

1 immigrant.

2 THE SPECIAL INQUIRY OFFICER:

3 Very well. And how does the respondent plead to the charge of deporta-  
4 bility as contained in the Order to Show Cause? Does he admit or deny  
5 deportability as charged?

6 MR. COONS:

7 With regard to the allegation of deportability, the respondent denies  
8 deportability.

9 THE SPECIAL INQUIRY OFFICER TO RESPONDENT:

10 Q Mr. Sirhan, in the event that you are finally found to be deportable  
11 and ordered deported, to what country do you desire to be sent?

12 A At this time I decline to name any country.

13 Q Of what country are you a citizen?

14 A I have no personal knowledge of what country I am a citizen of, so I  
15 don't know what country I will choose or what will be chosen. Of what  
16 country I am a citizen, I don't know.

17 Q Mr. Sirhan, I have before me a certified court record of the Superior  
18 Court of California for the County of Los Angeles in the matter of  
19 The People of the State of California, Plaintiff, v. MUNIR BISHARA  
20 SALAMEH SIRHAN, and I present this through your attorney. And upon the  
21 basis of your admission of allegation of fact No. (5), I ask you if this  
22 is the record covering that same conviction which you have already ad-  
23 mitted. In other words, are you the defendant in this record of pro-  
24 ceedings, and does it relate to the conviction stated in allegation of  
25 fact No. (5), and I present it through your attorney, Mr. Coons?

26 BY MR. COONS:

A 10 711 879

- 3 -

1/24/67

# TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service  
2025 RELEASE UNDER E.O. 14176

1 The respondent is the person named in this court record. This appears  
2 to be a true copy of the court record, and it is so stipulated.

3 THE SPECIAL INQUIRY OFFICER TO MR. COONS:

4 Any objection, Mr. Coons, to the receipt in evidence of the said court  
5 record?

6 MR. COONS:

7 No objection to its receipt in evidence.

8 THE SPECIAL INQUIRY OFFICER:

9 The said record is collectively entered in evidence as Exhibit No. 2.

10 In view of the respondent's denial of the allegations contained in  
11 paragraph No. 2 of the Order to Show Cause and his denial of the de-  
12 portation charge, it will be necessary to request the appearance of  
13 a Trial Attorney in this matter to represent the Immigration and Natural-  
14 ization Service. Therefore, the matter will at this time be continued  
15 by me without date certain but subject to my further call, and it is  
16 suggested that counsel confer with the Government's Trial Attorney as  
17 to a date, place, and time that is mutually satisfactory and permitted  
18 by my calendar. Is that agreeable, Mr. Coons?

19 MR. COONS:

20 That's agreeable.

21 THE SPECIAL INQUIRY OFFICER:

22 Any evidence desired to be submitted on behalf of the respondent at  
23 this time?

24 MR. COONS:

25 Not at this time, but at the further hearing we may submit evidence.

26 THE SPECIAL INQUIRY OFFICER:

A 10 711 879

- 4 -

1/24/67

# TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service  
2025 RELEASE UNDER E.O. 14176

1 Very well, then, the hearing in this matter is hereby continued.

2 HEARING ADJOURNED

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A 10 711 879

- 5 -

1/24/67

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

MATTER OF

MUNIR BISHARA SALAMEH SIRHAN

Respondent

FILE A 10 711 879 - Los Angeles

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Benjamin G. Myron

CONTINUED  
Hearing held on February 14, 1967

Los Angeles County Jail  
at Los Angeles, California

Recorded by Gray Kaynoter Machine

Transcribed by Ida Polsky  
Clerk-Transcriber

Official  
Interpreter ---

Language English

IN BEHALF OF SERVICE:

Sam I. Feldman  
Trial Attorney

Los Angeles, California  
Station

IN BEHALF OF RESPONDENT:

David C. Marcus, Esq.

215 West 5th Street

Los Angeles, California 90013

I hereby certify that to the best of my knowledge and belief the following pages numbered 6  
through 8 are a complete and accurate transcript of the above-described hearing.

Signature

Special Inquiry Officer

JAN 22 1968

1 THE SPECIAL INQUIRY OFFICER TO RESPONDENT:

2 Q Mr. Sirhan, you speak and understand English, do you not?

3 A Yes, I do.

4 Q This is a continued hearing in deportation proceedings for the purpose  
5 of giving you an opportunity to show cause why you should not be de-  
6 ported from the United States. Do you understand?

7 A Yes, I do.

8 Q There is presently with you at this hearing Attorney David C. Marcus.  
9 Is it your desire that Mr. Marcus represent you at this proceeding?

10 A Yes.

11 Q Now I note from the file that you were previously represented by  
12 Attorney Jerry Coons. Does Mr. Coons still represent you?

13 A No.

14 Q Then Mr. Marcus is representing you now in place of Mr. Coons. Is that  
15 correct?

16 A Correct.

17 THE SPECIAL INQUIRY OFFICER TO MR. MARCUS:

18 Very well. Mr. Marcus, as you are aware, you will have a reasonable  
19 opportunity to examine and to object to the evidence against the re-  
20 spondent, to present evidence in his behalf, and to cross-examine any  
21 witnesses that may be presented by the Government. Are you ready to  
22 proceed?

23 MR. MARCUS:

24 I am not ready to proceed, sir.

25 THE SPECIAL INQUIRY OFFICER:

26 And why are you not ready to proceed, Mr. Marcus?

A 10 711 879

- 6 -

2/14/67

# TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

2025 RELEASE UNDER E.O. 14176

1 MR. MARCUS:

2 I was retained on Saturday last. This is my first interview with the  
3 respondent. I intend to take certain proceedings in the Superior Court  
4 relating to the charges upon which the Order to Show Cause is predicated.  
5 I would ask that the matter be placed off calendar at this time until  
6 I have completed the proceedings that I intend to take in the Superior  
7 Court.

8 THE SPECIAL INQUIRY OFFICER:

9 How long do you anticipate that those proceedings will take, Mr. Marcus?

10 MR. MARCUS:

11 Within the next 30 days.

12 THE SPECIAL INQUIRY OFFICER:

13 Well, I will not take the case off calendar, but I will adjourn it  
14 without date and the case will be notified for hearing the next time  
15 hearings are held at the County Jail here. I anticipate that that will  
16 be a matter of several weeks or possibly a month or more.

17 MR. MARCUS TO THE SPECIAL INQUIRY OFFICER:

18 Sir, may I inquire as to whether or not there is a warrant on this case?  
19 Is there a bail set on the warrant?

20 THE SPECIAL INQUIRY OFFICER:

21 Well, Mr. Marcus, that is outside the province of the hearing. You may  
22 discuss that with the Trial Attorney after the hearing.

23 THE SPECIAL INQUIRY OFFICER TO MR. FELDMAN:

24 Mr. Feldman, there is nothing you want to present at this time is there?

25 MR. FELDMAN:

26 No, sir.

A 10 711 879

- 7 -

2/14/67

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

2025 RELEASE UNDER E.O. 14176

1 Superior Court before the Honorable Judge Noble. I would ask,  
2 therefore, that these proceedings be continued until that date  
3 because, in conversations that I have had with the Court and with  
4 the District Attorney, it is my impression that the motion will be  
5 granted and it will render these proceedings moot.

6 **THE SPECIAL INQUIRY OFFICER:**

7 Before acting upon the motion for continuance I wish to comply with  
8 the requirements of the regulations and designate a country for de-  
9 portation in the event that the respondent is finally ordered deported.  
10 The respondent has, I believe I mentioned before, declined to name  
11 a country for deportation at the original hearing held on January 24,  
12 1967.

13 **THE SPECIAL INQUIRY OFFICER TO RESPONDENT:**

14 **Q** Mr. Sirhan, you are informed that if you are finally ordered deported  
15 your deportation will be directed to Jordan, the country of nationality  
16 shown in the application for your immigrant visa executed by your  
17 father before the American Vice Consul at Amman, Jordan, September 22,  
18 1956, which is Exhibit 2 in evidence. Do you understand?

