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TEXT
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SUBJECT: 1503 RESPONSE: BREYER, TITTJUNG, BARTESCH AND SCHIFFER (NOS. 243, 247, 263, AND 267)

REFS: (A) 94 STATE 190075 (B) 94 GENEVA 7396
(C) GENEVA 3406

1. FOLLOWING IS THE RESPONSE OF THE USG UNDER PROVISIONS OF ECOSOC RESOLUTION 1503, TO A SERIES OF COMMUNICATIONS CONCERNING DENATURALIZATION AND DEPORTATION PROCEEDINGS BROUGHT BY THE DEPARTMENT OF JUSTICE AGAINST PERSONS ASSOCIATED WITH THE FORMER NAZI REGIME IN GERMANY DURING WORLD WAR II. THESE COMMUNICATIONS WERE RECEIVED UNDER COVER OF UN SECRETARIAT NOTES NO. G/SO 215/1 USA (243) DATED AUGUST 30, 1993, (247) DATED OCTOBER 29, 1993, (263) DATED MARCH 21, 1994, AND (267) DATED APRIL 20, 1994. ALTHOUGH THE USG RESPONDED IN FULL TO THESE COMMUNICATIONS LAST YEAR, THE CASES WERE CARRIED FORWARD BY THE

SUB-COMMISSION AND WILL BE CONSIDERED AGAIN AT ITS FORTHCOMING SESSION.

2. MISSION IS REQUESTED TO TRANSMIT THIS RESPONSE IN FULL, TOGETHER WITH THE SEPARATE SUMMARY PROVIDED IN PARA.

4 OF THIS MESSAGE, AS SOON AS POSSIBLE TO THE UN HUMAN RIGHTS CENTER UNDER COVER OF A DIPLOMATIC NOTE FOR DISTRIBUTION IN ITS ENTIRETY TO THE WORKING GROUP ON COMMUNICATIONS OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES. A SEPARATE COPY OF THIS RESPONSE SHOULD ALSO BE DELIVERED TO LINDA CHAVEZ, U.S. INDEPENDENT EXPERT ON THE SUBCOMMISSION.

3. BEGIN TEXT:

FURTHER RESPONSE OF THE GOVERNMENT OF THE UNITED STATES TO UN SECRETARIAT NOTES NO. G/SO 215/1 USA (243) DATED AUGUST 30, 1993, (247) DATED OCTOBER 29, 1993, (263) DATED MARCH 21, 1994, AND (267) DATED APRIL 20, 1994 TRANSMITTING A SERIES OF COMMUNICATIONS CONCERNING DENATURALIZATION AND DEPORTATION PROCEEDINGS BROUGHT BY THE UNITED STATES DEPARTMENT OF JUSTICE AGAINST INDIVIDUALS ASSOCIATED WITH THE FORMER NAZI REGIME IN GERMANY DURING WORLD WAR II.

THE GOVERNMENT OF THE UNITED STATES OF AMERICA WELCOMES THE OPPORTUNITY TO PROVIDE A FURTHER RESPONSE TO UNITED NATIONS SECRETARIAT NOTES NO. G/SO 215/1 USA (243) DATED AUGUST 30, 1993, (247) DATED OCTOBER 29, 1993, (263) DATED MARCH 21, 1994, AND (267) DATED APRIL 20, 1994 WHICH TRANSMITTED A SERIES OF COMMUNICATIONS CONCERNING DENATURALIZATION AND DEPORTATION PROCEEDINGS BROUGHT BY THE GOVERNMENT OF THE UNITED STATES AGAINST INDIVIDUALS ASSOCIATED WITH THE FORMER NAZI REGIME IN GERMANY DURING WORLD WAR II. THESE COMMUNICATIONS, WHICH WERE SUBMITTED BY RELATIVES, FRIENDS AND NEIGHBORS ON BEHALF OF FOUR INDIVIDUALS WHO HAVE BEEN THE SUBJECTS OF SUCH PROCEEDINGS, ALLEGE THAT THESE INDIVIDUALS AS WELL AS OTHERS PREVIOUSLY SUBJECTED TO SUCH PROCEEDINGS HAVE BEEN DENIED DUE PROCESS AND FAIR TREATMENT, PARTICULARLY AS THE RESULT OF THE RETROACTIVE APPLICATION OF CERTAIN U.S. LEGISLATION.

THE UNITED STATES NOTES THAT IT RESPONDED IN DETAIL TO THESE COMMUNICATIONS LAST YEAR AND THAT IT HAD PREVIOUSLY REPLIED TO SIMILAR ALLEGATIONS MADE IN COMMUNICATIONS TRANSMITTED BY SECRETARIAT NOTES NO. G/SO 215/1 USA (219), (220) AND (221) DATED FEBRUARY 23, 1993, (223) DATED MARCH 15, 1993, (225) DATED MARCH 22, 1993, (226) DATED MARCH 23, 1993, (228) DATED APRIL 5, 1993, (229) DATED APRIL 13, 1993, AND (233) DATED MAY 6, 1993. THE UNITED STATES IS PLEASED TO PROVIDE ADDITIONAL INFORMATION CONCERNING THE CURRENT STATUS OF THE PROCEEDINGS IN QUESTION.

FOR THE REASONS INDICATED BELOW, THE UNITED STATES GOVERNMENT RESPECTFULLY DENIES THAT ANY VIOLATIONS OF HUMAN RIGHTS HAVE OCCURRED IN CONNECTION WITH THE

DENATURALIZATION AND DEPORTATION PROCEEDINGS REFERRED TO IN THE COMMUNICATIONS IN QUESTION. TO THE CONTRARY, THESE JUDICIAL PROCEEDINGS ARE CHARACTERIZED BY AN ABUNDANCE OF DUE PROCESS, IN WHICH THE INDIVIDUALS CONCERNED HAVE BEEN FULLY REPRESENTED BY COMPETENT COUNSEL OF THEIR OWN CHOOSING AND HAVE HAD THEIR CONTENTIONS FULLY CONSIDERED AT TRIAL AND ON APPEAL. THE ORDERS OF DENATURALIZATION AND DEPORTATION ARE PREMISED UPON THE ESTABLISHED FACTS OF THE INDIVIDUALS' PARTICIPATION IN NAZI PERSECUTION AND THEIR RESULTING INELIGIBILITY TO BE A NATURALIZED CITIZEN OF, OR TO RESIDE IN, THE UNITED STATES. THE APPLICATION OF THE LAW IS NOT RETROACTIVE, BECAUSE EACH INDIVIDUAL WAS IN FACT INELIGIBLE TO ENTER THE UNITED STATES AND TO ACQUIRE U.S. CITIZENSHIP WHEN HE INITIALLY DID SO BY FRAUDULENT MEANS.

THE UNITED STATES ALSO NOTES THAT THE ALLEGATIONS IN THE COMMUNICATIONS DO NOT REVEAL A CONSISTENT PATTERN OF GROSS AND RELIABLY ATTESTED VIOLATIONS OF HUMAN RIGHTS. TO THE CONTRARY, THE COMMUNICATIONS CONCERN THE UNIQUE SITUATIONS OF ONLY A FEW INDIVIDUALS AND IN NO WAY SUBSTANTIATE THE ALLEGATIONS THAT TREATMENT OF THESE INDIVIDUALS RESULTED IN HUMAN RIGHTS VIOLATIONS OF ANY KIND.

IN ADDITION, THE COMMUNICATIONS DO NOT ESTABLISH THE EXHAUSTION OF DOMESTIC REMEDIES, OR ALLEGE THAT THE PURSUIT OF SUCH REMEDIES WOULD BE FUTILE. IN FACT, PROCEEDINGS AGAINST THREE OF THE FOUR INDIVIDUALS IN QUESTION REMAINPENDING. (THE FOURTH, MARTIN BARTESCH LEFT HE UNITED STATES VOLUNTARILY IN 1987 AND SUBSEUENTLY DIED OF NATURAL CAUSES.)

FOR THESE EASONS, THE GOVERNMENT OF THE UNITED STATES SUBMITS THAT THESE COMMUNICATIONS MUST BE DEEMED INADMISSIBLE UNDER THE RELEVANT CRITERIA, WHICH ARE SET FORTH AT THE END OF THIS RESPONSE.

THE GOVERNMENT OF THE UNITED STATES NEVERTHELESS HAS THE HONOR TO PROVIDE THE FOLLOWING DETAILED INFORMATION IN REGARD TO THE ISSUES RAISED IN THE COMMUNICATIONS IN QUESTION.

