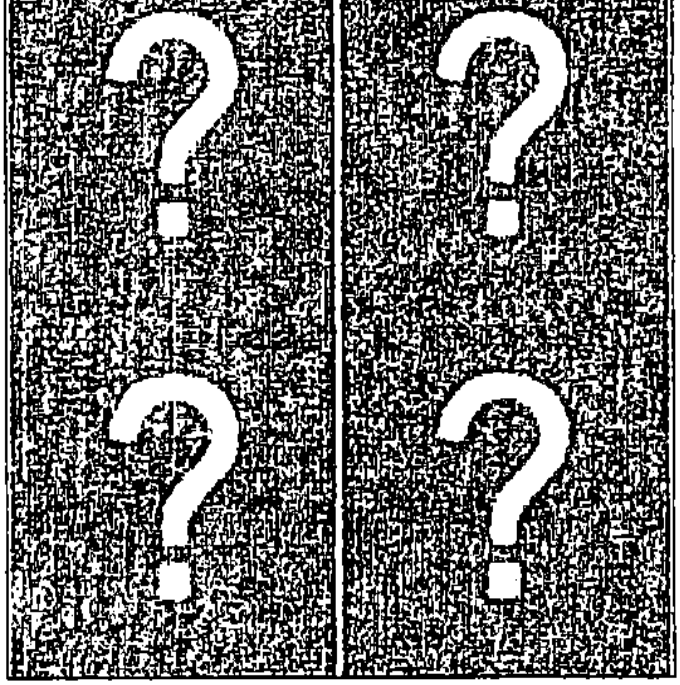
		19200403	M	W	6'4"	230	BLU	BLM



Biometric Information

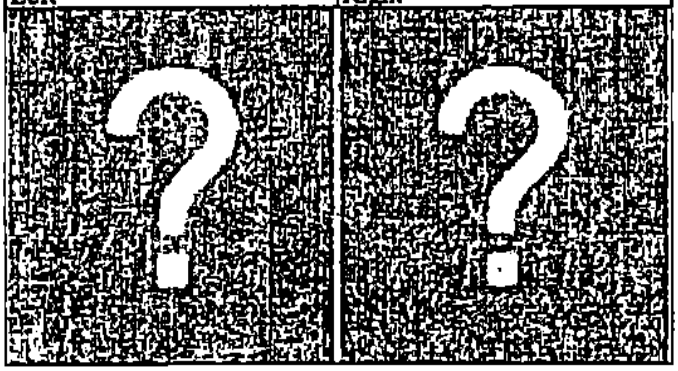
Name: JOHN DEMJANJUK
Alien Number [redacted]
(b)(6)

Photo



Fingerprints

Left	Right



U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : 117391

File No: A [redacted] (b)(6)

Event No: XCL0512000066

In the Matter of:

John DEMJANJUK

Respondent: _____ currently residing at:

[redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. SEE I-862

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

SEE I-862

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

U.S. Courthouse Suite 13-100 801 West Superior Avenue Cleveland OHIO US 44113182

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set *(Date)* at a time to be set *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

_____

(Signature and Title of Issuing Officer)

Date: _____

_____

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : 117391

File No: A[redacted] (b)(6)

Event No: XCL0512000066

In the Matter of:

John DEMJANJUK

Respondent: _____ currently residing at:

[redacted]

(Number, street, city and ZIP code) (Area code and phone number)

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on a date to be set *(Date)* at a time to be set *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

_____

(Signature and Title of Issuing Officer)

Date: _____

_____

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____

(Signature of Respondent)

_____ Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☐ in person ☐ by certified mail, returned receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

[redacted] SPECIAL AGENT

_____ (b)(7)(c) _____

(Signature of Respondent if Personally Served) (Signature and Title of officer)

U.S Department of Justice

Immigration and Naturalization Service

Warrant of Removal/Deportation

File No: A [redacted] (b)(6)

Date: June 18, 2008

To any officer of the United States Immigration and Naturalization Service:

John Dejanjuk
(Full name of alien)

who entered the United States at New York, NY (Place of entry) on or about February 9, 1952 (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

237(a)(4)(D) and 237(a)(1)(A) of the Immigration and Nationality Act.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of: *appropriation "Salaries and Expenses, Immigration and Naturalization Service,2008, including the expenses of an attendant if necessary.*

PLEASE RETURN TO:
DETENTION & REMOVALS
1240 EAST 9TH STREET, SUITE 535
CLEVELAND, OH 44199

[redacted] (b)(7)(c)
(Signature of INS official)

Field Office Director
(Title of INS official)

June 18, 2008 Cleveland, OH
(Date and office location)

Form I-205 (Rev. 4-1-97)N

U.S Department of Justice

Immigration and Naturalization Service

Warrant of Removal/Deportation

File No: A [redacted] (b)(6)

Date: June 18, 2008

To any officer of the United States Immigration and Naturalization Service:

John Dejanjak
(Full name of alien)

who entered the United States at New York, NY (Place of entry) on or about February 9, 1952 (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

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PLEASE RETURN TO:
DETENTION & REMOVALS
1240 EAST 9TH STREET, SUITE 535
CLEVELAND, OH 44199

[redacted] (b)(7)(c)
(Signature of INS official)
Field Office Director
(Title of INS official)
June 18, 2008 Cleveland, OH
(Date and office location)

Form I-205 (Rev 4-1-97)N

(b)(6)

DATE PREPARED	INFORMATION FOR TRAVEL DOCUMENT OR PASSPORT	FILE
06/11/08		[redacted]

1. NAME John DEMJANJUK							2. SEX M
3 OTHER NAMES USED OR KNOWN BY Iwan DEMJANJUK							4 CITIZENSHIP Ukraine
5 DATE OF BIRTH 04/03/1920	6 PLACE OF BIRTH Dubovye Makharintsy, Vynnitsky Oblast, Ukrainian S.S.R., Soviet Union						
7 HEIGHT 6'1	WEIGHT 230	EYES BLU	HAIR Gray	COMPLEXION Light	MARKS OR SCARS		
8 NEAREST LARGE CITY TO PLACE OF BIRTH KIEW					9 DISTANCE AND DIRECTION OF PLACE OF BIRTH FROM THIS LARGE CITY		

10 IF CITIZENSHIP IS DIFFERENT FROM COUNTRY OF BIRTH, EXPLAIN IF NATURALIZED IN ANY COUNTRY, SHOW DATE AND PLACE OF NATURALIZATION, CERTIFICATE NUMBER, AND STATE HOW CITIZENSHIP WAS ACQUIRED

Naturalized U.S. Citizen, U.S. citizenship revoked 5/29/01

11. NAMES, LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN SCHOOLS	12. NAMES, EXACT LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN CHURCHES. INCLUDE DATE AND NATURE OF ANY RELIGIOUS CEREMONY WHICH MAY HAVE BEEN RECORDED
	Ukrainian Orthodox Church of USA, 50 + years Parma, Ohio, USA

13 LAST PERMANENT RESIDENCE IN COUNTRY OF CITIZENSHIP *(Show dates of residence)*
Unknown

14 ADDRESS IN COUNTRY OF LAST FOREIGN RESIDENCE *(Show dates of residence, and immigration status there)*
Regensburg, Germany Displaced Persons Camp, refugee

15 PLACE OF ENTRY INTO UNITED STATES	DATE OF ENTRY INTO UNITED STATES
New York, NY	02/09/1952

16 LIST DATE AND PLACE OF ISSUANCE AND NUMBER OF PASSPORT, BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR DOCUMENT OF IDENTITY. SPECIFY DATES OF MILITARY SERVICE, COUNTRY AND UNIT, RANK, SERIAL NUMBER, AND PLACES OF INDUCTION AND DISCHARGE.
No passport, no birth certificate. Conscripted into Soviet Red Army 1940, captured as prisoner of war in 1942, did not return to the Soviet Union.

17. IN POSSESSION OF TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY? ☒ YES ☐ NO. DESCRIBE DOCUMENT (S). IF SUBJECT DID NOT HAVE TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY, OR DOES NOT HAVE SUCH A DOCUMENT NOW, INDICATE WHETHER EVER OBTAINED ONE: ☐ YES ☐ NO. STATE HOW, WHEN, AND WHERE IT WAS OBTAINED; WHAT KIND OF DOCUMENT IT WAS, AND WHAT BECAME OF IT.
Immigrant visa to USA issued in 1952.

18 FATHER'S NAME	DATE OF BIRTH	PLACE OF BIRTH
Mikola DEMJANJUK		
PRESENT ADDRESS Deceased		

19 MOTHER'S MAIDEN NAME	DATE OF BIRTH	PLACE OF BIRTH
Tabachuk		
PRESENT ADDRESS Deceased		

20 NAME, RELATIONSHIP, AND ADDRESSES OF RELATIVES ABROAD
Unknown

21 PREVIOUSLY ☐ EXCLUDED ☐ DEPORTED ☐ REQUIRED TO DEPART FROM THE UNITED STATES

ON _____ (Date) VIA _____ (Port) TO _____ (Country)

22 INDICATE WHETHER EVER ARRESTED, IN PRISON OR A PUBLIC INSTITUTION IN THE COUNTRY OF WHICH A NATIONAL, SUBJECT OR CITIZEN. ☒ YES ☐ NO. IF SO, GIVE DATES AND PLACES
Arrested in 1985 in the United States pending extradition to Israel.

23 NAME, NATIONALITY AND PRESENT ADDRESS OF SPOUSE, AND DATE AND PLACE OF MARRIAGE
Vera DEMJANJUK nee [redacted] married 1948 at Regensburg, Germany

24 NAMES, AGES AND ADDRESSES OF ALL CHILDREN
Three children, Lydia, Irene and John, all adult age and living in the USA (b)(6)

25 IF NONCANADIAN DEPORTABLE TO CANADA, GIVE DATE AND PORT OF ARRIVAL IN CANADA, AND NAME OF VESSEL
N/A

Form I-217 (Rev. 3-30-77)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

ROU[redacted]G AND TRANSMITTAL SLIP

Date [redacted]/16/09

TO: (Name, office symbol, room number, building, Agency/ Post)	Initials	Date
1.		
2. DP		
3.		
4.		
5.		

	Action		File		Note and Return
	Approval		For Clearance		Per Conversation
	As Requested		For Correction		Prepare Reply
	Circulate		For Your Information		See Me
	Comment		Investigate		Signature
	Coordination		Justify		

REMARKS

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/ Post)	Room No. — Bldg.
EXAMS	Phone No.

SN 7540-00-935-5862
041-103

OPTIONAL FORM 41 (Rev. 1-94)
Prescribed by GSA
UNICOR FPI - SST

DP

April 11, 2009

Bureau of Immigration —

If I'm not too late —

Please do not "deport" Mr. [redacted] !

2009 APR 14 AM 9:3

RECEIVED
CLEVELAND

[redacted]

(b)(6)

RECEIVED APR 15 2009
TO: Evans

[redacted]

(b)(6)

SHIPPED APR 16 2009

[redacted]

(b)(6)

11 APR 2009 PM 3 L

USA FIRST-CLASS FOREVER

Federal Bureau of Immigration
(Downtown Cleveland)

Cleveland, Ohio ~~[illegible]~~ ?

44199

44104 3333

Re: Mr. Demjanuk, Postmaster, Pls Fwd.

SHIPPED APR 06 2009

RECEIVED APR 03 2009
TO: ICE

DEMJANJUK

RECEIVED
2009 APR -2 AM 9:36

① WHAT AND how much MONEY AND ASSETS IS THE UNITED STATES, THE JEWS, ISRAEL, AND THE O.S.I. OF THE JUSTICE DEPT. GIVING TO GERMANY, TO HAVE DEMJANJUK DEPORTED, AND TO STAND TRIAL IN GERMANY, WHEN AMERICA IS IN A DEPRESSION, AND IS BANKRUPT AND BROKE, AND THE AMERICAN PEOPLE ARE HURTING, AS RIOTS AND REVOLUTION ARE COMING UP, AS CHINA, JAPAN, AND SAUDI ARABIA ARE OUR BANKERS? PLUS WARS - IRAQ - AFGHANISTAN !!?

② HOW AND WHY CAN GERMANY, AND ITS GOVERNMENT, BE SO STUPID, IGNORANT, ARROGANT, AND DUMB, AS TO PUT DEMJANJUK ON TRIAL, AT THE REQUEST OF THE JEWS, WHEN GERMANY, AND ITS GOVERNMENT, UNDER THE NAZIS AND HITLER, THE LEGAL GOVERNMENT OF GERMANY, IN THE 1930's & 1940's, STARTED WORLD WAR II, AND SLAUGHTERED MILLIONS, AND SET UP CAMPS, ESPECIALLY IN NAZIS OCCUPIED POLAND - SOBIBOR?

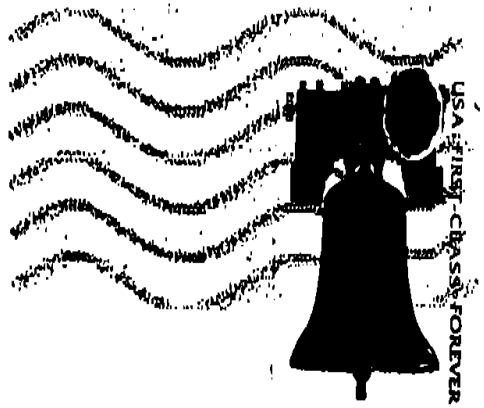
③ IS GERMANY TRYING TO CLEANSE ITS SOUL, FOR THE DEATH + DESTRUCTION OF JEWS, WITNESS'S, GYPSIES, AND OTHERS IN WORLD WAR II? WHAT ABOUT THE KAPOS - JEWS?

④ WOULDN'T MOST REALIZE, THAT HITLER AND NAZI GERMANY, HAD JEWS WORKING IN THE GOVERNMENT, AND THERE WAS AROUND 450,000 JEWS, 1/4, 1/2, 3/4 JEWS, IN THE GERMAN MILITARY, ARMY, NAVY, ETC., AND SOME GENERALS + FIELD MARSHALS? & OFFICERS?

* CASE CLOSED - CHARGES DISMISSED - FREE DEMJANJUK
* BY VETERANS OF WORLD WAR II + KOREAN WAR - AMERICA *
* SENT WITHIN AMERICA. *

Veterans OF World War II + Korean War -
U.S.A.

AKRON-CANTON 442
27 MAR 2000 PM 2 T

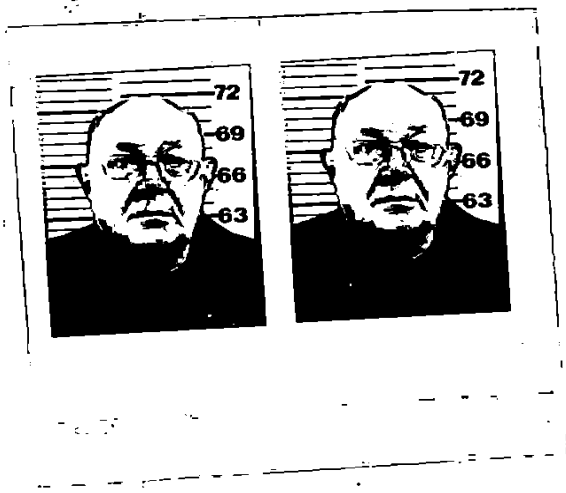


187

U.S. Immigration Dept. & Judges -
The Cleveland U.S. Federal Bldg.
Ref: Demjanjuk Case
C/o Cleveland U.S. Post office
Cleveland, Ohio

4/1/99

44100/3338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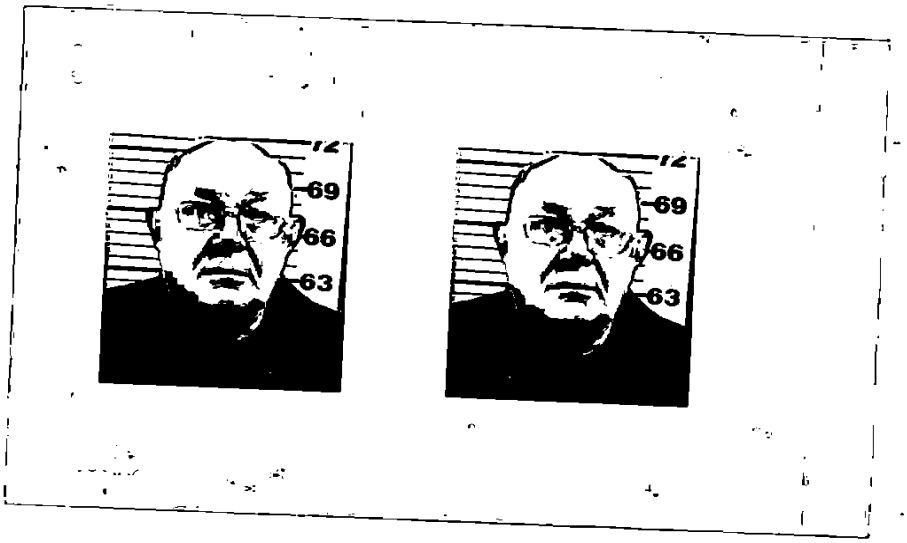
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Office of Detention and Removal Operations
Cleveland, Ohio
U.S. Department of Homeland Security
1240 E. 9th Street
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

Consulate General of the Federal Republic of Germany
The Honorable Johannes Harms
676 N. Michigan Ave. Suite 3200
Chicago, IL 60611

Re: John DEMJANJUK, aka: Ivan Demjanjuk A [redacted] (b)(6)

Dear Mr Harms:

Per your request to Deportation Officer [redacted] I am sending you four photos of John Demjanjuk, aka: Ivan Demjanjuk. Two of the photos have a plain background and two have a height chart background.

(b)(7)(c)

I have also enclosed a self addressed Federal Express envelope for your convenience. Should you need further assistance, please feel free to call me at [redacted] or on my cell phone at [redacted]

(b)(7)(c)

Sincerely,

[redacted]

(b)(7)(c) Supervisory Detention and Deportation Officer
Cleveland, Ohio

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 23, 2008

EMBASSY OF GERMANY

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE which is a Corrected Copy from the Prior Request dated 6/18/08.

Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 as an immigrant.

Mr. DEMJANJUK was afforded a hearing before an Immigration Judge to answer the charges on the attached Notice to Appear. As a result of this hearing, Mr. DEMJANJUK was ordered deported from the United States as documented by the attached Order. Mr. DEMJANJUK then appealed this decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal.

Mr. DEMJANJUK will be scheduled to depart the United States upon receipt of a travel document.

If you require further information, please contact Officer [redacted] at [redacted] or email [redacted]

(b)(7)(c)

Sincerely,

[redacted]

DO

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Biometric Information

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 23, 2008

EMBASSY OF POLAND

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE which is a Corrected Copy from the Prior Request dated 6/18/08.

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Mr. DEMJANJUK will be scheduled to depart the United States upon receipt of a travel document.

If you require further information, please contact Officer [redacted] (b)(7)(c) at [redacted] or email [redacted]

(b)(7)(c)

Sincerely,

[redacted]

DO

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Biometric Information

(b)(7)(c)

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 23, 2008

EMBASSY OF RUSSIA

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

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Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 as an immigrant.

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Mr. DEMJANJUK will be scheduled to depart the United States upon receipt of a travel document.

If you require further information, please contact Officer [redacted] (b)(7)(c) at [redacted] or email [redacted]

(b)(7)(c)

Sincerely,

[redacted]

DO

(b)(7)(c)

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Biometric Information

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 18, 2008

EMBASSY OF POLAND

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE.

Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 without inspection.

Mr. DEMJANJUK was afforded a hearing before an Immigration Judge to answer the charges on the attached Notice to Appear. As a result of this hearing, Mr. DEMJANJUK was ordered deported from the United States as documented by the attached Order. Mr. DEMJANJUK then appealed this decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal.

Mr. DEMJANJUK will be scheduled to departed the United States upon receipt of a travel document. Since he is being detained at Bureau expense, a prompt response would be appreciated.

If you require further information, please contact Officer [redacted] at [redacted] or email [redacted]

(b)(7)(c)

(b)(7)(c)

Sincerely,

[redacted]

DO

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Other
(5) Biometric Information

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 18, 2008

EMBASSY OF GERMANY

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE.

Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 without inspection.

Mr. DEMJANJUK was afforded a hearing before an Immigration Judge to answer the charges on the attached Notice to Appear. As a result of this hearing, Mr. DEMJANJUK was ordered deported from the United States as documented by the attached Order. Mr. DEMJANJUK then appealed this decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal.

Mr. DEMJANJUK will be scheduled to departed the United States upon receipt of a travel document. Since he is being detained at Bureau expense, a prompt response would be appreciated.

If you require further information, please contact Office [redacted] (b)(7)(c) at [redacted] (b)(7)(c) or email [redacted]

Sincerely

[redacted]

DO

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(2) Charging Document
(3) I-217
(4) Other
(5) Biometric Information

U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 18, 2008

EMBASSY OF RUSSIA

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If you require further information, please contact Officer [redacted] at [redacted] or email [redacted]

(b)(7)(c)

(b)(7)(c)

Sincerely

[redacted]

DO

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U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 18, 2008

EMBASSY OF UKRAINE

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(b)(7)(c)

Sincerely,

[redacted]

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Other
(5) Biometric Information

RUSSIAN FEDERATION

Embassy Address: Embassy of Russia (Consular Division)
2641 Tunlaw Road, NW
Washington, DC 20007

Contact: Mr. Ivan Kiselev
Position: Third Secretary
Phone #: [redacted]
Fax #: [redacted]
Web Site: www.russianembassy.org
E-Mail: [redacted]

(b)(6)

MANDATORY NOTIFICATION PURSUANT TO 8CFR236.1(e) **Yes** ☒ **No** ☐

COURTESY NOTIFICATION **Yes** ☒

TRAVEL DOCUMENT REQUEST

- CAN ALIEN RETURN ON EXPIRED PASSPORT Yes ☐ No ☒
- IS TRAVEL DOCUMENT APPLICATION REQUIRED Yes ☒ No ☐ Copies 1

  Application can be found at: http://www.russianembassy.org/CONSULAT/zayavl2.doc
- IS A FEE REQUIRED (money order only) Yes ☒ No ☐ Amt $100
- PREPAID RETURN ENVELOPE *(Express-Mail, FedEx or DHL)* Yes ☒ No ☐
- NUMBER OF PHOTOS REQUIRED 2
- INTERVIEW BY CONSULAR OFFICER REQUIRED Yes ☐ No ☐ Case by Case ☒
- ITINERARY REQUIRED BEFORE DOCUMENT ISSUED Yes ☒ No ☐
- OTHER DOCUMENTS REQUIRED

  I-217 ☒ OSC/NTA ☒ Judge's Order/BIA Decision ☒

  Warrant of Removal ☒ Fingerprints ☒ Birth Certificate/Passport/ID ☒

Revised on 09/08/07

UKRAINE

Embassy Address: Embassy of Ukraine (Consular Division)
3350 M Street NW
Washington, DC 20007

Contact: Mr. OLEKSIY SVIATUN	
Position: II Secretary	
Phone #:	(b)(6)
Fax #:	
Web Site: www.mfa.gov.ua/usa	
E-Mail:	

MANDATORY NOTIFICATION PURSUANT TO 8CFR236.1(e) Yes ☒ No ☐

COURTESY NOTIFICATION Yes ☒

TRAVEL DOCUMENT REQUEST

- CAN ALIEN RETURN ON EXPIRED PASSORT Yes ☐ No ☒
- IS TRAVEL DOCUMENT APPLICATION REQUIRED Yes ☒ No ☐ Copies 2
- IS A FEE REQUIRED Yes ☒ No ☐ Amt $30
- NUMBER OF PHOTOS REQUIRED 2
- INTERVIEW BY CONSULAR OFFICER REQUIRED Yes ☐ No ☐ Case by Case ☒
- ITINERARY REQUIRED BEFORE DOCUMENT ISSUED Yes ☒ No ☐
- OTHER DOCUMENTS REQUIRED

I-217 ☒ OSC/NTA ☒ Judge's Order/BIA Decision ☒

Warrant of Removal ☒ Fingerprints ☒ Birth Certificate/Passport/ID ☒

Revised on 07/25/07

German Consulate General
676 N. Michigan Ave., Suite 3200
Chicago, IL 60611
Tel.: (312)202-0480, direct contact no: 312-202-6722
Fax: (312)202-0466
email: chicago@germanconsulate.org
website: www.germany.info/relaunch/info/missions/consulates/chicago/chicago.html
AOR: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.

German Consulate General
1330 Post Oak Blvd. Suite 1850
Houston TX 77056
Telephone 713- 627-7770 , direct contact no: 713-985-3383
Fax 713-627-0506
Email: info@germanconsulatehouston.org
Website: http://www.germany.info/relaunch/info/missions/consulates/houston/houston.html
AOR: Arkansas, Louisiana, New Mexico, Oklahoma and Texas
The Consulate General
6222 Wilshire Blvd., Suite 500
Los Angeles, CA 90048
Tel.: (323) 930-2703, direct contact no: 323-930-7612
Fax: (323) 930-2805
Website: www.germany.info/relaunch/info/missions/consulates/losangeles/losangeles.html
E mail: losangeles@germany.info
AOR: California counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura; plus Arizona, Colorado, Nevada and Utah.

German Consulate General
100 North Biscayne Boulevard, Suite 2200
Miami, FL 33132-2381
Tel: (305) 358-0290, direct contact no: 305-373-9584
Fax: (305) 358-0307
Website: http://www.germany.info/relaunch/info/missions/consulates/miami/miami.html
E mail: miami@germany.info
AOR: Florida, U.S. Virgin Islands and Puerto Rico.

German Consulate General
871, United Nations Plaza
(1st Avenue @ 49th Street)
New York, NY 10017
Tel: (212) 610-9700, direct contact no: 212-610-9730
Fax: (212) 610-9702
Website: www.germany.info/relaunch/info/missions/consulates/newyork/newyork.html
E mail: german-consulate-rk@nyct.net
AOR: New York, New Jersey, Bermuda and Fairfield County of Connecticut.

CONSULAR OFFICES IN THE UNITED STATES

Embassy of the Republic of the Republic of Poland
Consular Division ,
2224 Wyoming Ave., NW
Washington, DC 20008
Paweł Bogdziewicz
II Secretary
Phone: 202 234 38 00 ext. 2204
Fax: 202 328 2152
Web Site: www.washington.polemb.net
e-mail: polconsul.dc@verizon.net

Consulate General of the Republic of Poland
820 N. Orleans St., Suite 335
Chicago, IL 60610
Feliks Kierzkowski
Vice Consul
Phone: 312 337 8166 ext. 237
Fax:312 337 7841
Web Site: www.polishconsulatechicago.org
e-mail : legal@polishconsulatechicago.org

Consulate General of the Republic of Poland
233 Madison Ave.
New York, NY 10016
Wojciech Łukasiewicz
Consul
Phone: 646 237 2100 ext. 2136
Fax: 646 237 2134
Web Site: www.polishconsulateny.org
e-mail: legal@polishconsulateny.org

Consulate General of the Republic of Poland
12400 Wilshire Blvd., Suite 555
Los Angeles, CA 90025
Dariusz Dobrowolski
Consul
Phone: 310 442 8500 ext. 107
Fax: 310 442 8517
Web Site: www.polishconsulatela.com
e-mail: legal@consulplla.org

Revised on 06/29/07

CONSULAR OFFICES IN THE UNITED STATES

Embassy of the Republic of the Republic of Poland
Consular Division ,
2224 Wyoming Ave., NW
Washington, DC 20008
Paweł Bogdziewicz
II Secretary
Phone: 202 234 38 00 ext. 2204
Fax: 202 328 2152
Web Site: www.washington.polemb.net
e-mail: polconsul.dc@verizon.net

Consulate General of the Republic of Poland
820 N. Orleans St., Suite 335
Chicago, IL 60610
Feliks Kierzkowski
Vice Consul
Phone: 312 337 8166 ext. 237
Fax:312 337 7841
Web Site: www.polishconsulatechicago.org
e-mail : legal@polishconsulatechicago.org

Consulate General of the Republic of Poland
233 Madison Ave.
New York, NY 10016
Wojciech Łukasiewicz
Consul
Phone: 646 237 2100 ext. 2136
Fax: 646 237 2134
Web Site: www.polishconsulateny.org
e-mail: legal@polishconsulateny.org

Consulate General of the Republic of Poland
12400 Wilshire Blvd., Suite 555
Los Angeles, CA 90025
Dariusz Dobrowolski
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Phone: 310 442 8500 ext. 107
Fax: 310 442 8517
Web Site: www.polishconsulatela.com
e-mail: legal@consulplla.org

Revised on 06/29/07

Consular jurisdiction:

NEW YORK:
Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont

LOS ANGELES:
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, Wyoming

CHICAGO:
Arkansas, Illinois, Indian, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin

WASHINGTON, DC:
Alabama, Florida, Kentucky, Tennessee, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Maryland, Puerto Rico, US Virgin Islands

Revised on 06/29/07

CONSULAR OFFICES IN THE UNITED STATES

Embassy of Ukraine in Washington, DC

Address on information sheet

Area of Responsibility (AOR): Alabama, Alaska, Arkansas, Delaware, DC, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

Consulate General of Ukraine in New York

240 East 49th Street
New York, NY 10017
Tel. (212) 371-5690
Fax (212) 371-5547
E-mail: gc_usn@mfa.gov.ua
Web Site: http://www.ukrconsul.org/
AOR: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont.

Consulate General of Ukraine in Chicago

10 East Huron Street
Chicago, IL 60611
Tel. (312) 642-4388
Fax (312) 642-4385
E-mail: ukrchicago@sbcglobal.net
Web Site: http://www.ukrchicago.com/
AOR: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.

Consulate General of Ukraine in San Francisco:

530 Bush Street, suite 402,
San Francisco, CA 94108-3623
Tel.: (415) 398-0240
(415) 398-4974
Fax: (415) 398-5039
E-mail: consulate@UkraineSF.com
Web Site:www.UkraineSF.com

AOR: Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Oregon, Utah, Washington, Wyoming.

Revised on 07/25/07

U.S. Immigration and Customs Enforcement

electronic Travel Documents

Welcome to eTD

You are logged in as [redacted] (b)(7)(c)

Current Language: English

3/11/09 5:56 PM

A travel document request for this detainee has already been created

A-Number: [redacted] (b)(6) **Event Number:** [redacted] Search

A detainee with the A-number or Event Number you entered has already been processed in the eTD system 3 travel documents found, displaying all travel documents.