19 **A** Yes, sir.

20 **Q** Do you claim that you would be subject to persecution in Jordan if  
21 deported to that country by reason of your race, your religion, or  
22 political opinion?

23 **A** I wouldn't know what would happen at the time.

24 **Q** You and your attorney, Mr. Marcus, are informed that if you claim that  
25 you would be subject to persecution by reason of your race, religion,  
26 or political opinion in Jordan if you are finally ordered deported

A 10 711 879

- 11 -

4/11/67

**TRANSCRIPT OF HEARING**

1 THE SPECIAL INQUIRY OFFICER:

2 There being nothing further, I will at this time adjourn this hearing  
3 without date. The parties will be advised as to the date for the  
4 continued hearing.

5 HEARING ADJOURNED

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A 10 711 879

- 8 -

2/14/67

TRANSCRIPT OF HEARING



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

MATTER OF

FILE A 10 711 879 - Los Angeles

MUNIR BISHARA SALAMATI SIRHAN

IN DEPORTATION PROCEEDINGS

Respondent

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Michael F. Leone

CONTINUED

Hearing held on April 11, 1967

Los Angeles County Central Jail  
at Los Angeles, California 90012

Recorded by Gray Keynote Machine

Transcribed by Ida Polsky  
Clerk-Transcriber

Official  
Interpreter ---

Language English

IN BEHALF OF SERVICE:

William S. Howell

Trial Attorney

Los Angeles, California

Station

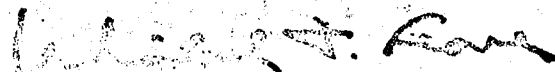
IN BEHALF OF RESPONDENT:

David C. Marcus, Esq.

215 West 5th Street

Los Angeles, California 90013

I hereby certify that to the best of my knowledge and belief the following pages numbered 9  
through 12 are a complete and accurate transcript of the above-described hearing.



Signature

Special Inquiry Officer

Title

1 THE SPECIAL INQUIRY OFFICER TO MR. HOWELL:

2 Mr. Howell, are you today appearing as Trial Attorney in this matter  
3 in place of Sam I. Feldman?

4 MR. HOWELL:

5 Yes, sir.

6 THE SPECIAL INQUIRY OFFICER:

7 For your information, in pleading to the Order to Show Cause through  
8 then  
9 his/counsel, Jerry Coons, the respondent, on January 24, 1967, ad-  
10 mitted the truth of allegations numbered (1), (3) and (5) as stated  
11 in the Order to Show Cause; denied both parts of allegation number (2)  
12 and number (4); and, as to number (4), admitted that he was admitted  
13 at the time, but denied that it was as an immigrant and asserts that  
14 it was as a refugee and denied the deportation charge. The respondent  
15 testified that he had no personal knowledge as to his citizenship  
16 and declined to name a country for deportation; and, for lack of  
17 evidence of such citizenship or admission of any citizenship by the  
18 respondent, no country was specified by me, as Special Inquiry Officer,  
19 at that original hearing. At a continued hearing held on February 14,  
20 1967, in my absence from duty, before Special Inquiry Officer  
21 Benjamin C. Myron, the hearing of the matter was, upon the request of  
22 respondent's present counsel, David C. Marcus, continued for the  
23 purpose of affording Mr. Marcus an opportunity to familiarize himself  
24 and prepare the respondent's defense.

25 THE SPECIAL INQUIRY OFFICER TO MR. HOWELL:

26 You may proceed, Mr. Howell.

MR. HOWELL TO RESPONDENT:

- 9 -  
TRANSCRIPT OF HEARING

4/11/67

1 Q For purposes of identification, Mr. Sirhan, I show you an immigrant  
2 visa and the application that are combined as one here, relating--  
3 (interrupted)

4 BY MR. MARCUS:

5 I will stipulate that it relates to him.

6 MR. HOWELL TO THE SPECIAL INQUIRY OFFICER:

7 I have showed this to counsel and he stipulates that this visa re-  
8 lates to the respondent herein, and so I offer it in evidence to be  
9 marked as an Exhibit next in order.

10 MR. MARCUS:

11 No objection.

12 THE SPECIAL INQUIRY OFFICER:

13 There being no objection, the said immigrant visa together with its  
14 application and supporting attached documents is received in evidence  
15 as Exhibit No. 3.

16 MR. HOWELL:

17 That completes all the evidence that the Government wishes to submit.  
18 There are no questions at this time.

19 MR. MARCUS:

20 At this time on the record I am respectfully requesting a continuance  
21 of this matter. I have prepared a motion to the Superior Court of  
22 the County of Los Angeles at Pasadena, requesting a vacation of the  
23 trial proceedings had in the Superior Court for the purpose of  
24 certifying this matter to the Juvenile Court and because of the age  
25 of the respondent at the time of the alleged commission of this offense.  
26 I have noted the hearing for April 26th, in Department A of the

1 to that country you will be required to file a written application  
2 claiming the benefits of Section 243(b) of the Immigration and Nation-  
3 ality Act within ten calendar days following the next hearing.

4 THE SPECIAL INQUIRY OFFICER TO MR. MARCUS:

5 Is that understood and satisfactory, Mr. Marcus?

6 MR. MARCUS:

7 It is, sir.

8 THE SPECIAL INQUIRY OFFICER TO MR. HOWELL:

9 And Mr. Howell?

10 MR. HOWELL:

11 Yes, sir.

12 THE SPECIAL INQUIRY OFFICER:

13 Now, Mr. Howell, do you wish to be heard upon the request for a  
14 continuance previously made by Mr. Marcus?

15 MR. HOWELL:

16 I will not object to one more continuance for this purpose.

17 THE SPECIAL INQUIRY OFFICER:

18 The hearing in this matter will be continued without date certain  
19 at this time and subject to my further call on some date subsequent  
20 to April 26, 1967. Hearing continued.

21 HEARING ADJOURNED

UNITED STATES GOVERNMENT

# Memorandum

TO : Regional Counsel  
San Pedro, California

FROM : Irving Appleman  
Appellate Trial Attorney

CO 649-C  
DATE: March 28, 1968

SUBJECT: MUNIR BISHARA SALAMEH SIRHAN, A10 711 879, your SW 3.2 dtd  
January 25, 1968

Attached for your information is a copy of the order entered  
by the Board of Immigration Appeals on March 27, 1968.

Also attached is the following :

☒ Material transmitted with subject memorandum.

☒ Relating correspondence and memoranda.

☐

The record of proceeding has been sent to the Los Angeles office.

*[Handwritten signature]*

Attachments



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

Respondent is a 20-year-old single male alien, a native of Palestine and a citizen of Jordan, who entered the United States at New York on or about January 12, 1957 at which time he was admitted as an immigrant. Respondent denies that he is deportable as charged.

The record establishes through a certified copy of information, Minutes of October 13, 1966 and Minutes of December 1, 1966 that a criminal action was instituted against the respondent by the filing of an information in the Superior Court of the State of California, for the County of Los Angeles in which the respondent was accused of the crime of violation of Section 11530, Health and Safety Code, committed on or about June 10, 1966 for unlawful possession of marijuana (Count 1) and a violation of Section 11531, Health and Safety Code of California committed on the same day, for unlawfully offering to sell, furnish and give away marijuana (Count 2). The Superior Court on October 13, 1966 found respondent guilty as charged on both counts. On December 1, 1966 the Superior Court suspended the proceedings and the respondent was granted probation for five years, a condition of which was that he spend the first year in the county jail (Exhibit 2).

On May 25, 1967 the court entered a "Minute Order" in the aforementioned criminal action which stated as follows: "Finding of 'Guilty' is vacated and defendant is certified to Juvenile (sic) Court. Remanded" (Exhibit 4).