BACKGROUND

THESE COMMUNICATIONS CONCERN THE MECHANISMS UNDER U.S. LAW FOR THE IDENTIFICATION, DENATURALIZATION, DEPORTATION AND EXCLUSION FROM THE UNITED STATES OF PERSONS WHO, WHILE ACTING IN ASSOCIATION WITH THE FORMER NAZI REGIME IN GERMANY OR AFFILIATED REGIMES, PARTICIPATED OR ASSISTED IN PERSECUTION BECAUSE OF RACE, RELIGION, NATIONAL ORIGIN, OR POLITICAL OPINION.

SUCH PERSECUTION, OF COURSE, WAS DETERMINED TO BE A CRIME AGAINST HUMANITY IN THE CHARTER OF THE INTERNATIONAL

MILITARY TRIBUNAL WHICH SAT AT NUREMBERG. BY RESOLUTION 95(I) ADOPTED DECEMBER 11, 1946, THE U.N. GENERAL ASSEMBLY AFFIRMED THE PRINCIPLES OF INTERNATIONAL LAW RECOGNIZED BY THAT CHARTER AND BY THE JUDGMENT OF THE TRIBUNAL. THE INTERNATIONAL COMMUNITY HAS SUBSEQUENTLY AFFIRMED THAT PERSONS WHO WERE COMPLICIT IN THOSE CRIMES AGAINST HUMANITY SHOULD BE PROSECUTED WITHOUT REFERENCE TO STATUTES OF LIMITATION AND THAT WAR CRIMINALS AND THEIR ACCOMPLICES SHOULD NOT BE PROVIDED REFUGE.

IN CONTRAST TO MANY OTHER STATES, HOWEVER, THE UNITED STATES DOES NOT, FOR CONSTITUTIONAL REASONS, CRIMINALLY PROSECUTE INDIVIDUALS FOR WAR CRIMES, CRIMES AGAINST HUMANITY OR CRIMES AGAINST THE PEACE COMMITTED IN ASSOCIATION WITH THE FORMER NAZI REGIME. INSTEAD, U.S. LAW PROVIDES ONLY FOR REVOCATION OF THEIR U.S. CITIZENSHIP IF THEY WERE NATURALIZED AND FOR THEIR REMOVAL FROM THE UNITED STATES, SUBJECT TO THE FULL PROTECTIONS OF DUE PROCESS. IN BRINGING THESE DENATURALIZATION AND DEPORTATION PROCEEDINGS, THE UNITED STATES SEEKS ONLY ITS SOVEREIGN RIGHT TO DENY REFUGE AND CITIZENSHIP TO PARTICIPANTS IN NAZI PERSECUTION AS A FUNCTION OF ITS IMMIGRATION AND CITIZENSHIP LAWS. SUCH PROCEEDINGS SERVE AS A DETERRENT AGAINST FUTURE DESTRUCTION OF HUMAN RIGHTS SUCH AS THAT WROUGHT BY PARTICIPANTS IN NAZI PERSECUTION BEFORE AND DURING WORLD WAR II.

ALL NATIONS, OF COURSE HAVE THE RIGHT TO REGULATE IMMIGRATION TO THEIR TERRITORIES AS WELL AS THE CONDITIONS UNDER WHICH CITIZENSHIP MAY BE CONFERRED OR REVOKED. THE UNITED STATES IS UNAWARE OF ANY NATION THAT DOES NOT PROSCRIBE THE ENTRY OF PERSONS WHO WERE INVOLVED IN SERIOUS CRIMES OR WHO SEEK TO ENTER BY FRAUDULENT OR ILLEGAL MEANS. THE UNITED STATES IS EQUALLY UNAWARE OF ANY NATION WHICH DOES NOT SEEK TO DEPORT OR DENATURALIZE SUCH PERSONS.

1. U.S. LAW.

SPECIFICALLY, UNITED STATES IMMIGRATION LAW PROVIDES FOR THE EXCLUSION OF ANY ALIEN WHO ORDERED, INCITED, ASSISTED OR OTHERWISE PARTICIPATED IN THE NAZI PERSECUTION OF ANY PERSON BECAUSE OF RACE, RELIGION, NATIONAL ORIGIN OR POLITICAL OPINION DURING THE PERIOD BEGINNING MARCH 23, 1933 AND ENDING ON MAY 8, 1945. THIS PROHIBITION AGAINST ENTRY INTO THE UNITED STATES APPLIES TO ANY ALIEN WHO COMMITTED SUCH ACTS UNDER THE DIRECTION OF OR IN ASSOCIATION WITH: THE NAZI GOVERNMENT OF GERMANY, ANY GOVERNMENT IN ANY AREA OCCUPIED BY THE MILITARY FORCES OF THE NAZI GOVERNMENT OF GERMANY, ANY GOVERNMENT ESTABLISHED WITH THE ASSISTANCE OR COOPERATION OF THE NAZI GOVERNMENT OF GERMANY, OR ANY GOVERNMENT WHICH WAS AN ALLY OF THE NAZI GOVERNMENT OF GERMANY.

THIS PROVISION, INITIALLY KNOWN AS THE HOLTZMAN AMENDMENT WHEN IT WAS ADOPTED IN 1978, IS NOW CODIFIED AS SECTION 212(A)(3)(E) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1182(A)(3)(E). TNE HOLTZMAN AMENDMENT IS BASED UPON THE PROVISION IN THE DISPLACED PERSONS ACT OF 1948, PUB. L. 774 (62 STAT. 1009), AS AMENDED ON JUNE 16, 1950 BY PUB. L. 555 (64 STAT. 219), WHICH EXCLUDED FROM ENTRY INTO THE UNITED STATES ANY PERSON WHO ASSISTED IN PERSECUTION ON THE BASIS OF RACE, RELIGION OR NATIONAL ORIGIN. MOST OF THE SUBJECTS OF THE VARIOUS PETITIONS BEFORE THE SUB-COMMISSION ENTERED THE UNITED STATES IN CONTRAVENTION OF THIS EARLIER STATUTE.

THE SAME SECTION PROVIDES THAT ANY ALIEN WHO HAS ENGAGED IN CONDUCT THAT IS DEFINED AS GENOCIDE FOR PURPOSES OF THE INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE IS ALSO EXCLUDABLE.

THE LAW ALSO PROVIDES THAT ALIENS WHO ASSISTED IN NAZI PERSECUTION OR ENGAGED IN GENOCIDE ARE DEPORTABLE FROM THE UNITED STATES. SECTION 241(A)(1) AND (4) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1251(A)(1) AND (4).

FINALLY, U.S. LAW PROVIDES FOR DENATURALIZATION (I.E., REVOCATION OF CITIZENSHIP) PROCEEDINGS AGAINST U.S. CITIZENS WHOSE ORDER AND CERTIFICATE OF NATURALIZATION WERE ILLEGALLY PROCURED OR WERE PROCURED BY CONCEALMENT OF A MATERIAL FACT OR BY WILLFUL MISREPRESENTATION. SECTION 340(A) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C.

SECTION 1451(A).

2. THE OFFICE OF SPECIAL INVESTIGATIONS

WITHIN THE UNITED STATES DEPARTMENT OF JUSTICE, THE OFFICE OF SPECIAL INVESTIGATIONS ("OSI") WAS ESTABLISHED BY ORDER OF THE ATTORNEY GENERAL IN SEPTEMBER 1979. IT IS RESPONSIBLE FOR SEEKING THE IDENTIFICATION, DENATURALIZATION, DEPORTATION AND EXCLUSION FROM THE UNITED STATES OF PERSONS WHO FALL WITHIN THE ABOVE CATEGORIES OF THE IMMIGRATION AND NATIONALITY ACT BECAUSE THEY PARTICIPATED OR ASSISTED IN PERSECUTION ON ACCOUNT OF RACE, RELIGION, NATIONAL ORIGIN OR POLITICAL OPINION IN ASSOCIATION WITH THE NAZI REGIME AND ITS AFFILIATES. IT IS ALSO RESPONSIBLE FOR ASSISTING IN THE EXTRADITION OF ALLEGED NAZI WAR CRIMINALS FOR THEIR CRIMINAL PROSECUTION OVERSEAS. SUCH EXTRADITION IS RARE: ONLY THREE SUCH EXTRADITION REQUESTS HAVE BEEN MADE UPON THE UNITED STATES SINCE OSI'S CREATION, AND NONE OF THE PRESENT PETITIONS CONCERNS THE QUESTION OF EXTRADITION.