A-Number	Last Name	First Name	Created Date	Created By	Status
[redacted] (b)(6)	DEMJANJUK	JOHN	10 Jun 2008	[redacted]	Non-electronic Pending
	DEMJANJUK	JOHN	18 Jun 2008		Non-electronic Pending
	DEMJANJUK	JOHN	18 Jun 2008		Non-electronic Pending

If you would still like to continue processing the detainee, please click Continue (b)(7)(c)

Continue

U.S. Immigration and Customs Enforcement

electronic Travel Documents

Welcome to eTD

You are logged in as [redacted] (b)(7)(c) | Home | EARM | Logout | Edit My Profile | View Actions
Current Language: English
3/11/09 5:56 PM

A travel document request for this detainee has already been created

A-Number: [redacted] **Event Number:** [redacted] Search

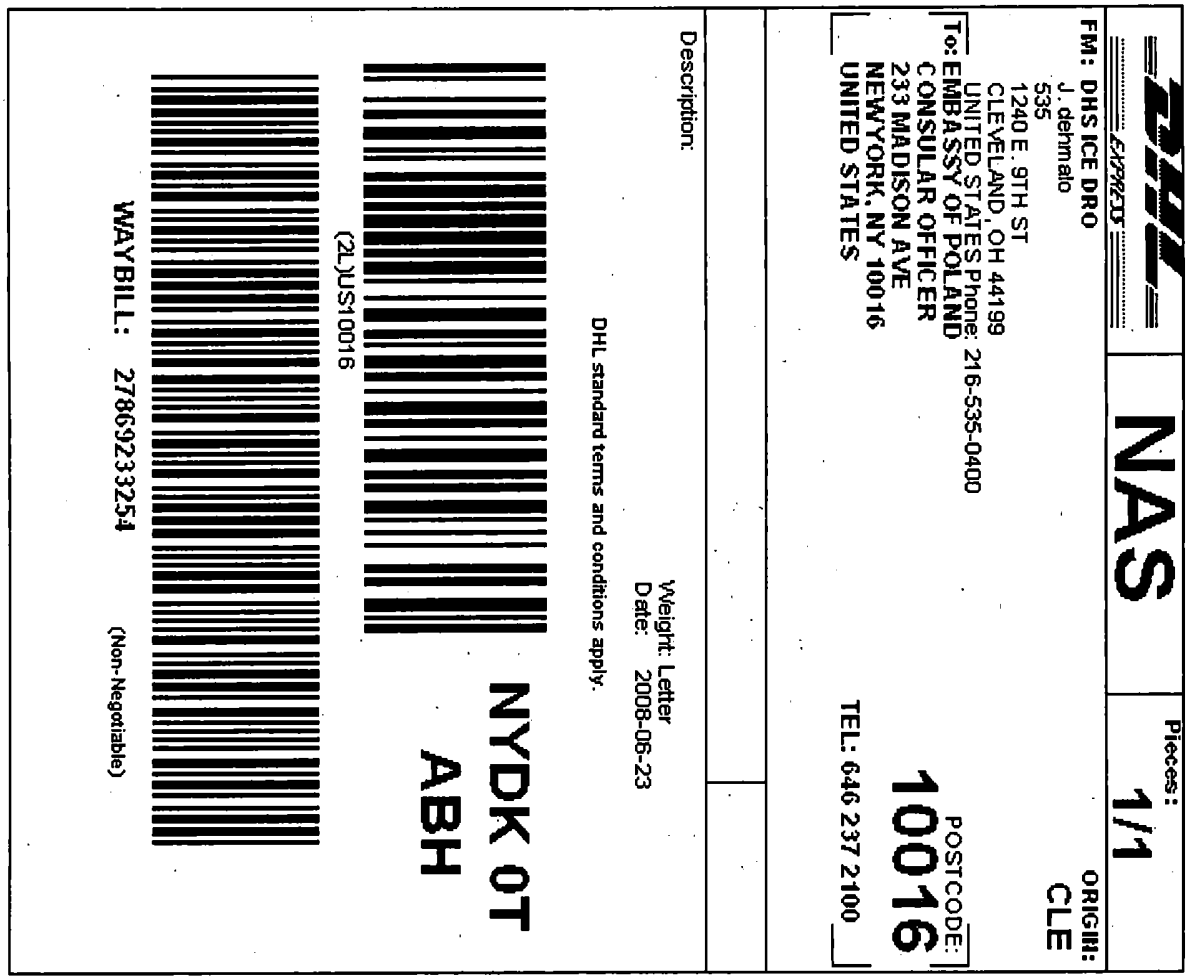
(b)(6)

One civilian found.

	A-Number	Event Number	Last Name	First Name	Date of Birth	Arrest Date	Country
○	[redacted]	XCL0512000066	DEMJANJUK	JOHN	03 Apr 1920	17 Dec 2004	UKRAI

(b)(6)

Submit Cancel



Please fold or cut in half

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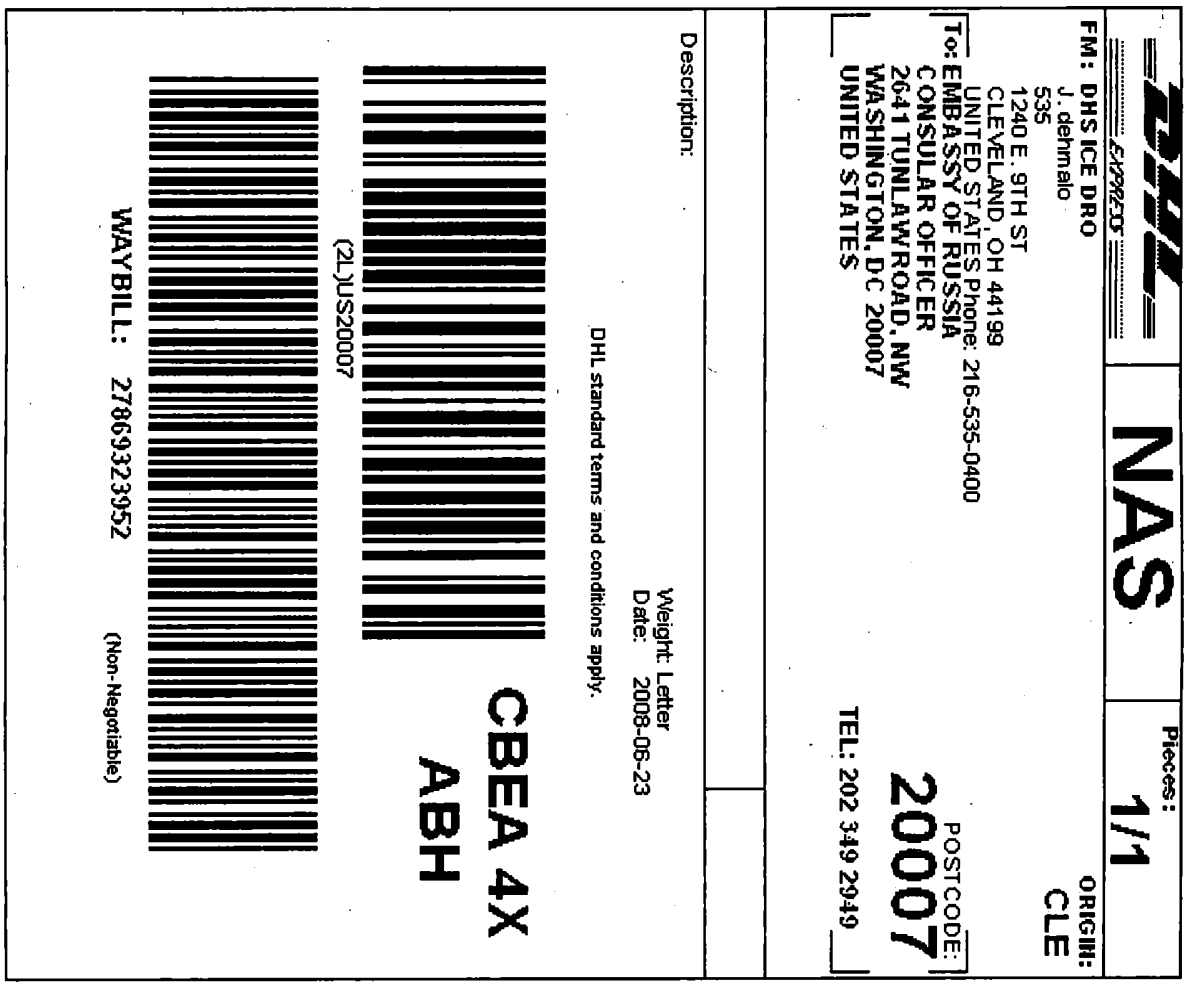
Using a photocopy could delay the delivery of your package and will result in additional shipping charge

For Tracking, please go to www.dhl-usa.com or call 1-800-225-5345

Thank you for shipping with DHL

Create new shipment ▶ View pending shipments **Print waybill**



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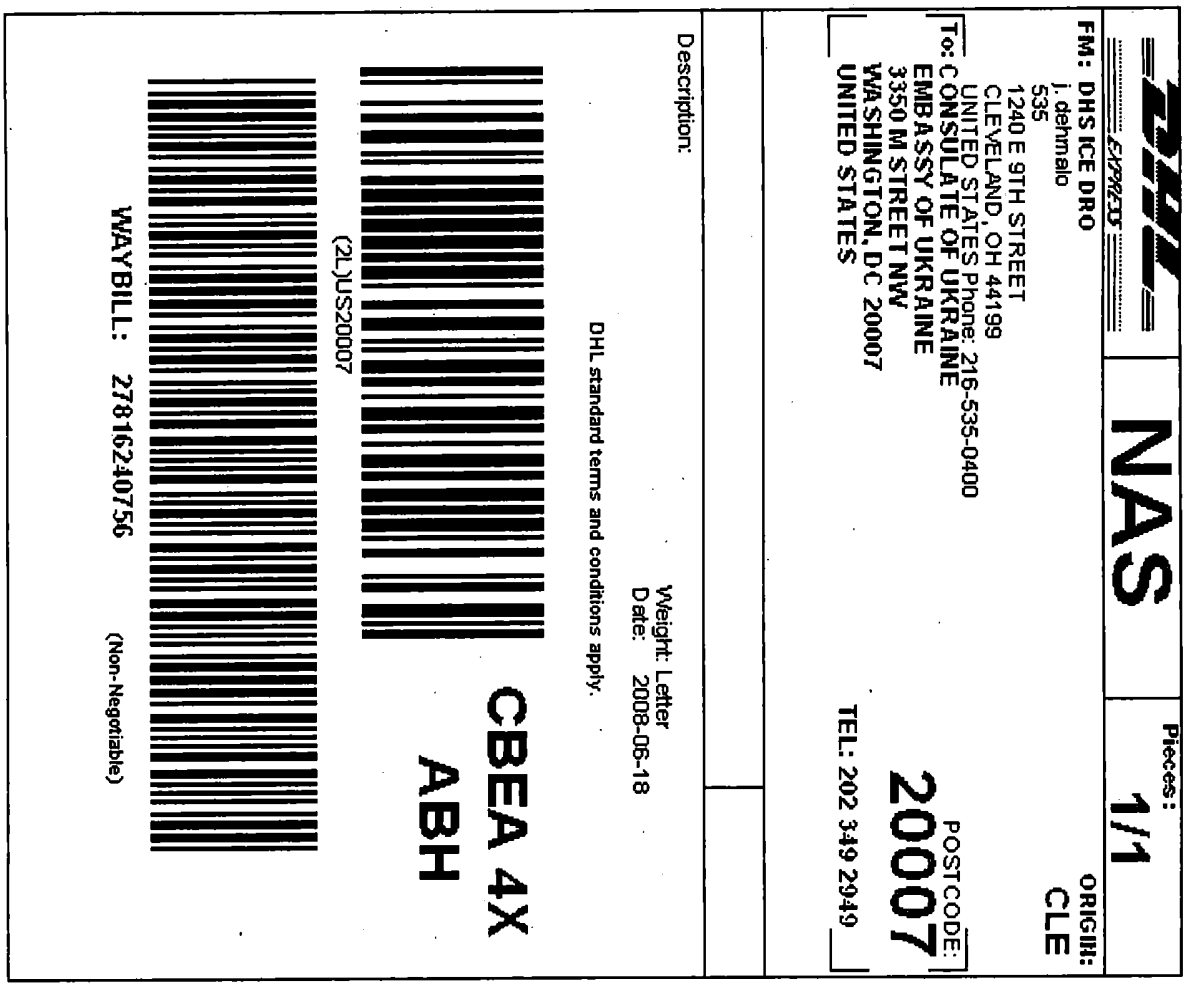

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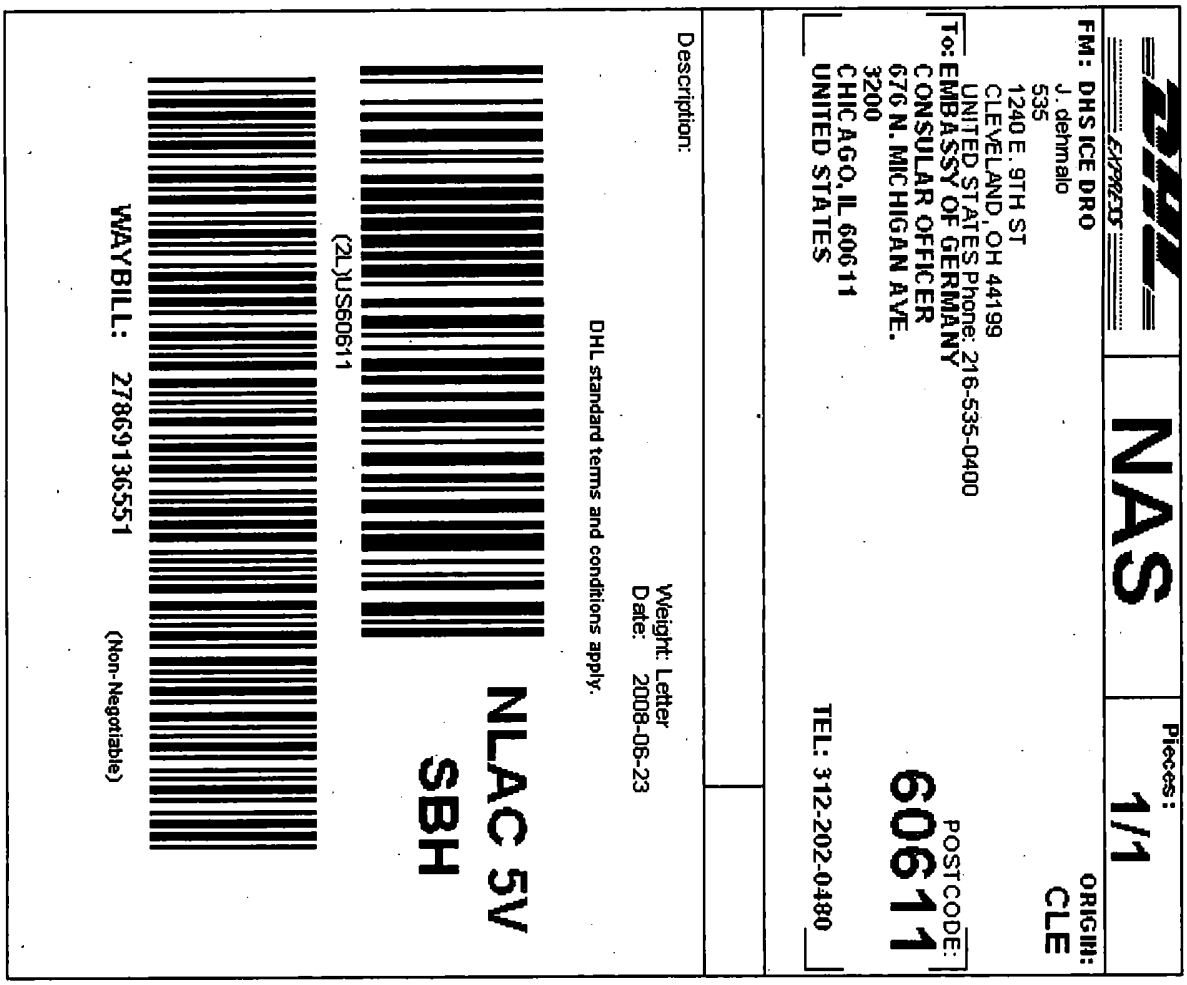

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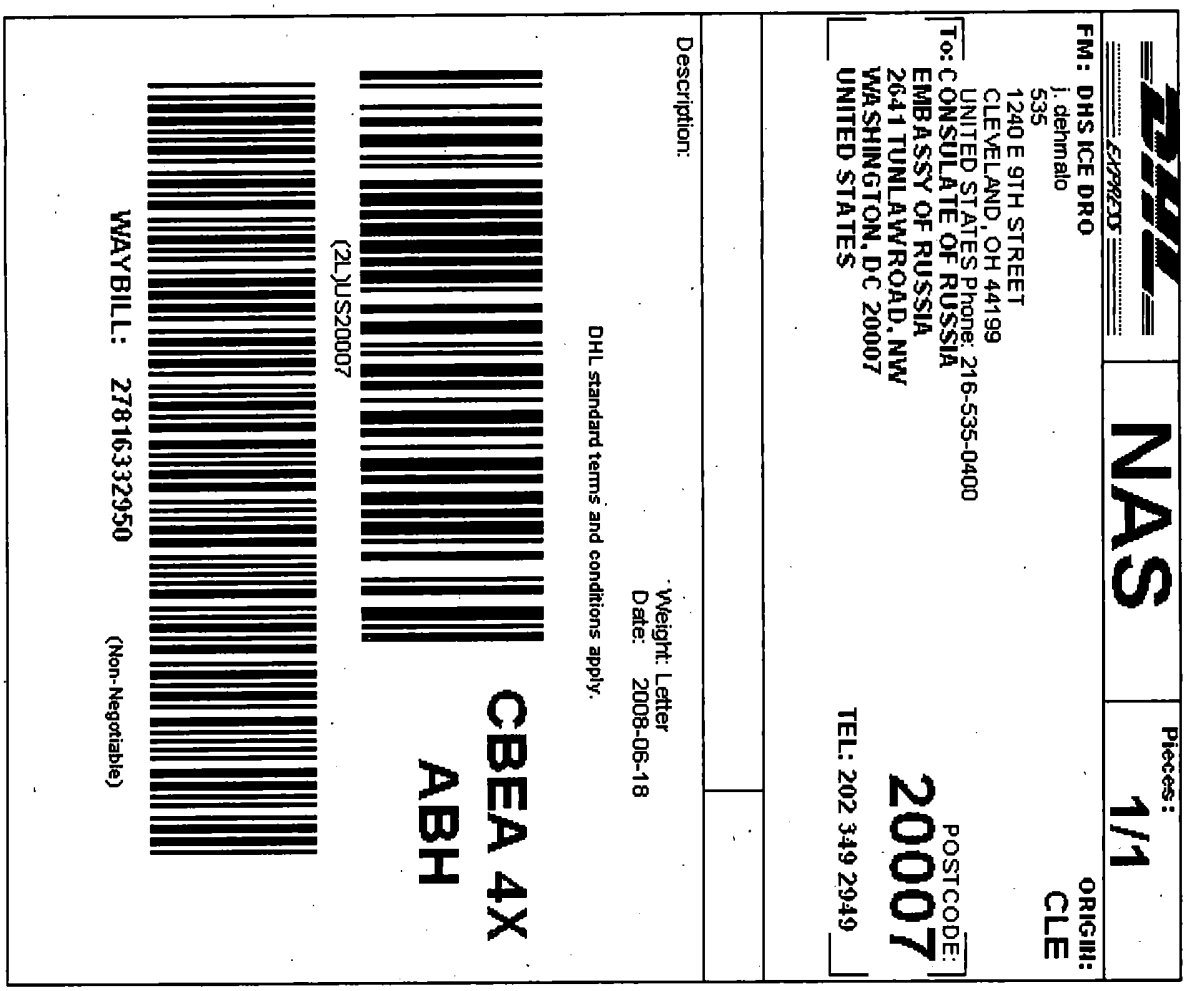

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Thank you for shipping with DHL

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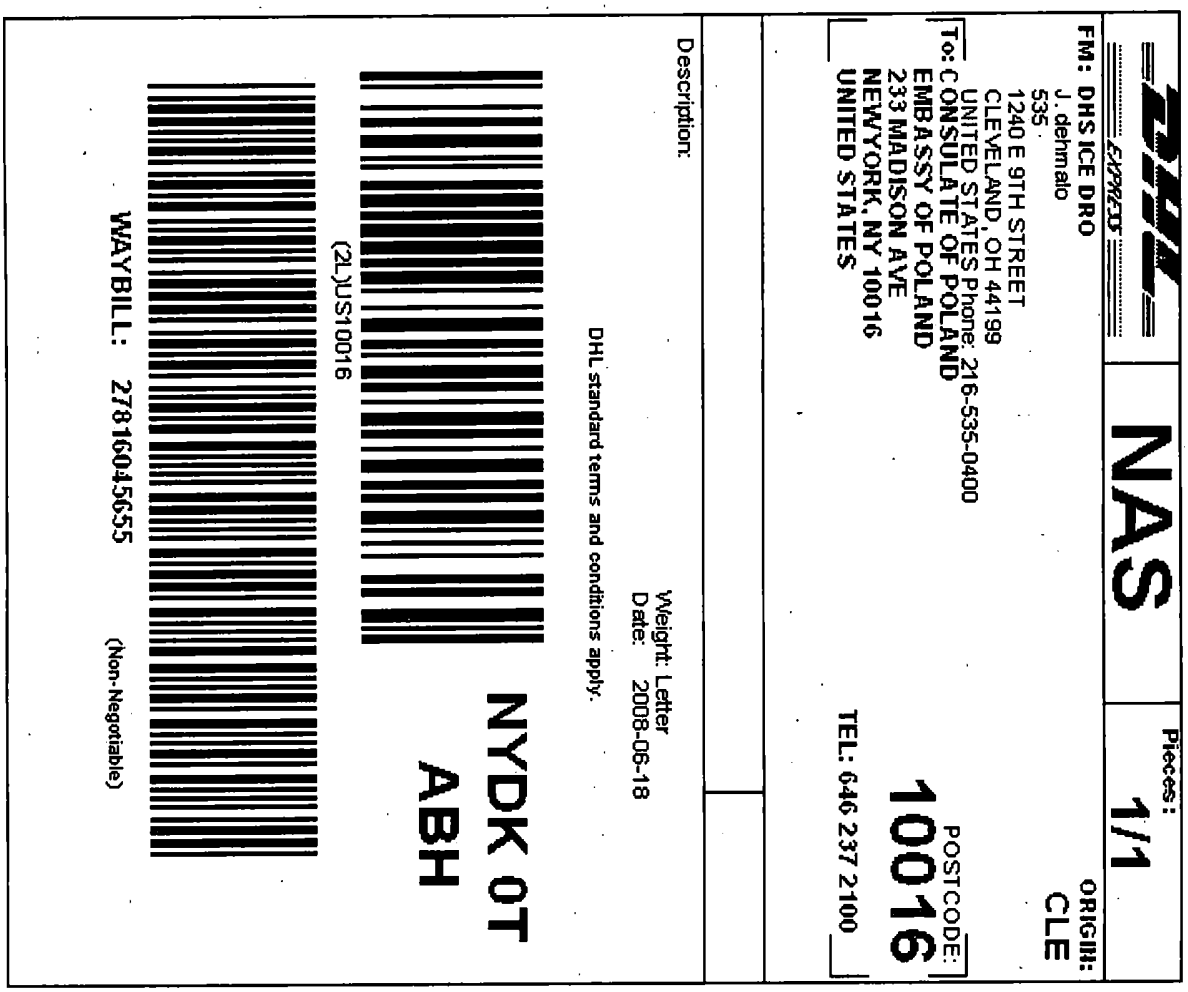

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For Tracking, please go to www.dhl-usa.com or call 1-800-225-5345

Thank you for shipping with DHL

Create new shipment ▶ View pending shipments **Print waybill** ▶

File SCR-

(b)(6)

Ajay [redacted] -Michelle Hyer - AUSA

[redacted]

who

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	**Case No. 1:99 CV 1193**
	)	
Plaintiff,	)	**Judge Dan Aaron Polster**
	)	
vs.	)	**SCHEDULING ORDER**
	)	
JOHN DEMJANJUK,	)	
	)	
Defendant.	)	

On July 19, 2011, Defendant John Demjanjuk filed a Motion Pursuant to Fed. R. Civ. P. 60(b)(6) and 60(d)(1), (3), to set aside the judgment of denaturalization for Demjanjuk with prejudice. (**Doc #: 219.**) As the basis for this motion, Demjanjuk cites, among other things,

untimely

- the Government's failure to turn over a recently declassified March 4, 1985 FBI memorandum concluding that "the principal evidence against Mr. Demjanjuk is "quite likely fabricated" by the KGB;
- the Government has still not disclosed any classified materials to any defense lawyer or court despite the fact that litigants routinely handle classified materials per the Classified Information Procedures Act;
- the Government this past spring revealed to defense counsel docs from a file in the Cleveland FBI office that it claimed it never reviewed before;
- the Government's storage of documents at the Nat'l Archives in Maryland includes hundreds of "withdrawal slips" where an "apparently relevant documents were originally located.

(See generally Doc #: 221.)

Citing the Government's history of failing to disclose vital information as to Demjanjuk's defense, Demjanjuk asks the Court to:

Public defender appt'd

(1) issue an order scheduling briefing on this motion;

(2) schedule the matter for oral argument;

(3) authorize further discovery and order a factual hearing to complete the record; and

(4) upon conclusion of the above, set aside the denaturalization judgment.

(Id. at 6.)

The Court hereby **GRANTS** the motion for an order scheduling briefing on this motion. Accordingly, the Government shall file a response memorandum no later than 4:00 p.m. on Friday, August 19, 2011, and Demjanjuk shall file a reply memorandum no later than 4:00 p.m. on Friday, September 2, 2011.

The Court **HOLDS IN ABEYANCE** Demjanjuk's other requests.

IT IS SO ORDERED.

/s/ Dan A. Polster July 20, 2011
Dan Aaron Polster
United States District Judge

CLEVELAND
Jewish News

Demjanjuk lawyers charge fraud, ask court to return him to

By Marilyn H. Karfeld
Senior Staff Reporter

Published: Thursday, July 21, 2011 4:26 PM EDT

A 1985 FBI memo questioning the authenticity of a Nazi identity card issued to John Demjanjuk is the b motion filed in Cleveland federal court July 19 charging the government with withholding evidence and

In the motion, Demjanjuk's attorneys asked U.S. District Court Judge Dan Aaron Polster to set aside co the former Seven Hills resident of his citizenship and deporting him. Defense attorneys say government to turn over evidence that could have exonerated Demjanjuk, specifically the 1985 FBI memo.

In this March 4, 1985 memo, a Cleveland FBI agent wrote that a key document known as the Trawniki "quite likely fabricated" by the Soviet Union's KGB.

"It is time to right the scales of justice, clear Mr. Demjanjuk's name and bring him home to this country remainder of his life with his family," said attorney Michael Tigar, who represented Demjanjuk in his 20 trial in Cleveland, and federal public defender Dennis Terez.

Demjanjuk's three-decade long legal battle to stay in this country began with the government's 1977 cl brutal Treblinka gas chamber guard "Ivan the Terrible," and he lied about his wartime past to gain adm He was stripped of his citizenship, extradited to Israel, convicted of the war-crimes charge, and sentenc In 1993, the Israel Supreme Court ordered Demjanjuk released because evidence indicated that anothe Ivan Marchenko, was the Treblinka guard. A Cincinnati federal appeals court ruled government attorney prosecutorial misconduct "that seriously misled the court" in withholding exculpatory evidence from Dei team during his denaturalization proceedings.

Demjanjuk returned to the U.S. and in 1999 prosecutors charged him with serving at several other con Those charges led to his loss of citizenship for the second time and his deportation to Germany in May

Two years later a Munich court convicted him of helping to murder over 28,000 Jews at Sobibor death c sentenced him to five years in prison. He was released from prison, and now lives in a Bavarian nursing appeal. During this trial, the judge rejected a defense motion asking for a delay in the trial so attorneys examine the 1985 FBI memo about the Trawniki court.

In the latest court motion, defense attorneys call the legal proceedings "a major miscarriage of justice, there are strong indications Mr. Demjanjuk is innocent of the charges against him."

One important piece of evidence, an identity card, issued at Trawniki, an SS guard-training camp, was used in all the court proceedings, including Demjanjuk's recent Munich trial. The documents showed De trained as an SS guard at Trawniki and subsequently sent to various concentration camps, including So

Flossenburg.

In a June speech to the City Club of Cleveland, Eli Rosenbaum, head of the Justice Department division and prosecutes suspected Nazis living in this country, discredited the once secret but now declassified r did not "bother to learn anything about the case," said Rosenbaum.

It was mere speculation that the Trawniki identity card was fabricated, he added. Government prosecut tested the card and offered it to the defense for further testing, which it declined to do. Contacted abou filed this week in Cleveland, Rosenbaum declined to comment further.

The late Jerome Brentar, a Cleveland travel agent who helped bankroll Demjanjuk's defense in the 198 notion that the Trawniki card was a Soviet forgery, Rosenbaum told the City Club last month.

The travel agent visited the Cleveland FBI office in the fall of 1984 with ex-Nazi Rudolf Konrad Reiss, ar at Trawniki, according to a declassified September 1984 FBI memo that the CJN obtained. Reiss, who t Demjanjuk's first trial in Cleveland that the Trawniki card was a fake, repeated to the FBI agent various photo ID card was a forgery, the memo said.

Brentar, whom Rosenbaum called a neo-Nazi and Holocaust denier in his City Club speech, was present interview with Reiss.

Another FBI memo from May 1985 that the CJN obtained indicates that the Cleveland agent in question credible source, despite being told by the regional director of the Anti-Defamation League that Brentar his attacks on the Justice Department's Nazi-hunting division.

In the May 1985 memo, the Cleveland agent denigrated the ADL official's motives "as supporting Israel Alleging someone is anti-Semitic appears to be a "handy label" the ADL used to "defame people," the m

"I don't think this goes anywhere," Cleveland immigration attorney David Leopold, said of this week's c a hard time believing a single memo by an FBI agent with a flawed understanding of the facts (could le the denaturalization). Demjanjuk lied and committed fraud when he came to the U.S. so he was inadmi throwing everything against the wall to see what sticks."