After the Superior Court certified and remanded the case to the Juvenile Court as aforesaid, the Probation Department on July 13, 1967 filed a petition with the Juvenile Court to have respondent adjudged and declared a ward of the court and dealt with as such. On July 14, 1967 the Juvenile Court in a "Findings and Order of Referee" accepted the certification to it of this case and granted the Probation Department's petition to have respondent declared a ward of the Juvenile Court. Neither of these two documents is a part of the record of this case.

UNITED STATES DEPARTMENT OF JUSTICE  
Board of Immigration Appeals

Recon  
MAR 27 1968

File: A-10711879 - Los Angeles

In re: MUNIR BISHARA SALAMEN SIRHAN

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David C. Marcus, Esq.  
215 West Fifth Street  
Los Angeles, Calif. 90013  
(Case scheduled for oral  
argument on February 27,  
1968 but counsel failed  
to appear)

CHARGES:

Order: Section 241(a)(11), I&N Act (8 USC 1251  
(a)(11)) - Conviction of violation  
of law relating to illicit posses-  
sion of marijuana in violation of  
Section 11530 of the Health and  
Safety Code of the State of Cali-  
fornia

Lodged: None

APPLICATION: Reopen for consideration of termination  
of proceedings

The case comes forward on appeal from the denial by the  
special inquiry officer of respondent's motion to reopen  
the proceedings and vacate his decision of July 11, 1967,  
under which respondent was found deportable as charged,  
denied the privilege of voluntary departure, and was  
ordered deported to Jordan.

Section 503 of the Welfare and Institutions Code of the State of California provides:

"An order adjudging a minor to be a ward of the Juvenile Court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the Juvenile Court be deemed a criminal proceeding."

Thus, if the legal position of the respondent is that of a ward of the Juvenile Court pursuant to the aforementioned proceedings he would thus not be amenable to deportation under Section 241(a)(11), Immigration and Nationality Act because under the above quoted Section 503 there could be no conviction for a crime by the Juvenile Court.

The Immigration and Naturalization Service contends that the Superior Court was without authority to enter its Minute Order of May 25, 1967 in which the finding of guilty was vacated and the case certified to the Juvenile Court for further action. It is contended that when the Superior Court found respondent guilty on October 13, 1966, and an appeal was not taken within the time stipulated by law, the verdict of guilty became final and could not be vacated or changed some six months later by the Superior Court simply certifying the case to another court. The Service contends that this being the case respondent is deportable as charged.

After careful consideration of the premises we will reopen the proceedings in order to have introduced into the record the recent proceedings of the Juvenile Court relative to the case certified to it and also to afford the Immigration and Naturalization Service an opportunity to establish that the Superior Court acted without authority when it vacated the finding of guilty and certify the case to the Juvenile Court.



A-10711879

ORDER: It is ordered that the proceedings be remanded to the special inquiry officer for the purposes stated in the foregoing opinion.

Chairman

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : R. A. Vielhaber, Appellate Trial Attorney  
Immigration & Naturalization Service

DATE: January 31, 1968

FROM : Thos. G. Finucane, Chairman  
Board of Immigration Appeals

SUBJECT: Munir Bishara Salameh Sirhan - A-10711879

The above listed case has been recalendared for  
oral argument at 2:00 p.m. on Tuesday, February 27,  
1968.

*Thos. G. Finucane*

F.T.A.

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : R. A. Vielhaber, Appellate Trial Attorney  
Immigration & Naturalization Service

DATE: January 30, 1968

FROM : Thos. G. Finucane, Chairman  
Board of Immigration Appeals

SUBJECT: Munir Bishara Salameh Sirhan - A-10711879

With respect to the above listed case, the hearing has  
been calendared for oral argument at 2:00 p.m. on  
Tuesday, February 20, 1968.

*Thos. G. Finucane*

879

**UNITED STATES DEPARTMENT OF JUSTICE**  
**IMMIGRATION AND NATURALIZATION SERVICE**

Date **January 29, 1968**

**TO : Chairman**  
**Board of Immigration Appeals**

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

**SUBJECT: MUNIR BISHARA SALAMEH SIRHAN, A10 711 879**

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

Remarks:

*RAU*

CO Form 63  
(Rev. 8-10-65)

☒ File  
☒ Work Folder  
☐ Special Log  
☐ General Log  
☐ \_\_\_\_\_  
☐ \_\_\_\_\_

UNITED STATES GOVERNMENT

# Memorandum

TO : General Counsel  
Attention: Appellate Trial Attorneys  
Board of Immigration Appeals  
323 HOLC Building, Washington, D. C.

FROM : M. F. Fargione, Deputy Regional Commissioner  
Southwest Region

SUBJECT: Munir Bishara Salameh Sirhan, A10 711 879.

SN 3.2  
DATE: January 25, 1968

The respondent is appealing, and is requesting oral argument. He was found deportable under Section 241(a)(11).

The issue involved is whether the respondent may circumvent Matter of A- F-, 8 I&N Dec. 429, by an order of the sentencing court declaring that the "guilty" finding is being vacated and defendant certified to the Juvenile Court. The issue was resolved by the Special Inquiry Officer adversely to the respondent. The issue is a novel one, and it is requested that the Service be represented at oral argument.

Enclosed is a copy of record of proceeding.

*M. F. Fargione*

Attachment

*Bd has file 1/29*

*Request OA  
RAV 1-29-68*

UNITED STATES GOVERNMENT

*Memorandum*

A10 711 879

DATE: November 29, 1967

TO Regional Commissioner, Southwest Region,  
San Pedro, California

FROM *GR* George K. Rosenberg, District Director,  
Los Angeles, California

SUBJECT: Munir Bishara Salameh Sirhan - Request for Oral Argument

Attention: Regional Counsel

This case presents the novel question of whether the Service can ignore a court action which it is believed is outside the jurisdiction of the court but which was intended to set aside a conviction upon which an order of deportation is based.

The Special Inquiry Officer in this case has supported and upheld the Government's contention that the Superior Court had acted improperly in setting aside a finding of guilt and remanding the case to the Juvenile Court.

For the reasons set forth above, it is urged that the Appellate Trial Attorney should represent the Service in the appeal before the Board of Immigration Appeals.

Attached is a copy of the record of proceeding for use of the Appellate Trial Attorney.

Attachment

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

IN DEPORTATION PROCEEDINGS

IN THE MATTER OF:

A- 20 711 679

MEHR BISHARA SALAMER SHERAH,

Respondent

TO THE SPECIAL INQUIRY OFFICER:

I waive my right to file a brief in <sup>answer to Appeal</sup> the above-entitled proceeding.

Dated at Los Angeles, Calif. this 8th day of November 1967.

\_\_\_\_\_  
Trial Attorney

UNITED STATES GOVERNMENT

# Memorandum

TO : William S. Howell, Trial Attorney,  
Los Angeles, Calif.

AIO 711 879 SIB  
DATE: September 21, 1967

*must*  
FROM : Special Inquiry Clerk,  
Los Angeles, Calif.

SUBJECT: Service of notice of appeal, Munir Bishara S. Sirhan.

There is served upon you herewith a copy of Form I-290 A,  
notice of appeal, filed in the above case by counsel.

You are granted to September 26, 1967 to answer the appeal.



NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:  
IMMIGRATION AND NATURALIZATION SERVICE

300 NORTH LOS ANGELES STREET  
LOS ANGELES, CALIFORNIA 90012

In the Matter of:

MUNIR BISHARA SALAHEN SIRHAN,  
Respondent

File No. A 10 711 879 STE

RECEIVED  
SPECIAL INQUIRY  
BRANCH  
LOS ANGELES, CALIF.