ALTHOUGH OSI IS PART OF THE CRIMINAL DIVISION OF THE JUSTICE DEPARTMENT, ITS LITIGATION IS CIVIL. THE

DENATURALIZATION PROCEEDINGS ARE ACCORDINGLY SUBJECT TO THE FULL PANOPLY OF CIVIL DISCOVERY RULES AS WELL AS DUE PROCESS CONSIDERATIONS. DEFENDANTS ACTUALLY HAVE GREATER RIGHTS TO DISCOVER EVIDENCE IN THE GOVERNMENT'S POSSESSION THAN DO DEFENDANTS IN CRIMINAL CASES. AS IN ALL DENATURALIZATION CASES, THE CASES ARE TRIED BY JUDGES WITHOUT JURIES. OSI DEFENDANTS HAVE ROUTINELY CHALLENGED THIS ASPECT OF THE PROCEEDINGS, BUT THE COURTS HAVE WITHOUT EXCEPTION DENIED DEMANDS FOR JURY TRIALS UNDER ESTABLISHED JURISPRUDENCE BECAUSE THESE ARE CASES IN EQUITY, RATHER THAN LAW, SINCE MONEY DAMAGES ARE NOT INCLUDED. (THERE IS NO INTERNATIONALLY RECOGNIZED RIGHT TO A JURY TRIAL, OF COURSE; NONE WERE PROVIDED AT NUREMBERG NOR IS THERE PROVISION FOR JURY TRIALS BEFORE THE AD HOC WAR CRIMES TRIBUNALS RECENTLY ESTABLISHED BY THE SECURITY COUNCIL.) HOWEVER, IN BOTH DENATURALIZATION AND DEPORTATION ACTIONS, THE GOVERNMENT IS REQUIRED TO PROVE ITS CASE BY "CLEAR, UNEQUIVOCAL, AND CONVINCING EVIDENCE WHICH DOES NOT LEAVE THE ISSUE IN DOUBT", A STANDARD WHICH THE SUPREME COURT HAS HELD "VIRTUALLY IDENTICAL" TO THE CRIMINAL STANDARD. KLAPPROTT V. UNITED STATES, 335 U.S. 601, 602 (1949). UNDER THIS STANDARD, THE OSI BEARS A HEAVY BURDEN OF PROVING IN OPEN COURT THAT THE INDIVIDUAL IN QUESTION WAS INVOLVED IN NAZI

PERSECUTION OR IN MISREPRESENTATION OR CONCEALMENT OF THIS OR OTHER MATERIAL MATTERS.

THE SPECIFIC PETITIONS

EACH OF THE FOUR CASES WHICH ARE THE SUBJECT OF THE VARIOUS PETITIONS ADDRESSED IN THIS RESPONSE INVOLVES A NATURALIZED U.S. CITIZEN WHO SERVED AS A MEMBER OF THE WAFFEN-SS AND AS A CONCENTRATION CAMP GUARD DURING THE RELEVANT TIME PERIOD. IN THREE OF THE CASES (SCHIFFER, TITTJUNG AND BREYER), APPEALS FROM DENATURALIZATION ORDERS ARE CURRENTLY PENDING BEFORE THE FEDERAL COURTS; THUS, WITH RESPECT TO THOSE CASES, AVAILABLE DOMESTIC REMEDIES BEEN NOT BEEN EXHAUSTED. IN ALL THREE CASES, DEFENDANTS HAVE BEEN AND CONTINUE TO BE REPRESENTED BY COUNSEL OF THEIR OWN CHOOSING. IN THE FOURTH (BARTESCH), THE INDIVIDUAL IN QUESTION WAS DENATURALIZED IN 1987, DEPARTED THE UNITED STATES VOLUNTARILY, AND HAS SUBSEQUENTLY DIED.

MOREOVER, IT IS IMPORTANT TO STRESS THAT, UNDER THE RELEVANT LAW, INDIVIDUALS WHO SERVED IN THE WAFFEN-SS ARE NOT FOUND TO BE SUBJECT TO DENATURALIZATION AND DEPORTATION SOLELY ON THE BASIS OF THEIR WAFFEN-SS SERVICE. ONLY THOSE WHO PARTICIPATED AND/OR ASSISTED IN NAZI-SPONSORED PERSECUTION BASED ON RACE, RELIGION, NATIONAL ORIGIN OR POLITICAL OPINION, AND WHO IN MOST CASES OBTAINED ENTRANCE TO AND/OR CITIZENSHIP OF THE UNITED STATES BY FRAUDULENT OR ILLEGAL MEANS ARE SUBJECT

TO DENATURALIZATION AND DEPORTATION.

1. NIKOLAUS SCHIFFER

NIKOLAUS SCHIFFER, WHO WAS BORN IN THE UNITED STATES IN 1919, SERVED VOLUNTARILY IN THE ROMANIAN ARMY FROM 1941 TO JULY 17, 1943. ON JULY 28, 1943, HE VOLUNTARILY JOINED THE WAFFEN-SS AND SWORE AN OATH OF ALLEGIANCE TO **ADOLF HITLER**. HE SERVED IN THE WAFFEN-SS TOTENKOPF (DEATH'S HEAD) BATTALION FROM JULY 1943 TO MAY 1945 AS AN ARMED GUARD OF PRISONERS AT THE SACHSENHAUSEN CONCENTRATION CAMP, THE TRAWNIKI LABOR CAMP, THE MAJDANEK CONCENTRATION CAMP AND THE HERSBRUCK SUB-CAMP OF THE FLOSSENBURG CONCENTRATION CAMP. ADDITIONALLY, HE SERVED AS AN ARMED GUARD OF PRISONERS WHEN PRISONERS WERE EVACUATED FROM THE MAJDANEK CONCENTRATION CAMP TO THE AUSCHWITZ CONCENTRATION CAMP AND AGAIN DURING EVACUATIONS OF PRISONERS FROM THE

HERSBRUCK SUB-CAMP TO THE DACHAU CONCENTRATION CAMP.

THE ARMED GUARDS OF THE WAFFEN-SS TOTENKOPF BATTALION IN THE SACHSENHAUSEN, TRAWNIKI, MAJDANEK AND HERSBRUCK CAMPS PARTICIPATED IN AND ASSISTED THE NAZI PROGRAM OF PERSECUTING VARIOUS CIVILIAN GROUPS, INCLUDING JEWS, JEHOVAH"S WITNESSES, GYPSIES, POLES, POLITICAL PRISONERS, HOMOSEXUALS, "ASOCIALS," AND THEIR CHILDREN. THIS PROGRAM INCLUDED THE CONFINEMENT, CORPORAL PUNISHMENT, TORTURE, FORCED LABOR AND MURDER OF PRISONERS INCARCERATED AT THESE CAMPS. PRISONERS WERE TORTURED AND DIED AT THE CAMPS AS THE RESULT OF BEATING, SHOOTING, GASSING, HANGING, STARVATION, FORCED LABOR, MEDICAL EXPERIMENTS AND OTNER METHODS OF KILLING EMPLOYED BY THE WAFFEN-SS TOTENKOPF BATTALION.

IN MAY 1945, SCHIFFER WAS CAPTURED BY ALLIED TROOPS AND HELD AS A PRISONER OF WAR UNTIL JULY 1946, WHEN HE WAS ARRESTED AS A SUSPECTED WAR CRIMINAL. DURING HIS CONFINEMENT, SCHIFFER ADMITTED UNDER OATH HIS MEMBERSHIP IN THE WAFFEN-SS AS WELL AS HIS SERVICE AS A GUARD AT THE AFOREMENTIONED CAMPS. SUBSEQUENTLY HE WAS TRANSFERRED TO THE JURISDICTION OF A GERMAN CIVILIAN COURT.

IN 1951, HE APPLIED FOR A VISA TO THE UNITED STATES UNDER THE DISPLACED PERSONS ACT BUT WAS REJECTED BECAUSE OF HIS SERVICE IN THE WAFFEN-SS. IN 1952, BASED ON AN APPLICATION WHICH DID NOT REVEAL HIS SERVICE AS A CONCENTRATION CAMP GUARD, THE DEPARTMENT OF STATE ISSUED A CERTIFICATE OF LOSS OF NATIONALITY TO SCHIFFER BASED UPON HIS ROMANIAN ARMY SERVICE. HE SUBSEQUENTLY APPLIED FOR AND WAS ISSUED A VISA, ENTERED THE UNITED STATES, AND PETITIONED FOR NATURALIZATION AS A U.S. CITIZEN. HIS APPLICATION FALSELY STATED THAT HE HAD NEVER BEEN ARRESTED, WHEN IN FACT HE HAD BEEN DETAINED AS A SUSPECTED

WAR CRIMINAL; HE DID NOT LIST HIS MEMBERSHIP IN THE WAFFEN-SS TOTENKOPF BATTALION; AND HE STATED THAT HE WAS A PERSON OF GOOD MORAL CHARACTER AND HAD NOT GIVEN FALSE TESTIMONY IN CONNECTION WITH HIS APPLICATION. HE WAS NATURALIZED IN AUGUST 1958.
IN SEPTEMBER 1991, THE U.S. GOVERNMENT BEGAN DENATURALIZATION PROCEEDINGS AGAINST MR. SCHIFFER IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA ON THE GROUNDS OF HIS SERVICE IN THE ROMANIAN ARMY AND THE WAFFEN-SS TOTENKOPF BATTALION, AND BECAUSE HIS NATURALIZED CITIZENSHIP HAD BEEN PROCURED ILLEGALLY AND BY CONCEALMENT OF A MATERIAL FACT AND BY WILLFUL

MISREPRESENTATION. TRIAL OF THE CASE WAS CONCLUDED ON APRIL 1, 1993; ON AUGUST 25, 1993, THE COURT ORDERED SCHIFFER DENATURALIZED. SEE UNITED STATES V. SCHIFFER, 831 F. SUPP. 1166 (E.D. PA. 1993).

