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

Chairman

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DEPORTATION CASE CHECK SHEET

ALIEN: [illegible], Munir Bishara Salameh - [illegible] — FILE: A- 10 771 [illegible]

~~[illegible] County Jail~~ [illegible]

ADDRESS: ~~Los Angeles, Calif.~~ [illegible] Calif.

ATTORNEY OR REP'VE: ~~[illegible]~~ David C. Marcus

[illegible] 5th St.

ADDRESS: L.S. [illegible] 91 [illegible]

FORM		TO WHOM FURNISHED (Alien, attorney, guardian, consulate, [illegible], hospital, file, etc.)	DATE	RESPONSIBLE EMPLOYEE
I-210	V/D Notice			
I-[illegible] / I-[illegible]	(circle one)	Stamping Requirements Verified	1/11/67	
M-125		Under docket control at LOS	1/11/67	
I-217	Info for T/D or PP Application		1/9/67	
I-200	Warrant of Arrest		1/11/67	
I-203	Order to Detain or Release Alien			
I-247	Notice - Detainer Against Alien	Sheriff, L.A. County Jail	1/11/67	
G-590 I-43	I-216 I-164 (circle)			
I-286	Notice of Det'n or Release Cond'ns		1/11/67	
I-352	Bond Form			
I-393	Bond Control Card			
I-220A	Order of Release on Recognizance	Alien & Atty	8-2-67	[illegible]
I-284	Notice re Det'n & Dep'n Expenses			
I-205	Warrant of Deportation			
I-229	Warning of 6-Month Limit - Sec 242(e)			
I-241	T/D Request - Design'd Country			
I-206 I-267	I-270 I-269 Efforts to Obtain T/D			
I-294	Notice of Dep'n Destination			
I-166	Deportation and Baggage Notice			
I-141	Medical Certificate			
I-172	Status Card	To C. O.		

DEPORTATION CASE CHECK SHEET
(To be kept on top - right side of file)

Form I-170
(Rev. 4-10-62)

[illegible]

(OVER)

FORM		TO WHOM FURNISHED (Alien, attorney, guardian, consulate, USPHS, hospital, file, etc.)	DATE	RESPONSIBLE EMPLOYEE
	Notice re Dep'n Expenses			
	Demand for Alien Surrender			
[illegible]	Bond Breach			
I-220B	Order of Supervision			
I-157	Notice of Deportation			
I-391	Bond Cancellation			
G-159 G-174	Coded Punch Card	To C. O.		
G-143	Lookout Notice Worksheet	To R. O.		
I-94 I-95	Checkout Record (circle one)			

CLOSING ACTIONS TAKEN	DATE	RESPONSIBLE EMPLOYEE
Disposition Notice - R-84 - to FBI		
Disposition Notice sent to RCMP		
Conditional Release - Supervision - Cancelled (Circle proper words)		
Form G-22.6 Noted as to Disposition		
To Rec ADM & Info Sec for Issuance of I-151		
Deportation Expense Billed		
"Closed" Stamp Placed on File		
"Statistics" Stamp Placed on File		
Form I-154 Closed Out		
Information as to Disposition Forwarded to Other Interested Agencies Listed Hereafter.		

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UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals

[illegible]

File: A-[illegible] - Los Angeles

In re: [illegible]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David C. Marcus, Esq.
215 West Fifth Street
Los Angeles, Calif. [illegible]
(Case scheduled for oral
argument on February [illegible],
[illegible] 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: Request 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.

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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 13, 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 Juveniel (sic) Court. Remanded" (Exhibit 4).

After the Superior Court certified and remanded the case to the Juvenile Court as aforestated, 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.

A-[illegible]

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, 1957 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, 1956, 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

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arrest, been dealing in bulk quantities of marijuana and the police were aware of a previous sale of three cans of it, each can containing enough for 25 or 30 cigarettes. It is stated that the witness in the previous case was afraid to testify so it was not prosecuted.

Deportation proceedings were commenced at a hearing before a Special Inquiry Officer of this Service on January 24, 1967, at the Los Angeles County Jail. Mr. Sirhan was represented by counsel and the hearing has presently been continued until February 14, 1967.

When the decision of the Special Inquiry Officer has been rendered, I will be happy to advise you further. It is contemplated that if ordered deported, travel documents for return to Jerusalem, Jordan, will be applied for.

Sincerely yours,

George K. Rosenberg
District Director

Honorable H. Allen Smith
House of Representatives
Washington, D. C.

CC: COMMISSIONER, WASHINGTON, D. C.
ATTN: CONGRESSIONAL MAIL UNIT

CC: REGIONAL COMMISSIONER, SWRO, SAN PEDRO, CALIF.