SEP 20 1967  
(DATE)

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated September 2, 1967, in the above entitled case.
2. I am (am) am not (am not) filing a written brief or a written statement with the above Service office within the time allowed for such filing.
3. I do (do) do not (do not) desire oral argument before the Board of Immigration Appeals in Washington, D.C.
4. Briefly, state reasons for this appeal.  
\*(See attached page)

*Munir B. Sirhan*  
MUNIR B. SIRHAN

Signature of Appellant (or attorney or representative)

*Munir B. Sirhan*  
(Print or type name)

September 16, 1967

Date

696 East Howard St., Pasadena, Calif

Address (Number, Street, City, State, Zip Code)

IMPORTANT:

SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

## INSTRUCTIONS

1. Fees. This notice of appeal must be accompanied by the prescribed fees: for appeal from a decision in an exclusion or deportation proceeding \$25; for an appeal from any other decision \$10. (Only a single fee need be paid if two or more persons are covered by a single decision.) Attach money order or check, payable to the "Immigration and Naturalization Service, Department of Justice." Do NOT send cash. If this form is filed in Guam, make remittance payable to the "Treasurer, Guam;" if filed in the Virgin Islands, make remittance payable to "Commissioner of Finance of the Virgin Islands." The fee is required for filing the appeal and is not returnable regardless of the action taken thereon.
2. Counsel. In presenting and prosecuting this appeal the appellant may, if he desires, be represented at no expense to the Government by counsel or other duly authorized representatives.
3. Briefs. A brief in support of or in opposition to an appeal is not required, but if a brief is filed it shall be in triplicate and submitted to the officer of the Immigration and Naturalization Service having administrative jurisdiction over the case within the time fixed for the appeal or within any other additional period designated by the special inquiry officer or other Service officer who made the decision. Such officer, or the Board for good cause, may extend the time for filing a brief or reply brief. The Board in its discretion may authorize the filing of briefs directly with it, in which event the opposing party shall be allowed a specified time to respond.
4. Oral argument. Oral argument in any one case should not extend beyond fifteen (15) minutes, unless arrangements for additional time are made with the Board in advance of the hearing.

An appellant will not be released from detention or permitted to enter the United States to present oral argument to the Board but may make arrangements to have someone represent him before the Board, and unless such arrangements are made at the time the appeal is taken, the Board will not calendar the case for argument.

5. Summary dismissal of appeals. The Board may deny oral argument and summarily dismiss any appeal in any deportation proceeding in which (i) the party concerned fails to specify the reason for his appeal on the reverse side of this form, (ii) the only reason specified by the party concerned for his Appeal involves a finding of fact or conclusion of law which was conceded by him at the hearing, or (iii) the appeal is from an order that grants the party concerned the relief which he requested.
6. Filing of Notice of Appeal. The Notice of Appeal, in triplicate, with the required fee, must be submitted to the Immigration and Naturalization Service office where the case is pending. The Notice of Appeal is not to be forwarded directly to the Board of Immigration Appeals.

4. \* Briefly, the reasons for this appeal are:

1. The hearing officer erred in holding that the Superior Court of the County of Los Angeles was without jurisdiction to effect a finding of guilt of a minor and his probationary order and certifying the minor to the Juvenile Court of the County of Los Angeles (Page 2 of the Opinion of the Special Inquiry Officer)

2. In holding that the minor must establish his "innocence" or produce "evidence" in support of the motion "addressed to the Court that the defendant did not in fact, commit the crime of which he was convicted, which resulted in a miscarriage of justice". (Page 2 of Opinion of the Special Inquiry Officer).

3. The hearing officer erred in finding that the motion and supporting records and documents filed in the Superior Court "cannot therefore be assimilated to a Writ of Coram Nobis for it was not addressed to an area of fact which the motion sought to redress but was addressed solely to a discretionary procedural matter. The issue of guilt was not raised by the motion and is a factual matter." (Page 2 of the Opinion of the Special Inquiry Officer.)

4. The hearing officer erred in finding that Section 1203.3 limits the jurisdiction of the Court to act thereunder extends solely to revocation, modification or change of the terms of the sentence imposed.

5. The hearing officer erred in holding that "the Superior Court was without jurisdiction to enter its Order dated May 25, 1967 for that order was not effecting the sentence but sought to exert a power which the court did not then possess, to wit, change the finding of guilt."

6. The hearing officer erred in holding that the respondent is a deportable alien under the provisions of Section 241(a) (11).

7. The hearing officer erred in failing to terminate the proceedings and discharge the respondent.

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

SEP - 7 1967

File: A 10 711 879 - Los Angeles

In The Matter Of )

MUNIR BISHARA SALAMEH SIRHAN, )

IN DEPORTATION PROCEEDINGS

Respondent. )

CHARGE:

IGN Act - Section 241(a)(11), convicted of viola-  
tion of law relating to illicit posses-  
sion of marijuana (Section 11530, Health  
and Safety Code of California)

APPLICATION: Motion by respondent to vacate decision dated  
July 11, 1967

ON BEHALF OF RESPONDENT:

David C. Marcus  
Attorney at Law  
215 West 5th Street  
Los Angeles, California 90013

ON BEHALF OF SERVICE:

William S. Howell  
Trial Attorney  
Los Angeles, California 90012

DECISION OF THE SPECIAL INQUIRY OFFICER

UPON RECONSIDERATION

The facts of this case are fully set forth in the decision en-  
tered herein on July 11, 1967, and do not now require repetition.  
Respondent now seeks, by his motion dated July 24, 1967, to have  
the aforementioned decision vacated and set aside and the finding  
of deportability therein reconsidered, presumably for termination  
of these proceedings. In support of the present motion, the re-  
spondent has submitted copies of the moving papers filed with  
the Superior Court in support of the Minute Order of that Court

dated May 25, 1967 (Exhibit 4) in which the court stated that the finding of "guilty" in the criminal proceedings was vacated and the defendant (respondent) was certified to the Juvenile Court.

In his present motion, respondent's counsel states that his declaration in support of the motion to vacate and the motion itself are in the nature of a writ of coram nobis. Close study of the declaration dated April 17, 1967 in support of the motion to modify terms of probation and sentence, vacate finding of guilt, and certify the defendant (respondent) to the Juvenile Court discloses that nowhere therein is there any assertion of the innocence of the defendant, nor is there any other evidence attached to the motion addressed to the court that the defendant did not in fact commit the crime of which he was convicted which resulted in a miscarriage of justice. The said motion in the criminal proceedings cannot therefore be assimilated to a writ of coram nobis for it was not addressed to an error of fact, which the motion sought to redress, but was addressed solely to a discretionary procedural matter. The issue of guilt was not raised by the motion as a factual matter.

In the instant motion, respondent's counsel correctly points out (top, page 7) that California courts retain authority at any time during the time of probation to revoke, modify or change an order of suspension of imposition or execution of sentence (Calif. Penal Code, Section 1203.3). It is clear from the language of Section 1203.3 that jurisdiction of the court to act thereunder extends solely to the revocation, modification or change of the terms of the sentence imposed.



and not the finding of guilt.


The Order to Show Cause herein was issued on January 11, 1967 upon the basis of respondent's conviction on October 12, 1966 in the Superior Court. The motion to the Superior Court for withdrawal of the finding of guilt and modification of the terms of probation and sentence and certification to the Juvenile Court was prepared on April 17, 1967. The Superior Court acted upon the said motion on May 25, 1967, as aforementioned (Exhibit 4). Respondent's present motion attaches a copy of a petition executed on July 13, 1967 by the probation officer and order dated July 14, 1967 of the Referee of Juvenile Court seeking to establish the pendency of an action in the latter, that is, Juvenile Court. The said petition and order add nothing to the Superior Court's Minute Order dated May 25, 1967 (Exhibit 4) if in fact, the said Minute Order was invalid for lack of jurisdiction of the Superior Court to reconsider and set aside the finding of guilty entered on October 13, 1966 (Exhibit 2). It is concluded that the Superior Court was without jurisdiction to enter its order dated May 25, 1967 for that order was not affecting the sentence but sought to exert a power which the court did not then possess, to wit, change the finding of guilt.