U.S. District Court Judge Paul Matia's 2002 opinion stripping Demjanjuk of his citizenship is a "well-reas and comprehensive discussion of the facts that led to his conclusion that Demjanjuk lied and committe came to the U.S.," Leopold said. "These are findings of fact that have never been second guessed by ar time."

Demjanjuk's latest court filing also charges that the prosecution withheld other pertinent evidence, suc about a second "Ivan Demjanjuk," reportedly a now deceased cousin of the former Seven Hills man. Th often maintained the government's case against Demjanjuk is a one of mistaken identity.

This week, Bavarian prosecutors opened a new investigation into Demjanjuk's wartime role after a Ger representing relatives of victims of Sobibor filed a new complaint. Attorney Cornelius Nestler charged D being a guard at Flossenburg concentration camp in Germany, from October 1943 to December 1944, v people were murdered. Nestler and investigating Judge Thomas Walther found a report that Demjanjuk Alex N., may have been involved in the killings at Flossenburg, the German newspaper Tagespiegel sai

In related news, on May 31, the Munich court rejected a request from Spain that Demjanjuk be extradit there for crimes allegedly committed at Flossenburg. Of the 155 Spanish citizens in the camp, 60 were spokesperson said the evidence presented by the Spanish court did not convincingly link Demjanjuk to reported.

mkarfeld@cjn.org

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	Case No. 1:99CV1193
Plaintiff,	:	Judge Dan Aaron Polster
-vs-	:	**MOTION OF JOHN DEMJANJUK PURSUANT TO FED. R. CIV. P. 60**
JOHN DEMJANJUK,	:	
Defendant.	:	

John Demjanjuk, by his undersigned counsel, moves this Court pursuant to Fed. R. Civ. P. 60(b)(6) and 60(d)(1) and (3) for relief from the final judgment and order in this case, and to set aside that final judgment that ultimately led to Mr. Demjanjuk's denaturalization and deportation to the Federal Republic of Germany where he now resides. As more fully set out in the supporting memorandum of law, this motion rests upon the persistent failure of the government to comply with orders and other unambiguous obligations requiring disclosure of discovery materials to the defense. It also rests upon what the undersigned believe support a finding of fraud on the court for a remarkable third time — once as previously found by the United States Court of Appeals for the Sixth Circuit, once by this Court in prior proceedings, and now the circumstances that give rise to this motion.

The defense does not file this motion hastily, nor out of a cavalier sense that this is Mr. Demjanjuk's last dying chance to win a reprieve in a case that has already brought numerous though short-lived reprieves for him. Instead, on behalf of their 91-year-old client who is in frail health and has already been in and out of a hospital since his conviction by a German court on May 12, 2011, the defense brings this motion out of obligation to their client and to the Court.

The government took its first steps in this Court to strip Mr. Demjanjuk of his United States citizenship in 1977. Successful in that proceeding four years later, the government next moved to deport Mr. Demjanjuk to the former Soviet Union, but shifted its strategy to have him extradited to Israel, which it achieved in 1986. Two years later an Israeli court found Mr. Demjanjuk to be "Ivan the Terrible" of Treblinka, and placed him on death row. In 1993, the Supreme Court of Israel reversed his conviction, determining that Mr. Demjanjuk was not "Ivan the Terrible" of Treblinka after all. Shortly thereafter, the United States Court of Appeals for the Sixth Circuit and then this Court found the government to have committed fraud on the court multiple times. Mr. Demjanjuk's citizenship and freedom were restored.

That reprieve, too, was short-lived. On May 19, 1999, the government filed a second round of denaturalization proceedings, which it won on March 21, 2002. After substantial litigation in the Court of Appeals and this Court, the denaturalization order was upheld, finding that Mr. Demjanjuk was a Nazi camp guard during World War II in the Polish town of Sobibor. The government removed Mr. Demjanjuk to Germany — which by then had issued a warrant for his arrest after Poland and Mr. Demjanjuk's native Ukraine refused to take him. Upon his deportation to Germany in 2009, the German government detained Mr. Demjanjuk in Stadelheim Prison until a German court in Munich convicted him on May 12, 2011 for complicity in the murder of at least 28,060 Jews at

the Nazi's Sobibor camp. That same day, the German court sentenced Mr. Demjanjuk to a five-year term of imprisonment with credit for time served (approximately two years), and released him finding no risk of flight due to his frail health and the absence of any travel documents or passport.[1]

Over three decades of litigation, the same apparent refusal to disclose all relevant materials to defense counsel persists. Let there be no mistake about it: the government, which started out on this legal odyssey claiming Mr. Demjanjuk was someone he was not, has produced large numbers of documents across the span of these three decades. And the defense has, through its own independent diligence, persistence, and sometimes simple good fortune, obtained more relevant materials on its own.

But how is it, then, that especially after a finding of fraud on the court for failure to disclose key information about the true identity of Mr. Demjanjuk, the government still failed to turn over to the defense a recently declassified March 4, 1985 memorandum authored by a special agent in the Federal Bureau of Investigation's Cleveland Office concerning the most crucial evidence against Mr. Demjanjuk?[2] The memorandum concludes that the principal evidence against Mr. Demjanjuk is "quite likely fabricated" by the KGB.

How is it that after all this, the government's own produced materials, including the above memorandum, still have key parts redacted, and, thus, not subject to review at all by the defense?

How is it that after all this, the government apparently has still not disclosed any classified materials to any defense lawyer or court on this case, despite the fact that litigants routinely handle

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[1] Under German law, Mr. Demjanjuk's conviction is not legally binding until the appeal is resolved.

[2] The report, along with a two-page explanatory transmittal addressed to, among others, the Director of the FBI, appears to have been authored by the Special Agent in Charge of the FBI's Cleveland Office.

classified materials through the appropriate protections of the Classified Information Procedures Act, 18 U.S.C. App. III, §§1-16, in criminal cases or through security clearances and protective orders in civil cases so that discovery obligations are not skirted?

How is it that after all this, the government just this spring revealed to the defense new documents from a file in the Cleveland FBI office that it claimed it had never reviewed before, and that it first learned in early May 2011 of the file having been retained in the Cleveland FBI office? After over thirty years of litigation that started in Cleveland, Ohio, we have no assurances that this is the only retained file that just came to the government's attention. Why it was retained and by whom are still unanswered questions, though it is at least curious if not troubling that some of the materials were apparently written by the Special Agent in Charge of that office and sent to the Director of the FBI. Why weren't those materials available to the defense when they were authored or gathered in the 1980s, especially since they plainly did not remain in Cleveland but were sent to Washington?

How is it that after all this, about a half-decade worth of work by the Cleveland FBI Office and individuals in Washington investigating the key issue at the heart of the defense's position — that the evidence by which Mr. Demjanjuk was stripped of his United States citizenship (twice) extradited (once), deported (twice), convicted (twice), and imprisoned (multiple times) was forged — does not appear to have surfaced in any of the materials produced to date?

How is it that after all this, the government's storage of documents at the National Archives and Record Administration in College Park, Maryland still includes "withdrawal notice" slips where an apparently relevant document was originally located? It is not an issue of one or two, but rather hundreds of these slips, some substituting for presumably relevant materials given the fact that many

"withdrawal notice" slips state "re: John Demjanjuk." Moreover, why were they withdrawn for the most part over the last couple of years according to dates printed on the slips? It is impossible to determine whether any of these "withdrawn" materials were ever turned over to the defense, since the descriptions of the withdrawn materials are too abbreviated. It is also impossible to determine the sum total of relevant materials withdrawn, since what appear to be possibly relevant materials are under broad categories such as "war crimes" and the like.[3]

How is it that after all this, the government has turned over only six sheets, apparently obtained from either the former Soviet Union or present-day Russia, referring to another "Ivan Demjanjuk" who was born in the same town where the defendant was born one year earlier and who apparently committed suicide in either 1970 or 1971 when he was told that the KGB was coming to investigate him?

In a similar vein, how is that the government has turned over interviews of other camp guards who were tortured and interrogated in the former Soviet Union as early as 1960, and yet the translations of those protocols were made available to the defense only after Mr. Demjanjuk had been stripped of his citizenship for a second time in this case?

To allow the government to take away from one of our citizens all the rights that attach to the status of being a citizen of this country, to render him stateless, and then to have him removed from this country while so many questions remain is a major miscarriage of justice, especially when there are strong indications Mr. Demjanjuk is innocent of the charges against him. Thus, by this motion, Mr. Demjanjuk requests that:

---

[3] As an aside, it seems remarkable that defense counsel should even have to pick through voluminous materials at NARA, literally making educated guesses as to what might be and might not be relevant materials when it is the government's obligation to produce discovery, not the defense's task to search it out.

1. The Court order the government to respond to this motion within a specific time frame, and allow for the filing of a reply by the defense;

2. The Court schedule this matter for oral argument upon completion of all briefing;

3. As in *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), *cert. denied sub nom. Rison v. Demjanjuk*, 513 U.S. 914 (1994), the Court authorize such further discovery and order factual hearings as are necessary to complete the record on the claims presented in the instant motion; and

4. Upon the conclusion of such proceedings, the Court set aside the judgment of denaturalization with prejudice.

Mr. Demjanjuk has been litigating these issues since 1977. It is not a just reward to give our government or any other country's government a third chance to put this man on trial. In 1993 the Court of Appeals found that the Department of Justice's Office of Special Investigations had committed fraud on the court. The Court took that occasion to set clear standards of conduct for the government. Yet, even as the Court was writing its opinion in 1993, significant exculpatory materials — challenging key evidence that could have been instrumental to the defense — were known to the OSI, were sitting in government files, and were being withheld from the defense and this Court. In the ensuing 18 years of litigation, the government has kept these materials hidden from view, and has repeatedly violated unambiguous orders and discovery obligations that all relevant information be produced. Indeed, it made a promise to this Court that it would comply with those orders. The government has failed in this promise. It is time to right the scales of justice, clear Mr. Demjanjuk's name, and bring him home to this country to live out the remainder of his life with his family.

Accordingly, for the foregoing reasons as set forth more fully in the supporting memorandum, Mr. Demjanjuk requests that this Court grant his motion.

Respectfully submitted,

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Attorneys for John Demjanjuk

July 19, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2011, a copy of the foregoing Motion of John Demjanjuk Pursuant to Fed. R. Civ. P. 60 (together with the supporting memorandum and exhibits) was filed electronically or by filing with the Office of the Clerk digital media containing Exhibits A and B. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system. In light of the fact that voluminous exhibits and electronically formatted exhibits were filed with the Court on digital media (Exhs. A and B), I further certify that on the above date a copy of this motion, its supporting memorandum and exhibits, and Exhs. A and B filed separately with the Office of the Clerk were also provided to counsel of record by overnight courier.

/s/ Dennis G. Terez
Dennis G. Terez
One of the Attorneys for John Demjanjuk

Nos. 09-3416 & 09-3469

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 01, 2009
LEONARD GREEN, Clerk

JOHN DEMJANJUK,)
)
Petitioner,)
)
v.) ORDER
)
ERIC H. HOLDER, JR., Attorney General,)
)
Respondent.)

Before: KENNEDY, GIBBONS, and ROGERS, Circuit Judges.

On April 14, 2009, the petitioner filed a petition for review of an order of the Board of Immigration Appeals (the "BIA") that denied his motion to stay his removal to Germany pending consideration of a motion to reopen removal proceedings. (Case No. 09-3416). The petitioner requested a stay of removal pending review, and in the alternative, a stay pending this court's review of the BIA's order should it reject his motion to reopen while his appeal was pending. In light of the government's stated desire to remove the petitioner later that day, the court issued a stay of removal pending further consideration of the matters raised by the petition.[1]

[1]The government characterizes the petitioner's application as a "mad scramble" undertaken hours before his scheduled removal. It suggested that the petitioner took no action between the time the Immigration Judge lifted a stay on April 8 and his April 14 application to this court. In fact, the petitioner asked the BIA for a stay on April 7, and the BIA denied the request on April 10. The petitioner also inquired of the government as to whether it planned to remove the petitioner prior to the BIA's ruling and received an uncooperative and uninformative response on April 13. Any "mad scramble" resulted from the government's refusal to give the petitioner's counsel any timing information. The government's opposition to the stay motion, moreover, omitted any reason for immediate removal. The overall course of conduct by the government in effect meant that granting the stay initially was the only way this court could give thoughtful consideration to the petitioner's claims.

On April 15, 2009, the BIA denied the petitioner's motion to reopen. The government moves to dismiss Case No. 09-3416 as moot in light of the BIA's April 15 decision. The petitioner does not oppose the motion to dismiss. The relief sought by the petitioner was a stay of removal pending the BIA's consideration of his motion to reopen. The BIA has now decided that motion, and there is no effective relief that can be granted by the court. The petition for review in Case No. 09-3416 is moot. *See Operation King's Dream v. Connerly*, 501 F.3d 584, 591 (6th Cir. 2007).

In Case No. 09-3469, the petitioner seeks review of the BIA's denial of his motion to reopen. He moves for leave to proceed *in forma pauperis* and for a stay of removal. The government opposes the motion for a stay.

The court has the discretion to grant a stay of removal pending consideration of a petition for review. *See* 8 U.S.C. § 1252(b)(3)(B). In ruling on a motion for a stay, the court applies the traditional four-part test governing injunctive relief. *Nken v. Holder*, No. 08-681, 2009 WL 1065976, at *11 (U.S. Apr. 22, 2009); *Nwakanma v. Ashcroft*, 352 F.3d 325, 327 (6th Cir. 2003). A petitioner seeking a stay of removal has the burden of demonstrating that a stay is warranted. The first two stay factors, the petitioner's likelihood of success on the merits and irreparable harm, "are the most critical." *Nken*, 2009 WL 1065976, at *11. The likelihood of success shown must be "better than negligible" and "more than a mere possibility." *Id.* (internal citations and quotations omitted). A petitioner must also demonstrate more than a possibility of irreparable harm. *Id.* The final two stay factors, the harm to others and the public interest, "merge when the Government is the opposing party." *Nken*, 2009 WL 1065976, at *12.

The petitioner sought to reopen his removal proceedings before the BIA to apply for deferral of removal to Germany under the Convention Against Torture ("CAT"). CAT precludes the forcible return of a person to a country where there are "substantial grounds for believing that he would be

in danger of being subjected to torture." *Filja v. Gonzales*, 447 F.3d 241, 256 (3d Cir. 2006); *see Almuhtaseb v. Gonzales*, 453 F.3d 743, 749 (6th Cir. 2006). In seeking reopening, the petitioner was required to demonstrate *prima facie* eligibility for deferral of removal. *See INS v. Abudu*, 485 U.S. 94, 104-08(1988); *Ahmed v. Mukasey*, 519 F.3d 579, 585 (6th Cir. 2008); *Alizoti v. Gonzales*, 477 F.3d 448, 451-52 (6th Cir. 2007). The BIA found that the petitioner failed to submit sufficient evidence demonstrating that he will be subjected to torture in Germany. Before this court, the petitioner has not shown a strong or substantial likelihood of success on the merits of his challenge to this finding by the BIA or to the denial of his motion to reopen. At most, he has offered speculation that German authorities may not adequately attend to his medical needs while he is in that country's custody.

The petitioner also argues that he will suffer irreparable harm amounting to torture while he is being transported to Germany. The government asserts that 8 U.S.C. § 1252(g) precludes judicial review of the decision that the petitioner's medical condition is sufficient to undergo removal to Germany. The petitioner's medical condition is relevant, however, in evaluating irreparable harm. Based on the medical information before the court and the government's representations about the conditions under which it will transport the petitioner, which include an aircraft equipped as a medical air ambulance and attendance by medical personnel, the court cannot find that the petitioner's removal to Germany is likely to cause irreparable harm sufficient to warrant a stay of removal.

In Case No. 09-3416, the government's motion to dismiss as moot is **GRANTED**. The April 14 order granting a stay of removal is **VACATED**, the petitioner's motion to unseal the medical report filed by the government is **GRANTED**, and all other pending motions are **DENIED** as moot.

In Case No. 09-3469, the petitioner's motion for leave to proceed *in forma pauperis* is **GRANTED**. His motion for a stay of removal pending review is **DENIED**.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

DECLARATION OF [redacted] (b)(7)(c)

Pursuant to 28 U.S.C. § 1746, I, [redacted] being first duly sworn, say that:

1) I am a Deportation Officer for the Immigration and Customs Enforcement (ICE), Detention and Removal Operations (DRO) located at 1240 E. 9th St., Room 535, Cleveland, Ohio 44199.

2) On April 6, 2009, at approximately 3:00 p.m., I conducted surveillance on John Demjanjuk, alien registration number A [redacted] (b)(6). I was accompanied on the surveillance by Supervisory Detention and Deportation Officer [redacted] Immigration Enforcement Agent [redacted] and Immigration Enforcement Agent [redacted] (b)(7)(c)

3) I saw Mr. Demjanjuk as he entered and exited the Phoenix Medical Building located at 6820 Ridge Road, Parma, Ohio, 44129.

4) Using a commercially available DVD Camcorder, a Canon ZR 600 NTSC with a zoom lens, I created a video recording of Mr. Demjanjuk entering the building. A copy of that recording is being submitted with this affidavit marked as Exhibit 1.

5) Mr. Demjanjuk arrived at the location in a brownish gray four door Lincoln sedan with Ohio license plate [redacted] driven by a woman who has since been identified to me as his wife, Vera Demjanjuk. (b)(6)

6) I watched his arrival at the location from the public parking of the medical building.

7) Upon arrival at the building, his wife went to the passenger side of the vehicle and opened the door.

8) Mr. Demjanjuk exited from the front passenger side of the vehicle. The wife remained near the door for a short time and may have assisted Mr. Demjanjuk by holding his arm.

9) Once Mr. Demjanjuk was out of the vehicle, he walked the approximately 30-40 feet to the entrance of the building without any assistance from anyone. His wife walked ahead of him and turned her back on him as she went to the building's entrance. He used no walking assistance device.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 21st day of April, 2009 in Cleveland, Ohio.

[redacted] (b)(7)(c)

Deportation Officer
Cleveland, Ohio

No. 09-3416

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DEMJANJUK,

Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,

Respondent.

DECLARATION OF [redacted] (b)(7)(c)

Pursuant to 28 U.S.C. § 1746, I, [redacted] do hereby declare:

1) I am a Supervisory Detention and Deportation Officer for U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), located at 1240 E. 9th St., Room 535, in Cleveland, Ohio.

2) On April 6, 2009, at approximately 3:00 p.m., I conducted surveillance on John Demjanjuk, alien registration number A[redacted] I was accompanied on the surveillance by Immigration Enforcement Agent (IEA)[redacted]. Deportation Offe[redacted] and IEA[redacted] conducted surveillance by a separate vehicle. (b)(6) (b)(7)(c)

3) I witnessed Mr. Demjanjuk both enter and exit the Phoenix Medical Building (Building) located at 6820 Ridge Road, in Parma, Ohio.

4) Using a commercially available DVD Camcorder, a Hitachi DZ-MV580A NTSC with a zoom lens, I made a video recording of Mr. Demjanjuk exiting the Building. A copy of this recording which has been burned onto a digital video disc, is attached hereto as Government Exhibit 2.

5) At approximately 3:00 p.m., Mr. Demjanjuk arrived at the Building in a brownish-gray four-door Lincoln sedan (sedan) with an Ohio license plate [redacted] affixed to the front of the vehicle. The sedan was driven by a woman who had previously been identified to me as his wife, Vera Demjanjuk. Mr. Demjanjuk was seated in the front passenger side of the vehicle. (b)(6)

6) I followed the sedan into the Building parking lot and parked my vehicle in the same lot.

7) Upon arrival at the Building, the sedan parked in a handicap spot directly across from the Building's entrance.

8) At about 3:00 p.m., I saw Mr. Demjanjuk walk approximately 30 feet from the sedan to the Building, and enter the Building. I did not see him receive any assistance from anyone or from a walking device.

9) After Mr. Demjanjuk entered the Building, I moved my vehicle to the adjacent YMCA public parking lot, which is located at 6840 Ridge Road, in Parma, Ohio

10) At about 3:30 p.m., I saw a person who had previously been identified to me as his son, John Demjanjuk, Jr., enter the Building.

11) At approximately 4:00 p.m., I saw Mr. Demjanjuk, his wife, and son exit the Building. Mr. Demjanjuk walked from the Building to the passenger side of the sedan, opened the passenger side door himself, and entered the vehicle. At no time did he receive assistance from anyone or from a walking device.

12) At about 4:00 p.m., the sedan departed after both Mr. and Mrs. Demjanjuk seated themselves in the car.

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

Executed on this 22nd day of April, 2009, in Cleveland, Ohio.

[redacted]

(b)(7)(c)

Supervisory Detention and Deportation Officer

No. 09-3416

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DEMJANJUK,

Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,

Respondent.

DECLARATION OF [redacted] (b)(7)(c)

Pursuant to 28 U.S.C. § 1746, I, [redacted] do hereby declare:

1) I am a Deportation Officer for U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), located at 1240 E. 9th St., Room 535, in Cleveland, Ohio.

2) On April 13, 2009, at approximately 3:00 p.m., I conducted surveillance on John Demjanjuk, alien registration number A[redacted]. I was accompanied on the surveillance by Immigration Enforcement Agent [redacted] (b)(7)(c) (b)(6)

3) I saw Mr. Demjanjuk enter and exit the Phoenix Medical Building (Building) located at 6820 Ridge Road, in Parma, Ohio.

4) Using a commercially available DVD Camcorder, a Hitachi DZ-MV580A NTSC with a zoom lens, I made a video recording of Mr. Demjanjuk entering and exiting the Building. A copy of this recording is attached hereto as Government Exhibit 3.

5) At approximately 3:00 p.m., Mr. Demjanjuk arrived at the Building in a brownish-gray four-door Lincoln sedan (sedan) with an Ohio license plate [redacted] affixed to the front of the vehicle. The sedan was driven by a woman who had been identified to me as his daughter from a previous meeting at Mr. Demjanjuk's residence on April 2, 2009. Mr. Demjanjuk was seated in the front passenger side of the vehicle. (b)(6)

6) I watched the sedan arrive at the Building from the adjacent YMCA public parking lot, which is located at 6840 Ridge Road in Parma, Ohio.

7) After the sedan arrived at the Building, Mr. Demjanjuk's daughter went to the front passenger side of the vehicle and opened the door.

8) Mr. Demjanjuk exited from the front passenger side of the vehicle. The daughter remained near the door for a short time. He then walked approximately 30-40 feet to the entrance of the Building without any assistance from anyone or from any walking device.

9) Approximately 20 minutes later, Mr. Demjanjuk and his daughter exited the Building. Mr. Demjanjuk walked to the sedan without assistance from anyone or from any walking device.

10) Mr. Demjanjuk's daughter opened the front passenger door and appeared to hold Mr. Demjanjuk's arm and for a brief moment, help move one of his legs into the sedan. At approximately 3:20 p.m., the sedan departed.

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

Executed on this 22nd day of April, 2009, in Cleveland, Ohio.

[redacted] (b)(7)(c)

Deportation Officer

No. 09-3416

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DEMJANJUK,

Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,

Respondent.

DECLARATION OF [redacted] (b)(7)(c)

Pursuant to 28 U.S.C. § 1746, I, [redacted] do hereby declare:

1) I am an Immigration Enforcement Agent for U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), located at 1240 E. 9th St., Room 535, in Cleveland, Ohio.

2) On April 14, 2009, I went to John Demjanjuk's residence at [redacted] (b)(6) with other ICE employees for the purpose of executing the final order of removal against him

3) Mr. Demjanjuk was lying in bed when I first saw him. He appeared to be completely immobile, bedridden, and in constant pain. Other ICE employees and I and Division of Immigration Health Services employees lifted him off of the bed and put him into a wheelchair. Mr. Demjanjuk was rigid and unbending while we lifted him; he moaned and groaned continuously until after he was placed in an ICE vehicle for transport to the ICE office. (b)(7)(c)

4) On the way to the ICE office, Mr. Demjanjuk moaned and groaned every time the vehicle hit a bump.

5) After we arrived at the ICE office, I stayed with Mr. Demjanjuk throughout his detention that day. I am the other person (besides Mr. Demjanjuk) identified in the digital video recording that IEA [redacted] made while Mr. Demjanjuk was detained at the ICE office. (b)(7)(c)

6) Mr. Demjanjuk's moaning and groaning lessened immediately upon his arrival at the ICE office. He stopped moaning and groaning entirely at some point and began carrying on an easy to follow and interesting conversation with medical personnel who were present and me.

7) While Mr. Demjanjuk was detained at the ICE office, it did not appear that he was suffering from any discomfort or pain. He turned his body in the wheelchair with relative ease, turned his head and neck in various directions, gestured with his hands and fingers to carry on a conversation, and seemed completely lucid and aware of his surroundings. He also was able to scoot himself up in the wheelchair and moved his wheelchair up with his feet while he was conversing with his son, John Demjanjuk, Jr.

8) When he learned that he would be going home instead of to Germany, he became quite happy, smiling and appearing jovial.

9) At one point, I gave him pudding to eat. He reached about 6 to 8 inches to his left to set the pudding container down on an empty bench, and then let out a groan.

10) Prior to leaving the ICE office, I observed Mr. Demjanjuk get out of the wheelchair on two occasions: first to use the restroom and second to get into the pickup truck that had arrived to take him home.

11) Mr. Demjanjuk had no apparent difficulty getting out of the wheelchair on either occasion. I saw him walk into the bathroom, again without any apparent difficulty. I helped him climb up into the pickup truck, a Ford F-150, with a rather high seat. He had no more difficulty than I would expect from someone his age in getting into the truck and scooted himself over once he climbed into the seat.

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

Executed on this 22nd day of April, 2009, in Cleveland, Ohio.

[redacted] (b)(7)(c)

Immigration Enforcement Agent

No. 09-3416

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DEMJANJUK,

Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,

Respondent.

DECLARATION OF [redacted] (b)(7)(c)

Pursuant to 28 U.S.C. § 1746, I, [redacted] do hereby declare:

1) I am an Immigration Enforcement Agent (IEA) for U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), located at 1240 E. 9th St., Room 535, in Cleveland, Ohio.

2) On April 14, 2009, I went to John Demjanjuk's residence at [redacted] with other ICE employees for the purpose of executing the final order of removal against him. (b)(6)

3) Mr. Demjanjuk was lying in bed when I first saw him. He appeared to be completely immobile, bedridden, and in constant pain. Other ICE employees and Division of Immigration Health Services lifted him off of the bed and put him into a wheelchair. Mr. Demjanjuk was rigid and unbending while we lifted him; he moaned and groaned continuously until after he was placed in an ICE vehicle for transport to the ICE office.

4) After arriving at the ICE office, I used a commercially available DVD camcorder, a Hitachi model DZ-MV580A NTSC with a zoom lens, to make a digital video recording of Mr. Demjanjuk in the ICE office. A copy of that recording is attached hereto as Government Exhibit 4.

5) IEA [redacted] stayed with Mr. Demjanjuk throughout his time in the ICE office. He is one of several persons, including Mr. Demjanjuk, identified in the video recording. (b)(7)(c)

6) While Mr. Demjanjuk was detained at the ICE office, it did not appear that he was experiencing any discomfort or pain. He moved, i.e., he rocked back and forth, his body in the wheelchair with relative ease, turned his head and neck in various directions, and gestured with his hands and fingers to carry on a conversation. In particular, it appeared that he engaged in a conversation with IEA [redacted] and medical personnel present in the office. (b)(7)(c)

7) When he learned that he would be going home instead of to Germany, he became quite happy, smiling and expressing a pleasant disposition.

8) While he was being wheeled in the wheelchair from the ICE office, Mr. Demjanjuk put his jacket back on and then sat back in the wheelchair and groaned twice. He then met his son, John Demjanjuk, Jr., and his ex-son-in-law. It appeared that he groaned again when he exited the building with them.

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

Executed on this 22nd day of April, 2009, in Cleveland, Ohio.

[redacted] (b)(7)(c)

Immigration Enforcement Agent

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Broadley, John, Esquire
1054 31st Street NW, Suite 200
Washington, DC 20007-0000

ICE Office of Chief Counsel/CLE
1240 E. 9th St., Suite 519
Cleveland, OH 44199

Name: DEMJANJUK, JOHN A [redacted] (b)(6)

Date of this notice: 12/21/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
HURWITZ, GERALD S.
MILLER, NEIL P.
OSUNA, JUAN P.

gilmored

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File: A[redacted] - Cleveland (b)(6) Date:

DEC 21 2006

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

APPLICATION: Deferral of removal under the Convention Against Torture

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec."). By decision dated December 28, 2005, the Immigration Judge denied the respondent's application for deferral of removal under the Convention Against Torture, and ordered him

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removed from the United States to Ukraine, or in the alternative to Germany or Poland ("CIJ Deferral Dec."). On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. The Chief Immigration Judge also held that, as an alien who assisted in Nazi persecution, the respondent was barred as a matter of law from all forms of relief from removal other than deferral of removal under the Convention Against Torture. Exh. 20.

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[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

Thereafter, the respondent filed an application for deferral of removal. Exh. 31. On December 28, 2005, the Chief Immigration Judge denied the respondent's application for deferral of removal on the ground that he failed to meet his burden of proving: 1) that he was likely to be prosecuted if removed to Ukraine; 2) that if prosecuted he was likely to be detained; and 3) that if prosecuted and detained, he was likely to be tortured. The Chief Immigration Judge ordered the respondent removed to Ukraine, with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

C. The Immigration Judge's December 28, 2005, Decision Regarding Relief from Removal

The Immigration Judge noted that the respondent's application for deferral of removal is based on three underlying premises: 1) prisoners in Ukraine are frequently subjected to serious abuse or torture, 2) persons who are potentially embarrassing to the Ukranian government are at risk of physical harm and death, and 3) he is uniquely at risk of torture if he is removed to Ukraine. The Immigration Judge found that the evidence of record did not support a finding that the respondent would be prosecuted in Ukraine because of his Nazi past. In reaching this decision, the Immigration Judge noted that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany. The Immigration Judge also found that the evidence of record did not support a finding that the respondent would likely be detained while awaiting trial or as a result of conviction. Finally, the Immigration Judge found the respondent's assertion that he would likely be tortured if taken into custody in Ukraine to be speculative and not supported by the record. For these reasons, the Immigration Judge denied the respondent's application for deferral of removal because he found that he had not established that he was more likely than not to be tortured if removed to Ukraine.