CC: LOS 93/8.38

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*ADD/INV:- In examining the case of Munir B. SIRHAN, A10 711 879, who is under deportation proceedings on narcotic charges, I noted the probation report in the file which states this man has a brother named Sharif, who was arrested in Pasadena December 18, 1963, for attempted murder. As a result of investigation this brother was finally placed on probation for using a hack saw to saw the hydraulic lines through on the car of a female acquaintance. Please check Sharif file and ascertain if there is a deportation case. Although Sharif came in with an immigrant visa on 1-12-57, there may be other matters.

RLW:wmr RLWMS

February 1, 1967

A10 711 879

Dear Mr. [illegible]:

This refers to your letter of January 27, 1967, concerning the immigration case of Mr. Munir B. SIRHAN, to whom our file A10 711 879 relates.

Mr. Sirhan is single and was born in Jerusalem on July 15, 1947. He entered the United States as an immigrant visa obtained in Jerusalem on January 13, 1957, in company with his mother, two brothers and a sister. He resided, since about 1957, at 696 East Howard Street, Pasadena, California, with his mother and brother.

On October 12, 1966, in the Superior Court of the State of California, for the County of Los Angeles, he was convicted following a plea of "not guilty", for violation of Sections 11530 "possession of marijuana", and, 11531 "sale of marijuana", of the Health & Safety Code for the State of California. The proceedings were suspended on December 1, 1966, by the Court. Following submission of a probation report, probation was granted for five years, the first year to be spent in the County Jail. His tentative release date is August 12, 1967.

Mr. Sirhan has stated to our officers that he has not seen nor heard from his father since he was nine years of age. His father is apparently still in Jerusalem, where an aunt also resides. His mother is said to be a nursery school employee. Prior to trial, Mr. Sirhan had been employed for about two weeks as a sales-clerk at Nash's Department Store, Pasadena, California.

It appears that previously, for about a year and a half, he had almost no employment being supported by his mother.

The matter under which he was convicted apparently involved negotiations over a can of marijuana and discussions concerning the future sale of a kilo of marijuana. Information has been received that the subject had, prior to his

H. ALLEN SMITH

Congress of the United States
House of Representatives
Washington, D. C.

January 27, 1967

George K. Rosenberg, Director
Immigration & Naturalization Service
Department of Justice
300 North Los Angeles Street
Los Angeles, California

Re: MUNIR B. SIRHAN

Dear George:

Enclosed is a copy of a letter which is self-explanatory. You know my position in these matters. I always hesitate to try and help people who have been convicted of a crime such as this.

The above-named has been here a good many years and it seems like he ought to know enough to be good. By the same token, I don't know where he is going to go if we deport him.

Would you be kind enough to review the file and let me have whatever information I am entitled to in order that I can determine whether or not I am justified in introducing private legislation on his behalf.

Sincerely yours,

H. ALLEN SMITH
M.C.

HAS:m
Enclosure

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LAW OFFICES OF
VERNON BETTIN
FREDRIC BETTIN
JERRY COONS

January 17, 196[illegible]

Hon. H. Allen Smith, M.C.
House Office Building
Washington, D.C.

Dear Congressman Smith:

Mrs. Mary B. Sirhan, who resides in your Congressional District at 696 East Howard Street, Pasadena, California 91104, has asked me to write to you on behalf of her son, Munir B. Sirhan.

Apparently her son, Munir Sirhan, has been convicted of possession of marijuana and is presently serving one year in county jail as a condition of probation. He has been notified that deportation proceedings will be brought against him because of his conviction.

Upon looking into the situation for her, I was unable to find any provision for administrative discretion or waiver of conviction such as would apply to persons convicted of less serious crimes (?) such as bank robbery, rape, etc. It is my understanding that the only recourse to prevent a deportation order is by means of a special bill or a presidential pardon.

In requesting you to sponsor a special bill, she wishes you to consider the following matters:

(1) The members of the family were refugees from Isreali aggression. They fled their native country of TransJordan, and entered the United States under Jordanian passports though they had never lived in Jordan, but had no other country to call home.

(2) When the family entered the United States in 1956, Munir was only eight years old. He has never known any other country as a home, and, indeed, the country of his rightful citizenship no longer exists. If deported he could only be sent to a country foreign to him.

(3) Munir does not speak any language except English, and all of his relatives and friends are in the United States. If he were to be sent to a foreign country, he would be banished in every practical sense just as though he were a native born citizen of the United States.

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(4) Munir must pay for his mistake, but without detracting from the seriousness of the offense, it should be noted that circumstances of the offense indicated he was being used as a pawn by other persons. A punishment of one year in jail is severe enough without adding to it exile from the country which is in fact, if not technically, his home.

(5) The judge who sentenced Munir must have felt that he had rehabilitation potential and that he could become a good member of the community -- otherwise he would not have been granted probation.