Following its finding of "guilty" on October 13, 1966, the Superior Court on December 1, 1966, ordered that the proceedings be suspended and respondent was granted probation for five years, a condition of which was that he spend the first year in the county jail. It has been held both administratively and judicially that the judg-

ment of a California court, after a finding of guilt, that the proceedings be suspended and probation granted, constitutes a "conviction" within the meaning of Section 241(a)(11) of the Immigration and Nationality Act. (Letter of A- F-, 8 I&N Dec. 429, Attorney General, 1959; Arellano-Flores vs Rosenberg, 9 Cir. 1958, 262 F. 2d 667, cert. denied 362 U. S. 921, 1960).

After careful consideration and upon review of the entire record of these proceedings and the matters set forth in respondent's present motion to vacate decision, including the exhibits attached thereto, and of the Trial Attorney's brief dated August 12, 1967, it is concluded that respondent's motion should be denied and that no change should be made in the decision heretofore entered on July 11, 1967.

ORDER: IT IS ORDERED that the respondent's motion dated July 24, 1967 to vacate and set aside the decision dated July 11, 1967, be, and the same is hereby, denied.



Michael F. Leone  
Special Inquiry Officer

1 UNITED STATES DEPARTMENT OF JUSTICE  
2 Immigration and Naturalization Service

3  
4 TO: Michael F. Leone, Special Inquiry Officer  
Los Angeles, California

5 FILE: A10 711 879 - Los Angeles

6 In re: Munir Bishara Salameh Sirhan  
7

8 IN DEPORTATION PROCEEDINGS

9 IN BEHALF OF RESPONDENT: David C. Marcus, Esq.  
215 West Fifth Street  
10 Los Angeles, California

11 IN BEHALF OF THE SERVICE: William S. Howell  
Trial Attorney  
12 Los Angeles, California 90012

13 CHARGE:

14 I & N Act - Section 241(a)(11), convicted of  
15 violation of law relating to illicit possession  
16 of marijuana (Section 11530, Health and Safety  
Code of California)

17 APPLICATION: Termination of proceedings  
18

19 We have carefully examined the Brief In Response To Motion  
20 To Vacate Decision of Special Inquiry Officer and the argument which  
21 lists five propositions of law with cited authority in support of his  
22 propositions that the Superior Court was without jurisdiction to vacate  
23 the defendant's plea of guilty and certify the proceedings to the  
24 Juvenile Court.

25 The general propositions quoted in the trial attorney's  
26 argument are not applicable or apropos to the instant proceedings, and  
27 the authorities which he cite do not support his position. It must be  
28 remembered that proceedings in the case at bar were suspended after a  
29 finding of guilt and the defendant was placed on probation. Under his  
30 argument, which we shall label Point 1, the trial attorney suggests  
31 where the sentence has been pronounced and the defendant has begun  
32 serving the sentence, the court is without jurisdiction to add to or



1 in any manner modify the sentence originally pronounced and cites,  
2 People vs. McAllister, 15 Cal 2d 519, and People vs. Reimringer, 116  
3 Cal App. 2d 332. Neither of these cases are in point. In McAllister  
4 the defendant was convicted of a felony and the court imposed a fine  
5 payable in monthly installments. Later in the day the court, in the  
6 presence of the defendant and his attorney provided that in the event  
7 the installment payments were not paid, defendant was to be confined  
8 in the County Jail. The Supreme Court held that the modified sentence  
9 was proper. It is to be noted that this was not a probationary sent-  
10 ence and the change was proper and effected on the same day the origin-  
11 al fine was imposed.

12 In Reimringer, it is completely beside the point. This,  
13 likewise, is not a probationary matter and the question is whether  
14 the court had authority under the Provisions of §1193 Sub 1 of the  
15 Penal Code in the absence of the defendant to prescribe whether a  
16 sentence was to run concurrently or consecutively. In making certain  
17 counts upon which the defendant was found guilty to run consecutively  
18 the District Court of Appeal held ... "That the court had the power to  
19 make the modification in the manner it did."

20 Under Point 2, the trial attorney suggests that the court  
21 was without power to set aside the Judgment on motion not made on  
22 statutory or court recognized grounds and cites, People vs. Behrmann,  
23 34 Cal 2d 459. This case was not a probationary matter in which a  
24 sentence was suspended but his authority for the proposition of law  
25 that an oral notice of appeal does not comply with Rule 31 of Rules  
26 On Appeal, though a later written notice of appeal is filed, and the  
27 court was without jurisdiction or in the absence of a "Motion or  
28 showing of facts to support a motion to vacate the Judgment."

29 In Point 3, he suggests that Coram Nobis lies only to  
30 vacate or correct a judgment for errors of fact which if known would  
31 have prevented the rendition and entry of the judgment questioned,  
32 and cites People vs. Reid, 195 Cal 249, and People vs. McCoy, 115 Cal  
App 2d 565.

1        Neither of these cases are in point as they do not deal  
2 with probationary sentences where the defendant is under the juris-  
3 diction of the court. In Reid, Coram Nobis was invoked long after  
4 defendant had begun serving his sentence, after a conviction on a  
5 charge of murder. After imposition of the death penalty the court  
6 held that the matters sought to be raised in Coram Nobis could not  
7 have been raised by appeal or on motion for a new trial, and that the  
8 denial of the Writ was proper. This was no probationary matter.

9        In People vs. McCoy, the defendant in this case filed a  
10 motion to vacate the judgment committing him by reason of insanity to  
11 the Mendicino State Hospital on several grounds, after trial and he  
12 was found guilty by the court; that he was insane at the time of the  
13 commitment of the offense.

14        An examination of the opinion will disclose that the grounds  
15 of the motion, although determined by the court to be "In the nature  
16 of a Coram Nobis, there was no merit in defendant's contention that  
17 the judgment is to be set aside because only a single trial was had  
18 on his plea of not guilty and not guilty by reason of insanity; and  
19 that this testimony given on the advice of his attorney may have  
20 influenced the court's determination that he was insane; and although  
21 the doctors were unverified did not constitute grounds to vacate the  
22 judgment, and that no doctor testified under oath at the trial was  
23 in error. This case has not application to the instant matter.

24        The remaining points and cases in support thereof are like-  
25 wise without merit as none involved a suspended and probationary  
26 sentence. The remedy of Coram Nobis has been well briefed and argued  
27 in our previously supplied Memorandum to the Hearing Officer. We  
28 again reiterate that the court was with jurisdiction to vacate the  
29 Finding of guilt and to certify the defendant to the Juvenile Court.

30                                Respectfully submitted.

31                                DAVID C. MARCUS  
32                                Attorney for Respondent

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

AUG 18 1967

TO: Michael R. Leone, Special Inquiry Officer  
Los Angeles, California

FILE: A10 711 879 - Los Angeles

In re: MUNIR BISHARA SALAMEH SIRHAN

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: David C. Marcus, Esq.  
215 West Fifth Street  
Los Angeles, California

IN BEHALF OF THE SERVICE: William S. Howell  
Trial Attorney  
Los Angeles, California 90012

CHARGE:

I & N Act - Section 241(a)(11), convicted of violation  
of law relating to illicit possession of  
marijuana (Section 11530, Health and Safety  
Code of California)

APPLICATION: Termination of proceedings

BRIEF IN RESPONSE TO MOTION TO VACATE DECISION OF SPECIAL INQUIRY OFFICER

On July 11, 1967 the Special Inquiry Officer entered his decision in this matter in which he rejected the decision of the Superior Court, State of California on May 25, 1967 vacating the finding of "guilty" and certifying the case to the Juvenile Court presumably under Section 604(b) of the Welfare and Institutions Code, State of California (Exhibit #4). Now comes the respondent and makes a Motion to the Special Inquiry Officer to vacate his decision and to reconsider the initial decision, presumably looking toward a termination of the proceedings.

The Service is opposed to the Motion to vacate the decision and supports the findings of the Special Inquiry Officer.