IN ITS LENGTHY OPINION, THE COURT FOUND THAT SCHIFFER HAD SERVED VOLUNTARILY IN THE WAFFEN-SS TOTENKOPF BATTALION, THAT HE SERVED AS AN ARMED GUARD AT SACHSENHAUSEN, LUBLIN (MAJDANEK), HERSBRUCK AND TRAWNIKI, AND THAT PRISONERS AT THOSE CAMPS WERE SUBJECTED TO SLAVE LABOR UNDER CONDITIONS OF EXTREME PHYSICAL ABUSE WITH LIFE EXPECTANCY BETWEEN TWO TO FIVE MONTHS. THOSE WHO ATTEMPTED ESCAPE WHERE EITHER EXECUTED OR TORTURED. THE WAFFEN-SS BATTALIONS AT TRAWNIKI PARTICIPATED IN THE MURDER OF 16,000 JEWISH PRISONERS ON NOVEMBER 3, 1943 IN A SIXTEEN HOUR PERIOD.

THE COURT REVOKED SCHIFFER'S CITIZENSHIP BECAUSE IT HAD BEEN PROCURED ILLEGALLY, BY WILLFUL CONCEALMENT AND MISREPRESENTATION. THE COURT ALSO FOUND "MUCH OF SCHIFFER'S TESTIMONY UNBELIEVABLE," CONTRADICTED BY DOCUMENTARY EVIDENCE AND BY "WRITTEN AND ORAL STATEMENTS PREVIOUSLY MADE BY HIM."

SCHIFFER'S MOTION FOR A NEW TRIAL WAS DENIED ON OCTOBER 29, 1993. HE THEN APPEALED TO THE US. COURT OF APPEALS FOR THE THIRD CIRCUIT, WHICH ON JULY 25, 1994, UNANIMOUSLY AFFIRMED THE DISTRICT COURT'S ORDER OF AUGUST 25, 1993. THE COURT OF APPEALS RULED THAT THERE WAS SUFFICIENT EVIDENCE IN THE TRIAL RECORD TO SUFPORT THE DISTRICT COURT"S FINDING THAT SCHIFFER "PERSONALLY PARTICIPATED IN PERSECUTION" WHILE SERVING AS AN ARMED SS GUARD AT THE MAJDANEK, SACHSENHAUSEN AND HERSBRUCK NAZI CONCENTRATION CAMPS. THE COURT ALSO REJECTED SCHIFFER'S ARGUMENT THAT THE DISTRICT COURT HAD ERRED IN FINDING THAT HE HAD PROCURED HIS U.S. CITIZENSHIP BY MATERIAL FRAUD. SCHIFFER DID NOT SEEK REVIEW OF THE COURT OF APPEALS" DECISION BY THE U.S. SUPREME COURT.

ON FEBRUARY 1, 1995, THE DEPARTMENT OF JUSTICE INITIATED DEPORTATION PROCEEDINGS AGAINST SCHIFFER IN U.S. IMMIGRATION COURT IN PHILADELPHIA. THOSE PROCEEDINGS

REMAIN PENDING. IF THE IMMIGRATION JUDGE FINDS SCHIFFER DEPORTABLE, HE MAY APPEAL TO THE BOARD OF IMMIGRATION APPEALS AND THEN TO THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT AS WELL AS TO THE UNITED STATES SUPREME COURT.

THE UNITED STATES TAKES SPECIFIC ISSUE WITH A NUMBER OF

INACCURATE STATEMENTS IN THE RELEVANT PETITIONS. AMONG OTHER THINGS, SCHIFFER WAS NEVER FORCED TO JOIN THE GERMAN ARMY OR THE WAFFEN-SS; INDEED, HE WAS NEVER IN THE GERMAN ARMY AND, AS THE TRIAL COURT DETERMINED, HE JOINED THE WAFFEN-SS VOLUNTARILY. NOR IS IT ACCURATE TO SAY THAT HE WAS FOUND INNOCENT OF WAR CRIMES BY ALLIED FORCES; HE WAS HELD BY AMERICAN FORCES AS A SUSPECTED WAR CRIMINAL AND TRANSFERRED TO THE GERMANS WITH THE EXPECTATION THAT HE WOULD BE TRIED FOR THOSE CRIMES. SCHIFFER NEVER DISCLOSED HIS MEMBERSHIP IN THE WAFFEN-SS ON HIS NATURALIZATION APPLICATION, AS TESTIMONY AT HIS TRIAL ESTABLISHED HE WAS REQUIRED TO DO.

2. ANTON TITTJUNG

ANTON TITTJUNG JOINED THE WAFFEN-SS IN OCTOBER 1942. HE WAS A MEMBER OF THE TOTENKOPF-STURMBANN BATTALION AND SERVED AS AN ARMED GUARD AT THE MAUTHAUSEN CONCENTRATION CAMP OUTSIDE LINZ, AUSTRIA, AND ITS SUB-CAMP GROSS RAMING. INDEED, HE HAS ADMITTED SERVING AS A GUARD AT A GERMAN CAMP. HIS DUTIES INCLUDED GUARDING PRISONERS AS THEY PERFORMED FORCED LABOR, ON FORCED MARCHES FROM THE MAIN CAMP TO THE SUBCAMPS, AND FROM THE CAMP WATCHTOWERS AND PERIMETER. WHILE PERFORMING SUCH DUTIES, HE ASSISTED OR OTHERWISE PARTICIPATED IN THE PERSECUTION OF PRISONERS BECAUSE OF THEIR RACE, RELIGION, NATIONAL ORIGIN OR POLITICAL OPINION, INCLUDING THROUGH FORCIBLE CONFINEMENT, SLAVE LABOR, DEPRIVATION, PHYSICAL AND EMOTIONAL ABUSE, TORTURE AND EXTERMINATION.

AMONG THE PRISONERS INCARCERATED AT MAUTHAUSEN AND GROSS RAMING DURING THE RELEVANT PERIODS WERE JEWS; SOVIET BRITISH AND AMERICAN PRISONERS OF WAR; AND POLITICAL OPPONENTS OF THE NAZIS, INCLUDING CITIZENS OF YUGOSLAVIA, FRANCE, POLAND, THE SOVIET UNION, SPAIN AND MANY OTHER EUROPEAN COUNTRIES.. DURING TITTJUNG'S SERVICE AT THESE CAMPS, THOUSANDS OF PRISONERS DIED AS THE RESULT OF SHOOTING, GASSING, HANGING, ELECTROCUTION, STARVATION, FORCED LABOR, LETHAL INJECTION AND OTHER FORMS OF KILLING.

TITTJUNG WAS ADMITTED TO THE UNITED STATES FOR PERMANENT RESIDENCE IN 1952 AND BECAME A NATURALIZED U.S. CITIZEN IN 1973 ON THE BASIS OF APPLICATIONS WHICH CONCEALED HIS SERVICE AS AN SS GUARD AT MAUTHAUSEN AND GROSS RAMING,

STATING INSTEAD THAT HE HAD SERVED IN THE "GERMAN ARMY" WITHOUT REFERENCE TO THE WAFFEN-SS. IN ADDITION HE FALSELY SWORE THAT HE HAD NEVER ASSISTED IN THE

PERSECUTION OF ANY PERSON BECAUSE OF RACE, RELIGION OR NATIONAL ORIGIN.