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

relevant to the removability issue had been established by collateral estoppel; and 5) the Chief Immigration Judge erroneously found that the respondent was not eligible for deferral of removal pursuant to the Convention Against Torture. Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

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Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(1), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd, Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himelf to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal,' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley, supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

law. and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005. decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hammer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as "'issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived....'" *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112; NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

appeals," 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko, supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

E. Deferral of Removal under the Convention Against Torture

Finally, the respondent argues that the Chief Immigration Judge erred in denying his application for deferral of removal under the Convention Against Torture. A person seeking deferral of removal must prove that it is more likely than not that he or she would be tortured if removed to a particular country. 8 C.F.R. §§ 208.16(c)(2) and 208.17(a). It is not sufficient for an applicant to claim a subjective fear of torture, rather, the applicant must prove, through objective evidence, that he or she is likely to be tortured in a particular country. *Matter of J-E-*, 23 I&N Dec. 291, 302 (BIA 2002). For purposes of the Convention Against Torture, "torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for a specific purpose, such as extracting a confession or punishing the victim. 8 C.F.R. § 208.18(a)(1). To qualify as torture, the act must also be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," at a time when the victim is in the offender's "custody or physical control." 8 C.F.R. §§ 208.18(a)(1) and (6). "Torture is an extreme form of cruel and inhumane treatment and does not include lesser forms of cruel, inhumane, or degrading treatment or punishment. . . ." 8 C.F.R. § 208.18(a)(2). Moreover, "[a]n act that results in unanticipated or unintended severity of pain and suffering is not torture." 8 C.F.R. § 208.18(a)(5).

The thrust of the respondent's claim for deferral is that: 1) the United States Government created a widespread public perception that he is responsible for crimes committed against Jewish prisoners by "Ivan the Terrible" at the Treblinka death camp; 2) the United States will encourage Ukraine to arrest, detain, and prosecute him if he is removed to Ukraine; 3) it is "irrational" to believe that the Ukranian government will not comply with such requests; 4) many prisoners in Ukraine are subjected to mistreatment and/or torture; and 5) the respondent is especially "vulnerable" to mistreatment and torture because of his age. In denying the respondent's application, the Chief Immigration Judge concluded that the respondent failed to prove three key facts: 1) that as a result of the government's previous assertion that he was "Ivan the Terrible" (an assertion that the government has not made in more than a decade), he is likely to be prosecuted if removed to Ukraine; 2) that if prosecuted, he is likely to be detained; and 3) that if prosecuted and detained, he is likely to be tortured.

The Chief Immigration Judge relied on numerous exhibits showing that Ukraine has not charged, indicted, prosecuted, or convicted a single person for war crimes committed in association with the Nazi government of Germany, despite having numerous opportunities to do so. CIJ Deferral Dec. at 10 (citing Exhibits 35 at 1-2, 36, 37A at 15-22, 37C, 37G, 37H). Moreover, we note that the respondent stipulated that several Ukranian nationals who assisted in Nazi persecution had not been indicted or prosecuted, nor had Ukraine requested their extradition, despite the U.S. government's efforts to encourage Ukraine to do so. Exh. 35 §§ 1-20. We reject the respondent's speculation that because of his notoriety , his case is markedly different from others who have been returned to Ukraine. Instead, the State Department's advisory opinion letter[7] rebuts this claim by expressing the opposite opinion: that the government of Ukraine is "very unlikely" to mistreat a "high-profile individual[]" such as the respondent. Exhs. 39A and 45. For these reasons, and given the absence of *any* evidence of a Nazi war criminal facing prosecution in Ukraine, the respondent's speculative argument is not persuasive. Therefore, we agree with the Chief Immigration Judge that the respondent failed to establish that he is likely to be prosecuted if removed to Ukraine.

We also agree with the Chief Immigration Judge's finding that the respondent has not established that he is likely to be detained even in the unlikely event that he is prosecuted in Ukraine. As set forth in the stipulations between the parties, Ukranian law allows for pre-trial release of criminal defendants, and large numbers of Ukranian criminal defendants are released from custody while awaiting trial. CIJ Deferral Dec. at 11 (citing Exh. 35).

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[7] We reject the respondent's argument that the State Department's advisory opinion is inadmissible. In this regard, we note that the Federal Rules of Evidence do not apply in immigration court proceedings. Because the letter from the State Department is probative and its use is not unfair to the respondent, we find no error in the Chief Immigration Judge's consideration of the letter. *See Matter of K-S-*, 20 I&N Dec. 715, 722 (BIA 1993) (relying on State department advisory opinion letter as "expert" evidence); *Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785 (BIA 1999) (noting that the test for admissibility of evidence is whether the evidence is probative and whether its use is fundamentally fair so as to not deprive the alien of due process); 8 C.F.R. §§ 1208.11(a) and (b) (the State Department may provide an assessment of the accuracy of an applicant's claims, information about the treatment of similarly-situated persons or "[s]uch other information as it deems relevant").

Finally, we agree with the Chief Immigration Judge's finding that although conditions in Ukranian prisons may be harsh, it is unlikely that the respondent would be tortured if detained. In this context we note that the evidence of record indicates that the government of Ukraine has permitted international monitoring of its prisons and has engaged in improvement efforts. CIJ Deferral Dec. at 12 (citing Exhs. 39A and 45). Moreover, we note that even if the respondent were to face harsh prison conditions in the unlikely event that he faces detention, generally harsh prison conditions do not constitute torture. *See Matter of J-E-*, 23 I&N Dec. at 301-04; *see generally, Alemu v. Gonzales*, 403 F.3d 572, 576 (8th Cir. 2005) (noting that substandard prison conditions are not a basis for relief under the Convention Against Torture unless they are intentionally and deliberately created and maintained in order to inflict torture); *Auguste v. Ridge*, 395 F.3d 123, 152-53 (3rd Cir. 2005).

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). Simply put, the respondent's arguments regarding the likelihood of torture are speculative and not based on evidence in the record. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006) (applicant fails to carry burden of proof if evidence is speculative or inconclusive). Therefore, we reject the respondent's arguments, and conclude that the Chief Immigration Judge correctly decided that the respondent failed to prove that he is likely to be prosecuted in Ukraine; that if prosecuted, he is likely to be detained either prior to trial or as a result of a conviction; and, that if prosecuted and detained, he is more likely than not to be tortured.

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HEARING LOCATION: CLEVELAND, OHIO[1]

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
DEMJANJUK, John	)	**File No.: A#** [redacted] (b)(6)
	)	
RESPONDENT	)	
	)	

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ORDER OF THE CHIEF IMMIGRATION JUDGE

The Court has reviewed all of the proposed exhibits submitted by the parties in the pre-hearing statements and the parties' supplemental memoranda regarding the relevance of those exhibits. The Court, based on the explanations provided by each party regarding the relevance of the proposed exhibits and having duly considered the parties' objections, admits all of the proposed documents into the evidence and will accord appropriate weight to each. Respondent's pre-hearing statement shall be designated as Exhibit 36, with the supporting documents admitted as Exhibits 36A through 36X. The Government's pre-hearing statement shall be designated as Exhibit 37, with the supporting documents admitted as Exhibits 37A through 37ZZ.

The Court has also reviewed the statements submitted with regard to the admission of the Department of State opinion dated October 13, 2005 regarding Respondent offered by the Government. Upon careful consideration of the arguments made by the parties, the Court shall admit the Department of State opinion, which shall be designated as Exhibit 39A.

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[1] Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the administrative control court: Immigration Court, 901 North Stuart Street, Suite 1300, Arlington, Virginia 22203.

The Court has attached to this Order, which is designated as Exhibit 44, a list of exhibits admitted into the evidence. This list shall be designated as Exhibit 44A.

Accordingly, the Court will enter the following orders:

ORDER

It is ordered that: All of the proposed exhibits submitted with the pre-hearing statements are admitted into evidence.

It is further ordered that: The Department of State opinion regarding Respondent shall be admitted into evidence.

11/16/05
Date

Michael J. Creppy
Chief Immigration Judge

Form G-590 (Rev. 2-1-67)
United States Department of Justice
Immigration and Naturalization Service

PROPERTY ENVELOPE

FACILITY: _____

ALIEN'S NAME	G-589 NUMBER

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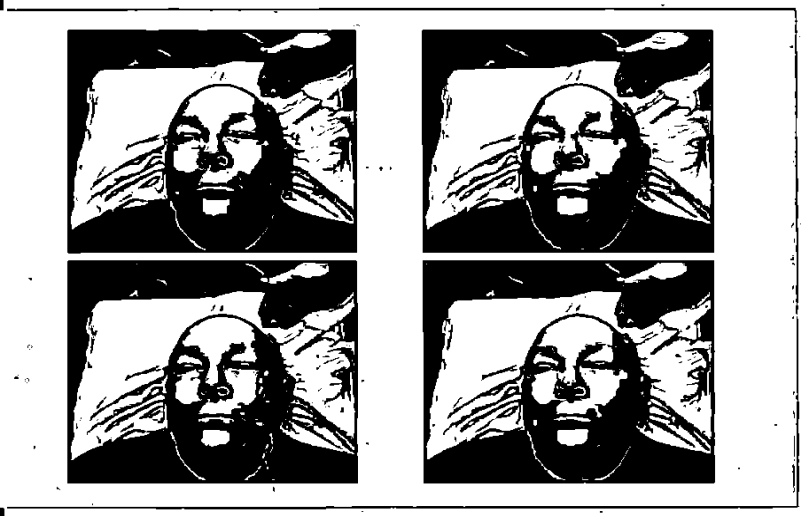

PRESS

Fri May 01, 2009 | 18:53 Iran's Hafez Nazeri unveils a new version of the Persian Setar.

Demjanjuk life hangin by a thread

Fri, 01 May 2009 18:23:14 GMT

Font size :

The life of John Demjanjuk, an accused Nazi camp guard who is wanted in Germany for war crimes, is hanging by a thread as he loses a fight to stay in the US.

A US federal court on Thursday denied a stay of deportation to Demjanjuk – a move that will see him being deported back to Germany, where he stands accused of aiding the death of 29,000 Jews.

Demjanjuk denies accusations of being a guard at the Nazi-run Sobibor death camp in World War II and insists that he was captured by the Germans in his native Ukraine and kept as a prisoner of war.

A stay of deportation was granted earlier in April after his family claimed he was too ill to be moved; but a government videotape that showed him walking unassisted has put his case back on track.

"The US Government will continue to seek the removal of Demjanjuk to Germany," a Justice Department spokeswoman told Reuters on Friday.

Demjanjuk's case has been kept in a haze of ambiguity since he moved to the United States in 1952 with his family, settling in Ohio, where he worked in car industry.

He was deported from the United States to Israel and sentenced to death in 1988, after Holocaust survivors identified him as the sadistic "Ivan the Terrible", a guard at the Treblinka death camp.

Israel's highest court later overturned his sentence and freed him, after newly unearthed documents from the former Soviet Union indicated that "Ivan the Terrible" had been a completely different man.

Free of all charges, he returned to the US in 1993 where his citizenship was restored.

However, US Justice Department Nazi hunters reopened his case in 2002, and a US court convicted him of working at three other camps and he was stripped of his citizenship a second time.

SBB/MMN

Accused Nazi Guard Needs Chemo, Is Unfit for Trial, Lawyer Says

Print

Wednesday, April 15, 2009
Associated Press

AP

April 3: Accused Nazi death camp guard John Demjanjuk arrives at the federal building in Cleveland. Demjanjuk is asking the United States to block his deportation to Germany.

CLEVELAND — A lawyer for th Cleveland area man accused of being a Nazi death camp guard says the elderly suspect needs chemotherapy and is unfit for t

John Demjanjuk was released fro federal custody late Tuesday, just hours after immigration officers to him from his Ohio home in a wheelchair. He'd been scheduled deportation to Germany to face a possible war crimes trial.

An appeals court is giving the 89-year-old another chance to argue that deportation would amount to torture, due to medical conditions that include kidney disease. His German attorney also says Demjanjuk has a kidney tumor.

Earlier Tuesday, U.S. immigration agents arrived at Demjanjuk's hor to deport him to Germany, where an arrest warrant alleges he was a Nazi death camp guard, his son said.

Click here to see photos.

His son, John Demjanjuk Jr., filed motions earlier Tuesday asking the 6th U.S. Circuit Court of Appeals for a stay of deportation.

He was in contact with people at his father's home.

"He can't stand up and walk out of the house," Demjanjuk Jr. said. "We weren't anticipating anything like this. I was told that a family member could accompany him. We also were told that would have 3-5 days notice before anything happened."

Around 1 p.m., five men in two unmarked cars arrived at Demjanjuk's home and at least three w seen inside the home.

A wheelchair-accessible van arrived after one man heard saying on a cell phone, "John can't get out of bed." Two priests who came to the home later went inside and left after a short time.

A short while later, video footage showed Demjanju being carried out of his house in a wheelchair and placed into the waiting van as family members look on.

German prosecutors claim Demjanjuk was an accessory to some 29,000 deaths during World W II at the Sobibor camp in Nazi-occupied Poland. Once in Germany, he could be formally charge court.

Demjanjuk, a native Ukrainian, has denied being a Nazi guard, long claiming he was a prisoner of war the Germans. He came to the United States after t war as a refugee.

Demjanjuk had been tried in Israel after accusatior surfaced that he was the notorious Nazi guard "Iva the Terrible" in Poland at the Treblinka death camp

He was found guilty in 1988 of war crimes and crim against humanity, a conviction later overturned by Israeli Supreme Court.

A U.S. judge revoked his citizenship in 2002, base on Justice Department evidence showing he concealed his service at Sobibor and other Nazi-ru death and forced labor camps.

An immigration judge ruled in 2005 he could be deported to Germany, Poland or Ukraine.

Guenther Maull, a Munich-based lawyer for Demja said earlier Tuesday that his client could arrive in Germany on Wednesday.

The Immigration Appeals board in Falls Church, V had denied a motion for an emergency stay on Fric

The U.S. Justice Department has opposed his previous appeals.

See Next Story in U.S.

RELATED STORIES

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Nazi guard's US family fights deportation

Apr 10, 2009

SEVEN HILLS, Ohio (AFP) — A decades-long saga over the alleged war crimes committed by Nazi death camp guard John Demjanjuk was set to drag on for days if not weeks Wednesday as his family prepared their latest appeal of his deportation.

Demjanjuk, 89, was granted a last minute reprieve Tuesday as he waited in a federal building to be extradited to Germany to face charges of aiding in the murder of more than 29,000 Jews during World War II.

Just hours earlier he had been carried moaning in a wheelchair out of his yellow brick home in Seven Hills, Ohio by five immigration agents as his family sobbed in the driveway.

The US Immigration and Customs Enforcement allowed Demjanjuk to return home with an electronic tracking bracelet around his ankle, but said it would continue to pursue the case.

Demjanjuk's lawyer has argued that his client is in poor health, and that jailing and trying him in Germany would cause him pain amounting to torture.

His family says he is bedridden and suffers from a host of ailments including kidney disease, arthritis and cancer which makes him unfit to fly and criticized US and German authorities for putting his life at risk.

"We could have been making funeral arrangements today," his son, John Demjanjuk Jr. told AFP.

"The Germans have a medical opinion that Mr. Demjanjuk is not fit for trial, and that it would be a further danger to his life to fly. And that danger does not diminish with an oxygen machine on board the plane. What if it fails?"

The younger Demjanjuk, who insists that his father did not participate in the extermination of Jews, said he is confident the US federal appeals court will block deportation on medical grounds.

Putting the octogenarian on trial will send an important signal that those who participate in genocide will be "be pursued until their last days on earth," said Jonathan Drimmera, a former federal prosecutor who spent years in charge of Demjanjuk's case.

"The evidence against Demjanjuk is rock solid, and based on seven authentic Nazi-created wartime documents that contain Demjanjuk's name, biographical and physical details, and even a photograph.

"A former comrade who served with Demjanjuk at the camp specifically recalled that Demjanjuk escorted prisoners to the gas chambers as part of his daily work, and was repeatedly assigned to gather prisoners from surrounding ghettos to deliver them to the camp to be killed."

Tuesday's ruling was just the latest twist in a long saga for the Ukrainian-born Demjanjuk, who changed his name from Ivan to John when he emigrated to the United States in 1952.

Former wartime inmates of Nazi camps in occupied Poland identified him as notorious Ukrainian prison guard "Ivan the Terrible" during a 1977 US Justice Department investigation.

An Israeli court sentenced him to death in 1988, but the country's Supreme Court overturned the conviction five years later, after statements from former guards identified another man as the sadistic "Ivan."

He was returned to the United States despite strenuous objections from Holocaust survivors and Jewish groups who said he should be retried based on the ample evidence that he was a death camp guard.

The US government filed new charges in 1999 using fresh evidence that surfaced following the collapse of the Soviet Union.

John De

Map

He was stripped of his US citizenship in 2002 but remained in Ohio long after his appeals of that decision were exhausted because the United States could not find a country willing to accept the now-stateless alleged war criminal.

Germany issued a warrant for Demjanjuk's arrest on March 11.

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"I'm confident that they are going to demand that all the information accessible in the United States and Germany," Demjanjuk Jr. said. **"Once they have that information, the case is over."**

Apr 15, 2009 The Associated Press
(70 occurrences)

"Given the amount of suffering and death that was meted out by Nazi Germany, it seems inconceivable that the Germans, who nearly killed my father in combat and again later in POW camps, now want to take him -- so elderly and weak he is unable to...

Apr 2, 2009 Reuters UK (49 occurrences)

"I can't fathom how they will actually follow through with the plans we've heard about from Germany _ getting him there and putting his through any legal proceeding. He can't get up out of a chair on his own. He can't walk on his own. He can't get...

Apr 1, 2009 Washington Post
(44 occurrences)

"He went through a lot of pain today in the transportation," John Demjanjuk Jr. said of his 89-year-old father. **"But he's nevertheless relieved to be home rather than on a plane to Germany, and we're very grateful that the federal 6th Circuit...**

"He doesn't understand all the details," Demjanjuk Jr. said. **"He does understand that he's been ordered deported. He understands that Germany is considering accepting him and that they're saying they will arrest him and put him on trial...**

Apr 1, 2009 Washington Post
(70 occurrences)

"His brain isn't functioning right," Vera Demjanjuk, 83, said, according to the report. **"One day he's aware of everything, the next day he's forgotten it all."**

Mar 6, 2009 International Herald Tribune
(59 occurrences)

"He can't stand up and walk out of the house," Demjanjuk Jr. said. **"We weren't anticipating anything like this. I was told that a family member could accompany him. We also were told that we would have 3-5 days notice before anything...**

Apr 15, 2009 FOXNews
(35 occurrences)

"Today, at 88 years old, he is in very frail health and unable to endure travel and another foreign trial," Demjanjuk Jr. said in a statement e-mailed to the Associated Press in Cleveland. "These statements about possible charges are not...

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Ohio's Demjanjuk is denied stay of deportation

35 minutes ago

CLEVELAND (AP) — An immigration appeals board has denied an emergency stay of deportation requested by John Demjanjuk (dem-YAHN'-yuk), who faces charges in Germany that he served as a Nazi death camp guard during World War II.

The Friday ruling makes it likely he will soon be sent to face a German warrant that accuses him of being an accessory to some 29,000 deaths in Nazi-occupied Poland.

The 89-year-old suburban Cleveland man filed a motion to the board in Falls Church, Va., saying he is in poor health and that being forced to travel to Germany would amount to torture.

U.S. immigration spokeswoman Pat Reilly says she cannot comment on the timing of Demjanjuk's deportation.

Messages left with Demjanuk's son, his attorney and the U.S. Justice Department haven't been returned.

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Ohio man asks US to halt deportation in Nazi case

By M.R. KROPKO – 1 hour ago

CLEVELAND (AP) — An Ohio man with a reputed Nazi past is asking the United States to block his deportation to Germany, citing humanitarian reasons.

John Demjanjuk (dem-YAHN'-yook) made the request in a document filed Wednesday with Immigration and Customs Enforcement.

Demjanjuk, who turns 89 on Friday, is charged in an arrest warrant in Germany with 29,000 counts of acting as an accessory to murder while working as a guard at a Nazi death camp during World War II.

In the statement dated Tuesday, Demjanjuk tells ICE he is in poor physical condition and that being sent to Germany would be inappropriate and degrading treatment.

Demjanjuk's son has said that his father suffers from chronic kidney disease.

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Newspaper says US to extradite Demjanjuk on

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Munich, Germany - US authorities are to extradite Ukrainian- born John Demjanjuk to Ge answer charges that he helped put at least 29,000 Jews to death at a Nazi death camp, a Ger Wednesday. Demjanjuk would arrive on Monday in Munich, where a warrant was issued three we the newspaper Abendzeitung said, quoting the accused's German lawyer, Guenther Maull.

A German Justice Ministry spokeswoman in Berlin said, "We can neither confirm nor deny this."

Demjanjuk was acquitted in 1993 by the Israeli Supreme Court of charges that he worked at the N This time he is being accused of working at a different wartime camp, Sobibor, at a location Poland.

The 88-year-old former US car worker is to be interviewed in Munich before any indictment is stripped of his US citizenship and is now stateless. Washington has been eager to expel him.

A senior Munich prosecutor, Manfred Noetzel, said last week that a war crimes trial involving De require a major effort and a lot of time, but was vague about whether the accused would arrive "n after that."

German evidence suggests Demjanjuk, then 23, was a guard at Sobibor from March till the end After the Second World War he lived in Germany as a refugee. In 1952 he changed his first nan and moved to the United States.

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Article : Newspaper says US to extradite Demjanjuk on Monday
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I.D. Card

German investigators reviewed an identification card they obtained from the U.S. Office of Special Investigations and concluded it was authentic. Demjanjuk served in Sobibor from March to September 1943, according to Munich prosecutors.

A native of what is now Ukraine, Demjanjuk has denied ever serving the Nazis and said his fear of being sent back to the Soviet Union prompted him to falsely assert on his U.S. visa application that was a farmer in Poland during the war.

Germany's Central Unit For the Investigation of Nazi Crimes, based in Ludwigsburg, had probed Demjanjuk for several years and suggested he should be charged.

The Federal Court of Justice, the country's top criminal court, in December instructed the Munich Regional Court to take over the case because Demjanjuk had lived in various Bavarian cities between 1945 and 1951.

Statute of Limitations

An estimated 6 million Jews as well as resistance fighters, gypsies and homosexuals were killed in Nazi death camps across Europe in territories occupied by Germany during the war.

Germany lifted its statute of limitations for murder in 1979, allowing prosecution of Nazi criminals in its courts to continue. Murder and genocide are the only crimes under German law with no applicable statute of limitations, which bar prosecution after a certain period of time.

Munich newspaper Abendzeitung previously reported the expected extradition.

To contact the reporter on this story: Karin Matussek in Berlin at kmatussek@bloomberg.net.

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THE PLAIN DEALER

John Demjanjuk deportation in limbo; family says he's too ill - Page 2

Germany ready to take him; kin say he's too ill

The United States' rush to deport John Demjanjuk appears to have slowed just as Germany is ready to accept him.

The delay upsets some, including former prosecutors who had pursued Demjanjuk for years.

Germany says it has done everything necessary to bring Demjanjuk to Munich, where he is expected to stand trial as an accessory in the deaths of 29,000 Jews at a Nazi death camp.

"We're prepared to take Mr. Demjanjuk right now," said Ulrich Sante, a spokesman for the German Embassy in Washington. "All requirements on our side have been fulfilled. The ball is in the court of the United States."

The United States, which has spent decades proving the 88-year-old Seven Hills retiree worked as a Nazi guard, appears to be closely ex amining his health before a move is made to put him on a plane, former federal prose cutors and offi cials said.

On Tuesday, the family asked the U.S. Bureau of Immigration and Customs Enforcement to stop the deportation, saying Demjanjuk is too sick to be deported. Demjanjuk said in the filing that he is physically weak and experiences pain daily in his back, hip and legs.

"They have an 89-year-old man in bad health. If he gets on the plane and doesn't come off it in Germany, there's going to be one hell of a lawsuit," said Demjanjuk's attorney, John Broadley.

"[The government] and Germany know that he is in bad health."

Demjanjuk turns 89 Friday.

The U.S. Department of Homeland Security, which oversees the immigration issues, declined to comment about the pace of Demjanjuk's removal, saying only that it is working with Germany.

The delay angers many who have followed the Demjanjuk case since it started in 1977.

"It is absolutely inexcusable that the Department of Homeland Security has not effectuated this removal," said Neal Sher, who led the U.S. Justice Department's Nazi-hunting unit from 1982 to 1994.

"It's outrageous. The Justice Department spent decades pursuing this case, and the bureaucracy of Homeland Security is frustrating."

Three weeks ago, German authorities filed an arrest warrant for Demjanjuk, accusing him of working as a guard at the Sobibor death camp in Nazi-occupied Poland.

U.S. immigration officials said in a statement last month that they had contacted Germany to obtain travel documents that would enable Demjanjuk to enter the country.

"This is not a novel process," said Jonathan Drimmer, a former prosecutor who handled the Demjanjuk case in Cleveland in 2001 that led to his deportation order.

"This is done every day in the United States – but not for an 88-year-old."

The German investigator, Kurt Schrimm, told reporters in February that the case must be pushed quickly.

"The world can't wait," he said. "Demjanjuk is old. Every day counts now."

The allegations in Germany are based on documents first filed nearly 10 years ago in U.S. District Court in Cleveland that linked Demjanjuk to Sobibor and other Nazi camps, according to federal prosecutors and published reports.

In 1983, Israel charged Demjanjuk with being "Ivan the Terrible," the brutal guard who ran the gas chambers at the Treblinka death camp. He was convicted and sentenced to death. In 1993, the Israeli Supreme Court overturned the conviction based on new evidence that became available after the fall of the Soviet Union.

In 1998, federal prosecutors accused Demjanjuk of working at Sobibor and two other camps. Federal judges ruled that he did serve at the camps, and an immigration judge in 2005 ordered him deported.

He has stayed in Seven Hills because no other country had sought to accept him until Germany stepped forward earlier this year.

To reach this Plain Dealer reporter:

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U.S. Department of Homeland Security
1240 East 9th Street
Suite 535
Cleveland, OH 44199

U.S. Immigration and Customs Enforcement

June 12, 2008

RE: DEMJANJUK, JOHN A [redacted] (b)(6)

Dear Consul General:

Please accept this letter with the enclosed documents as a formal request for a travel document on behalf of DEMJANJUK, JOHN a native and citizen of UKRAINE.

Mr. DEMJANJUK entered the United States at NEW YORK, NEW YORK on 02/09/1952 as an immigrant.

Mr. DEMJANJUK was afforded a hearing before an Immigration Judge to answer the charges on the attached Notice to Appear. As a result of this hearing, Mr. DEMJANJUK was ordered deported from the United States as documented by the attached Order. Mr. DEMJANJUK then appealed this decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal.

Mr. DEMJANJUK will be scheduled to departed the United States upon receipt of a travel document. A prompt response would be appreciated.

If you require further information, please contact Officer [redacted] at [redacted] or email [redacted]

(b)(7)(c)

Sincerely,

[redacted]

SDDO [redacted]

Encl: (1) Removal Order
(2) Charging Document
(3) I-217
(4) Ukrainian_Application
(5) Ukrainian_Application
(6) Biometric Information

On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. [redacted]

[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

[redacted] The Chief Immigration Judge ordered the respondent removed to Ukraine. with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality: and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings: 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002. the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193. 2002 WL 544622 (N.D. Ohio Feb. 21. 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*. 128 Fed. Appx. 496. 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

[redacted]

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

relevant to the removability issue had been established by collateral estoppel [redacted] Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(1), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd, Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himelf to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal.' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beatty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hanmer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B, FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as '"issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived . . . ."' *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union, and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him, i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion, in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21, 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G, docket entry 112: NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001, the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later, at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627, which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court, together with a complete English translation and a cover letter on August 17, 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted) (noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

appeals." 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko, supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

[redacted]

(b)(6)

[redacted]

[redacted]

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i) [redacted]

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

DECISION AND ORDER OF THE CHIEF IMMIGRATION JUDGE

I. STATEMENT OF THE CASE

The respondent is an eighty-five year old former citizen of the United States and national of the Ukraine. He was born on April 3, 1920, at Dubovye Makharintsy, Ukraine. He was first admitted to the United States at New York, New York, on or about February 9, 1952, on an immigrant visa issued under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch.647, 62 Stat. 1009 (*amended* June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219).[1] He became a naturalized citizen of the United States in 1958. *See* Exhibit 5.

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. Exhibit 5B. The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. Exhibit 5E.[2] While that appeal was pending, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b) in the district court on February 12, 2003. *U.S. v. Demjanjuk*, 128 Fed. App. 496, 2005 WL 910738 (6th Cir. 2005) (unpublished decision). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *See id.*

The Office of Special Investigations, U.S. Department of Justice, (*hereinafter*, the government) commenced these removal proceedings against the respondent by filing a Notice to Appear (NTA), dated December 17, 2004, with this Court. Exhibit 1.

On February 25, 2005, the government filed a motion for the application of collateral estoppel and judgment as a matter of law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA had been litigated and decided during the respondent's denaturalization proceedings and that, with the exception of allegation #22, the respondent should be precluded from relitigating those issues in these removal proceedings. *See* Exhibit 5.

On February 28, 2005, the Court conducted a Master Calendar hearing in this matter. The Court issued an Order, instructing the respondent to file written pleadings and opposition to the government's motion for collateral estoppel and judgment as a matter of law by May 31, 2005. In addition, the respondent was requested to submit any applications for relief by June 30, 2005.

On May 31, 2005, the respondent filed his written pleadings to the allegations of fact and

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[1] The DPA was enacted to assist in alleviating the problem of World War II refugees. The DPA permitted the admission into the United States of over 400,000 displaced persons by 1951.

[2] The United States Court of Appeals for the Sixth Circuit discussed the six decisions issued in matters related to Respondent's citizenship prior to the denaturalization proceedings. *Id.* at 627.