### ISSUE

Did the Special Inquiry Officer err in his finding that the order of the Superior Court setting aside the judgment of "guilty" be vacated and the Defendant certified to Juvenile Court (Case No. 324984, Superior Court, State of California)?

### ARGUMENT

The rule in California is that where sentence has been legally pronounced and it has been entered in the minutes or the defendant has begun serving the sentence or has been restrained by reason thereof the Court is without jurisdiction to vacate, add to, or in any manner modify the sentence originally pronounced.<sup>1/</sup>

It is also a general rule in California that the Court is without power to set aside the judgment on a Motion to Vacate not made on statutory or court recognized grounds.<sup>2/</sup>

Counsel for the respondent is attempting to argue that in effect the doctrine of Coram Nobis has been exercised in this matter and that the court was, therefore, possessed with jurisdiction to make such an order vacating the judgment. Assuming for the sake of argument that the counsel's proof that a Motion to Vacate is tantamount to a petition for Coram Nobis it must be pointed out that Coram Nobis lies only to vacate or correct a judgment for errors of fact which if known would have prevented the rendition and entry of the judgment questioned.<sup>3/</sup>

Coram Nobis is available merely to declare as false a fact previously determined to be true.<sup>4/</sup>

The remedy of Coram Nobis does not lie to enable the court to correct errors of law, allegedly made at the trial,<sup>5/</sup> or to redress irregularities at the trial that could have been corrected on motion for a new trial or by appeal.<sup>6/</sup>

<sup>1/</sup> People vs McAllister, 15 Cal 2d 519, 102 P 2d 1072; People vs Reimringer, 115 Cal App. 2d 332, 253 P 2d 756

<sup>2/</sup> People vs Behrmann, 34 Cal 2d 459

<sup>3/</sup> People vs Reid, 195 Cal 249, 232 P 457, and People vs McCoy, 115 Cal App. 2d 565, 252 P 2d 371

<sup>4/</sup> In re Dyer, 85 Cal App. 2d 394, 193 P 2d 69

<sup>5/</sup> People vs Dale, 239 Cal App. 2d 634, and People vs Miller, 219 Cal App. 2d 124

<sup>6/</sup> People vs Gatewood, 182 Cal App. 2d 724, 6 Cal Rptr. 447



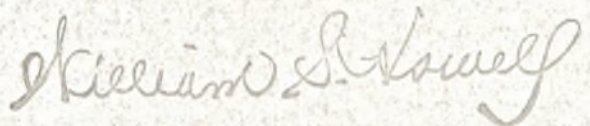
In the instant case it must be presumed that the court was made aware that the respondent herein and defendant in that criminal proceeding was over the age of 18 years at the time of the commission of the crime for which he was charged and that the court exercised its proper discretion in determining under its authority contained in Section 604(b) of the Welfare and Institutions Code whether the proceeding should be suspended and to certify the case to the Juvenile Court.

It appears from the Motion to Vacate that respondent's counsel simply raised a collateral matter which had no bearing upon the determination effecting the guilt or innocence of the respondent of the criminal charge. There is no showing that as to the issues of fact in this case that the Superior Court had erred in the first instance.

If instead of a finding of guilt by the court there had been such a finding by a jury would the court have, some five months later, entered an order setting aside the guilty verdict without a showing of errors of fact which would be determinative of a finding of guilt, but not relating to collateral matters which have no relation to the fact of conviction? Such is very unlikely and for these reasons it must be concluded the court was without proper authority to vacate the finding of guilt.

It must be concluded that the conviction in this case is final and that the order of the Superior Court, State of California, dated May 23, 1967 in criminal matter No. 324984 re Munir Bishara Salameh Sirhan be disregarded.

On the basis of the foregoing it is urged that the decision of the Special Inquiry Officer be allowed to stand.



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WILLIAM S. HOWELL  
Trial Attorney  
Immigration and Naturalization Service  
United States Department of Justice  
Los Angeles, California



Attorney for Respondent

SPECIAL IN-  
BRANCH  
LOS ANGELES, CA.  
JUL 24 1967  
(DATE)

UNITED STATES DEPARTMENT OF JUSTICE

IN DEPORTATION PROCEEDINGS

MOTION TO VACATE DECISION  
OF SPECIAL INQUIRY OFFICER  
AND FOR RECONSIDERATION

This motion is based upon the errors and conclusions of law appearing on the face of the decision.

## STATEMENT OF THE CASE

Respondent was charged in an information filed by the District Attorney of Los Angeles County in the Superior Court of Los Angeles for the State of California, of a violation in Count I of Section 11530 of the Health and Safety Code of the State of California (unlawful possession of narcotics) and in Count II of a violation of Section 11531 of the Health and Safety Code of the State of California (unlawful possession of narcotics for sale, distribution or other purpose), on which charges Respondent pled guilty and was fined \$500.00 and sentenced to 90 days in the County Jail. Information for violation was filed on 10/1/68. An application for probation was filed on 10/1/68.

1 of respondent and on December 1, 1966, proceedings were suspended  
2 and respondent was placed on probation to the court for a period of  
3 five years, one condition being that he spend the first year in  
4 the County Jail.

5 On July 13, 1967, respondent, through counsel, filed a  
6 motion with the Superior Court of Los Angeles County, supported by  
7 the declaration of his attorney, to vacate the finding of guilt and  
8 to remand respondent to the Juvenile Court of the Los Angeles Superior  
9 Court for further proceedings. On May 25, 1967, the finding of  
10 guilt was vacated and the respondent was certified to the Juvenile  
11 Court of the Superior Court of Los Angeles County. On July 13, 1967,  
12 a petition was filed in the Juvenile Court of the Superior Court of  
13 Los Angeles County by the Probation Department of the Superior Court,  
14 alleging that Munir Sirhan, a minor of the age of nineteen years,  
15 came within the provisions of Section 602 of the Welfare and Insti-  
16 tutions Code for the violation of Sections 11530 and 11531 of the  
17 Health and Safety Code of the State of California, praying that he  
18 be adjudged and declared a ward of the Juvenile Court and dealt with  
19 as such.

20 The matter coming on regularly for hearing on July 14,  
21 1967, before a Referee of the Juvenile Court who accepted the  
22 certification from the Los Angeles County Superior Court of the  
23 State of California, was continued for disposition to July 31, 1967.

24 On January 11, 1967, an order was issued by the District  
25 Director of the Immigration Department at Los Angeles to show cause  
26 why the respondent should not be deported from the United States, on  
27 the grounds that he had been convicted of the offense of violation  
28 of Section 11530 of the Health and Safety Code of the State of  
29 California. A hearing was conducted before Special Inquiry Officer  
30 Michael F. Leone on June 4, 1967, and on July 11, 1967, the Special  
31 Inquiry Officer rendered his decision ordering the respondent's  
32 deportation from the United States.

1           At the hearing before the Immigration Service, a certified  
2 copy of the Order of the Superior Court of Los Angeles County,  
3 dated May 25, 1967, vacating the finding of guilt of said court and  
4 certifying the respondent to the Juvenile Court was received in  
5 evidence. No other documents were filed on respondent's behalf.  
6 The respondent does herewith attach to this motion the following  
7 certified copies of the record of the Superior Court of the County  
8 of Los Angeles and of the Juvenile Court thereof, to supplement  
9 the Immigration record on behalf of the respondent:

10           1. The April 27, 1967, Notice of Motion and Motion  
11 to Modify Terms of Probation and Sentence, Vacate Finding  
12 of Guilt, and Certify Defendant to Los Angeles County  
13 Juvenile Court and Declaration of David C. Marcus in  
14 Support thereof.

15           2. The affidavit of service on the Los Angeles County  
16 District Attorney.

17           3. The April 27, 1967, Minute Order of the Superior  
18 Court, continuing said proceeding until May 11, 1967.

19           4. The May 12, 1967 Minute Order of the Superior Court,  
20 referring the matter to Juvenile Court and continuance  
21 to May 18, 1967.