AS A RESULT OF PROCEEDINGS BROUGHT BY OSI, TITTJUNG WAS DENATURALIZED IN 1990 BECAUSE HE HAD BEEN INELIGIBLE FOR A VISA UNDER THE DISPLACED PERSONS ACT BASED ON HIS ASSISTANCE IN PERSECUTION AS A GUARD IN THE MAUTHAUSEN CONCENTRATION CAMP SYSTEM. THE DECISION OF THE DISTRICT COURT WAS UPHELD ON APPEAL. UNITED STATES V. TITTJUNG, 753 F. SUPP. 251 (E.D. WIS. 1990), AFF'D, 948 F.2D 1292 (7TH CIR. 1991), REH'G DENIED, 1992 U.S. APP. LEXIS 427 (7TH CIR. 1992), CERT. DENIED, 112 S. CT. 3035 (1992).

DEPORTATION PROCEEDINGS WERE BEGUN AGAINST TITTJUNG ON MAY 11, 1992, BECAUSE OF HIS PARTICIPATION IN NAZI PERSECUTION AND HIS MISREPRESENTATIONS OF HIS WARTIME ACTIVITIES TO GAIN ENTRY INTO THE UNITED STATES. ON MARCH 25, 1994, THE U.S. IMMIGRATION COURT FOUND TITTJUNG DEPORTABLE ON THE BASIS OF HIS ASSISTANCE IN PERSECUTION AS A GUARD AT MAUTHAUSEN AND HIS FAILURE TO OBTAIN A VALID VISA TO ENTER THE UNITED STATES DUE TO HIS INELIGIBILITY AS A FORMER CONCENTRATION CAMP GUARD. SEE IN THE MATTER OF TITTJUNG, FILE NO. A08 315 083 (IMMIGRATION COURT, CHICAGO, MARCH 30, 1994). THE DEPORTATION ORDER WAS PREDICATED ON THE RECORD OF TITTJUNG'S SERVICE AS A CONCENTRATION CAMP GUARD. ALTHOUGH THE COURT ORDERED TITTJUNG TO DESIGNATE A COUNTRY TO WHICH HE WOULD BE DEPORTED, HE DECLINED TO DO SO; CONSEQUENTLY, ON MAY 18, 1994, THE COURT DESIGNATED CROATIA AS THE COUNTRY OF DEPORTATION.

ON MAY 27, 1994, TITTJUNG APPEALED TO THE U.S. BOARD OF IMMIGRATION APPEALS. THAT APPEAL REMAINS PENDING. IF THE BOARD OF APPEALS AFFIRMS THE DECISION OF THE IMMIGRATION JUDGE, TITTJUNG WILL HAVE NINETY (90) DAYS TO SEEK REVIEW BY THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT INCLUDING BY THE FULL COURT, AND MAY SEEK REVIEW OF THAT COURT'S DECISION IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES TAKES SPECIFIC ISSUE WITH A NUMBER OF STATEMENTS IN THE RELEVANT PETITIONS. IT IS NOT TRUE, FOR EXAMPLE, THAT TITTJUNG WAS NOT ASKED ABOUT HIS WARTIME SERVICE WHEN HE IMMIGRATED; UNREBUTTED DOCUMENTARY EVIDENCE SUBMITTED DURING THE DENATURALIZATION CASE PROVES THAT HE WAS. NOR IS IT ACCURATE TO DESCRIBE HIS WAFFEN-SS SERVICE AS INVOLUNTARY; THE COURT'S OPINION IN THE DENATURALIZATION CASE CHARACTERIZED THE EVIDENCE AS PROVIDING "STRONG SUPPORT FOR THE GOVERNMENT'S POSITION THAT TITTJUNG VOLUNTARILY JOINED THE WAFFEN-SS."

TITTJUNG, 753 F. SUPP. AT 253 N. 2. HIS ACTIONS AS A CONCENTRATION CAMP GUARD WERE FOUND BY THE DENATURALIZATION COURT TO CONSTITUTE PARTICIPATION IN PERSECUTION. THE AUTHENTICITY OF A CAPTURED SS DUTY ROSTER SHOWING THAT TITTJUNG HAD SERVED AT MAUTHAUSEN WAS NOT QUESTIONABLE; ON THE CONTRARY, THE COURT FOUND IT CREDIBLE. TITTJUNG HAS NOT BEEN DENIED DUE PROCESS; ON THE CONTRARY, HE HAS BEEN REPRESENTED BY PROMINENT AND EXPERIENCED COUNSEL OF HIS OWN CHOOSING, HAS NOT BEEN COMPELLED TO TESTIFY AGAINST HIMSELF, AND HAS BENEFITTED FROM SEVERAL LEVELS OF APPELLATE REVIEW OF THE DENATURALIZATION JUDGMENT AND THE DEPORTATION ORDER.

FINALLY, WHILE ONE COMMUNICATION SUGGESTS THAT TITTJUNG MAY FACE DEATH IF DEPORTED TO CROATIA, THIS APPEARS TO BE AN ISSUE MANUFACTURED BY THE TITTJUNG DEFENSE TEAM. U.S. LAW PERMITS TITTJUNG TO DESIGNATE THE COUNTRY TO WHICH HE WOULD BE DEPORTED (FOR EXAMPLE, ANY COUNTRY FROM WHICH HE ENTERED THE UNITED STATES OR IN WHICH HE RESIDED BEFORE ENTERING THE UNITED STATES). TITTJUNG REFRAINED FROM MAKING SUCH A DESIGNATION BY THE ORIGINAL AND A SUBSEQUENT DEADLINE FOR DOING SO, AND THE COURT WARNED THAT IF HE DID NOT DO SO BY A DATE CERTAIN, THE COURT WOULD ORDER HIM DEPORTED TO HIS HOMELAND OF CROATIA. NONETHELESS, TITTJUNG DECLINED TO EXERCISE HIS RIGHT TO DESIGNATE. THEREFORE, THE COURT'S SUBSEQUENT DESIGNATION OF CROATIA WAS OF TITTJUNG'S OWN DEVISE.

MORE GENERALLY, THE UNITED STATES NOTES THAT IT IS MISLEADING TO STATE, AS SEVERAL PETITIONS DO, THAT OSI HAS BEEN UNSUCCESSFUL IN PROVING GUILT IN CRIMINAL TRIALS. THE OSI HAS NEVER PROSECUTED A CRIMINAL TRIAL; AS INDICATED ABOVE, ITS PROCEEDINGS ARE CIVIL IN NATURE. IT IS ALSO ERRONEOUS TO STATE THAT NO RULES OF EVIDENCE APPLY IN THESE CASES; IN FACT, THE FEDERAL RULES OF CIVIL PROCEDURE AND OF EVIDENCE APPLY IN ALL DENATURALIZATION CASES AND WERE APPLIED BY THE JUDGE IN THE DENATURALIZATION ACTIONS AGAINST TITTJUNG SCHIFFER AND BREYER.

WITH REGARD TO THE CLAIM THAT SOME DEFENDANTS HAVE BEEN UNLAWFULLY DENIED INCOME FROM SOCIAL SECURITY, THE UNITED STATES NOTES THAT SOCIAL SECURITY BENEFITS ARE TERMINATED PURSUANT TO STATUTE AND ONLY IN CASES OF NON-CITIZENS WHO ARE DEPORTED. UNDER SECTION 202(N)(3) OF THE SOCIAL SECURITY ACT, BENEFITS ARE TERMINATED WHEN A FINAL ORDER OF DEPORTATION HAS BEEN ISSUED BASED ON A CHARGE OF ASSISTANCE IN PERSECUTION ON ACCOUNT OF RACE, RELIGION,

NATIONAL ORIGIN, OR POLITICAL OPINION, UNDER THE DIRECTION

OF OR IN ASSOCIATION WITH THE NAZI GOVERNMENT. THIS IS JUST ONE OF A NUMBER OF DEPORTATION CHARGES THAT CAN RESULT IN TERMINATION OF SOCIAL SECURITY BENEFITS.

3. JOHANN BREYER

JOHANN BREYER WAS AN SS TOTENKOPF GUARD AT THE BUCHENWALD CONCENTRATION CAMP FROM FEBRUARY 1943 UNTIL AT LEAST MAY 1944, WHEN HE WAS TRANSFERRED TO THE AUSCHWITZ DEATH CAMP, WHERE HE REMAINED UNTIL AT LEAST AUGUST 1944.