Mrs. Sirhan would write to you herself, but she is afraid that you might not understand her English well enough to answer her requests and prayers. On behalf of Mrs. Sirhan, I therefore ask you to make this matter one of personal interest and concern.

Yours very truly,

Jerry Coons

JERRY COONS

t:pm

General Counsel
Attention: Appellate Trial Attorneys
Board of Immigration Appeals
323 HOLC Building, Washington, D. C.
M. F. [illegible], Deputy Regional Commissioner
Southwest Region

CO 3.[illegible]
January [illegible], 1968

Munir Bishara Salameh Sirhan, A10 711 [illegible].

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 proceedings.

Attachment

cc: Deputy Regional Commissioner, SWRO

cc: District Director, Los Angeles, California

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A13 [illegible]
Regional Commissioner, [illegible] Region, November [illegible], 19[illegible]
San Pedro, California

Edward B. [illegible], District Director,
Los Angeles, California.

Re: Richard [illegible] - Request for oral argument

Attention: Regional Counsel

This case presents the novel question of whether the [illegible] a court action which [illegible] is believed to be outside the jurisdiction of the court but which was regarded as and [illegible] 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 finding which a [illegible] guilt and returning 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 proceedings for use by the Appellate Trial Attorney.

Attachment

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UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

IN DEPORTATION PROCEEDINGS

IN THE MATTER OF: A- 10 711 879

MUNIR BISHARA SALAMEH SIRHAN,

Respondent

TO THE SPECIAL INQUIRY OFFICER:

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

Dated at Los Angeles, Calif. this 8th day of November 196_7.

Trial Attorney

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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

File No. A 10 711 829 818

In the Matter of:

MUNIR BISHARA SALAMEH SIRHAN,

Respondent

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated September 8, 1967, in the above entitled case.

2. I am (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 not) desire oral argument before the Board of Immigration Appeals in Washington, D.C.

4. Briefly, state reasons for this appeal.

*(See attached page)

Recd of Proceedings to BIA [illegible] 1/22/68

MUNIR B. SIRHAN

Signature of Appellant (or attorney or representative)

Munir B. Sirhan

(Print or type name)

696 East Howard St., Pasadena, Cal.

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

September 16, 1967

Date

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Form I-290A
(Rev. [illegible])

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 office 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.

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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 Corim 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.

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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

JUL 11 1957

File: A 10 711 879 - Los Angeles

In the Matter of)

MUNIR BISHARA SALAMEH SIRHAN,) IN DEPORTATION PROCEEDINGS

Respondent)

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

ON BEHALF OF RESPONDENT:

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

ON BEHALF OF SERVICE:

William S. Howell
Trial Attorney
Los Angeles, California

DECISION OF THE SPECIAL INQUIRY OFFICER

Respondent is a 19-year-old native of Palestine and a citizen of Jordan. He entered the United States at New York, New York on January 12, 1957, when he was admitted as an immigrant. Respondent is charged herein with being subject to deportation under the provisions of Section 241(a)(11) of the Immigration and Nationality Act on the ground that he at any time has been convicted of a violation of any law or regulation relating to the illicit possession of marijuana in violation of Section 11530 of the Health and Safety Code of the

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State of California. This charge is based on the respondent's con-
[illegible] alleged that he was on October 13, 1966, convicted in the Superior Court of the State of California, for the County of Los Angeles for the offense of unlawful possession of marijuana in violation of Section 11530 of the Health and Safety Code of the State of California.

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 I) 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 II). The case was submitted to the court by stipulation on the testimony contained in the transcript of proceedings had at the preliminary hearing and the Superior Court on October 13, 1966 found the respondent guilty as charged as to both counts. On December 1, 1966, the proceedings were suspended 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, a Minute Order was entered in the aforementioned criminal action which states as follows: "Finding of 'Guilty' is vacated and defendant is certified to Juvenile (sic) Court. Remanded."

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(Exhibit [illegible]). The Government's Trial Attorney objected to the receipt in evidence of this latter court order on the ground that the Superior Court was without any authority to make it and it therefore constitutes an invalid order. Respondent's counsel has represented that, pursuant to the aforementioned certification, the Juvenile Court has accepted jurisdiction of the matter.

Article VI, Section 5, Constitution of California provides that "The superior courts shall have original jurisdiction in all criminal cases amounting to felony and cases of misdemeanor not otherwise provided for." Section 737 of the Penal Code of California provides that "All public offenses triable in the superior court must be prosecuted therein by indictment or information, except as provided in the Government Code, the Juvenile Court Law and Section [illegible] of this code." Section 794 of the California Penal Code provides that "Where an offense is within the jurisdiction of two or more courts, a conviction or acquittal thereof in one court is a bar to a prosecution therefor in another."