22           5. The May 18, 1967, Minute Order of the Superior  
23 Court continuing the matter to May 25, 1967.

24           6. The May 25, 1967, Minute Order of the Superior Court  
25 providing that the finding of "Guilty" be vacated and the  
26 defendant certified to Juvenile Court.

27           7. Petition of July 13, 1967, certifying the respondent  
28 as a ward of the Juvenile Court.

29           8. Findings and Order of Referee dated July 14, 1967,  
30 accepting certification and continuing the matter until  
31 July 31, 1967, for disposition.  
32



1            ERRORS IN THE DECISION OF THE SPECIAL INQUIRY OFFICER

2            The Decision of the Special Inquiry Officer recites:

3            ". . . . The record indicates that the criminal case  
4            against the respondent was not 'pending' on May 25,  
5            1967 but appears to have become a final judgment  
6            upon the expiration of 10 days after the rendition  
7            of the judgment, aforementioned, on October 13, 1966  
8            without notice of appeal having been filed therein,  
9            as provided by Rule 31, Judicial Council (California  
10            Penal Code, Section 1247k)."

11            The order suspending the proceeding and requiring the  
12            condition of one year's penal servitude is appealable. Penal Code,  
13            Section 1237, provides,

14            "An appeal may be taken by the defendant: 1.  
15            From a final judgment of conviction . . . a sentence  
16            or Order granting probation shall be deemed to be a  
17            final judgment within the meaning of this Section . . . ."  
18            (Emphasis added.)

19            Pursuant to the foregoing penal provision, the court,  
20            in *People v. Goldstein*, 136 Cal. App. 2d 778, 793 (1955), stated:

21            ". . . "Probation having been granted and the proceedings  
22            thereupon suspended, there was in fact no judgment, and  
23            this is true notwithstanding the requirement that defend-  
24            ant pay a fine and make certain restitution as conditions  
25            of probation. (*People v. Wallach*, 8 Cal.App.2d 129, 133  
26            [47 P.2d 1071]; *In re Marquez*, 3 Cal.2d 625, 627 [45  
27            P.2d 342]) An appeal may now be taken from a probation  
28            order (Pen. Code, § 1237), and it is established that  
29            where probation has been granted and no judgment entered  
30            an appeal which purports to be taken from the judgment  
31            may be treated as an appeal from the probation order. . . ."

32            In a footnote directive, *People v. Kraps*, 238 Cal. App.

1 2d 675, 676 (1965), the court offered an explanation applicable to  
2 the instant case:

3 "1 Defendant purports to appeal from 'the judgment'  
4 of the trial court. However, the record discloses that  
5 following defendant's conviction the proceedings in the  
6 instant case were suspended without imposition of sentence  
7 and probation was granted pursuant to defendant's motion.  
8 Thus, there was in fact no judgment entered in the instant  
9 action. However, under the 1951 amendment to Penal Code,  
10 section 1237, subdivision 1, an order granting probation  
11 is deemed to be a final judgment for purposes of appeal.  
12 Since that amendment it has been held that an appeal  
13 which purports to be taken from the judgment may be  
14 treated as an appeal from the probation order and that  
15 for purposes of appeal the two are interchangeable  
16 terms. . . ."

17 Based on the foregoing, it must be deemed proper to effect  
18 an appeal from the Order of December 1, 1966, granting probation,  
19 as said Order shall be construed a "Final Judgment."

20 The Declaration in support of the motion to vacate and  
21 the motion itself are in the nature of a writ of coram nobis.  
22 "The non-statutory motion to set aside the judgment is the equivalent  
23 of a writ of error coram nobis." People v. O'Brien, 97 Cal. App. 2d  
24 391, 392 (1950). California law permits both the writ of coram  
25 nobis and motion to vacate and set aside the judgment to be used  
26 interchangeably when there exist matters unknown to the defendant  
27 at trial, and which are subsequently asserted, on exercise of "due  
28 diligence." People v. Del Campo, 174 Cal. App. 2d 217 (1959).  
29 "A motion to vacate a judgment is an application for relief in the  
30 nature of a writ of error coram nobis." People v. McCoy, 115 Cal.  
31 App. 2d 565, 567 (1953); People v. Wilson, 106 Cal. App. 2d 712,  
32 718 (1951).

1           In People v. Harincar, 49 Cal. App. 2d 594, 595-596 (1942),  
2 the court said,

3           "Although defendant's motion to vacate the judgment,  
4 it is in legal effect under the practice of this state a  
5 Petition for a Writ of Error Coram Nobis. In People v.  
6 Vernon, 9 Cal. App. 2d 138 (1935), it is held that a  
7 Writ of Error Coram Nobis, 'is nothing more nor less than  
8 a motion to vacate a judgment,' and that the remedy provided  
9 by the Writ could be designated by 'the more simple and appro-  
10 priate name of a motion to vacate a judgment.'"

11           A motion in the nature of coram nobis may be made at any  
12 time after judgment, or time for appeal has passed, and no such  
13 limitation governs the application of said remedy. The court, in  
14 People v. Martinez, 88 Cal. App. 2d 767, 773 (1948), instructed,

15           "... an appeal for a Writ of Error Coram Nobis should  
16 be made within a reasonable time. Diligence is required.  
17 A convicted person is not permitted to allow years to  
18 pass during which witnesses die, disappear or forget, and  
19 his own imagination grows and expands."

20           The major criteria for determining whether or not the  
21 writ has been exercised under the circumstances of "due diligence"  
22 includes a showing that the matter was not apparent to the defendant  
23 at trial and upon its ascertainment he acted promptly in its  
24 assertion.

25           Irrespective of the writ of coram nobis, the court was  
26 possessed with jurisdiction to make such order as the cause was  
27 still "pending." By virtue of the Order, suspending proceedings  
28 and placing the defendant on probation for a period of five years,  
29 the court's jurisdiction over the respondent continued during the  
30 entirety of probation. The court could, during such time interval,  
31 revoke, alter, change, or modify its order of suspension, imposition  
32 or execution of sentence.

1           Section 1203.3 of the Penal Code provides, in part,  
2       "The court shall have (1) authority at any time during the term of  
3       probation to revoke, (2) modify or change its order of suspension  
4       its order of suspension of imposition or execution of sentence."  
5       (Emphasis added.) California clearly holds that the court maintains  
6       complete and exhaustive jurisdiction over a probation during the  
7       term of said probation.

8       ". . . the jurisdiction of the trial court over the pro-  
9       bationer is not exhausted when it imposes the original  
10      conditions of probation; but on the contrary, at all  
11      times during the probationary period, it may exercise  
12      control over him. . . ." People v. Roberts, 136 Cal.  
13      App. 709, 712 (1934).

14       "The court, during the term of probation may modify its  
15      original order." In re Marcus, 11 Cal. App. 2d 359 (1936); People  
16      v. McClean, 130 Cal. App. 2d 439, 444 (1955); People v. Marin, 147  
17      Cal. App. 2d 625, 627 (1957).

18       In People v. Brown, 111 Cal. App. 2d 406, 408 (1952), the  
19      court said, "when the term of probation expired the court lost juris-  
20      diction to vacate its former order." (Emphasis added.)

21       The foregoing is settled law of the state, and no collateral  
22      attack, by a purely administrative department of the federal govern-  
23      ment can impeach, affect, or attack the jurisdiction exercised by a  
24      duly constituted court of the state administering its inherent  
25      powers and discretion in probationary criminal proceedings.

26       The Special Inquiry Officer concludes in the following  
27      solution:

28       "In view of the recency of respondent's conviction, on  
29      which he is still confined and serving the aforementioned  
30      term of probation, it is concluded that the respondent is  
31      ineligible for any form of discretionary relief from  
32      deportation. . . ."