DURING THE PERIOD OF HIS SERVICE AT BUCHENWALD, THOUSANDS OF PRISONERS WERE SUBJECTED TO CONFINEMENT, FORCED LABOR, MALNOURISHMENT AND STARVATION EXPOSURE TO UNSANITARY CONDITIONS, CORPORAL PUNISHMENT, TORTURE AND THE CONSTANT THREAT OF EXECUTION. MANY PRISONERS DIED AS THE RESULT OF THESE CONDITIONS, AS WELL AS FROM PSEUDO-MEDICAL "EXPERIMENTATION" ON NON-VOLUNTEER PRISONER-SUBJECTS HANGING, SHOOTING, INJECTION, BEATING AND OTHER MEANS OF KILLING. SIMILAR CONDITIONS PREVAILED AT AUSCHWITZ, WHERE PRISONERS WHO WERE SPARED IMMEDIATE DEATH IN THE GAS CHAMBERS DIED SLOWLY FROM MALNUTRITION, EXHAUSTION, DISEASE, AND OTHER CAUSES. BREYER STATES THAT AT BOTH CAMPS HE WAS A PERIMETER GUARD AND HE ADMITS THAT ENORMOUS NUMBERS OF PEOPLE DIED IN THE CAMPS DURING HIS SERVICE.

BREYER WAS ADMITTED TO THE UNITED STATES ON AN IMMIGRANT VISA IN 1952 AND HIS PETITION FOR NATURALIZATION WAS GRANTED IN 1957.

THE UNITED STATES INSTITUTED DENATURALIZATION PROCEEDINGS AGAINST BREYER IN APRIL 1991 BECAUSE OF HIS SERVICE AS AN SS TOTENKOPF GUARD AT BUCHENWALD AND AUSCHWITZ AND BECAUSE HE MISREPRESENTED AND CONCEALED THAT SERVICE WHEN HE APPLIED FOR A VISA UNDER THE DISPLACED PERSONS ACT AND WHEN APPLYING FOR NATURALIZATION. BREYER ARGUED THAT HE SHOULD BE ALLOWED TO CLAIM U.S. CITIZENSHIP BASED ON HIS MOTHER'S BIRTH IN THE UNITED STATES. IN JULY 1993, THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA ALLOWED BREYER TO SEEK TO ESTABLISH HIS RIGHT TO CITIZENSHIP ON THAT BASIS. A TRIAL WAS HELD ON THE ISSUE OF HIS MOTHER'S BIRTH IN SEPTEMBER AND OCTOBER 1993; ON DECEMBER 20, THE COURT ISSUED AN ORDER REVOKING HIS NATURALIZED CITIZENSHIP BUT ABSTAINING FROM RESOLVING THE ISSUE OF HIS POSSIBLE DERIVATIVE CITIZENSHIP UNTIL HE OBTAINS THE STATUTORILY REQUISITE ADMINISTRATIVE

DECLARATION REGARDING HIS MOTHER'S BIRTH. SEE UNITED STATES V. BREYER, 841 F. SUPP. 679 (E.D. PA. 1993).

BREYER HAS MADE APPLICATION FOR SUCH A DETERMINATION: THAT APPLICATION IS PENDING.

IN MARCH 1994, BREYER EXERCISED HIS RIGHT TO APPEAL FROM THAT DECISION TO THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT. ON NOVEMBER 14, 1994, THE COURT OF APPEALS UNANIMOUSLY AFFIRMED THE 1993 DECISION OF THE DISTRICT COURTIN PHILADELPHIA. THE COURT OF APEALS RULED THAT IT WAS "BEYOND DISPUTE" THATBREYER HAD "ASSISTED IN PERSECUTION" OF INMAES AT THE AUSCHWITZ AND BUCHENWALD CAMPS. IT LSO RULED THAT THE DISTRICT COURT HAD EXCEEDED ITS JURISDICTION IN CONSIDERING BREYER"S CONSTITUTIONAL ARGUMENT THAT HE WAS ENTITLED TO A RETROACTIVE GRANT OF U.S. CITIZENSHIP ON THE BASIS OF HIS MOTHER"S ALLEGED BIRTH IN THE UNITED STATES. BREYER DID NOT SEEK TO APPEAL THAT DECISION TO THE U.S. SUPREME COURT.

MEANWHILE, IN OCTOBER 1992, BREYER HAD FILED WITH THE U.S. IMMIGRATION AND NATURALIZATION SERVICE (INS) AN APPLICATION FOR CERTIFICATE OF ADMISSION, SEEKING AN ADMINISTRATIVE DETERMINATION OF HIS DERIVATIVE CITIZENSHIP CLAIM BASED ON HIS MOTHER"S ALLEGED BIRTH IN THE UNITED STATES. THIS CLAIM HAS TWICE BEEN DENIED BY THE INS (IN FEBRUARY 1993 AND MAY 1994) AND IS CURRENTLY ON APPEAL TO THE INS ADMINISTRATIVE APPEALS UNIT.

THE UNITED STATES TAKES SPECIFIC ISSUE WITH A NUMBER OF ERRONEOUS STATEMENTS IN THE RELEVANT PETITIONS. THE IMPLICATION THAT BREYER'S SERVICE AT BUCHENWALD AND AUSCHWITZ DID NOT ENTAIL PARTICIPATION IN PERSECUTION IS INCORRECT, AS ARE THE STATEMENTS THAT HIS SERVICE WAS INVOLUNTARY AND THAT HE WOULD HAVE BEEN SHOT OR IMPRISONED FOR REFUSING TO SERVE. MOREOVER, THE GOVERNMENT DID NOT HAVE IN ITS POSSESSION DOCUMENTS REGARDING BREYER'S BUCHENWALD SERVICE AT THE TIME OF HIS IMMIGRATION OR HIS NATURALIZATION; IT DID HOWEVER HAVE FALSE INFORMATION SUPPLIED BY BREYER TO THE EFFECT THAT HE SERVED WITH THE WIKING DIVISION ON THE EASTERN FRONT. FINALLY, THE UNITED STATES EMPHATICALLY REJECTS THE CONTENTION THAT OSI HAS USED THE POSSIBILITY OF LITIGATION AGAINST A FAMILY MEMBER TO INFLUENCE A SETTLEMENT AGREEMENT; OSI HAS NEVER BROUGHT OR THREATENED, AND WILL NEVER BRING, AN ACTION AGAINST A DEFENDANT'S FAMILY MEMBER BASED ON A DEFENDANT'S WAR-TIME ACTIVITIES.

ONE COMMUNICATION SUGGESTS THAT BREYER MAY FACE DEATH IF

HE IS DEPORTED TO HIS NATIVE COUNTRY OF SLOVAKIA. HOWEVER, U.S. LAW PERMITS BREYER TO DESIGNATE THE COUNTRY TO WHICH HE WILL BE DEPORTED (FOR EXAMPLE, ANY COUNTRY

FROM WHICH HE ENTERED THE UNITED STATES OR ANY COUNTRY IN WHICH HE RESIDED BEFORE ENTERING THE UNITED STATES). ACCORDINGLY HE MAY DETERMINE WHETHER OR NOT HE IS DEPORTED TO SLOVAKIA.

4. MARTIN BARTESCH

MARTIN BARTESCH WAS A WAFFEN-SS TOTENKOPF BATTALION GUARD AT THE MAUTHAUSEN CONCENTRATION CAMP AND AT THE MAUTHAUSEN SUBCAMP OF "LINZ III" FROM AT LEAST OCTOBER 20, 1943 TO JULY 26, 1944. THE MAUTHAUSEN "DEATH BOOK AND UNNATURAL DEATH BOOK" (CAPTURED SS DOCUMENTS WHICH WERE INTRODUCED INTO EVIDENCE AT THE NUREMBERG WAR CRIMES TRIALS) SHOW THAT ON OCTOBER 20, 1943, WHILE A GUARD AT THE MAUTHAUSEN MAIN CAMP, BARTESCH SHOT AND KILLED A FRENCH JEW NAMED MAX OCHSHORN. BARTESCH PERMANENTLY DEPARTED THE UNITED STATES IN 1987 PURSUANT TO AN AGREEMENT WITH THE UNITED STATES AND A CONSENT JUDGMENT BY A UNITED STATES TRIAL COURT.

DURING THE PERIOD OF HIS SERVICE AT MAUTHAUSEN,, TENS OF THOUSANDS OF PRISONERS WERE SUBJECTED TO CONFINEMENT FORCED LABOR, MALNOURISHMENT AND STARVATION, EXPOSURE TO UNSANITARY CONDITIONS, CORPORAL PUNISHMENT, TORTURE AND THE CONSTANT THREAT OF EXECUTION. THOUSANDS OF PRISONERS DIED AT MAUTHAUSEN AS THE RESULT OF SHOOTING, GASSING, HANGING, STARVATION, FORCED LABOR AND OTHER METHODS OF KILLING EMPLOYED BY THE TOTENKOPF BATTALION THERE.