The present Juvenile Court Law is found in the Welfare and Institutions Code of California, Sections 550, et seq. Section 602 thereof provides as follows:

> "Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the Juvenile Court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

The Superior Court exercises the jurisdiction of the juvenile court and while sitting as such is known as the juvenile court (Sec. 558,

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W and I Code) no criminal offense charged against a person under the age of 18 years at the time of the alleged commission thereof may be tried by any court "unless the matter has first been submitted to the juvenile court by petition as provided in Article 7 commencing with Section 650, and said juvenile court has made an order directing that such person be prosecuted under the general law. (Section 606, W and I Code). This respondent was born on July 13, 1947 and accordingly, was not under the age of 18 years at the time of the alleged commission, on June 10, 1966, of the aforementioned offense. The respondent did not, therefore, come under the mandatory certification to the juvenile court provisions of Section 604(a) of the Welfare and Institutions Code.

Section 604(b), Welfare and Institutions Code of California, provides as follows:

> "(b) Whenever a case is pending in any court upon an accusatory pleading and it appears to the satisfaction of the judge that the person charged is under the age of 21 years, the judge <u>may</u> certify the case to the juvenile court of his county in manner prescribed by subdivision (a) of this section." (emphasis supplied)

Section 604(c) of the Welfare and Institutions Code of California provides as follows:

> "(c) When a court certifies a case to the juvenile court pursuant to subdivision (a) or subdivision (b), it shall be deemed that jeopardy has not attached by reason of the proceedings prior to certification, but the court may not resume proceedings, nor may a new proceeding under the general law be commenced in any court with respect to the same matter unless the juvenile court has found that the minor is not a fit subject for consideration under

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juvenile Court Law and has ordered that proceedings under the criminal law [illegible]."

The question in this case is what effect, if any, was had upon the judgment of conviction entered on October 11, 1966 (Exhibit 3) 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." (emphasis supplied). The record indicates that the criminal case against the respondent was _not_ "pending" on May 25, 1967 but appears to have become a final judgment upon the expiration of 10 days after the rendition of the judgment, aforementioned, on October 11, 1966 without notice of appeal having been filed therein, as provided by Rule 31, Judicial Council (California Penal Code, Section [illegible]).

The California Evidence Code provides the following rebuttable presumption:

> "Section 666. Judicial Action Lawful Exercise of Jurisdiction. Any court of this state or the United States, or any court of general jurisdiction in any other state or nation, or any judge of such a court, acting as such, is presumed to have acted in the lawful exercise of its jurisdiction. This presumption applies only when the act of the court or judge is under collateral attack."

The question of whether a court has jurisdiction to make an order may be raised in any forum (_Matter of H-_, 9 I&N Dec. 460, Board of Immigration Appeals, 1961). Prior to the enactment of the California Evidence Code, effective January 1, 1967, it was held in one

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California rule that a void order or judgment is subject to collateral attack at any time and in any place by any interested party. (Carter v. Carter, 1957, 148 C. A. 2d 845, 307 P. 2d 633). Even prior to the enactment of Section 666, California Evidence Code, aforementioned, the Board of Immigration Appeals held that lack of judicial jurisdiction in a court must be affirmatively established by the Service. (Matter of O'Sullivan, 1963, 10 I&N Dec. 320). Section 242(b)(4) (8 U.S.C. 1252(b)(4)) requires that "no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence."

It is well settled that the sentence in a criminal case is a final judgment of conviction (cf. Matter of T-, 6 I&N Dec. 835). The aforementioned Minute Order of May 25, 1967 (Exhibit 4) does not recite any section of law or other authority for its exercise. It does not appear to constitute the granting of a writ of error coram nobis or the granting of a motion to set aside the judgment within the period of time permitted for such a motion. There is no provision known to us in California law which permits the vacating of a final judgment of conviction more than 6 months thereafter, with no intervening appeal, writ of error coram nobis or motion to set aside the judgment. It must be and is concluded that the Minute Order of the Superior Court entered on May 25, 1967, aforementioned, was entered when the proceedings herein were no longer "pending", therefore, entered without jurisdiction over the subject matter and of no force or effect. The respondent's motion for termination of these proceedings must and will be denied.

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The allegations of fact and charge of deportability contained in the Order to Show Cause herein are hereby adopted by me as my findings of fact and conclusions of law.

In view of the category of respondent's conviction, on which he is still confined and serving the aforementioned term of imprisonment, it is concluded that the respondent is ineligible for any form of discretionary relief from deportation. His deportation must and will be ordered.

ORDER: IT IS ORDERED that the respondent's application for termination of these proceedings be and it is hereby denied.

IT IS FURTHER ORDERED that the respondent be deported from the United States to Jordan on the charge contained in the Order to Show Cause.

[illegible]l P. Leone
Special Inquiry Officer