The sole issue stressed in the Decision of the Special Inquiry Officer is,

"... what effect, if any, was made upon the judgment of conviction entered on October 13, 1966 (Exhibit 2) by the Minute Order entered by another judge of the same Superior Court on May 25, 1967 vacating the finding of 'guilty' and certifying the case to the Juvenile Court, presumably under the provisions of Section 604(b); Welfare and Institutions Code. (Exhibit 4). The said section permits the discretionary certification to the juvenile court 'whenever a case is pending in any court.'"

As stated earlier, his conclusions are clearly erroneous and the Minute Order of May 25, 1967, remains proper under the circumstances herein. The suspension of proceedings and granting of probation maintained the court's jurisdiction, rendering the defendant's case as "pending." Because of the lack of finality, the subsequent certification, on May 25, 1967, to the Juvenile Court, was in conformity and compliance with California precedent.

Section 503 of the Welfare and Institutions Code of the State of California provides:

"An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."

## CONCLUSION

The Superior Court had jurisdiction to vacate its finding of guilt and remand the minor defendant to the Juvenile Court under Section 503 of the Welfare and Institutions Code of the State of California. The adjudication of a minor to be a ward of the Juvenile Court is not to be deemed the conviction of a crime for any purpose nor shall the proceedings in the Juvenile Court be deemed criminal proceedings. It therefore must be determined that the respondent



1 is not a deportable alien.

2 Respondent therefore moves to vacate the Decision of the  
3 Special Inquiry Officer and, alleging the foregoing, urges that  
4 immediate reconsideration is both necessary and proper.

5 DATED: July 24, 1967.

6  
7 /s/ David C. Marcus  
8 DAVID C. MARCUS

9 Attorney for Respondent  
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1 DAVID C. MARCUS  
2 Attorney at Law  
3 215 West Fifth Street  
4 Los Angeles, California 90013

5 Telephone: 628-4788

6 Attorney for Defendant

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WILLIAM G. SHARP  
COUNTY CLERK  
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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

No. 324984

11 Plaintiff,

NOTICE OF MOTION

12 vs.

13 MUNIR SHIRHAN,

14 Defendant.

15  
16 TO: THE PLAINTIFF ABOVE NAMED AND TO EVELLE YOUNGER,

17 DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES

18 <sup>27</sup> YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the  
19 <sup>4:30</sup> 26th day of April, 1967, at the hour of 9 a.m. on said date,

20 defendant through his counsel will move the above entitled court  
21 to modify the terms of probation and sentence heretofore imposed  
22 by the above entitled court, to time served and to permit the  
23 defendant's release from custody, and that the finding of guilt  
24 be vacated and set aside and the defendant certified to the Juvenile  
25 Court of the County of Los Angeles.

26 Said motion will be based upon the files and record in  
27 the proceedings and upon the declaration of David C. Marcus,  
28 attached hereto.

29 DATED: April 17, 1967.

30  
31 David C. Marcus  
32 DAVID C. MARCUS

Attorney for Defendant

1 DAVID C. MARCUS  
2 Attorney at Law  
3 215 West Fifth Street  
4 Los Angeles, California 90013  
5 Telephone: 628-4788

6 Attorney for Defendant

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 MUNIR SHIRHAN,

14 Defendant.

No. 354784

MOTION TO MODIFY TERMS  
OF PROBATION AND SENTENCE,  
VACATE FINDING OF GUILT,  
AND CERTIFY DEFENDANT  
TO LOS ANGELES COUNTY  
JUVENILE COURT AND  
DECLARATION OF DAVID  
C. MARCUS IN SUPPORT  
THEREOF

15  
16 DAVID C. MARCUS does hereby certify:

17 That he is the attorney for the defendant in the  
18 above entitled proceedings. That he is informed and believes and  
19 therefore alleges:

20 That Defendant Munir Sirhan, born July 15, 1947, in  
21 Palestine, was charged by an information filed by the District  
22 Attorney of Los Angeles County of a violation of section 11530 of  
23 the Health and Safety Code of the State of California; that at the  
24 time of the commission of the alleged offense, the defendant was  
25 a minor, eighteen years of age.

26 In proceedings had before the above entitled court the  
27 defendant was found guilty of the charge, and on December 1, 1966,  
28 his sentence was suspended and he was placed on probation for five  
29 years on the condition that he serve one year in the County Jail.  
30 That defendant is presently confined at the Sheriff's Wayside  
31 Honor Farm pursuant to the provisions of the judgment of said  
32 court.



1 On behalf of defendant Munir Shirhan, declarant further  
2 recites:

3 That at the time of the establishment of the Israeli  
4 Government, when defendant was eight years of age, defendant, his  
5 father, mother and family, consisting of four brothers and one  
6 sister, who were non-Jews, were forced to flee, as refugees, the  
7 country of their birth and journeyed to Jordan and resided in that  
8 country; that while residing in Jordan the Sirhan family was sub-  
9 jected to great hardship and deprivation. That on September 24,  
10 1956, the United States Consulate at Amman, Trans-Jordan, issued  
11 its visas to the Sirhan family, granting them a 4A(4) Non-Quota  
12 visa PH203 upon Trans-Jordanian passport for travel purposes.  
13 That on January 12, 1957, the Sirhan family was admitted as per-  
14 manent residents to the United States of America in New York, New  
15 York. Defendant was then nine years of age. That the Sirhan  
16 family then journeyed to California, establishing their home and  
17 residence in Pasadena, California, where defendant attended grade  
18 and high schools. All of the defendant's family are now permanent  
19 residents of the United States, residing at 696 East Howard,  
20 Pasadena, California.

21 That during the trial proceedings had before the above  
22 entitled court, the defendant was represented by an attorney.  
23 However, his counsel was not cognizant of the statutes, laws, and  
24 regulations of the Immigration and Nationality Act of the United  
25 States nor the interpretation of the United States courts of the  
26 grounds of deportation as related to one found guilty of the  
27 possession of narcotics in any form by an alien.

28 That subsequent to the finding of guilt and during the  
29 defendant's incarceration as aforesaid, the Immigration Department  
30 ascertained that the defendant was an alien and had been found  
31 guilty of the illegal possession of marijuana, and thereupon and  
32 on January 11, 1967, caused to be issued its Order to Show Cause

1 and Notice of Hearing in Deportation under the provisions of  
2 section 242 of the Immigration and Nationality Act, in the matter  
3 entitled "In the Matter of Munir Bishara Salameh Sirhan, Respond-  
4 ent," bearing number A10 711 879, charging that the defendant was  
5 a citizen of Jordan who last entered the United States in New York  
6 on January 12, 1957, and at the time of his entry was admitted  
7 as an immigrant; and that on October 12, 1966, in the Superior  
8 Court of the State of California for the County of Los Angeles  
9 was convicted for the offense of unlawful possession of marijuana  
10 in violation of section 11530 of the Health and Safety Code of the  
11 State of California; and that on the basis of his alienage and  
12 conviction he became a deportable alien pursuant to the provisions  
13 of section 241(a)(11) of the Immigration and Nationality Act.  
14 That hearings have been conducted before said Immigration Service  
15 and the defendant has now become subject to deportation.

16 That defendant stands to be deported and banished from  
17 the United States to be separated from his father, mother, and  
18 family, to a country strange and unknown to him, and to a penalty  
19 and hardship much worse than death.

20 Your declarant has been advised by defendant's attorney  
21 of record that if he had known of the provisions of the Immigration  
22 and Nationality Act at the time of his representation of the  
23 defendant before the above entitled superior court, he would have  
24 sought to have the defendant certified to the Juvenile Court and  
25 prosecuted as a juvenile.

26 Your declarant alleges that if the defendant had been  
27 certified to the Juvenile Court and charged and prosecuted as  
28 a juvenile, he would not have become amenable to the harsh and  
29 extreme penalties of deportation under the Immigration and  
30 Nationality Act as the statute is not applicable to minors when  
31 prosecuted as juveniles.  
32

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3.

RECEIVED  
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WASHINGTON, D.C.