BARTESCH WAS ADMITTED TO THE UNITED STATES ON AN IMMIGRANT VISA IN 1955 AND HIS PETITION FOR NATURALIZATION WAS GRANTED IN 1966. THE UNITED STATES GOVERNMENT INSTITUTED DENATURALIZATION PROCEEDINGS AGAINST HIM IN APRIL 1986 BECAUSE OF HIS SERVICE AS AN SS TOTENKOPF GUARD AT MAUTHAUSEN AND BECAUSE HE MISREPRESENTED AND CONCEALED THAT SERVICE WHEN HE APPLIED FOR A VISA UNDER THE REFUGEE RELIEF ACT AND WHEN HE APPLIED FOR NATURALIZATION.

IN APRIL 1987, ON THE ADVICE OF COUNSEL, BARTESCH ENTERED INTO AN AGREEMENT WITH THE UNITED STATES WHEREBY HE ADMITTED THAT HIS ENTRY INTO THE UNITED STATES HAD BEEN UNLAWFUL BECAUSE HE MISREPRESENTED AND CONCEALED MATERIAL FACTS ON HIS VISA QUESTIONNAIRE AND APPLICATION. BARTESCH AGREED TO DEPART THE UNITED STATES PERMANENTLY, TO THE REVOCATION OF HIS CITIZENSHIP BY CONSENT JUDGMENT, AND TO

ABANDONMENT OF ANY CLAIM TO U.S. RESIDENCY. HE ALSO AGREED TO FOREGO ANY RIGHT OF APPEAL OR FURTHER REVIEW. HE ENTERED THIS AGREEMENT UPON CONSULTATION WITH HIS COUNSEL

BARTESCH DEPARTED THE UNITED STATES FOR AUSTRIA ON MAY 27 1987. IT IS THE UNDERSTANDING OF THE UNITED STATES THAT HE SUBSEQUENTLY DIED IN AUSTRIA OF NATURAL CAUSES.

THE UNITED STATES TAKES SPECIFIC ISSUE WITH A NUMBER OF STATEMENTS IN THE RELEVANT COMMUNICATION. CONTRARY TO THE REPRESENTATIONS OF BARTESCH'S FAMILY, BARTESCH WAS NEVER DEPRIVED OF SOCIAL SECURITY BENEFITS. HE WAS NEVER PROSECUTED UNDER THE HOLTZMAN AMENDMENT. HE WAS NOT DEPRIVED OF DUE PROCESS, THE PRESUMPTION OF INNOCENCE, OR THE RIGHT TO A FAIR HEARING. RATHER, HE MADE A KNOWING AND INTELLIGENT DECISION UPON THE ADVICE OF COUNSEL TO ENTER THE AGREEMENT WHEREBY HE WAIVED HIS RIGHT TO TRIAL IN WHICH THE GOVERNMENT BORE A HIGH BURDEN OF PROOF AND HE WOULD HAVE BEEN REPRESENTED BY COUNSEL AND WOULD HAVE ENJOYED MULTIPLE LEVELS OF APPEAL. IN LIGHT OF THE IRREFUTABLE PROOF (AND HIS OWN KNOWLEDGE) THAT HE COMMITTED MURDER WHILE SERVING AS AN ARMED NAZI CONCENTRATION CAMP GUARD, HIS DECISION IS NOT SURPRISING.

FINALLY, THE FACT THAT SUCCESSFUL DEPORTATION PROCEEDINGS RESULT IN THE SEPARATION OF FAMILIES WHO DO NOT CHOOSE TO TRAVEL WITH THE DEPORTED FAMILY MEMBER CANNOT RENDER OBJECTIONABLE A NATION'S EFFORTS TO DEPORT PERSONS WHO PARTICIPATED IN NAZI PERSECUTION. ALL NATIONS HAVE THE RIGHT TO DETERMINE WHO MAY ENTER OR REMAIN WITHIN THEIR BORDERS. IF THE PETITIONER'S CONTENTIONS WERE CREDITED, ALL DEPORTATION PROCEEDINGS AS WELL AS CRIMINAL PROSECUTIONS WOULD CONSTITUTE HUMAN RIGHTS VIOLATIONS BECAUSE OF THEIR POTENTIAL FOR SEPARATING FAMILIES. THIS WOULD BE AN ABSURD RESULT AND AN INTOLERABLE INFRINGEMENT UPON SOVEREIGN RIGHTS. THIS IS PARTICULARLY TRUE SINCE PARTICIPATION IN NAZI CRIMES HAS BEEN DECLARED A HUMAN RIGHTS VIOLATION ITSELF AND SINCE PROSECUTION OF SUCH PERSONS HAS BEEN DECLARED A HUMAN RIGHTS PRIORITY BOTH BY THE GENERAL ASSEMBLY AND BY THE HUMAN RIGHTS COMMISSION.

RELEVANT STANDARDS

IN CONCLUSION, THE GOVERNMENT OF THE UNITED STATES WOULD CITE THE PERTINENT SECTIONS BOTH OF ECOSOC RESOLUTION 1503

(XLVIII), UNDER WHICH GOVERNMENT COMMENTS ON THIS COMMUNICATION ARE BEING SOLICITED, AS WELL AS SUB-COMMISSION RESOLUTION 1 (XXIV), IN WHICH THE STANDARDS FOR ADMISSIBILITY OF COMMUNICATIONS ARE LAID OUT:

- (THE WORKING GROUP SHOULD MEET) WITH A VIEW TO

- BRINGING TO THE ATTENTION OF THE SUB-COMMISSION THOSE
- COMMUNICATIONS, TOGETHER WITH REPLIES OF GOVERNMENTS,
- IF ANY, WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF
- GROSS AND RELIABLY ATTESTED VIOLATIONS OF HUMAN RIGHTS
- AND FUNDAMENTAL FREEDOMS.

- ECOSOC RESOLUTION 1503 (XLVIII)

- 1. STANDARDS AND CRITERIA

- COMMUNICATIONS SHALL BE ADMISSIBLE ONLY IF, AFTER
- CONSIDERATION THEREOF, TOGETHER WITH THE REPLIES
- OF ANY OF THE GOVERNMENTS CONCERNED, THERE ARE
- REASONABLE GROUNDS TO BELIEVE THAT THEY MAY
- REVEAL A CONSISTENT PATTERN OF GROSS AND RELIABLY
- ATTESTED VIOLATIONS OF HUMAN RIGHTS AND
- FUNDAMENTAL FREEDOMS.

- . . .

- 4. EXISTENCE OF OTHER REMEDIES

- (B) COMMUNICATIONS SHALL BE INADMISSIBLE IF
- DOMESTIC REMEDIES HAVE NOT BEEN EXHAUSTED. . . .
- ANY FAILURE TO EXHAUST REMEDIES SHOULD BE
- SATISFACTORILY ESTABLISHED.

- SUB-COMMISSION RESOLUTION 1 (XXIV)

THE GOVERNMENT OF THE UNITED STATES BELIEVES THAT THE COMMUNICATIONS IN QUESTION DO NOT MEET THESE CRITERIA AND ACCORDINGLY RENEWS ITS REQUEST THAT THE SUB-COMMISSION DECLARE THESE COMMUNICATIONS TO BE INADMISSIBLE FOR THE REASONS DISCUSSED ABOVE. END TEXT.

4. BEGIN SUMMARY

NAZI DEATH CAMP GUARDS CASES
SUMMARY OF THE RESPONSE OF THE GOVERNMENT OF THE UNITED STATES TO UN SECRETARIAT NOTES NO. G/SO 215/1 USA (243), (247), (263), AND (267): NIKOLAUS SCHIFFER, ANTON

TITTJUNG, JOHANN BREYER AND MARTIN BARTESCH

THESE NOTES TRANSMIT A SERIES OF COMMUNICATIONS CONCERNING DENATURALIZATION (I.E., REVOCATION OF CITIZENSHIP) AND DEPORTATION PROCEEDINGS BROUGHT BY THE UNITED STATES DEPARTMENT OF JUSTICE AGAINST FOUR INDIVIDUALS WHO WERE PERSONALLY INVOLVED IN NAZI PERSECUTION DURING WORLD WAR II.

EACH OF THESE INDIVIDUALS WAS A MEMBER OF THE WAFFEN-SS TOTENKOPF BATTALION AND SERVED AS AN ARMED CONCENTRATION CAMP GUARD DURING WORLD WAR II. THEY SERVED AT SUCH CAMPS AS BUCHENWALD, SACHSENHAUSEN, TRAWNIKI, MAUTHAUSEN AND AUSCHWITZ. IN THAT CAPACITY EACH PARTICIPATED IN THE NAZI PERSECUTION OF INNOCENT PERSONS.

