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UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

100-1-100

FILE NO. 100-1-100 - THE NEGATIVE

IN THE MATTER OF

JOHN EDWARD WILSON, JR.      IN REMOVAL PROCEEDINGS

Respondent      1

COMES:

That the respondent, JOHN EDWARD WILSON, JR., Respondent of above  
title, of the County of Los Angeles, State of California, do hereby  
file of and under (Section 100-1, United  
and before (State of California)

Respondent      do hereby recommend the removal of the respondent dated  
July 11, 1957.

AS COUNSEL OF THE RESPONDENT:

AS COUNSEL OF GOVERNMENT:

JOHN E. WILSON, JR.  
Respondent of above  
123 West 1st Street  
Los Angeles, California 90013

WILLIAM E. WILSON  
United Attorney  
Los Angeles, California 90013

RECOMMENDATION OF THE SPECIAL TRAINING OFFICER

RECOMMENDATION

The above of this case are fully and fairly set forth in the decision re-  
ported herein on July 11, 1957, and do not now require repetition.  
Respondent has made, by his motion dated July 11, 1957, to have  
the aforementioned decision vacated and set aside and the finding  
of deportability therein recommended, previously 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 Motion Order of that Court

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about May 21, 1967 (Exhibit A) in which the court stated that the finding of "guilt" in the criminal proceedings was sustained and the defendant (respondent) was committed to the State Prison.

In his present motion, respondent's counsel argues that his defendant is entitled to the writ he seeks and the writ shall issue in the nature of a writ of habeas corpus. This writ of the defendant dated April 17, 1967 in support of his motion to modify terms of probation and sentence, release finding of guilt, and deliver the defendant (respondent) to the Juvenile Court. Counselman that nowhere therein is there any assertion of the innocence of the defendant, nor is there any other defense advanced to the motion advanced to the court that the defendant did not do that which the crime of which he was convicted which resulted in a deprivation of justice. The said motion is the criminal proceedings cannot therefore be permissibly to a writ of habeas corpus for it was not advanced to as Writ of Habeas Corpus, which the motion sought to maintain, but was advanced 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 (p. 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 1203.1). It is clear from the language of Section 1203.1 that jurisdiction of the court to act thereafter extends solely to the revocation, modification or change of the terms of <sup>the</sup> sentence imposed.

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and the finding of guilt.

The Order to Show Cause herein was issued on January 21, 1967 upon the basis of respondent's conviction on October 13, 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 granted on April 17, 1967. The Superior Court acted upon the said motion on May 25, 1967, on circumstances existing at that time. Respondent's present motion attacks a copy of a petition entered on July 18, 1967 by the probation officer and order dated July 14, 1967 of the before of Juvenile Court seeking to establish the propriety of an action by the latter, that is, Juvenile Court. The said petition and order are contrary to the Juvenile Court's Minute Order dated May 25, 1967 (Exhibit 4) in that, the said Minute Order was furnished for back of jurisdiction of the Superior Court to reconsider and set aside the finding of guilty entered on October 13, 1966 (Exhibit 3). It is concluded that the Superior Court was without jurisdiction to enter its order dated May 25, 1967 for the 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 the 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-

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not of a traditional work, after a finding of guilt, that the person  
should be executed and protection removed, as required by "Article  
Six" under the wording of Section 21(a)(1) of the Indemnity  
and Warranty Act. United States v. [redacted], 9 Cir. 1967, 382 F. 2d  
617, cert. denied 392 U. S. 921, 1967.

After careful consideration and upon review of the entire record  
these proceedings and the evidence set forth in respondent's petition,  
it is hereby decided, including the exhibits attached thereto,  
and of the Trial Attorney's brief dated August 11, 1967, it is now  
advised that respondent's motion should be denied and that no change  
should be made in the decision heretofore entered on July 11, 1967.

NOTE: It is ORDERED that the respondent's motion dated July 11,  
1967, be vacated and not made the decision dated July 11, 1967, be,  
and the same is hereby, denied.

*Michael F. Evans*

Michael F. Evans  
Special Inquiry Officer

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UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
200 North Los Angeles Street  
Los Angeles, California 90012

Date: September 7, 1967

David G. Marcus, Esq.  
215 West San Marcos  
Los Angeles, California 90012

File: A 10 711 879

NOTICE OF DECISION

MATTER OF JAMES BLANKA SALAMON SIMAN

Dear Sir:

☒ Attached is a copy of the written decision of the Special Inquiry Officer. This decision is final unless an appeal is taken to the Board of Immigration Appeals by returning to this office on or before September 20, 1967 the enclosed copies of Form I-290A, Notice of Appeal, properly executed, together with a fee of twenty-five dollars (\$25.00).

☐ Attached is an information copy of the oral decision of the Special Inquiry Officer made on \_\_\_\_\_.

☐ Attached, as requested, is a transcript of the testimony of record, pages to \_\_\_\_\_ which is being loaned to you on condition that no copy thereof will be made, that it will be retained in your possession and control, and that it will be surrendered upon final disposition of the case or upon demand by the Service.

☐ You are advised that on \_\_\_\_\_ the Special Inquiry Officer entered an order, which is final, granting the application for adjustment of status to that of a permanent resident under Section \_\_\_\_\_ of the Immigration and Nationality Act. A Form I-151, Alien Registration Receipt Card will be delivered in due course.

Very truly yours,

Special Inquiry Clerk  
Special Inquiry Branch

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Form I-295  
(Rev. 11-15-65)

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