(b)(6)

DATE PREPARED	INFORMATION FOR TRAVEL DOCUMENT OR PASSPORT	FILE A
06/11/08		[redacted]

1. NAME: John DEMJANJUK
2. SEX: M
3. OTHER NAMES USED OR KNOWN BY: Iwan DEMJANJUK
4. CITIZENSHIP: Ukraine
5. DATE OF BIRTH: 04/03/1920
6. PLACE OF BIRTH: Dubovye Makharintsy, Vynnitsky Oblast, Ukrainian S.S.R., Soviet Union
7. HEIGHT: 6'1 | WEIGHT: 230 | EYES: BLU | HAIR: Gray | COMPLEXION: Light | MARKS OR SCARS:
8. NEAREST LARGE CITY TO PLACE OF BIRTH: KIEW
9. DISTANCE AND DIRECTION OF PLACE OF BIRTH FROM THIS LARGE CITY:
10. IF CITIZENSHIP IS DIFFERENT FROM COUNTRY OF BIRTH, EXPLAIN. IF NATURALIZED IN ANY COUNTRY, SHOW DATE AND PLACE OF NATURALIZATION, CERTIFICATE NUMBER, AND STATE HOW CITIZENSHIP WAS ACQUIRED.
Naturalized U.S. Citizen, U.S. citizenship revoked 5/29/01
11. NAMES, LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN SCHOOLS:
12. NAMES, EXACT LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN CHURCHES. INCLUDE DATE AND NATURE OF ANY RELIGIOUS CEREMONY WHICH MAY HAVE BEEN RECORDED.
Ukrainian Orthodox Church of USA, 50 + years
Parma, Ohio, USA
13. LAST PERMANENT RESIDENCE IN COUNTRY OF CITIZENSHIP *(Show dates of residence)*
Unknown
14. ADDRESS IN COUNTRY OF LAST FOREIGN RESIDENCE *(Show dates of residence, and immigration status there)*
Regensburg, Germany Displaced Persons Camp, refugee
15. PLACE OF ENTRY INTO UNITED STATES: New York, NY
DATE OF ENTRY INTO UNITED STATES: 02/09/1952
16. LIST DATE AND PLACE OF ISSUANCE AND NUMBER OF PASSPORT, BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR DOCUMENT OF IDENTITY. SPECIFY DATES OF MILITARY SERVICE, COUNTRY AND UNIT, RANK, SERIAL NUMBER, AND PLACES OF INDUCTION AND DISCHARGE.
No passport, no birth certificate. Conscripted into Soviet Red Army 1940, captured as prisoner of war in 1942, did not return to the Soviet Union.
17. IN POSSESSION OF TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY? ☒ YES ☐ NO. DESCRIBE DOCUMENT (S). IF SUBJECT DID NOT HAVE TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY, OR DOES NOT HAVE SUCH A DOCUMENT NOW, INDICATE WHETHER EVER OBTAINED ONE: ☐ YES ☐ NO. STATE HOW, WHEN, AND WHERE IT WAS OBTAINED; WHAT KIND OF DOCUMENT IT WAS, AND WHAT BECAME OF IT.
Immigrant visa to USA issued in 1952.
18. FATHER'S NAME: Mikola DEMJANJUK | DATE OF BIRTH: | PLACE OF BIRTH:
PRESENT ADDRESS: Deceased
19. MOTHER'S MAIDEN NAME: Tabachuk | DATE OF BIRTH: | PLACE OF BIRTH:
PRESENT ADDRESS: Deceased
20. NAME, RELATIONSHIP, AND ADDRESSES OF RELATIVES ABROAD
Unknown
21. PREVIOUSLY ☐ EXCLUDED ☐ DEPORTED ☐ REQUIRED TO DEPART FROM THE UNITED STATES
ON _____ *(Date)* VIA _____ *(Port)* TO _____ *(Country)*
22. INDICATE WHETHER EVER ARRESTED, IN PRISON OR A PUBLIC INSTITUTION IN THE COUNTRY OF WHICH A NATIONAL, SUBJECT OR CITIZEN: ☒ YES ☐ NO. IF SO, GIVE DATES AND PLACES.
Arrested in 1985 in the United States pending extradition to Israel.
23. NAME, NATIONALITY AND PRESENT ADDRESS OF SPOUSE, AND DATE AND PLACE OF MARRIAGE
Vera DEMJANJUK nee [redacted] Ohio, USA, married 1948 at Regensburg, Germany
24. NAMES, AGES AND ADDRESSES OF ALL CHILDREN
Three children, Lydia, Irene and John, all adult age and living in the USA (b)(6)
25. IF NONCANADIAN DEPORTABLE TO CANADA, GIVE DATE AND PORT OF ARRIVAL IN CANADA, AND NAME OF VESSEL
N/A

Form I-217 (Rev. 3-30-77)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

Подовження додатка 1

Прошу видати мені посвідчення особи на повернення в Україну у зв'язку тим, що під час мого перебування на території США
(зазначається місце втрати)

мною було
втрачено НЕ ІСНУЮТЬ
(назва паспортного документа, номер, дата, орган видачі)

Прибув (ла) на територію США 9 ЛЮТИЙ 1952
(назва держави, дата в'їзду на її територію)

з метою ІММІГРУВАТИ НА ЛІПШИ ЖИТТЯ
(зазначається мета перебування на території держави)

На території США перебуваю
(b)(6) [redacted] тел. [redacted]

На території України зареєстрований: —
НЕ ІСНУЄ тел. —

Маю в наявності такі документи —
НЕ ІСНУЄ

12 ЧЕРВЕНЬ 2008 р.

Підпис заявника (законного представника) John Demjanjuk

Анкету прийняв «__» _____200__ р. _____
(підпис, прізвище, посада)

Оформлено та видано посвідчення особи на повернення в Україну №_____ від_____
Консульський збір у розмірі_____ стягнуто.
Посвідчення видане без стягнення консульського збору на підставі:_____
(зазначається підстава для звільнення від сплати консульського збору)

Посвідчення особи на повернення в Україну одержав:

«____» _____200__ р. _____
(підпис заявника)

Додаток 1
до пункту 4.2 Правил оформлення і видачі
дипломатичними представництвами
та консульськими установами України посвідчення
особи на повернення в Україну

фото
3,5×4,5 см

(назва дипломатичного представництва або консульської установи)

ЗАЯВА-АНКЕТА №_____

про оформлення посвідчення особи на повернення в Україну

Цю частину заповнювати великими друкованими літерами

Прізвище (українською мовою) ДЕМЯНЮК

(латиницею) DEMJANJUK

Ім'я (українською мовою) ІВАН

(латиницею) JOHN

По батькові МИКОЛОВИЧ

Стать: Жін. [ ] Чол. [✓] (потрібне позначити)

Дата народження: число 03 місяць 04 рік 1920

Місце народження:

держава СССР

область ВІННИЦЬКА

район/місто КОЗЯТИН

селище/село АХБОВИЙ МАХАРИНЦІ

Відомості про дітей, що вносяться до посвідчення:

№		Прізвище	Ім'я	По батькові	Дата народження
1	укр.	ІВАН ДЕМЯНЮК	ІВАН	ІВАН	
	лат.	DEMJANJUK	JOHN JR.		
2	укр.	НИЖНИК	ІРИНА	ІВАН	
	лат.	NISHNIC	IRENE		
3	укр.	МАЛАЙ	ЛІДА	ІВАН	
	лат.	MALAY	LYDIA		

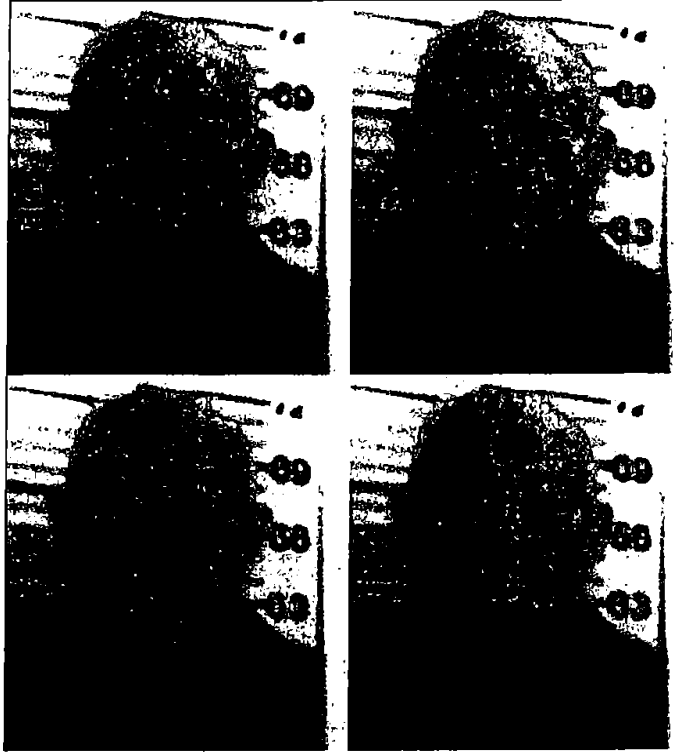
Фотокартки дітей (подаються при досягненні дітьми 5 років)

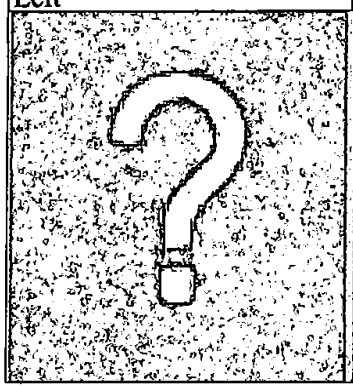
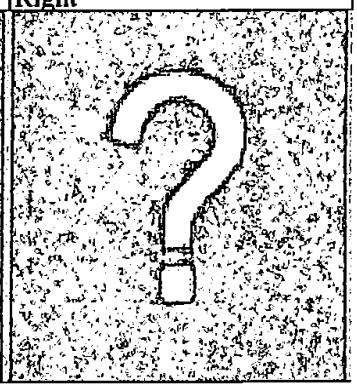
1. [ ] 2. [ ] 3. [ ]

(b)(6)

Biometric Information

Name: JOHN DEMJANJUK
Alien Number: (b)(6)

Photo


Fingerprints	
Left	Right
	

Подовження додатка 1

Прошу видати мені посвідчення особи на повернення в Україну у зв'язку тим, що під час мого перебування на території США
(зазначається місце втрати)

мною було втрачено НЕ ІСНУЮТЬ
(назва паспортного документа, номер, дата, орган видачі)

Прибув (ла) на територію США 9 ЛЮТИЙ 1952
(назва держави, дата в'їзду на її територію)

з метою ІММІГРУВАТИ НА ЛІПШИ ЖИТТЯ
(зазначається мета перебування на території держави)

На території США перебуваю [redacted] тел. [redacted] (b)(6)

На території України зареєстрований: —

НЕ ІСНУЄ тел. —

Маю в наявності такі документи —

НЕ ІСНУЄ

12 ЧЕРВЕНЬ 2008 р.

Підпис заявника (законного представника) John Detyanchik

Анкету прийняв "___" _____200__ р. _____
(підпис, прізвище, посада)

Оформлено та видано посвідчення особи на повернення в Україну №_____ від_____.
Консульський збір у розмірі_____ стягнуто.
Посвідчення видане без стягнення консульського збору на підставі:_____
(зазначається підстава для звільнення від сплати консульського збору)

Посвідчення особи на повернення в Україну одержав:

"____"_____200__ р. _____
(підпис заявника)

Додаток 1
до пункту 4.2 Правил оформлення і видачі
дипломатичними представництвами
та консульськими установами України посвідчення
особи на повернення в Україну

фото
3,5×4,5 см

(назва дипломатичного представництва або консульської установи)

ЗАЯВА-АНКЕТА №_____

про оформлення посвідчення особи на повернення в Україну

Цю частину заповнювати великими друкованими літерами

Прізвище *(українською мовою)* ДЕМЯНЮК

(латиницею) DEMJANJUK

Ім'я *(українською мовою)* ІВАН

(латиницею) JOHN

Стать: Жін. [ ] Чол. [✓]

По батькові МИКОЛОВИЧ

(потрібне позначити)

Дата народження: число 03 *місяць* 04 *рік* 1920

Місце народження:

держава СССР

область ВІННИЦЬКА

район/місто КОЗЯТИН

селище/село ДУБОВИЙ МАХАРИНЦІ

Відомості про дітей, що вносяться до посвідчення:

№		Прізвище	Ім'я	По батькові	Дата народження
1	укр.	ІВАН ДЕМЯНЮК	ІВАН	ІВАН	
	лат.	DEMJANJUK	JOHN JR.		
2	укр.	НИЖНИК	ІРИНА	ІВАН	
	лат.	NISHNIC	IRENE		
3	укр.	МАЛАЙ	ЛІДА	ІВАН	
	лат.	MALAY	LYDIA		

Фотокартки дітей (подаються при досягненні дітьми 5 років)

1. [ ] 2. [ ] 3. [ ]

(b)(6)

(b)(6)

ALIEN REGISTRATION
Name Iwan Demjanjuk
No. [redacted]

STATEMENT OF FACTS FOR PREPARATION OF PETITION

Gen Law 5 yrs

(b)(6)

(1) My full, true, and correct name is Iwan Demjanjuk

(2) My present place of residence is [redacted] (Number and street) (City or town) (County) (State)

(3) My present occupation is Motor Balancer

(4) I was born on April 3, 1920 (Month) (Day) (Year) in Dub Macharenzi (City or town) (County, district, province, or State) Ukraine (Country)

(5) My personal description is as follows: Sex male; complexion fair; color of eyes blue; color of hair brown; height six feet 0 inches; weight 182 pounds; visible distinctive marks ~~operation scar on back~~ Scar left wrist; country of which I am a citizen, subject, or national Ukraine;

(6) I (am, ~~am~~ not) married; the name of my wife or husband is Vera; we were married on Sept. 1, 1947 (Month) (Year) at Regensburg (City or town) Germany (Country); he or she was born at [redacted] (City or town) (County, district, province, or State) [redacted] (Country) on [redacted] (Month) (Day) (Year); entered the United States at New York (City or town) New York (State) on Feb. 9, 1952 (Month) (Day) (Year) for permanent residence in the United States and now resides at ~~Cleveland~~ (City or town) (with me) ~~Ohio~~ (State or country); and was naturalized on (Month) (Day) (Year) at (City or Town) (State) certificate No. or became a citizen by

(7) I have 1 children; and the name, sex, place and date of birth, and present place of residence of each of said children who is living, are as follows:

Name	Sex	Place Born	Date Born	Now Living At—
Lydia	female	[redacted]		with me

(8) My lawful admission for permanent residence in the United States was at New York (City or town) New York (State); under the name of Iwan Demjanjuk on Feb. 9, 1952 (Month) (Day) (Year) on the General Haahn (Name of vessel or other means of conveyance)

(9) Since such lawful admission, I have not been absent from the United States for a period or periods of 6 months or longer except as follows:

Departed from the United States			Returned to the United States		
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance

(10a) I have resided continuously in the United States of America since Feb. 9, 1952 and continuously in the State of Ohio where I now live since July 1952 and during the past 5 years I have been physically present in the United States for an aggregate period of 60 months.

(10b) Do you intend to reside permanently in the United States? ☒ Yes ☐ No.

If "No," explain

(11) I (~~have~~, have not) heretofore made petition for naturalization No. on (Month) (Day) (Year) at (City) (State) in the Court which was denied because

(12) I wish the naturalization court to change my name to John DEMJANJUK (Give full name desired)

TO THE APPLICANT: DO NOT WRITE BELOW THIS LINE.

27

(1st witness) Gerald KRAVCHUK Mack Oper

[redacted]

residing at (Number and street) (City or town) (State)

(2d witness) [illegible] CHAE [illegible]

[redacted]

residing at

United States 8-1-53

State

Physical presence 31 mos.

Examiner C R Riddiough

(OVER)

(b)(6)

Process with (husbands/wifes) file # A-[redacted]

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Form approved.
Budget Bureau No. 43-R079.7.

Mail or take to:
IMMIGRATION AND NATURALIZATION SERVICE

Index Checked
On MAY 16 1958
by [illegible]
Cleveland, Ohio

ALIEN REGISTRATION
(Show the exact spelling of your name as it appears on your alien registration receipt card, and the number of your card. If you did not register, so state.)
Name Iwan Demjanjuk (b)(6)
No. [redacted]

Demjanjuk
EX-1
J.C. 2/20/00

PENGAD - Bayonne, N.J.

APPLICATION TO FILE PETITION FOR NATURALIZATION

2530

I desire to file a petition for naturalization in the—
U. S. District (Name of court) Court at Cleveland (City) Ohio (State)
Iwan Demjanjuk
[redacted] (Print or type your name)
Cleveland (City) Cuyahoga (County) Ohio (State)

5 12 1958
8:30

INSTRUCTIONS TO THE APPLICANT

IMPORTANT.—Under the naturalization laws, citizenship may be revoked for concealment of a material fact or for willful misrepresentation in connection with the naturalization proceedings. It is important therefore that you fill out pages 1, 2, 3, and 4 of this form completely and as accurately as possible, using ink or a typewriter. If you do not have enough room to answer a question, continue your answer on another sheet of paper and show the number of the question you are continuing.

PHOTOGRAPHS.—You must send with this application three identical photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. DO NOT SIGN YOUR PHOTOGRAPHS.

DATE OF YOUR ARRIVAL.—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, give the facts as you remember them.

If the date of your arrival in the United States was on or before June 29, 1906, you should submit with this application documentary evidence of your residence in the United States prior to that date. Such documents may be family Bible entries, deeds of record, wills or other authentic legal documents, life insurance policies, bankbooks and records, employment records or other documents showing that you were in the United States on or before June 29, 1906. Do not submit such documents if your arrival in the United States was after June 29, 1906.

ALIEN REGISTRATION RECEIPT CARD.—DO NOT SEND your alien registration receipt card with this application.

FINGERPRINT CARD.—This application must be accompanied by a record of your fingerprints. Fingerprint cards, with instructions for recording your fingerprints, are available at any office of the Immigration and Naturalization Service.

(1) In what places in the United States have you lived during the last 5 years? ANY TUESDAY OR THURSDAY BETWEEN 1:00 P.M. & 4:00 P.M.

	From—	To—	Street Address	City and State
(a)	July 1952	Feb. 1954	[redacted]	Cleveland, 13, Ohio
(b)	Feb. 1954	Aug. 1955		Cleveland, 13, Ohio
(c)	Aug. 1955	Sept. 1957		Cleveland, 13, Ohio
(d)	Sept. 1957	to present 19		Cleveland, 13, Ohio
(e)	19	19		
(f)	19	19		
(g)	19	19	(b)(6)	
(h)	19	19		
(i)	19	19		
(j)	19	19		

(2) What were the names, addresses, and occupations (or types of business) of your employers during the last 5 years? (If necessary, use an additional sheet)

	From—	To—	Employer's Name	Address	Occupation or Type of Business
(a)	Aug. 1952	present 19	Ford Motor Co.	Brookpark	Motor Balancer
(b)	19	19			
(c)	19	19			
(d)	19	19			
(e)	19	19			
(f)	19	19			
(g)	19	19			
(h)	19	19			

(3) Have you been out of the United States since you first arrived? Yes ☒ or No ☐ If "Yes" fill in the following information for every absence of *less than 6 months*.

Date Departed	Date Returned	Name of Ship, or of Airline, Railroad Company, Bus Company, or Other Means Used to Return to the United States	Place or Port of Entry Through Which You Returned to the United States
7/8/1954	7/9/1954	Private Car	Buffalo, N.Y.
		no other	

29

Form N-400 (Rev. 10-15-57)

HISTORY:

that the Principal Applicant was born on 3 April 1920 at Kiew, Ukraine;

(b)(6) that his wife, Wira, nee [redacted] was born on [redacted] at [redacted]

that they were married on 1 September 1947 at Regensburg, Germany;

that his daughter, Lydia, was born on [redacted]

that from 1936 to September 1943 the Principal Applicant was an independent farmer at Sobibor, Poland;

that from September 1943 to May 1944 he was employed as a worker at the harbor of Danzig, (September 1943, the date of the Applicant's arrival in Danzig is listed under item 7 of the Applicant's IRO Registration Form as his entry date into Germany. It is to be noted that for the purpose of entry into Germany under the provisions of the Displaced Persons Act, that Danzig does not constitute a part of Germany);

that in May 1944 he entered into Germany, arriving at Munich, where he was employed as a railway worker until May 1945;

that from May 1945 to May 1947 he resided at Landshut, there occasionally employed by US Army units;

that from May 1947 to September 1949 he was employed as a driver at Regensburg, Germany;

that from September 1949 to the present time he and his family have held residence at Displaced Persons Camp Ulm, the Applicant being unemployed during this period;

that based on information contained in the IRO documentation and/or other documents in the Principal Applicant's dossier, it has been determined that he was a resident of the US Zone of Germany on 1 January 1949.

(b)(6)

DATE PREPARED	INFORMATION FOR TRAVEL DOCUMENT OR PASSPORT	FILE
06/11/08		A [redacted]

1. NAME John DEMJANJUK		2. SEX M
3. OTHER NAMES USED OR KNOWN BY Iwan DEMJANJUK		4. CITIZENSHIP Ukraine
5. DATE OF BIRTH 04/03/1920	6. PLACE OF BIRTH Dubovye Makharintsy, Ukraine	

7. HEIGHT	WEIGHT	EYES	HAIR	COMPLEXION	MARKS OR SCARS
6'1	230	BLU	BLN	Light	

8. NEAREST LARGE CITY TO PLACE OF BIRTH	9. DISTANCE AND DIRECTION OF PLACE OF BIRTH FROM THIS LARGE CITY
KIEW	

10. IF CITIZENSHIP IS DIFFERENT FROM COUNTRY OF BIRTH, EXPLAIN. IF NATURALIZED IN ANY COUNTRY, SHOW DATE AND PLACE OF NATURALIZATION, CERTIFICATE NUMBER, AND STATE HOW CITIZENSHIP WAS ACQUIRED.

11. NAMES; LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN SCHOOLS	12. NAMES, EXACT LOCATIONS AND DATES (YEARS) OF ATTENDANCE OF FOREIGN CHURCHES. INCLUDE DATE AND NATURE OF ANY RELIGIOUS CEREMONY WHICH MAY HAVE BEEN RECORDED.

13. LAST PERMANENT RESIDENCE IN COUNTRY OF CITIZENSHIP *(Show dates of residence)*

14. ADDRESS IN COUNTRY OF LAST FOREIGN RESIDENCE *(Show dates of residence, and Immigration status there)*

15. PLACE OF ENTRY INTO UNITED STATES	DATE OF ENTRY INTO UNITED STATES
New York, NY	02/09/1952

16. LIST DATE AND PLACE OF ISSUANCE AND NUMBER OF PASSPORT, BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR DOCUMENT OF IDENTITY. SPECIFY DATES OF MILITARY SERVICE, COUNTRY AND UNIT, RANK, SERIAL NUMBER, AND PLACES OF INDUCTION AND DISCHARGE.

17. IN POSSESSION OF TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY? ☐ YES ☒ NO. DESCRIBE DOCUMENT (S). IF SUBJECT DID NOT HAVE TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY, OR DOES NOT HAVE SUCH A DOCUMENT NOW, INDICATE WHETHER EVER OBTAINED ONE: ☐ YES ☒ NO. STATE HOW, WHEN, AND WHERE IT WAS OBTAINED: WHAT KIND OF DOCUMENT IT WAS, AND WHAT BECAME OF IT.

18. FATHER'S NAME	DATE OF BIRTH	PLACE OF BIRTH
Nikola J DEMJANJUK		
PRESENT ADDRESS Decease		

19 MOTHER'S MAIDEN NAME	DATE OF BIRTH	PLACE OF BIRTH
Olga MARTSCHENKO		
PRESENT ADDRESS Decease		

20. NAME, RELATIONSHIP, AND ADDRESSES OF RELATIVES ABROAD
Unknown

21. PREVIOUSLY ☐ EXCLUDED ☐ DEPORTED ☒ REQUIRED TO DEPART FROM THE UNITED STATES

ON	VIA	TO
12/28/2005 *(Date)*	*(Port)*	Ukraine, Poland or Germany *(Country)*

22. INDICATE WHETHER EVER ARRESTED, IN PRISON OR A PUBLIC INSTITUTION IN THE COUNTRY OF WHICH A NATIONAL, SUBJECT OR CITIZEN: ☐ YES ☒ NO, IF SO, GIVE DATES AND PLACES

23. NAME, NATIONALITY AND PRESENT ADDRESS OF SPOUSE AND DATE AND PLACE OF MARRIAGE
Wira DEMJANJUK nee [redacted] married on 9/01/47 at Regensburg, Germany

24. NAMES, AGES AND ADDRESSES OF ALL CHILDREN
Lydia DEMJANJUK [redacted]

25. IF NONCANADIAN DEPORTABLE TO CANADA, GIVE DATE AND PORT OF ARRIVAL IN CANADA, AND NAME OF VESSEL

Form I-217 (Rev. 3-30-77)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

(b)(6)

(b)(6)

Form 256a
FOREIGN SERVICE
(Revised February 1945)

APPLICATION FOR IMMIGRATION VISA AND ALIEN REGISTRATION

No. I-[redacted]

TO THE AMERICAN CONSULATE AT Stuttgart, Germany

I, the undersigned APPLICANT FOR AN IMMIGRATION VISA AND ALIEN REGISTRATION, being duly sworn, state the following facts regarding myself:

I claim to be a {nonquota / preference quota} immigrant and my claim is based on the following facts:
eligible Displaced Person of Section 2 (c) of PL 774 as amended.

Available documents required by the Immigration Act of 1924, as amended, are filed herewith and made part hereof, as follows: *& PL 774 as amended
Affidavit in lieu of Birth Certificate.
Police Dossier.
Good Conduct Certificate.
Copy of Marriage Certificate.
Affidavit concerning employment.

FULL AND TRUE NAME: Iwan DEMJANJUK
OCCUPATION: driver
LAST PERMANENT RESIDENCE: Camp Feldafing/Munich, Germany
DATE AND PLACE OF BIRTH: April 3, 1920 at Kiew, USSR
AGE: 31
M [X] S [ ] F [ ] W [ ] D [ ]
NATIONALITY: Polish
RACE: Ukrainian
HAIR: brown
EYES: grey
HEIGHT: 6'1"
COMPLEXION: med
MARKS OF IDENTIFICATION: scar on left hand
FINAL DESTINATION IN UNITED STATES: Decatur, Indiana
DATES OF PREVIOUS SOJOURN IN THE UNITED STATES: none
THE NAMES AND ADDRESSES OF MY PARENTS ARE:
Mother Olga nee MARTSCHENKO Address unknown
Father Nikolaj DEMJANJUK Address unknown
NEITHER OF MY PARENTS IS LIVING AND THE NAME, RELATIONSHIP AND ADDRESS OF NEAREST RELATIVE IN COUNTRY WHENCE I COME IS: XX

That I am aware that the Deportation Act of March 4, 1929, provides in part that an alien who enters the United States in an illegal manner, or who eludes examination or inspection by immigration officials or who obtains entry to the United States by a willful false or misleading representation or willful concealment of a material fact shall be punishable by fine or imprisonment, or both; and that the Immigration Act of 1924 provides in part that a person who knowingly makes under oath any false statement in any application, affidavit, or other document required by the immigration laws or regulations issued thereunder shall be punishable by fine or imprisonment, or both;

That I have had the following excludable classes explained to me, and that, except as hereinafter noted I am not a member of any one of the following classes of individuals excluded from admission to the United States under the immigration laws: (1) idiots; (2) imbeciles; (3) feebleminded; (4) epileptics; (5) insane persons; (6) persons having had previous attacks of insanity; (7) persons with constitutional psychopathic inferiority; (8) persons with chronic alcoholism; (9) paupers; (10) professional beggars; (11) vagrants; (12) persons afflicted with tuberculosis; (13) persons afflicted with loathsome or dangerous contagious disease; (14) persons convicted of, or who admit committing, a crime involving moral turpitude; (15) polygamists; (16) anarchists; (17) persons who believe in or advocate the overthrow by force or violence of the Government of the United States or the assassination of public officials, or the unlawful destruction of property, or who have ever held or advocated such views; (18) persons inadmissible under the provisions of section 3 of the act of February 5, 1917; (19) persons inadmissible under the provisions of the act of October 16, 1918, as amended; (20) prostitutes; (21) procurers; (22) contract laborers; (23) persons likely to become public charges; (24) persons previously deported or ordered deported and permitted to leave the United States voluntarily under the order of deportation; (25) persons previously excluded from admission to the United States at a port of entry; (26) persons whose passage paid by another; (27) unaccompanied children; (28) natives of Asiatic barred zone; (29) illiterates; (30) aliens ineligible to citizenship; (31) persons removed from and at the expense of the United States under the provisions of section 23 of the act of February 5, 1917; (32) persons who left the United States to evade military service;

That I have had the various exceptions to the foregoing excludable classes explained to me, and that I claim to be exempt from exclusion on account of the class [illegible] for the reason following:

22/26 Exempt under DP Act 1948 as amended
I am not a member of any other excludable class.

That I have (not) been in prison or almshouse; I have (not) been in an institution or hospital for the care and treatment of the insane; my (father, mother) (have, has) (not) been in an institution for the care and treatment of the insane; I have (not) been arrested or indicted for, or convicted of, any offense; I have (not) been the beneficiary of a foreign pardon or amnesty, to wit: XX

That within the past 5 years I have (not) been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part to influencing or furthering in the United States the political activities, public relations, or public policy of any other government.

That since reaching the age of 16 years I have resided at the following places, during the periods stated, to wit: 1934-43 Sobibor, Poland; 1943-9/44 Pilau, Danzig; 9/44-5/45 Munich; Germany; 5/45-5/47 Landshut, Germany; 5/47-9/49 Regensburg, Germany; 9/49-4/50 Ulm, Germany; 4/50-10/50 Ellwangen, Germany; 10/50-2/51 Ulm, Germany; 2/51-5/51 Bad Reichenhall, Germany; 5/51 to date Feldafing, Germany

That I am (married, ~~single~~) and the name of my (husband, wife) is Wira nee [redacted]; and resides at Feldafing, Germany [redacted]

That the names, dates of birth, and places of residence of my minor children are:

Daughter: Lydia [redacted]

That I am able to speak, read and write the following languages or dialects: Ukrainian, German, Polish (b)(6)

That my port of embarkation is Bremerhaven, Germany; I shall enter the United States at the port of New York, N.Y. I do (not) have a ticket through to my final destination in the United States; my passage was paid for by International Refugee Organization whose address is

That I intend to join (relative, friend) Donald D. COLTER, UUARC whose address is Decatur, Indiana

That the names and addresses of other close relatives in the United States are: XX

That my purpose in going to the United States is to reside; my occupation will be general farming; I intend to engage in the following activities there: XX

I intend to remain (permanently, temporarily) XX; my education total: 5 years

That I have (not) applied for an immigration or passport visa at any American Consulate, either formally or informally. XX

Wherefore, I apply for an Immigration Visa pursuant to the provisions of the Immigration Act of 1924, as amended, and [illegible]

19

Available documents required by the immigration Act of 1924, as amended, are filed herewith and made part hereof, as follows: *& PL 774 as amended
Affidavit in lieu of birth Certificate.
Police Dossier.
Good Conduct Certificate.
Copy of Marriage Certificate.
Affidavit concerning employment.

DATES OF PREVIOUS SOJOURN IN THE UNITED STATES: none

THE NAMES AND ADDRESSES OF MY PARENTS ARE

Mother Olga nee MARTSCHENKO Address unknown

Father Nikolaj DEMJANJUK Address unknown

WHETHER OF MY PARENTS IS LIVING AND THE NAME, RELATIONSHIP AND ADDRESS OF NEAREST RELATIVE IN COUNTRY WHENCE I COME IS: XX

That I am aware that the Deportation Act of March 4, 1929, provides in part that an alien who enters the United States in an illegal manner, or who eludes examination or inspection by immigration officials or who obtains entry to the United States by a willful false or misleading representation or willful concealment of a material fact shall be punishable by fine or imprisonment, or both; and that the Immigration Act of 1924 provides in part that a person who knowingly makes under oath any false statement in any application, affidavit, or other document required by the immigration laws or regulations issued thereunder shall be punishable by fine or imprisonment, or both;

That I have had the following excludable classes explained to me, and that, except as hereinafter noted I am not a member of any one of the following classes of individuals excluded from admission to the United States under the immigration laws: (1) idiots; (2) imbeciles; (3) feebleminded; (4) epileptics; (5) insane persons; (6) persons having had previous attacks of insanity; (7) persons with constitutional psychopathic inferiority; (8) persons with chronic alcoholism; (9) paupers; (10) professional beggars; (11) vagrants; (12) persons afflicted with tuberculosis; (13) persons afflicted with loathsome or dangerous contagious disease; (14) persons convicted of, or who admit committing, a crime involving moral turpitude; (15) polygamists; (16) anarchists; (17) persons who believe in or advocate the overthrow by force or violence of the Government of the United States or the assassination of public officials, or the unlawful destruction of property, or who have ever held or advocated such views; (18) persons inadmissible under the provisions of section 3 of the act of February 5, 1917; (19) persons inadmissible under the provisions of the act of October 16, 1918, as amended; (20) prostitutes; (21) procurers; (22) contract laborers; (23) persons likely to become public charges; (24) persons previously deported or ordered deported and permitted to leave the United States voluntarily under the order of deportation; (25) persons previously excluded from admission to the United States at a port of entry; (26) persons whose passage paid by another; (27) unaccompanied children; (28) natives of Asiatic barred zone; (29) illiterates; (30) aliens ineligible to citizenship; (31) persons removed from and at the expense of the United States under the provisions of section 23 of the act of February 5, 1917; (32) persons who left the United States to evade military service;

That I have had the various exceptions to the foregoing excludable classes explained to me, and that I claim to be exempt from exclusion on account of the class ~~checked~~ noted above, for the reasons following, to wit:

22/26 Exempt under DP Act 1948 as amended
I am not a member of any other excludable class.

That I have (not) been in prison or almshouse; I have (not) been in an institution or hospital for the care and treatment of the insane; my (father, mother) (have, has) (not) been in an institution for the care and treatment of the insane; I have (not) been arrested or indicted for, or convicted of, any offense; I have (not) been the beneficiary of a foreign pardon or amnesty, to wit: XX

That within the past 5 years I have (not) been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part to influencing or furthering in the United States the political activities, public relations, or public policy of any other government.

That since reaching the age of 14 years I have resided at the following places, during the periods stated, to wit: 1934-43 Sobibor, Poland; 1943-9/44 Pilau, Danzig; 9/44-5/45 Munich, Germany; 5/45-5/47 Landshut, Germany; 5/47-9/49 Regensburg, Germany; 9/49-4/50 Ulm, Germany; 4/50-10/50 Ellwangen, Germany; 10/50-2/51 Ulm, Germany; 2/51-5/51 Bad Reichenhall, Germany; 5/51 to date Feldafing, Germany

That I am (married, ~~single~~) and the name of my (husband, wife) is Wira nee [redacted]; and resides at Feldafing, Germany [redacted]

That the names, dates of birth, and places of residence of my minor children are:

Daughter: Lydia [redacted] (b)(6)

That I am able to speak, read and write the following languages or dialects: Ukrainian, German, Polish

That my port of embarkation is Bremerhaven, Gemany; I shall enter the United States at the port of New York, N.Y.; I do (not) have a ticket through to my final destination in the United States; my passage was paid for by International Refugee Organization whose address is

That I intend to join (relatives, friend) Donald D. COLTER, UUARC whose address is Decatur, Indiana

That the names and addresses of other close relatives in the United States are: XX

That my purpose in going to the United States is to reside; my occupation will be general farming; I intend to engage in the following activities there: XX

I intend to remain (permanently, temporarily) XX; my education: total: 5 years

That I have (not) applied for an immigration or passport visa at any American Consulate, either formally or informally. XX

WHEREFORE, I apply for an Immigration Visa pursuant to the provisions of the Immigration Act of 1924, as amended, and PL 774 as amended

Ivan Demjanjuk
(Signature of applicant)

[seal] Subscribed and sworn to before me this 20th day of December 1951

Harold L. Henrikson
HAROLD L. HENRIKSON
Vice Consul of the United States of America.

Fee No.
Fee $XX no fee prescribed

Preexamined and found admissible, UNDISCOURSE, GER. 28 DEC 1951 Immigrant Inspector

UNITED STATES OF AMERICA

IMMIGRATION VISA AND ALIEN REGISTRATION

NEW YORK, N.Y.

PORT OF 0300

I CERTIFY that the immigrant named herein arrived in the United States at this port on the "GENERAL W.G. HAAN"

S. S.

on FEB 9 1952

and was inspected by me and duly {admitted. / held for BSI}

under Section 2(c) of the Immigration Act of JUN 28 1948

Immigrant Inspector.

RECORD OF BSI

The immigrant named herein was {admitted. / excluded and appeal granted.}

Date

Chairman BSI.

RECORD OF APPEAL

Admitted Excluded Date

Demjanjuk

STATISTICS

Dr. Bearer is Prince, Applicant and is accompanied by his wife Mira DEMJANJUK, visa # [illegible] daughter: Lydia DEMJANJUK, visa # [illegible]

☐ Nonquota; Subdivision ( ) Section 4

☐ Nonpreference; Quota DEC 27 1951 174

☐ First preference; Quota

☐ Second preference; Quota

☒ Section 2 (c) of PL 774 as amended Soviet - Eligible Displaced Person

IMMIGRATION VISA No. 1580/78

American Foreign Service DEC 27 1951

at Stuttgart, Germany Date

SEEN: Iwan DEMJANJUK The bearer

who is of Polish (Citizen or subject)

Nationality, ~~having been seen and examined~~, is classified as a displaced person immigrant and is granted this Immigration Visa pursuant to the Immigration Act of 1924, as amended and PL 774 as amended

The validity of this Immigration Visa expires 4 months from date of issue unless otherwise noted.

HAROLD L. HENRIKSON

Vice Consul of the United States of America.

FEE No ~~XXXXX~~ no fee prescribed

Passport No. or other travel document

Passport waived by Secretary of State under date of September 28, 1948.

(Describe)

Issued to

Issued by 20

Date

Valid until

NOTE.—This Immigration Visa will not entitle the person to whom issued to enter the United States if upon arrival in the United States he is found to be inadmissible to the United States under the immigration laws. (Subdivision (g), sec. 2, Immigration Act of 1924.)

Demjanjuk Dep. Ex. 1

U. S. GOVERNMENT PRINTING OFFICE 16—10257-4

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

(b)(6)

File No: A [redacted]

In the Matter of:

Respondent: John (a.k.a. Iwan) DEMJANJUK

[redacted]
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

SEE ATTACHED CONTINUATION PAGES.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

SEE ATTACHED CONTINUATION PAGES.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

A date, place, and time to be set by the Immigration Court
(Complete Address of Immigration Court, including Room Number, if any)

on _____ at _____ to show why you should not be removed from the United States based on the charge(s) set forth above.
(Date) (Time)

Date: DEC 16 2004

Eli M. Rosenbaum
Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice
Department of Homeland Security

See reverse for important information

Form I-862 (Rev. 4-1-97)

See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☐ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

_____
(Signature and Title of Officer)

Alien's Name		File Number	Date
John (a.k.a. Ivan) DEMJANJUK	(b)(6)	A [redacted]	DEC 16 2004

Upon inquiry conducted by the Office of Special Investigations (OSI) of the U.S. Department of Justice, OSI and the Department of Homeland Security allege that:

1. You are not a citizen or national of the United States.

2. You were born on April 3, 1920, in Dubovye Makharintsy, Ukraine.

3. Not much later than July 19, 1942, you arrived at the Trawniki Training Camp.

4. Upon your arrival at Trawniki Training Camp, you entered service in the Guard Forces of the SS and Police Leader in Lublin District.

5. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland.

6. By January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were serving as an armed guard at the concentration camp located near Lublin, commonly known as Majdanek.

7. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

8. While assigned to Majdanek, you served as an armed guard of prisoners, whom you prevented from escaping.

9. You returned from Majdanek to Trawniki Training Camp by March 26, 1943.

10. In Sobibor, Poland, the Germans constructed one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard.

11. On or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were assigned to the "SS Special Detachment Sobibor." You began serving at the Sobibor extermination camp no later than March 27, 1943.

12. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide.

Signature	Title
Signature	Title Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/02)
*U.S. GPO: 1992-342-483/72348

Alien's Name		File Number	Date
John (a.k.a. Ivan) DEMJANJUK	(b)(7)(c)	[redacted]	DEC 16 2004

13. In serving at Sobibor, you contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

14. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these prisoners to work, and prevented them from escaping.

15. While assigned to Sobibor, you guarded Jewish forced laborers, compelled them to work, and prevented them from escaping.

16. You returned from Sobibor to Trawniki by October 1, 1943.

17. On or about October 1, 1943, you were transferred from Trawniki to Flossenbürg Concentration Camp, where you became a member of the SS Death's Head Battalion Flossenbürg.

18. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin.

19. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

20. While a member of the SS Death's Head Battalion Flossenbürg, you served as an armed guard of prisoners, whom you prevented from escaping.

21. You remained a member of the SS Death's Head Battalion at Flossenbürg Concentration Camp until at least December 1944.

22. Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing.

23. In October 1950, you sought a determination from the Displaced Persons Commission (DPC) that you were a displaced person as defined in the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 (DPA), and therefore eligible to immigrate to the United States under the DPA.

24. In seeking a determination that you were an eligible displaced person, you misrepresented your employment and residences from 1942 to 1944, stating that you worked on a farm in Sobibor, Poland, from 1936 to September 1943, that you worked at the harbor at Danzig from September 1943 until May 1944, and that you were a railway worker in Munich, Germany, from May 1944 to May 1945. In addition, you concealed that you served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Majdanek, and Sobibor, and the SS Death's Head Battalion at Flossenbürg Concentration Camp from 1942 to 1944.

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Immigration and Customs Enforcement, Dept. of Homeland Security

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name		File Number	Date
Iwan DEMJANJUK	(b)(7)(c)	[redacted]	DEC 16 2004

25. On December 27, 1951, you filed an Application for Immigration Visa and Alien Registration with the American consulate at Stuttgart, Germany, to obtain a non-quota immigrant visa to the United States under the DPA. In connection with your visa application, you were interviewed by a U.S. vice consul.

26. On your visa application, you swore that you resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. Your sworn statements on your visa application about your residences and occupations from 1942 to 1945 were not true.

27. On your visa application, you concealed that you were a member of the Guard Forces at Trawniki, Majdanek, and Sobibor, and of the SS Death's Head Battalion at Flossenburg, from 1942 to 1944.

28. You were issued a DPA visa. Pursuant to that visa, you were admitted to the United States as an immigrant at New York, New York, on or about February 9, 1952.

AND on the basis of the foregoing allegations, it is charged that you are subject to removal pursuant to the following provisions of law:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. 1227(a)(4)(D), in that you are an alien described in Section 212(a)(3)(E)(i) of the INA, 8 U.S.C. 1182(a)(3)(E)(i), as you ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany.

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [redacted] Cleveland (b)(6) Date:

In re: JOHN DEMJANJUK a.k.a. John Iwan Demjanjuk

DEC 21 2006

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Broadley, Esquire

ON BEHALF OF DHS: Stephen Paskey
Senior Trial Attorney

CHARGE:

Notice: Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13 of the Displaced Persons Act (DPA), 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 10 of the DPA, 62 Stat. at 1013 (1948)

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924)

[redacted]

By decision dated June 16, 2005, the Immigration Judge denied the respondent's motion to reassign this case to a different Immigration Judge ("CIJ Recusal Dec."). In a separate decision issued on June 16, 2005, the Immigration Judge granted the government's motion for application of collateral estoppel and judgment as a matter of law, and denied the respondent's motion to terminate removal proceedings ("CIJ Collateral Estoppel Dec.").

[redacted]

DECISION AND ORDER OF THE CHIEF IMMIGRATION JUDGE

I. STATEMENT OF THE CASE

The respondent is an eighty-five year old former citizen of the United States and national of the Ukraine. He was born on April 3, 1920, at Dubovye Makharintsy, Ukraine. He was first admitted to the United States at New York, New York, on or about February 9, 1952, on an immigrant visa issued under the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch.647, 62 Stat. 1009 (*amended* June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219).[1] He became a naturalized citizen of the United States in 1958. *See* Exhibit 5.

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. Exhibit 5B. The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. Exhibit 5E.[2] While that appeal was pending, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b) in the district court on February 12, 2003. *U.S. v. Demjanjuk*, 128 Fed. App. 496, 2005 WL 910738 (6th Cir. 2005) (unpublished decision). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *See id.*

The Office of Special Investigations, U.S. Department of Justice, (*hereinafter,* the government) commenced these removal proceedings against the respondent by filing a Notice to Appear (NTA), dated December 17, 2004, with this Court. Exhibit 1.

On February 25, 2005, the government filed a motion for the application of collateral estoppel and judgment as a matter of law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA had been litigated and decided during the respondent's denaturalization proceedings and that, with the exception of allegation #22, the respondent should be precluded from relitigating those issues in these removal proceedings. *See* Exhibit 5.

On February 28, 2005, the Court conducted a Master Calendar hearing in this matter. The Court issued an Order, instructing the respondent to file written pleadings and opposition to the government's motion for collateral estoppel and judgment as a matter of law by May 31, 2005. In addition, the respondent was requested to submit any applications for relief by June 30, 2005.

On May 31, 2005, the respondent filed his written pleadings to the allegations of fact and

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[1] The DPA was enacted to assist in alleviating the problem of World War II refugees. The DPA permitted the admission into the United States of over 400,000 displaced persons by 1951.

[2] The United States Court of Appeals for the Sixth Circuit discussed the six decisions issued in matters related to Respondent's citizenship prior to the denaturalization proceedings. *Id.* at 627.

charges of removability, as set forth in the NTA, and his opposition to the government's motion for application of collateral estoppel and judgment as a matter of law, and moved the Court to terminate the proceedings. Exhibit 14. The respondent denied all four charges of removability, and argued that the government's motion should be denied because he did not have "a full and fair opportunity to litigate substantive issues that go to the heart of these removal proceedings." *See id.*

On June 10, 2005, the Government filed its reply brief in support of its motion for the application of collateral estoppel and judgment as a matter of law.

On June 16, 2005, the Court issued an Order granting the government's motion for application of collateral estoppel and judgment as a matter of law and denying the respondent's motion to terminate proceedings, which is incorporated into this decision by reference. Exhibit 20. The Court sustained all four charges contained in the NTA, and found the respondent removable from the United States. *See id.* [redacted]

On June 23, 2005, the Court issued an Interim Order, canceling the June 30, 2005 hearing and granting the respondent until July 20, 2005 to comply with the Department of Homeland Security's (*hereinafter*, DHS) biometrics requirements. In addition, the Court granted the respondent until September 7, 2005 to submit any applications for relief, and required that the parties file a joint pre-hearing statement by September 21, 2005. *See* Exhibit 23. On July 5, 2005, the Court amended its June 23, 2005 order and granted the parties until October 5, 2005 to submit the joint pre-hearing statement and designated the Ukraine, or in the alternative Germany or Poland, as the country of removal. *See* Exhibit 28.

On September 7, 2005, the respondent submitted his application for deferral of removal and proof of compliance with instructions for providing biometrics. Exhibit 31.

On September 14, 2005, the Court conducted a status conference with the parties. The Court admitted Exhibits 1 - 32. The Court reaffirmed that the parties must submit the joint pre-hearing statement on or before October 5, 2005.

On October 4, 2005, the Court issued an Order granting the respondent's September 29, 2005 motion for an enlargement of time to file the joint pre-hearing statement and ordered the parties to file the joint pre-hearing statement on or before October 12, 2005. *See* Exhibit 34.

On October 12, 2005, the parties jointly filed a statement of stipulated facts not at issue and each party submitted an individual pre-hearing statement. *See* Exhibits 35 - 37ZZ. The respondent submitted nineteen exhibits in support of his pre-hearing statement. *See* Exhibits 36A - 36X. The government submitted fifty-two exhibits in support of its pre-hearing statement. *See* Exhibits 37A - 37ZZ.

On October 18, 2005, the Court issued an Order requiring each party to submit a supplemental memorandum addressing the exhibits submitted on October 12, 2005. *See* Exhibit 38. [redacted]

[redacted] The Court advised that failure to comply with this order with respect to any exhibit would result in that exhibit not being considered. *Id.*

[redacted]

On November 1, 2005, both parties submitted their supplemental memoranda addressing the exhibits submitted on October 12, 2005. Exhibits 40 and 41.

[redacted]

On November 29, 2005, the Court conducted a merits hearing. The respondent, through his attorney, appeared before the Immigration Court in Cleveland, Ohio. [redacted]

Neither the respondent nor the government called any witnesses in this case. However, each side submitted a brief closing argument and the Court took the matter under advisement.

II. STATEMENT OF THE FACTS

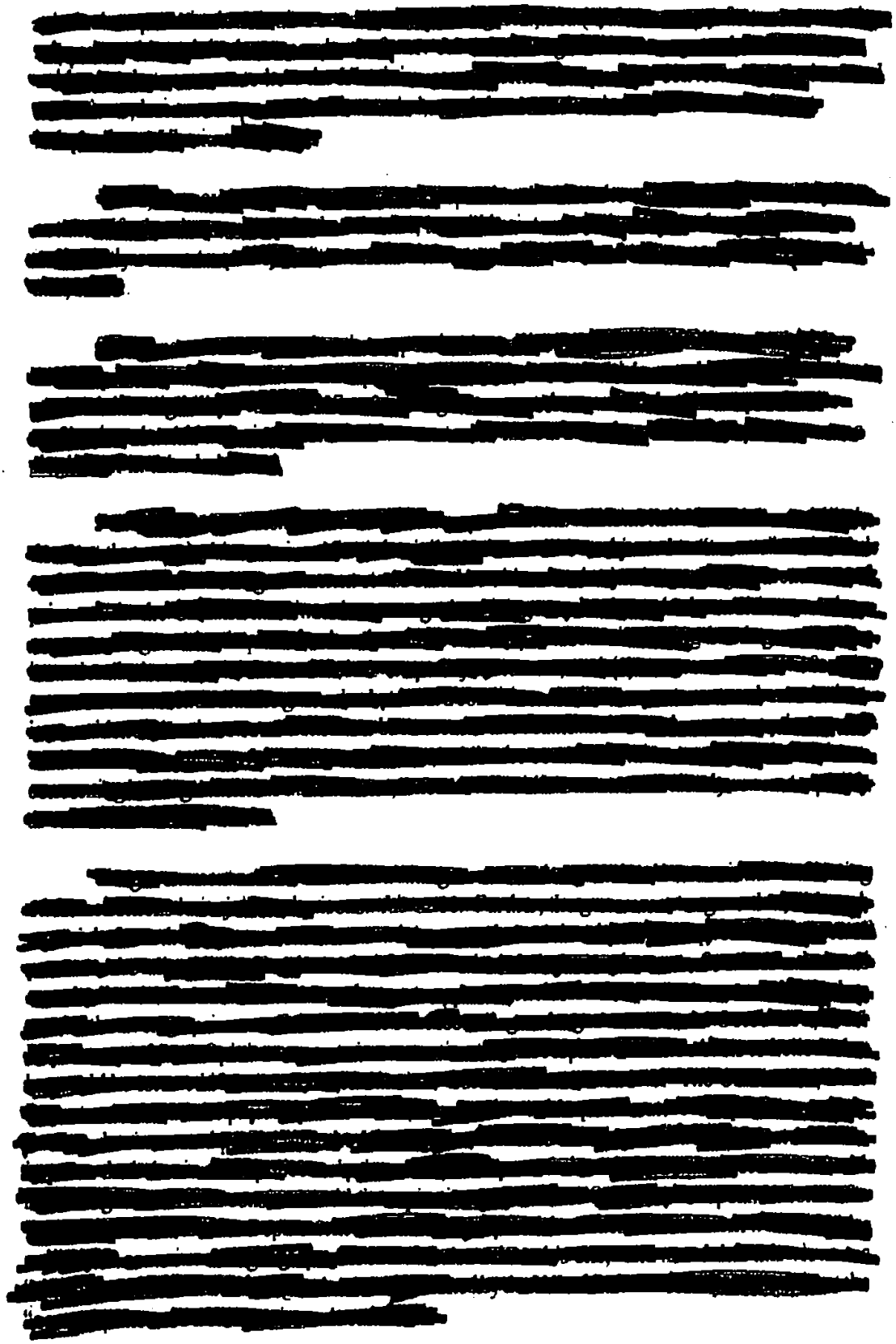
A. [redacted]

Although the respondent was given an opportunity to present testimony at the merits hearing on November 29, 2005, he presented no testimony but relied on his written application and supporting documents. [redacted]

[redacted]

B. [redacted]

[redacted]



[redacted]

C. **Stipulated Facts Not At Issue**

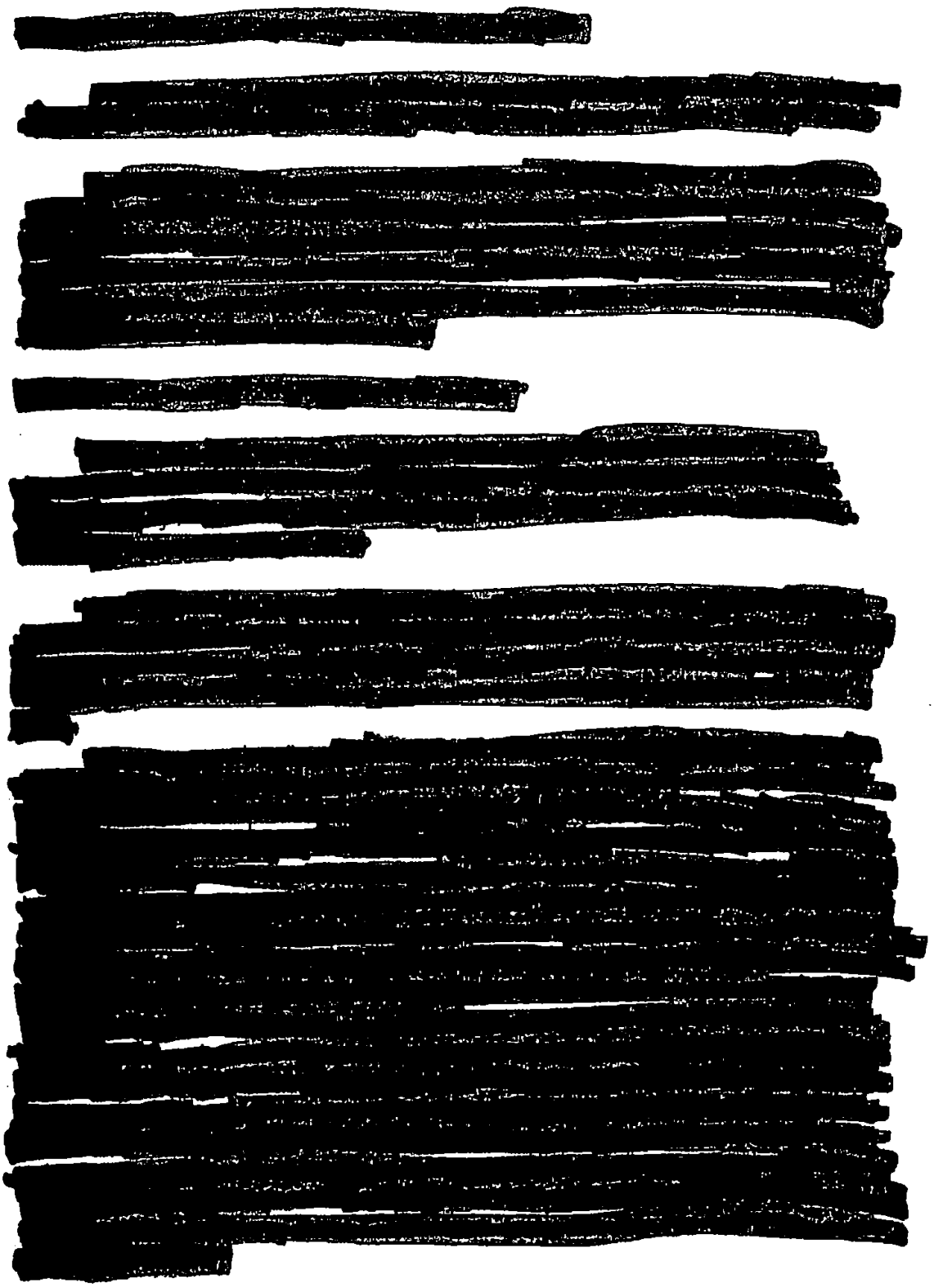
In conjunction with their submission of pre-trial statements, the parties stipulated to numerous facts not at issue. *See* Exhibit 35.

[redacted]

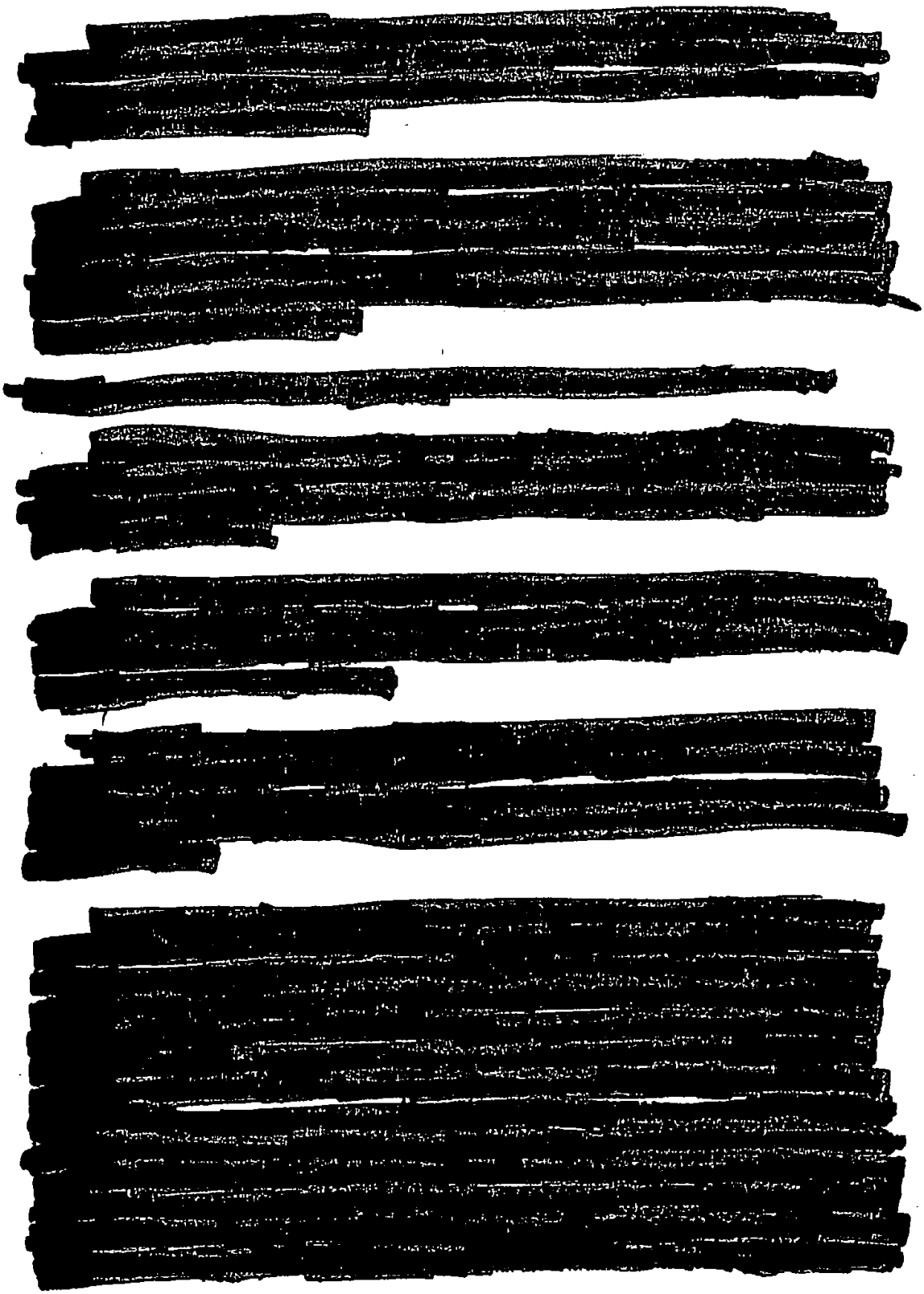
[redacted]

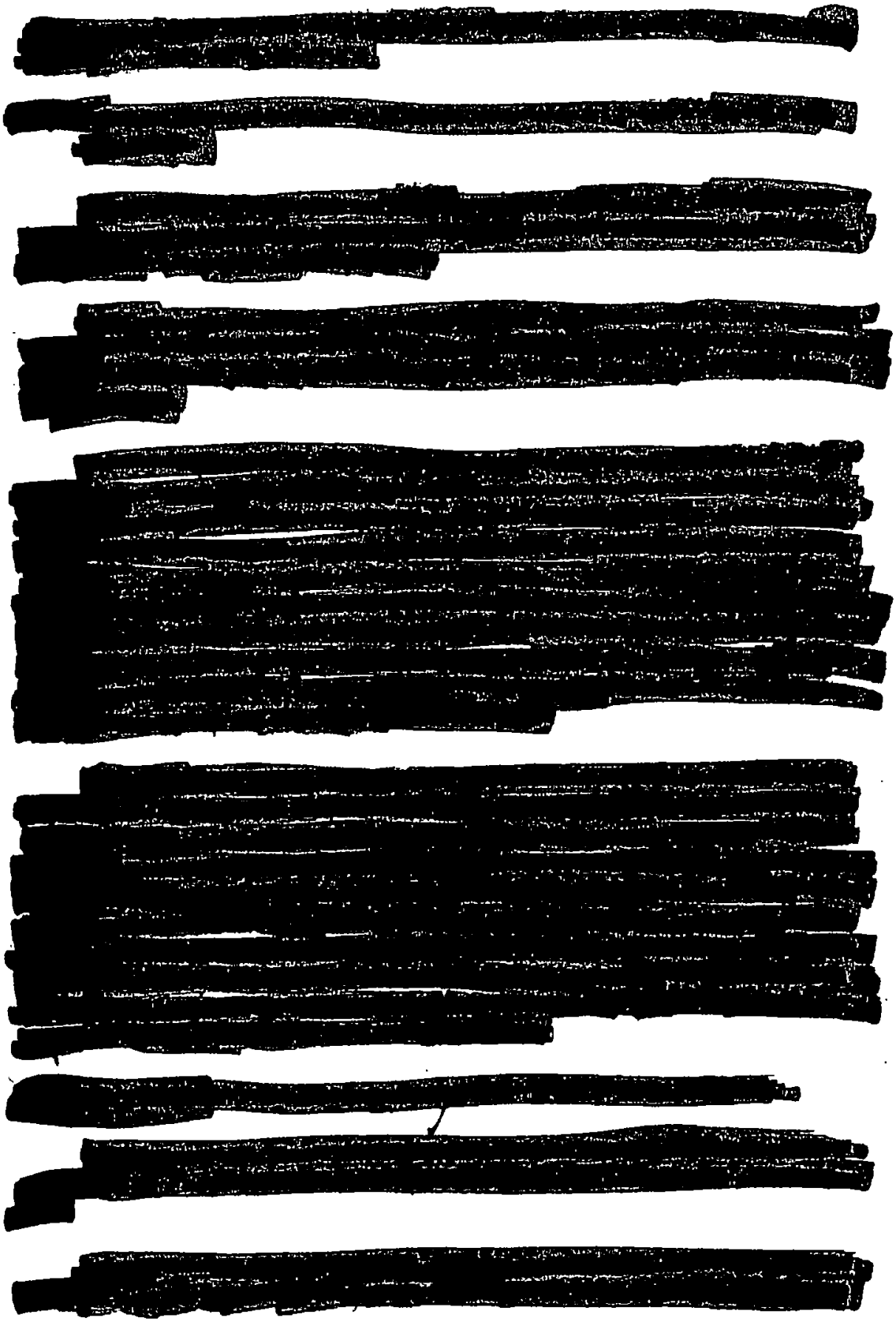
Finally, the parties stipulated to specific facts regarding the respondent's case. The parties agreed that, since the respondent's conviction by the Supreme Court of Israel was overturned, the United States government has not asserted that the respondent is Ivan the Terrible of Treblinka and no allegation of such facts were made during the denaturalization proceedings instituted in 1999. *Id.* at 8. [redacted] Finally, the parties agreed that the denaturalization proceedings that ended in 2002 and these removal proceedings are high profile cases, and that, if the respondent is removed to the Ukraine, his case may well be a high profile matter for the Ukrainian government and attract considerable public interest. *Id.* 8-9; *see also* Exhibit 36.

[redacted]



IV. APPLICATION OF THE LAW TO THE FACTS





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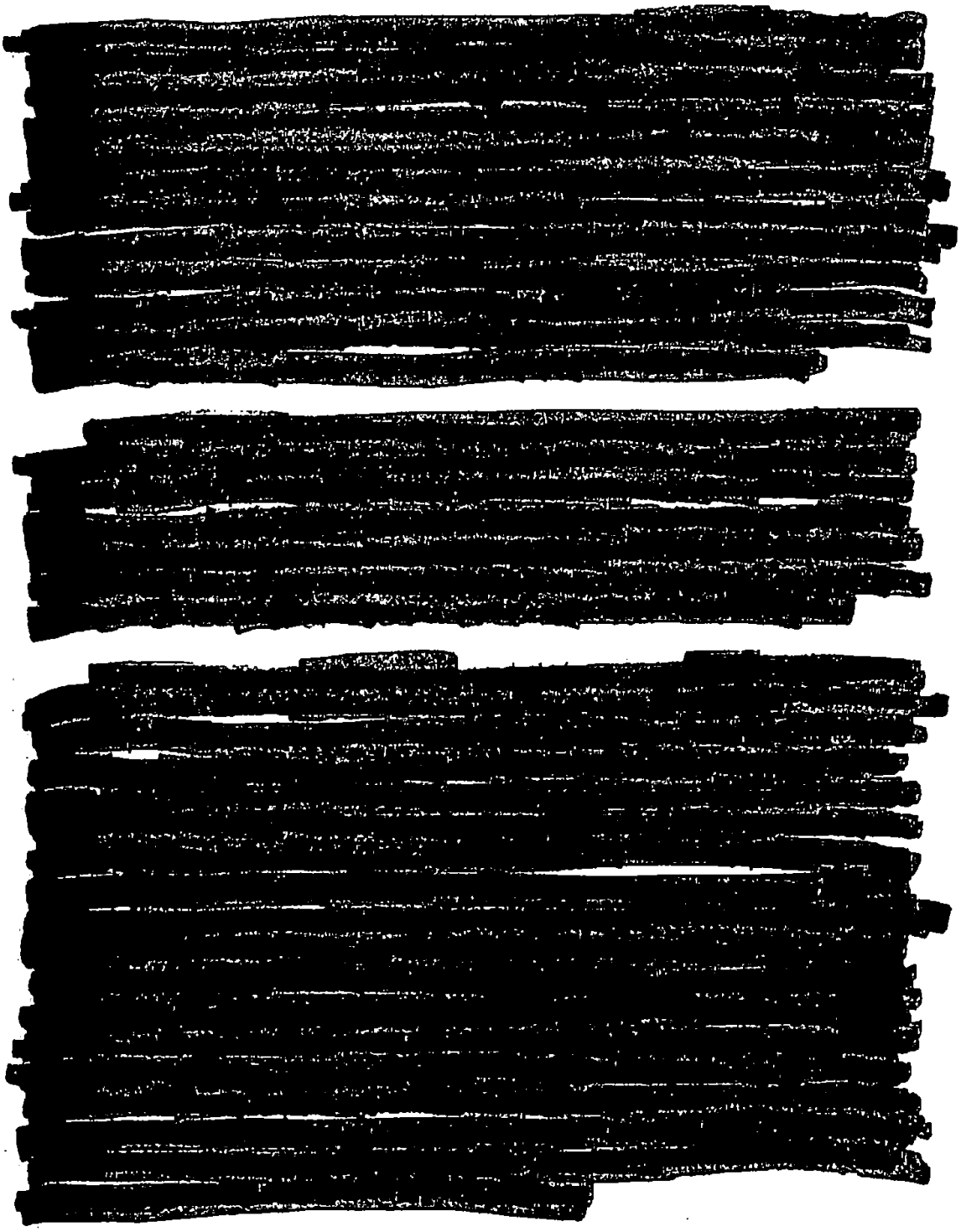
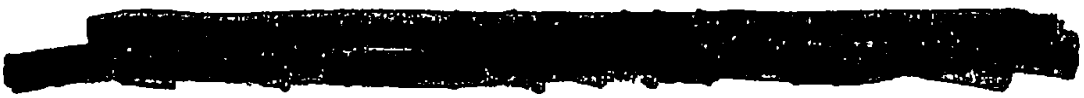


V. DECISION AND ORDER



[redacted]

ORDER

[redacted]

IT IS FURTHER ORDERED that the respondent be removed from the United States to the Ukraine, or in the alternative to Germany or Poland, on the charges contained in the Notice to Appear.

MICHAEL J. CREPPY
CHIEF IMMIGRATION JUDGE

DATE: 12/28/05

[redacted] On January 23, 2006, the respondent filed a Notice of Appeal ("NOA") with the Board of Immigration Appeals, arguing that the Immigration Judge's decisions were in error.[1] The appeal will be dismissed.

I. BACKGROUND

The respondent is a native of Ukraine who first entered the United States on February 9, 1952, pursuant to an immigrant visa issued under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 219 ("DPA"). He was naturalized as a citizen of the United States in 1958. Exh. 5B.

On May 19, 1999, the government filed a three-count complaint in the United States District Court for the Northern District of Ohio seeking revocation of the respondent's citizenship. Exh. 5A. Each count alleged that the respondent's naturalization had been illegally procured and must be revoked pursuant to section 340(a) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. § 1451(a), because the respondent was not lawfully admitted to the United States as required by section 316 of the Act, 8 U.S.C. § 1427(a). Count I asserted that the respondent was not eligible for a visa because he assisted in Nazi persecution in violation of section 13 of the DPA. Count II asserted that the respondent was not eligible for a visa because he had been a member of a movement hostile to the United States, also in violation of section 13 of the DPA. Count III asserted that the respondent was ineligible for a visa or admission to this country because he procured his visa by willfully misrepresenting material facts.

Following a trial that began on May 29, 2001, the district court ruled in the government's favor on all three counts. Exh. 5B. In doing so, the district court issued separate findings of fact and conclusions of law, and a "Supplemental Opinion" in which the court addressed the respondent's defenses. Exhs. 5B and 5C. The district court found that the respondent served willingly as an armed guard at two Nazi camps in occupied Poland (the Sobibor extermination center and the Majdanek Concentration Camp) and at the Flossenburg Concentration Camp in Germany. Exh. 5B, Findings of Fact ("FOF") 100-05, 123-35, 162-68, 291.

The district court found that Sobibor was created expressly for the purpose of killing Jews, that thousands of Jews were murdered there by asphyxiation with carbon monoxide gas, and that the respondent's actions as a guard there contributed to the process by which these Jews were murdered. Exh. 5B, FOF 128-32. The district court also found that a small number of Jewish prisoners worked as forced laborers at Sobibor, and that the respondent guarded these forced laborers, "compelled them to work, and prevented them from escaping." Exh. 5B, FOF 133-34. The district court found that Jews, Gypsies, and other civilians were confined at Majdanek and Flossenburg because the Nazis considered them to be "undesirable," and that prisoners at both camps were subjected to inhumane treatment, including

[1] We note that the respondent filed an interlocutory appeal regarding the Immigration Judge's June 16, 2005, decision denying his motion asking the Immigration Judge to recuse himself from the case and have it randomly reassigned. In an order dated September 6, 2005, the Board declined to consider the interlocutory appeal and returned the record to the Immigration Court without further action.

forced labor, physical and psychological abuse, and murder. Exh. 5B, FOF 102-03 (Majdanek); 166-67 (Flossenburg). The district court further found that by serving as an armed guard at each camp, the respondent prevented prisoners from escaping. Exh. 5B, FOF 105, 168.

The district court concluded that as a result of this wartime service to Nazi Germany, the respondent was ineligible for the DPA visa under DPA § 13 because (1) he had assisted in Nazi persecution and (2) he had been a member of a movement hostile to the United States. Exh. 5B, Conclusions of Law ("COL") 46, 56. In addition, the district court concluded that the respondent was ineligible for a visa or admission to the United States because he willfully misrepresented his wartime employment and residences when he applied for a DPA visa. Exh. 5B, COL 68.

The district court's factual findings with regard to the respondent's wartime Nazi service rested primarily on a group of seven captured wartime German documents which, according to the court's findings, identified the respondent by, among other things, his name, date of birth, nationality, father's name, mother's name, military history, and physical attributes, including a scar on his back. One of the German documents was a *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp (the "Trawniki card"). In addition to identifying information, the Trawniki card contains a photograph that the court found resembles the respondent and a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In a decision dated April 20, 2004, the United States Court of Appeals for the Sixth Circuit rejected the respondent's claims and affirmed the district court's decision in all respects. *United States v. Demjanjuk*, 367 F.3d 623 (6th Cir. 2004), *cert. denied*, 543 U.S. 970 (2004). On December 17, 2004, the Department of Homeland Security served the respondent with a Notice to Appear ("NTA") charging that he is removable under the above-captioned charges. Michael J. Creppy, who was then the Chief Immigration Judge, assigned the case to himself.[2]

On February 25, 2005, the government filed a motion asking the immigration court to apply collateral estoppel to the findings of fact and conclusions of law in the denaturalization case, and to hold that the respondent is removable as a matter of law on the charges contained in the NTA. Exh. 5. On April 26, 2005, the respondent filed a motion to reassign the case to a randomly-selected judge at the Arlington Immigration Court. Exh. 9.

On June 16, 2005, the Chief Immigration Judge denied the respondent's motion to reassign, granted the government's motion to apply collateral estoppel, and held that the respondent was removable as charged. Exhs. 19 and 20. [redacted]

[2] All references in this decision to the "Chief Immigration Judge" are to Michael J. Creppy, who was Chief Immigration Judge at the time of the respondent's removal hearing.

[redacted] the Chief Immigration Judge ordered the respondent removed to Ukraine, with alternate orders of removal to Germany or Poland. The respondent filed a timely appeal to the Board of Immigration Appeals.

II. THE CHIEF IMMIGRATION JUDGE'S DECISIONS

A. The Immigration Judge's June 16, 2005, Decision Regarding the Assignment of the Respondent's Case

The Chief Immigration Judge assigned himself to hear the respondent's case. On April 26, 2005, the respondent filed a Motion to Reassign to Arlington Immigration Judge. The respondent raised three issues in support of his motion: 1) that the Chief Immigration Judge lacked the authority to preside over removal proceedings; 2) that the Chief Immigration Judge should recuse himself because a reasonable person would question his impartiality; and 3) that due process requires random reassignment to an Arlington Immigration Court Judge.

In a decision dated June 16, 2005, the Chief Immigration Judge denied the respondent's motion, deciding that 1) he did have the authority to conduct removal proceedings; 2) despite the respondent's allegations to the contrary, recusal was not warranted because a reasonable person, knowing all of the relevant facts, would not reasonably question his impartiality; and 3) due process did not require random Immigration Judge assignment of the respondent's removal proceedings.

B. The Immigration Judge's June 16, 2005, Decision Regarding Collateral Estoppel

On February 21, 2002, the United States District Court for the Northern District of Ohio, Eastern Division, entered judgment revoking the respondent's United States citizenship. *United States v. Demjanjuk*, No. 1:99CV1193, 2002 WL 544622 (N.D. Ohio Feb. 21, 2002) (unpublished decision). The United States Court of Appeals for the Sixth Circuit affirmed this decision on April 30, 2004. *United States v. Demjanjuk*, 367 F.3d 623. On February 12, 2003, the respondent filed a motion for relief pursuant to Fed.R.Civ.P. 60(b). The district court denied the motion on May 1, 2003, and the United States Court of Appeals for the Sixth Circuit affirmed the decision on April 20, 2005. *United States v. Demjanjuk*, 128 Fed. Appx. 496, 2005 WL 910738 (6th Cir. 2005).

On February 25, 2005, the government filed a Motion for the Application of Collateral Estoppel and Judgment as a Matter of Law and a brief in support of the motion. The government contended that each of the factual allegations set forth in the NTA was litigated and decided during the respondent's

denaturalization proceedings and that, with the exception of allegation number 22,[3] those facts were necessary to the judgment in that case. Thus, the government argued that the respondent should be precluded from contesting the issues in removal proceedings. The government also argued that collateral estoppel precluded the respondent from relitigating the legal conclusions in the denaturalization proceeding concerning his eligibility for a DPA visa and the lawfulness of his admission to the United States.

The Immigration Judge found that collateral estoppel did apply to all of the allegations of fact, except number 22, and to the charges contained in the NTA. Specifically, the Immigration Judge found that in the removal proceedings before him, the government sought to remove the respondent based on the same factual and legal issues presented in the denaturalization case. The Immigration Judge went through each allegation of fact at issue, and determined that the court had reached a decision on each one, and that every fact alleged in the NTA (except allegation number 22) was necessary and essential to the district court's judgment revoking the respondent's citizenship. Therefore, the Immigration Judge found that the respondent was collaterally estopped from relitigating the factual and legal issues presented, and that he was removable pursuant to the four charges of removability.

[redacted]

III. DISCUSSION

On appeal the respondent argues that: 1) the Chief Immigration Judge has no jurisdiction to conduct removal proceedings; 2) the Chief Immigration Judge improperly refused to recuse himself as required by applicable law; 3) the Chief Immigration Judge improperly refused to assign the respondent's case on a random basis to an Immigration Judge sitting in the Arlington, Virginia Immigration Court with responsibility for cases arising in Cleveland, Ohio; 4) the Chief Immigration Judge erroneously found that certain facts

[3] Allegation 22 in the Notice to Appear reads as follows: "Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing."

relevant to the removability issue had been established by collateral estoppel [redacted] Each of these arguments is addressed below.

A. The Power of the Chief Immigration Judge to Conduct Removal Proceedings

The respondent argues that the position of Chief Immigration Judge is purely administrative, i.e., that the regulations do not confer on the Chief Immigration Judge the powers of an Immigration Judge to conduct hearings, and therefore the Chief Immigration Judge was without authority to conduct removal proceedings in this case. We disagree.

The Attorney General has been vested by Congress with the authority to conduct removal proceedings under the INA and to "establish such regulations" and "delegate such authority" as may be needed to conduct such proceedings. *See* section 103(g)(2) of the Act; 8 U.S.C. § 1103(g)(2). In 1983, the Attorney General created the Executive Office for Immigration Review ("EOIR") to carry out this function. 48 Fed. Reg. 8038 (Feb. 25, 1983). The authority of various officials within EOIR, including Immigration Judges and the Chief Immigration Judge, is discussed in the regulations at 8 C.F.R. §§ 1003.1 through 1003.11.

The duties of the Chief Immigration Judge are set forth as follows:

> The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:
>
> (a) Establishment of operational policies; and
> (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8 C.F.R. § 1003.9.

We reject the argument that the regulatory provision which sets forth the duties of the Chief Immigration Judge is a comprehensive grant of authority which precludes him from performing any other duties. The regulation sets forth only some of the specific responsibilities and duties assigned to the Chief Immigration Judge. However, the explicit language of the regulation makes clear that the Chief Immigration Judge's duties are "not limited to" those explicitly referenced in the regulation. Therefore, we must determine if conducting removal proceedings falls within the other duties for which the Chief Immigration Judge is responsible.

Pursuant to 8 C.F.R. § 1003.10, Immigration Judges are authorized to preside over exclusion, deportation, removal, and asylum proceedings and any other proceedings "which the Attorney General may assign them to conduct." "The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service." 8 C.F.R. § 1001.1(l).

The Chief Immigration Judge is an attorney whom the Attorney General appointed as an administrative judge within the Executive Office for Immigration Review. In this context, we note that his position description indicates that the Chief Immigration Judge's "occupational code" is "905," which is the code for attorney. Exh. 19A. The Chief Immigration Judge is also "qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act" as required by the regulation. That he is considered qualified to conduct such proceedings is manifest by the fact that his position description, signed by the director of EOIR, the Attorney General's delegate, explicitly provides that "[w]hen called upon, [the Chief Immigration Judge] performs the duties of an immigration judge in areas such as exclusion proceedings, discretionary relief from deportation, claims of persecution, stays of deportation, recission of adjustment of status, custody determinations, and departure control." Exh. 19A.[4] Because the Chief Immigration Judge is an attorney appointed by the Attorney General's designee (the Director of EOIR) as an administrative judge qualified to conduct removal proceedings under section 240 of the Act, we conclude that he is an Immigration Judge within the meaning of 8 C.F.R. § 1001.1(l), and therefore had the authority to conduct the removal proceedings in this case.[5]

B. Recusal of the Chief Immigration Judge

The respondent argues that the Chief Immigration Judge should have recused himself from hearing this case because a reasonable person, possessed of all relevant facts, might reasonably question his impartiality. Specifically, the respondent asserts that because the Chief Immigration Judge wrote a law review article addressing the treatment of Nazi war criminals under United States immigration law, and

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[4] The position description states that "[w]hen called upon, [the Chief Immigration Judge] performs the duties" of an Immigration Judge. However, there is no statutory or regulatory authority requiring a higher authority in EOIR or the Department of Justice to "call upon" the Chief Immigration Judge to act as an Immigration Judge before he has the authority to do so. Therefore, we reject the respondent's suggestion that the authority of the Chief Immigration Judge is limited based on the language in the position description. Instead, the language of the position description simply acknowledges the reality that the Chief Immigration Judge may occasionally be "called upon" to "perform[] the duties" of an Immigration Judge by workload and other considerations.

[5] We note that the Board of Immigration Appeals and the United States Court of Appeals for the Sixth Circuit have both affirmed a decision in which the Chief Immigration Judge performed the duties of an Immigration Judge. *Matter of Ferdinand Hammer*, File A08-865-516 (BIA Oct. 13, 1998), *aff'd, Hammer v. INS*, 195 F.3d 836 (6th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

because two of the three cases he heard over a period of many years dealt with this issue, the Chief Immigration Judge's decision to appoint himself to hear this case raises serious concerns about his impartiality.

In a 1998 law review article, the Chief Immigration Judge addressed the treatment of Nazi war criminals under United States immigration law. *See* Michael J. Creppy, *Nazi War Criminals in Immigration Law*, 12 Geo. Immigr. L.J. 443 (1998). The article attempts, by its own terms, to be a "comprehensive presentation" on the law relating to the removal of persons who assisted in Nazi persecution. The first ten pages are devoted to "historical development" of the law in this area. In this section of the article the Chief Immigration Judge noted that "it is believed that a high number of suspected Nazi War Criminals illegally entered the United States under" the Displaced Persons Act of 1948. *Id.* at 447. The DPA is the provision of law under which the respondent entered this country in 1951.

The next fourteen pages of the law review article discuss the investigation, apprehension, and attempted removal of persons who allegedly assisted in Nazi persecution, including a detailed and objective discussion of the removal process. *Id.* at 453-67. The final three paragraphs – less than one published page in the article – discuss the Chief Immigration Judge's opinions "on the future of this area of immigration law." Those paragraphs read, in their entirety:

> A. Time Issue
>
> The issue of Nazi War Criminals in immigration law will eventually subside. This is not because of a lack of interest, rather it is a reflection of the challenge we face every day – the passage of time. It has been nearly 52 years since World War II ended. If a person had been 18 years old at the time the war ended, he would be 70 years old today. This "biological solution" as it has been called, effects [sic] not just the ability to find the Nazi War Criminals alive and in sufficient health to stand trial, but also it challenges the government's ability to find witnesses to testify to the atrocities. It is a simple fact that time will resolve the problem.
>
> B. A Change in Scope or Focus
>
> Where will this leave this area of immigration law? The author believes the focus of the government efforts will or should turn to targeting the removal of other war crime criminals believed to have committed similar atrocities. For example, in the last few years we have seen the devastation that has occurred in areas such as Bosnia, Somalia, Rwanda and Liberia.
>
> The IMMACT 90 included a revision to our immigration laws, in section 212(a)(2)(E)(ii), which mandates that aliens who have committed genocide not be admitted into the United States. Regrettably, it is quite possible that some of the perpetrators of these crimes against humanity have reached or may reach safe harbor within U.S. borders. With the

> emphasis on removing Nazi war criminals diminishing as a natural effect of time, the government may seek to renew its efforts by ferreting this new crop of war criminals. It is a sad testimony to humanity that as a society we continue to generate war criminals. As long as we persist in taking action against them, we continue to triumph over them.

Id. at 467.

The respondent argues that the Chief Immigration Judge's personal views on the need for aggressive prosecution of suspected Nazi war criminals under U.S. immigration law betrays an improper bias. Respondent's Br. at 18. Specifically, the respondent argues that "the Chief Immigration Judge's opinion that those suspected of having committed war crimes and 'similar atrocities' should be 'targeted for removal,' reveals a lack of impartiality towards aliens – such as the respondent – who have been placed in removal proceedings and charged with participation in Nazi persecution or genocide under the INA." Respondent's Br. at 18. We disagree.

The standard for recusal of an Immigration Judge is whether "it would appear to a reasonable person, knowing all the relevant facts, that the judge's impartiality might reasonably be questioned." Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 05-02: *Procedures For Issuing Recusal Orders in Immigration Proceedings* ("Recusal Memo"), published in 82 Interp. Rel. 535 (Mar. 28, 2005). The Board has declared that recusal is warranted where: 1) an alien demonstrates that he was denied a constitutionally fair proceeding; 2) the Immigration Judge has a personal bias stemming from an extrajudicial source; or 3) the Immigration Judge's conduct demonstrates "pervasive bias and prejudice." *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982).

In total, the respondent's claims of bias are premised on fewer than a half dozen sentences in a 25-page article. We note that the Chief Immigration Judge did not make any comment that would appear to commit him to a particular course of action or outcome in this or any other case. In fact, he did not specifically mention the respondent and he made no statement indicating any personal bias or animosity toward the respondent or any other identifiable individual. Instead, he emphasized that the respondents in Holtzman Amendment cases are entitled to due process protections such as an evidentiary hearing and both administrative and judicial review, and that the government has the burden of proving its allegations by clear and convincing evidence. *See* 12 Geo. Immigr. L. J. at 464.

We find that the Chief Immigration Judge's law review article expressed nothing more than a bias in favor of upholding the law as enacted by Congress, which is not a sufficient basis for recusal. *See Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001) (noting that "[i]t is well-established that a judge's expressed intention to uphold the law, or to impose severe punishment within the limits of the law upon those found guilty of a particular offense," is not a sufficient basis for recusal); *United States v. Cooley*, 1 F.3d 985, 993 n.4 (10th Cir. 1993) ("Judges take an oath to uphold the law; they are expected to disfavor its violation."); *Smith v. Danyo*, 585 F.2d 83, 87 (3rd Cir. 1978) (noting that "there is a world of difference between a charge of bias against a party . . . and a bias in favor of a particular legal principle"); *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) ("A judge cannot be disqualified merely

because he believes in upholding the law, even though he says so with vehemence."). Moreover, we find no instances of a federal judge having been recused under circumstances similar to this case, i.e., where he or she made general statements about an area of law. *Compare, e.g., United States v. Cooley*, *supra*, at 995 (recusal required where judge appeared on "Nightline" and expressed strong views about a pending case); *United States v. Microsoft Corp.*, 253 F.3d 34, 109-15 (D.C. Cir. 2001) (district court judge created an appearance of impropriety by making "crude" comments to the press about Bill Gates and other Microsoft officials); *Roberts v. Bailar*, 625 F.2d 125, 127-30 (6th Cir. 1980) (disqualification required in employment discrimination suit against post office, where judge stated during a pre-trial hearing: "I know [the Postmaster] and he is an honorable man and I know he would never intentionally discriminate against anybody.").

We also note that the standard for recusal can only be met by a showing of actual bias. *See Harlin v. Drug Enforcement Admin.*, 148 F.3d 1199, 1204 (10th Cir. 1998) (administrative judge enjoys "a presumption of honesty and integrity" which may be rebutted only by a showing of actual bias); *Del Vecchio v. Illinois Dep't of Corr.*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (en banc) (absent a financial interest or other clear motive for bias, "bad appearances alone" do not require disqualification of a judge on due process grounds). Nothing in the Chief Immigration Judge's decisions or the record establishes that the Chief Immigration Judge was actually biased against the respondent, nor does the respondent point to any error in the decisions which allegedly resulted from bias.

We also reject the respondent's argument regarding the alleged appearance of impropriety based on the fact that although the Chief Immigration Judge presided over only three removal cases from 1996 to 2006, two of those cases involved aliens who allegedly assisted in Nazi persecution. The respondent argues that the Chief Immigration Judge has "exhibited an unmistakable interest" in Holtzman Amendment cases by writing a law review article about such cases and presiding over such cases during a ten-year period when he heard a total of three cases. Respondent's Br. at 19-20. The respondent speculates that this interest shows "a decided lack of judicial impartiality, if not outright bias," and that by presiding over this case the Chief Immigration Judge is attempting to "dictate" the outcome of this proceeding. Respondent's Br. at 20, 23. We disagree.

A judge is not precluded from taking a special interest in a certain area of law, and the fact that a judge has done so does not imply that the judge cannot fairly adjudicate such cases. *See e.g., United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (bias in favor of a legal principle does not necessarily indicate bias against a party). Moreover, federal courts have recognized that a departure from random assignment of judges, including the assignment of a case to the Chief Judge, is permissible when a case is expected to be protracted and presents issues that are complex or of great public interest. For example, in *Matter of Charge of Judicial Misconduct or Disability*, 196 F.3d 1285, 1289 (D.C. Cir. 1999), the D.C. Circuit upheld a local rule permitting the Chief Judge to depart from the random assignment of cases if he concluded that the case will be protracted and a non-random assignment was necessary for the "expeditious and efficient disposition of the court's business." The appeals court further recognized that it was permissible for the Chief Judge to assign such cases to judges who were "known to be efficient" and who had sufficient time in their dockets to "permit the intense preparation required by these high profile cases." Id. at 1290.

We note that Holtzman Amendment cases are generally complicated and require preparation of lengthy written decisions. In contrast, most decisions by Immigration Judges in removal proceedings are decided in an oral opinion issued from the bench immediately after the evidence has been presented.[6] The Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of law, and was not burdened with an overcrowded docket. For these reasons, we find that it was reasonable for the Chief Immigration Judge to assign the case to himself, i.e., he had the time necessary to conduct this case and the expertise needed to handle it in a fair, impartial, and efficient manner. Thus, we conclude that an objectively reasonable person would not regard the Chief Immigration Judge's assignment of this case to himself as a reason to question his impartiality. Rather, such a person would likely conclude that the assignment was both reasonable and justified.

After reviewing the record, we find that a reasonable person knowing all the facts of this case would not question the Chief Immigration Judge's impartiality. Moreover, the respondent has not shown that he was denied a constitutionally fair proceeding, that the Immigration Judge had a personal bias against him stemming from an extrajudicial source, or that the Chief Immigration Judge's conduct demonstrated a pervasive bias and prejudice against him. For all of these reasons, we conclude that the Chief Immigration Judge was not required to recuse himself from the respondent's removal proceedings.

C. Assignment of the Respondent's Case on a Random Basis

The respondent argues that the Chief Immigration Judge should have assigned the respondent's case to an Arlington Immigration Judge on a random basis. Specifically, citing to 8 C.F.R. § 1003.10, the respondent argues that by singling out the respondent's case and imposing himself as arbiter of his removal proceedings, rather than allowing the case to be assigned to an Immigration Judge on a random basis according to the method routinely employed by the Arlington Immigration Court, he sidestepped the proper regulatory procedures. The respondent asserts that the Chief Immigration Judge's actions raise such serious due process concerns that the respondent was deprived of a fair hearing.

In support of his argument, the respondent points to cases which note that one tool to help ensure fairness and impartiality in judicial proceedings is the assignment of cases to available judges on a random basis. *See Beaty v. Chesapeake Ctr., Inc.*, 835 F.2d 71, 75 n.1 (4th Cir. 1987) (Murnaghan, C.J., concurring) ("One of the court's techniques for promoting justice is randomly to select panel members to hear cases."). However, the respondent has pointed to no statute, regulation, or case law which affirmatively requires the random assignment of an Immigration Judge in removal proceedings, or which strips the Chief Immigration Judge of the authority to assign a specific case. Indeed, at least one federal court has expressly concluded that random assignment is not required to satisfy the standard of impartiality, stating that "[a]lthough random assignment is an important innovation in the judiciary, facilitated greatly by the presence of computers, it is not a necessary component to a judge's impartiality. *Obert v. Republic W. Ins.*, 190 F.Supp.2d 279, 290-91 (D.R.I. 2002). Moreover, the respondent himself acknowledges that random assignment is not "mandatory, but that it is appropriate given the history and circumstances of this unique case." Respondent's Br. at 25. As discussed above, the Chief Immigration Judge had previously presided over a Holtzman Amendment case, had published an article in that area of

[6] The Chief Immigration Judge issued three separate written decisions in this case.

law, and was not burdened with an overcrowded docket. For these reasons, and because there is no authority mandating the random assignment of the respondent's removal proceedings, we reject the respondent's argument on this point.

D. Establishing Facts Relating to Removability by Collateral Estoppel

The respondent next argues that the Chief Immigration Judge improperly applied the doctrine of collateral estoppel. In his June 16, 2005, decision, the Chief Immigration Judge applied collateral estoppel with respect to all but one of the allegations in the NTA. The respondent argues that collateral estoppel cannot be applied to the present case because the respondent did not have a full and fair opportunity to litigate the issues on which the Chief Immigration Judge granted the government's collateral estoppel motion. We disagree.

The doctrine of collateral estoppel, or issue preclusion, provides that "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Hanimer v. INS*, 195 F.3d 836, 840 (6th Cir. 1999), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). In a case involving the Board of Immigration Appeals, the United States Court of Appeals for the Sixth Circuit decided that the doctrine of collateral estoppel applies only when 1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; 2) the issue was actually litigated and decided in the prior action; 3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; 4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and 5) the party to be estopped had a full and fair opportunity to litigate the issue. *Id.* at 840 (citations omitted); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 67 (BIA 1984) (holding that an alien's prior denaturalization proceedings conclusively established the "ultimate facts" of a subsequent deportation proceeding, so long as the issues in the prior suit and the deportation proceeding arose from "virtually identical facts" and there had been "no change in the controlling law.").

1. The Respondent's Collateral Estoppel Argument Regarding the Trawniki Card

The respondent's first collateral estoppel argument centers around the signature on the German *Dienstausweis*, or Service Identity Card, identifying the holder as guard number 1393 at the Trawniki Training Camp. The Trawniki card also identifies the holder by name, date of birth, and other information, and contains a signature in the Cyrillic alphabet that transliterates to "Demyanyuk." Exh. 5B, FOF 2-19.

In each trial the respondent argued, unsuccessfully, that the Trawniki card did not refer to him. In 1987 the respondent faced a criminal trial in Israel. During that trial, the respondent offered the testimony of Dr. Julius Grant, a forensic document examiner who claimed that the signature on the Trawniki card was not made by the respondent. In response, the Israeli government elicited testimony from Dr. Gideon Epstein, the retired head of the Forensic Document Laboratory at the former Immigration and Naturalization Service. In his testimony, Dr. Epstein rejected Dr. Grant's conclusions regarding the signature on the Trawniki card, pointing out specific flaws in his testimony. See Exh. 17M. The respondent's attorney cross-examined Dr. Epstein, but did not question him about his critique of Dr. Grant's testimony. The Israeli court rejected Dr. Grant's conclusions regarding the Trawniki card. Exh. 17G at 95-96.

In rejecting the respondent's claim that he was not the person named on the Trawniki card, the denaturalization court found that Dr. Grant's testimony in Israel was "not reliable or credible" and cited a portion of Dr. Epstein's testimony. Exh. 5B. FOF 22. The respondent subsequently filed a series of post-trial motions and an initial brief in support of his appeal to the United States Court of Appeals for the Sixth Circuit, none of which mention his present allegation that Dr. Epstein testified falsely and that the district court improperly relied on the testimony of Dr. Epstein in disregarding Dr. Grant's testimony.

The respondent first raised the issue of Dr. Epstein's allegedly false testimony in a reply brief filed during the pendency of his appeal to the United States Court of Appeals for the Sixth Circuit. Respondent's Br. at 30. The Sixth Circuit refused to consider the issue and granted the government's motion to strike his reply brief on the ground that issues raised for the first time on appeal are beyond the scope of the court's review. *See* 367 F.3d at 638. The Sixth Circuit also commented on the lack of evidence or legal support offered with respect to the respondent's arguments regarding Dr. Epstein's testimony. Specifically, the Court noted that the respondent "cannot raise allegations in the eleventh hour, without evidentiary or legal support, as '"issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived...."' *Demjanjuk* 367, F.3d at 638 (citations omitted).

We reject the respondent's argument that he did not have a fair opportunity to litigate his claims regarding the Trawniki card. The respondent knew (or should have known) all pertinent facts at the completion of Dr. Epstein's direct examination. However, he did not raise any objection concerning Dr. Epstein's testimony during cross-examination, nor did he object to this testimony in his first post-trial motions. Even when the respondent appealed his case to the United States Court of Appeals for the Sixth Circuit he failed to question the testimony of Dr. Epstein in his initial brief. It was only in a reply brief that he finally raised this issue. At that late point in the proceedings, and given what the Sixth Circuit found to be a dearth of evidentiary or legal support, the Court found that the respondent had waived his opportunity to raise a new argument and granted the government's motion to strike his brief.

Collateral estoppel requires only that a party had a full and fair *opportunity* to litigate relevant issues during the earlier proceeding. A litigant cannot avoid collateral estopped if, solely through the litigant's own fault, an issue was not raised or evidence was not presented. *See generally, N. Georgia Elec. Membership Corp.*, 989 F.2d 429, 438 (11th Cir. 1993); *Blonder-Tongue Laboratories*, 402 U.S. 313, 333 (1971) (collateral estoppel does not apply if the litigant, through no fault of his own, is deprived of crucial evidence or witnesses). In the present case, the respondent was not prevented from raising his concerns about Dr. Epstein during the denaturalization case – rather, he simply failed to do so until it was too late. *See Demjanjuk* 367, F.3d at 638 (citations omitted); *see also United States v. Crozier*, 259 F.3d 503, at 517 (6th Cir. 2001) (citations omitted) (noting that the Sixth Circuit generally will not hear issues raised for the first time in a reply brief). Because the respondent had a fair opportunity to litigate his claims about Dr. Epstein's testimony but did not do so, he waived those claims in the denaturalization case and is barred from raising them here.

2. The Respondent's Collateral Estoppel Argument Regarding Certain Documents

The respondent's second collateral estoppel argument centers around the difficulty he experienced obtaining certain documents in his denaturalization proceedings. He argues that the government's case against him was founded on documents, most of which had been supplied to the government by the former Soviet Union or by states formed from the former Soviet Union. and that his ability to obtain other documents from the files from which the government's documents came was limited or non-existent. He argues that he relied on the U.S. Government to help him retrieve documents held by the government of Ukraine, and the failure of the U.S. government to aggressively pursue these documents "effectively denied [him] a fair opportunity to litigate his case." Respondent's Br. at 36. We disagree.

The respondent first learned of the existence of a KGB investigative file that contained materials pertaining to him. i.e., Operational Search File No. 1627 ("File 1627"), in May of 2001. On May 14, 2001, the respondent filed an emergency motion for continuance of the trial date in which he alleged "discovery abuse" by the government. Exh. 5G, docket entry 109. Two days later, he filed a supplemental brief in support of that motion. in which he raised issues about the contents of File 1627. Id. docket entry 110.

On May 21. 2001, the respondent filed a second emergency motion seeking to conduct additional discovery relating to File 1627. Exh. 5G. docket entry 112: NOA Attachment D. The respondent sought to depose both U.S. and Ukranian officials, and to obtain the contents of any investigative files in the possession of Ukranian authorities relating to the respondent or his cousin, Ivan Andreevich Demjanjuk, "if necessary with the assistance of the United States government." NOA Attachment D. On May 22, 2001. the district court denied the respondent's motion to continue the trial date, but granted his motion for discovery in part and permitted him to seek the investigative files. NOA Attachment E.

Two days later. at the respondent's request, the Director of the Justice Department's Office of Special Investigations ("OSI") sent a letter to Ukranian authorities making what he termed a "very urgent request" for "copies of the complete contents" of File 1627. NOA Attachment F. The letter requested that Ukranian authorities advise OSI "tomorrow" as to whether File 1627 had been found and was being copied, and when the copies could be expected at the U.S. Embassy in Kiev. *Id.* The letter notes that the Director of OSI telephoned the Ukranian Embassy in Washington and personally discussed the matter with Ukranian officials shortly before the letter was faxed to the embassy. *Id.*

Despite the urgent nature of OSI's request, the Ukranian Government did not respond for more than 2 months. In a letter dated July 27, 2001, a Ukranian official informed the U.S. government that "[i]n the Directorate of the Security Service in Vinnytsya Oblast there is in fact an Operational Search File No. 1627. which deals with the course of the investigative work pertaining to I.M. Demyahyuk." NOA Attachment G. The letter made no reference to the availability of copies or other access to the contents of the file. Instead, the letter indicated that some 585 pages of material had been sent to Moscow in 1979. *Id.* The U.S. government submitted a copy of this letter to the respondent and to the court. together with a complete English translation and a cover letter on August 17. 2001 – after the trial but some 6 months before the district court rendered a judgment against the respondent. *Id.* There is no evidence that the

respondent thereafter attempted to obtain copies of this material or that he sought to have the U.S. government assist in obtaining such copies.

On February 21, 2002, 6 months after the respondent received a copy of the July 27, 2001, letter from a Ukranian official, the district court entered a judgment revoking the respondent's naturalized U.S. citizenship. On March 1, 2002, the respondent filed a comprehensive post-judgment motion asking the court to amend its findings, alter or amend the judgment, grant a new trial, and/or grant relief under Fed. R. Civ. P. 60(b). Exh. 5G, docket entry 171. At that time, the respondent was fully aware of the U.S. government's efforts to obtain File 1627 and the Ukranian government's response, and he had no reason to believe that the government had made further efforts to obtain the file. In this motion the respondent did not raise the issue of the government's efforts to obtain File 1627.

The respondent filed an appeal from the denaturalization judgment with the United States Court of Appeals for the Sixth Circuit on May 10, 2002. Again, he did not raise any issue relating to File 1627 in either his initial brief or his reply brief. On February 12, 2003, the respondent filed a second post-judgment motion pursuant to Fed. R. Civ. P. 60(b), and again did not raise any issue with respect to File 1627. His motion was denied by the district court, and his appeal from that decision was dismissed. Exh. 17O.

The respondent's removal proceedings were commenced in December 2004. On February 25, 2005, the government moved to apply collateral estoppel to the findings and conclusions in the denaturalization case. The respondent did not raise any issue relating to File 1627 in his brief opposing the government's motion, and the Chief Immigration Judge granted the motion on June 16, 2005. Exh. 14.

While there is no provision for discovery in the course of removal proceedings, the Government voluntarily provided various documents on July 22, 2005, at the respondent's request. One such document was a May 31, 2001, e-mail from Evgeniy Suborov, an employee of the U.S. Embassy in Ukraine, to Dr. Steven Coe, a government staff historian. NOA Attachment I ("the Suborov e-mail"). The Suborov e-mail states that File 1627 contained a large number of pages (585 of which apparently had been sent to Moscow). Despite receiving the Suborov e-mail on July 22, 2005 – some 5 months before the Chief Immigration Judge entered his final order, the respondent did not request that the Chief Immigration Judge reconsider his decision granting collateral estoppel, nor did he raise any issue relating to File 1627 before the Chief Immigration Judge in any other context. On January 23, 2006, the respondent filed a Notice of Appeal with the Board, in which he raised his claims regarding File 1627 for the first time in the course of his removal proceedings.

It is well-established that appellate bodies ordinarily will not consider issues that are raised for the first time on appeal. *E.g., Am. Trim L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004) (citations omitted)(noting that the appeals court would not consider an argument raised for the first time in a reply brief). Consistent with regulatory limits on the Board's appellate jurisdiction, the Board has applied this rule to legal arguments that were not raised before the Immigration Judge. *Matter of Rocha*, 20 I&N Dec. 944, 948 (BIA 1995) (citations omitted) (INS waived issue by failing to make timely objection). *See also* 8 C.F.R. § 1003.1(b)(3) (Board's appellate jurisdiction in removal cases is limited to review of decisions by an Immigration Judge). In addition, the Board "will not engage in fact finding in the course of deciding

appeals." 8 C.F.R. § 1003.1(d)(iv), and a party may not "supplement" the record on appeal. *Matter of Fedorenko*, *supra* at 73-74.

Despite having a full and fair opportunity to pursue his concerns regarding File 1627 during his denaturalization proceedings, the respondent elected not to raise any issues relating to File 1627 in his first post-trial motion, his direct appeal, and his subsequent motion for relief from judgment. Moreover, although the respondent filed numerous pleadings with the Chief Immigration Judge and appeared before him on two occasions, he never: 1) mentioned File 1627; 2) made his own efforts to examine or obtain a copy of the file; or 3) claimed that collateral estoppel should be denied for reasons relating to the file. For these reasons, we find no error in the Chief Immigration Judge's decision to apply collateral estoppel in this case, and we reject the respondent's argument that he was denied a fair opportunity to litigate his case. Because he did have the opportunity to raise his claims regarding File 1627 below, we conclude that those claims have been waived and we will not consider them now for the first time on appeal.

We reject the respondent's claim that he could not have raised the issue of File 1627 earlier and that "new information" came to light after the Chief Immigration Judge granted the government's motion for collateral estoppel in June 2005. As of August 17, 2001, the respondent was aware that File 1627 contained a large number of pages, only a few of which had been provided to the U.S. Government. He was also fully aware of the U.S. Government's written and telephonic efforts to obtain a complete copy of the file for him and the Ukranian government's response. Therefore, the documents the respondent seeks to rely on as "new information" (Respondent's Br. tabs J, K and L) simply confirm what the respondent knew or should have known long before his citizenship was revoked and the removal case began. For all of these reasons, we agree with the Chief Immigration Judge's conclusion that the facts established in the denaturalization case are conclusively established in his removal proceedings (thereby rendering the respondent removable as charged) by operation of the doctrine of collateral estoppel.

[redacted]

(b)(6)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Based on our review of the evidence of record, we conclude that the findings of the Chief Immigration Judge are reasonable and permissible conclusions to draw from the record and that none of the findings is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i) [redacted]

IV. CONCLUSION

After reviewing the record, we find no error in the Chief Immigration Judge's three decisions from which the respondent appeals. We conclude that the Chief Immigration Judge correctly found that the respondent is removable as charged and ineligible for any form of relief from removal. Moreover, we reject the arguments raised by the respondent on appeal. For these reasons, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

U.S. Department of Justice

Immigration and Naturalization Service

Record of Deportable/Inadmissible Alien

Family Name (CAPS)	First	Middle
DEMJANJUK, John		

Country of Citizenship	Passport Number and Country of Issue	File Number
UKRAINE		Case No: VCO0512000066 A [redacted]

U.S. Address: [redacted] (b)(6)

Sex	Hair	Eyes	Cmplxn
M	BLN	BLU	FAR

Height	Weight	Occupation
72	230	

Scars and Marks:

Date, Place, Time, and Manner of Last Entry: 02/09/1952, Unknown Time, NYC, IMMIGRANT

Passenger Boarded at:

F.B.I. Number:

☐ Single ☐ Divorced ☒ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence:

Method of Location/Apprehension: L 511.2.5

Date of Birth	Date of Action	Location Code
04/03/1920 Age: 84	12/17/2004	VDT/VCO

At/Near: SEVEN HILLS, OHIO

Date/Hour: 12/17/2004 0000

City, Province (State) and Country of Birth	AR	Form: (Type and No.)	Lifted	Not Lifted
, UKRAINE	☒		☐	☐

By: [redacted]

NIV Issuing Post and NIV Number:

Social Security Account Name: (b)(7)(c)

Status at Entry	Status When Found
Immigrant	

Date Visa Issued:

Social Security Number: [redacted] (b)(6)

Length of Time Illegally in U.S.: AT ENTRY

Immigration Record: NEGATIVE

Criminal Record: None known

Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate):

Number and Nationality of Minor Children:

Father's Name, Nationality, and Address, if Known: , Unk

Mother's Present and Maiden Names, Nationality, and Address, if Known: , Unk

Monies Due/Property in U.S. Not in Immediate Possession:

Fingerprinted? Yes ☐ No ☒

INS Systems Checks: CIS Positive

Charge Code Word(s):

Name and Address of (Last)/(Current) U.S. Employer: FORD MOTOR CO.

Type of Employment: Operators, Fabricators, and Laborers

Salary: Hr.

Employed from/to: / / / /

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

Narrative Title: Record of Deportable/Excludable Alien
Narrative Created by [redacted] (b)(7)(c)

SUBJECT PROCESSED IN ABSENTIA BASED ON INFORMATION PROVIDED TO ASACCL BY HQ DIRECTIVE - OFFICE OF SPECIAL INVESTIGATIONS (OSI). PER OSI, SUBJECT TO BE SERVED NTA DUE TO SUBJECT'S ALLEGED INVOLVEMENT IN WAR CRIMES COMMITTED DURING WWII AND THE SUBSEQUENT MISREPRESENTATION OF MATERIAL FACTS ON HIS IMMIGRANT APPLICATION TO GAIN ADMISSION TO THE U.S. AS A LEGAL PERMANENT RESIDENT. IN DECEMBER OF 2004, THE U.S. CIRCUIT COURT OF APPEALS FOR THE 6H CIRCUIT AFFIRMED THE LOWER COURT'S DECISION TO STRIP SUBJECT OF HIS U.S. CITIZENSHIP.

SUBJECT IS A NATIVE OF THE UKRAINE BASED ON BIRTH IN THAT COUNTRY ON 04/03/1920.

SUBJECT'S HEALTH SITUATION IS UNKNOWN, BUT MEDIA COVERAGE OVER THE PAST YEARS IN CLEVELAND, OHIO HAS INDICATED THAT SUBJECT HAS BEEN SUFFERING FROM HEALTH PROBLEMS DUE TO HIS AGE.

SUBJECT LIVES WITH HIS WIFE, VERA, AND HAS OTHER FAMILY LIVING IN NEARBY COMMUNITIES.

SUBJECT HAS NO KNOWN PENDING APPLICATIONS/PETITIONS WITH U.S. CIS.

Alien has been advised of communication privileges. _____(Date/Initials) (b)(7)(c)

[redacted] SPECIAL AGENT [redacted]
(Signature and Title of INS Official)

Distribution: FILE, LOG

Received: (Subject and Documents) (Report of Interview)

Officer: [redacted]

on: December 17, 2004 at _____ (time)

Disposition: Notice to Appear Released (I-862)

Examining Officer: [redacted]

65

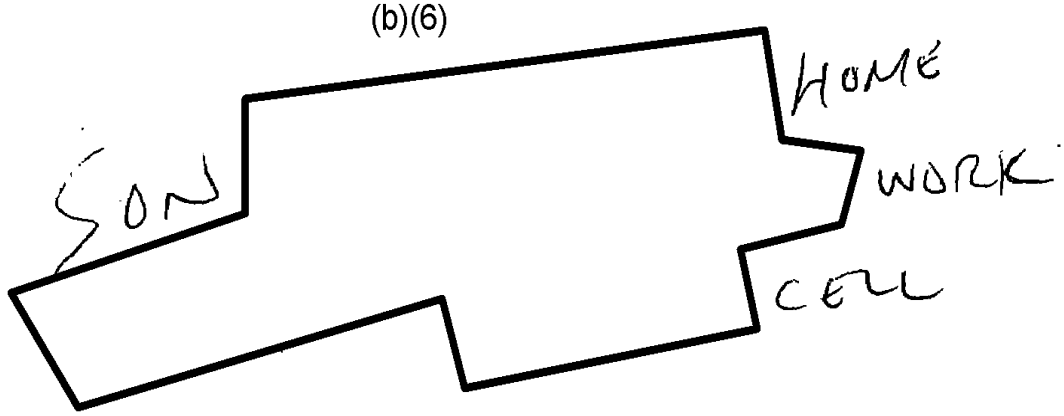
Alien's Name	File Number	Date
DEMJANJUK, John	Case No: VCO0512000066 A [redacted]	12/17/2004

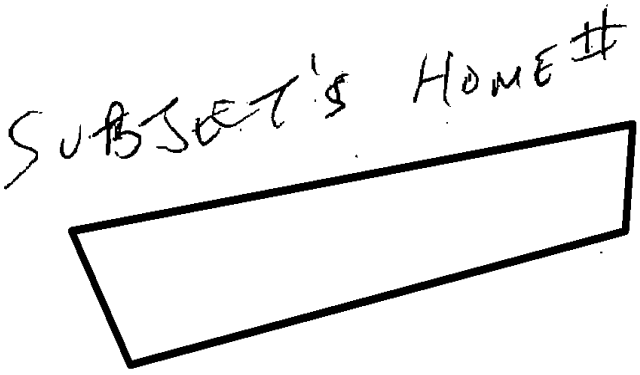
(b)(6)

TECS RECORD ID#P9B65610700CCL.

SUBJECT TO BE SERVED WITH THE NTA AND RELEASED ON HIS OWN RECOGNIZANCE PER SACDT.

(b)(6)





(b)(6)

(b)(7)(c)

Signature	Title
[redacted]	SPECIAL AGENT

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

(b)(6)

File No: A [redacted]

In the Matter of:

Respondent: John (a.k.a. Ivan) DEMJANJUK

[redacted] (b)(6)

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

SEE ATTACHED CONTINUATION PAGES.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions(s) of law:

SEE ATTACHED CONTINUATION PAGES.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

A date, place, and time to be set by the Immigration Court

(Complete Address of Immigration Court, including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: DEC 16 2004

Director, Office of Special Investigations
Criminal Division, U.S. Department of Justice

Department of Homeland Security

See reverse for important information

Form I-862 (Rev. 4-1-97)

See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☐ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☒ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____ _____
(Signature of Respondent if Personally Served) (Signature and Title of Officer)

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

Upon inquiry conducted by the Office of Special Investigations (OSI) of the U.S. Department of Justice, OSI and the Department of Homeland Security allege that:

1. You are not a citizen or national of the United States.

2. You were born on April 3, 1920, in Dubovye Makharintsy, Ukraine.

3. Not much later than July 19, 1942, you arrived at the Trawniki Training Camp.

4. Upon your arrival at Trawniki Training Camp, you entered service in the Guard Forces of the SS and Police Leader in Lublin District.

5. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland.

6. By January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were serving as an armed guard at the concentration camp located near Lublin, commonly known as Majdanek.

7. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

8. While assigned to Majdanek, you served as an armed guard of prisoners, whom you prevented from escaping.

9. You returned from Majdanek to Trawniki Training Camp by March 26, 1943.

10. In Sobibor, Poland, the Germans constructed one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard.

11. On or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, you were assigned to the "SS Special Detachment Sobibor." You began serving at the Sobibor extermination camp no later than March 27, 1943.

12. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide.

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/02)
*U.S. GPO: 1992-342-483/72848

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name	File Number	Date
John (a.k.a. Iwan) DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

13. In serving at Sobibor, you contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

14. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these prisoners to work, and prevented them from escaping.

15. While assigned to Sobibor, you guarded Jewish forced laborers, compelled them to work, and prevented them from escaping.

16. You returned from Sobibor to Trawniki by October 1, 1943.

17. On or about October 1, 1943, you were transferred from Trawniki to Flossenbürg Concentration Camp, where you became a member of the SS Death's Head Battalion Flossenbürg.

18. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin.

19. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder.

20. While a member of the SS Death's Head Battalion Flossenbürg, you served as an armed guard of prisoners, whom you prevented from escaping.

21. You remained a member of the SS Death's Head Battalion at Flossenbürg Concentration Camp until at least December 1944.

22. Your continued, paid service for the Germans, spanning more than two years, during which there is no evidence you attempted to desert or seek discharge, was willing.

23. In October 1950, you sought a determination from the Displaced Persons Commission (DPC) that you were a displaced person as defined in the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, as amended, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 (DPA), and therefore eligible to immigrate to the United States under the DPA.

24. In seeking a determination that you were an eligible displaced person, you misrepresented your employment and residences from 1942 to 1944, stating that you worked on a farm in Sobibor, Poland, from 1936 to September 1943, that you worked at the harbor at Danzig from September 1943 until May 1944, and that you were a railway worker in Munich, Germany, from May 1944 to May 1945. In addition, you concealed that you served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Majdanek, and Sobibor, and the SS Death's Head Battalion at Flossenbürg Concentration Camp from 1942 to 1944.

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

Form I-831 Continuation Page (Rev. 6/12/92)
*U.S. GPO: 1992-342-489/72548

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form I-862

Alien's Name	File Number	Date
Iwan DEMJANJUK (b)(6)	A [redacted]	DEC 16 2004

25. On December 27, 1951, you filed an Application for Immigration Visa and Alien Registration with the American consulate at Stuttgart, Germany, to obtain a non-quota immigrant visa to the United States under the DPA. In connection with your visa application, you were interviewed by a U.S. vice consul.

26. On your visa application, you swore that you resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. Your sworn statements on your visa application about your residences and occupations from 1942 to 1945 were not true.

27. On your visa application, you concealed that you were a member of the Guard Forces at Trawniki, Majdanek, and Sobibor, and of the SS Death's Head Battalion at Flossenbürg, from 1942 to 1944.

28. You were issued a DPA visa. Pursuant to that visa, you were admitted to the United States as an immigrant at New York, New York, on or about February 9, 1952.

AND on the basis of the foregoing allegations, it is charged that you are subject to removal pursuant to the following provisions of law:

Section 237(a)(4)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. 1227(a)(4)(D), in that you are an alien described in Section 212(a)(3)(E)(i) of the INA, 8 U.S.C. 1182(a)(3)(E)(i), as you ordered, incited, assisted, or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945, under the direction of or in association with the Nazi government of Germany.

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who were members of or participants in movements which were hostile to the United States in violation of section 13 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who willfully made misrepresentations for the purpose of gaining admission into the United States as an eligible displaced person in violation of section 10 of the DPA, 62 Stat. at 1013 (1948).

Section 237(a)(1)(A) of the INA, 8 U.S.C. 1227(a)(1)(A), in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens not in possession of a valid unexpired immigration visa as required by section 13(a) of the Immigration Act of 1924, 43 Stat. 153 (1924).

Signature	Title
Signature	Director, Office of Special Investigations Criminal Division, U.S. Department of Justice Title Immigration and Customs Enforcement, Dept. of Homeland Security

U.S. Department of Justice
Immigration and Naturalization Service

Order of Release on Recognizance

(b)(6) File No: A [redacted]

Date: December 17, 2004

Name: John DEMJANJUK AKA: Iwan Demjanjuk

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Immigration and Naturalization Service or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

(b)(7)(c)

☒ You must report in (~~writing~~) (person) to ADT by phone to [redacted] on the MSR Program
(Name and Title of Case Officer)

at Cleveland, OH (Location of INS Office) on every Monday (Day of each week or month) at anytime (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the officer listed above.

☒ You must not violate any local, State, or Federal laws or ordinances.

☒ You must assist the Immigration and Naturalization Service in obtaining any necessary travel documents.

☒ Other. Detention and Removal Office is located at 1240 E. 9th Street, Suite 535 Cleveland, OH 44199 (216) 535-0510

☒ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Immigration and Naturalization Service.

(b)(7)(c) [redacted]

[redacted] SDDO
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the N/A language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Immigration and Naturalization Service may revoke my release without further notice.

[redacted] John Demjanjuk 12/20/04
(Signature of Alien) (Date)

(b)(7)(c)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.

☐ The alien was taken into custody for removal.

(Signature of INS Official Canceling Order) (Date)

Form I-220A (Rev 4-1-97) N

MINIMUM SUPERVISION REPORTING PROCEDURES (MSR)

(b)(7)(c)

1) DIAL [redacted] TO ACCESS AUTOMATED SYSTEM OF THE MSR PROGRAM.
2) ENTER DEPARTMENT: 68#
3) PRESS #1 FOR ENROLLEE WHEN ASKED BY SYSTEM.
4) ENROLLEE IDENTIFICATION NUMBER: ENTER YOUR ALIEN REGISTRATION NUMBER. DO NOT INCLUDE THE "A" IN THIS ENTRY. EXAMPLE (12345678).
5) ANSWER ALL QUESTIONS WHEN ASKED BY THE MSR SYTEM.
6) THIS PROGRAM IS A PRIVILEGE AND IT MAY BE REVOKED AT ANY TIME IF YOU ARE FOUND TO BE NON-COMPLIANT IN YOUR REPORTING BY TELEPHONE.

DEPORTATION OFFICE: [redacted] (b)(7)(c)