BECAUSE OF THEIR INVOLVEMENT IN NAZI PERSECUTION, AND BECAUSE THEY MADE FALSE STATEMENTS IN CONNECTION WITH THEIR ENTRY INTO THE UNITED STATES AND THEIR APPLICATIONS FOR U.S. CITIZENSHIP, ALL WERE IN FACT INELIGIBLE TO ENTER THE U.S. OR TO ACQUIRE CITIZENSHIP WHEN THEY ORIGINALLY DID SO, AND ALL ARE NOW SUBJECT UNDER THE RELEVANT U.S. LAW TO REVOCATION OF CITIZENSHIP AND TO DEPORTATION.

THE PROCEEDINGS AGAINST THESE INDIVIDUALS ARE ENTIRELY JUSTIFIED AND IN NO WAY CONSTITUTE PERSECUTION. THE UNITED STATES IS UNAWARE OF ANY NATION WHICH, IN THE EXERCISE OF ITS RIGHT TO CONTROL IMMIGRATION AND THE CONFERRAL OF CITIZENSHIP, DOES NOT PROSCRIBE THE ENTRY OF PERSONS WHO HAVE COMMITTED SERIOUS CRIMES OR WHO SEEK TO ENTER BY FRAUDULENT OR ILLEGAL MEANS.

IN CONTRAST TO MANY OTHER STATES, THE UNITED STATES DOES NOT CRIMINALLY PROSECUTE INDIVIDUALS FOR WAR CRIMES, CRIMES AGAINST HUMANITY OR CRIMES AGAINST THE PEACE COMMITTED IN ASSOCIATION WITH THE FORMER NAZI REGIME. INSTEAD, THE LAW PROVIDES ONLY FOR REVOCATION OF THEIR U.S. CITIZENSHIP IF THEY WERE NATURALIZED AND FOR THEIR REMOVAL FROM THE UNITED STATES, SUBJECT TO THE FULL PROTECTIONS OF DUE PROCESS.

IN BRINGING THESE DENATURALIZATION AND DEPORTATION PROCEEDINGS, THE UNITED STATES SEEKS ONLY ITS SOVEREIGN RIGHT TO DENY REFUGE AND CITIZENSHIP TO PARTICIPANTS IN NAZI PERSECUTION AS A FUNCTION OF ITS IMMIGRATION AND CITIZENSHIP LAWS. SUCH PROCEEDINGS SERVE AS A DETERRENT AGAINST FUTURE DESTRUCTION OF HUMAN RIGHTS SUCH AS THAT WROUGHT BY PARTICIPANTS IN NAZI PERSECUTION BEFORE AND

DURING WORLD WAR II.

UNDER RELEVANT U.S. LAW, INDIVIDUALS WHO SERVED IN THE WAFFEN-SS ARE NOT SUBJECT TO DENATURALIZATION AND DEPORTATION SOLELY ON THE BASIS OF THEIR WAFFEN-SS SERVICE. ONLY THOSE WHO PARTICIPATED AND/OR ASSISTED IN NAZI-SPONSORED PERSECUTION BASED ON RACE, RELIGION, NATIONAL ORIGIN OR POLITICAL OPINION, OR WHO OBTAINED ENTRANCE TO AND/OR CITIZENSHIP OF THE UNITED STATES BY

FRAUDULENT OR ILLEGAL MEANS ARE SUBJECT TO DENATURALIZATION AND DEPORTATION.

SCHIFFER: NIKOLAUS SCHIFFER SERVED AS AN ARMED SS GUARD AT THE SACHSENHAUSEN AND MAJDANEK CONCENTRATION CAMPS, AT THE HERSBRUCK OUT-CAMP OF FLOSSENBURG CONCENTRATION CAMP, AT TRAWNIKI LABOR CAMP, AND ON THE DEATH MARCH EVACUATIONS OF MAJDANEK TO AUSCHWITZ AND OF HERSBRUCK. SCHIFFER HAS ADMITTED THAT HE SERVED AS A NAZI CONCENTRATION CAMP GUARD. HIS WAFFEN-SS SERVICE WAS VOLUNTARY. HIS APPEAL FROM THE DENATURALIZATION ORDER WAS DENIED IN AUGUST 1994; THE COURT OF APPEALS RULED THAT THERE WAS SUFFICIENT EVIDENCE THAT HE HAD "PERSONALLY PARTICIPATED IN PERSECUTION" WHILE SERVING AT THE NAZI CAMPS AND PARTICIPATING IN TWO "DEATH MARCHES." DEPORTATION PROCEEDINGS AGAINST SCHIFFER REMAIN PENDING.

TITTJUNG: ANTON TITTJUNG WAS DENATURALIZED AND FOUND DEPORTABLE ON THE BASIS OF HIS SERVICE AS AN ARMED GUARD OF CIVILIAN PRISONERS AT THE MAUTHAUSEN CONCENTRATION CAMP SYSTEM. HIS WAFFEN-SS SERVICE WAS VOLUNTARY. THE AUTHENTICITY OF THE EVIDENCE IS NOT QUESTIONABLE AND HAS NOT IN FACT BEEN CHALLENGED IN COURT. MOREOVER, TITTJUNG HAS ADMITTED SERVING AS A GERMAN CAMP GUARD DURING WORLD WAR II. TITTJUNG'S APPEAL FROM THE DEPORTATION DECISION REMAINS PENDING.

BREYER: JOHANN BREYER WAS DENATURALIZED ON THE BASIS OF HIS SERVICE AS A WAFFEN-SS TOTENKOPF BATTALION ARMED GUARD OF CIVILIAN PRISONERS AT BUCHENWALD CONCENTRATION CAMP AND AUSCHWITZ DEATH CAMP. HE HAS ADMITTED THAT HE SERVED AS A NAZI CONCENTRATION CAMP GUARD. HIS WAFFEN-SS SERVICE WAS VOLUNTARY. HIS APPEAL FROM THE JUDGMENT OF DENATURALIZATION WAS DENIED IN NOVEMBER 1994; THE COURT OF APPEALS RULED THAT IT WAS "BEYOND DISPUTE" THAT BREYER HAD "ASSISTED IN PERSECUTION" OF INMATES AT THE TWO DEATH CAMPS. HIS INDEPENDENT CLAIM THAT HE IS ENTITLED TO U.S. CITIZENSHIP BY VIRTUE OF HIS MOTHER'S ASSERTED BIRTH IN THE UNITED STATES HAS TWICE BEEN DENIED BUT CURRENTLY

REMAINS ON APPEAL BEFORE THE IMMIGRATION AND NATURALIZATION SERVICE.

BARTESCH: MARTIN BARTESCH SERVED VOLUNTARILY AS A WAFFEN-SS TOTENKOPF BATTALION GUARD AT MAUTHAUSEN CONCENTRATION CAMP, DURING WHICH TIME HE SHOT AND KILLED A FRENCH JEW. IN 1987 HE ADMITTED THAT HIS ENTRY INTO THE UNITED STATES HAD BEEN UNLAWFUL BECAUSE HE WILLFULLY MISREPRESENTED AND CONCEALED FACTS CONCERNING HIS WARTIME SERVICE; HE ALSO AGREED TO HIS DENATURALIZATION AND PERMANENTLY DEPARTED THE UNITED STATES. IT IS THE

UNDERSTANDING OF THE UNITED STATES THAT HE SUBSEQUENTLY DIED OF NATURAL CAUSES.

THE COMMUNICATIONS ALLEGE GENERALLY THAT THESE INDIVIDUALS HAVE BEEN DENIED FAIR TREATMENT AND DUE PROCESS AND ARE BEING PERSECUTED. FOR THE REASONS INDICATED IN GREATER DETAIL IN THE U.S. RESPONSE, THE UNITED STATES GOVERNMENT RESPECTFULLY DENIES THAT ANY VIOLATIONS OF HUMAN RIGHTS HAVE OCCURRED IN CONNECTION WITH THE DENATURALIZATION AND DEPORTATION PROCEEDINGS REFERRED TO IN THE COMMUNICATIONS IN QUESTION. TO THE CONTRARY, THESE JUDICIAL PROCEEDINGS ARE CHARACTERIZED BY AN ABUNDANCE OF DUE PROCESS, IN WHICH THE INDIVIDUALS CONCERNED HAVE BEEN FULLY REPRESENTED BY COMPETENT COUNSEL OF THEIR OWN CHOOSING AND HAVE THEIR CONTENTIONS FULLY CONSIDERED AT TRIAL AND ON APPEAL. THE ORDERS OF DENATURALIZATION AND DEPORTATION ARE PREMISED UPON THE ESTABLISHED FACTS OF THE INDIVIDUALS' PARTICIPATION IN NAZI PERSECUTION AND THEIR RESULTING INELIGIBILITY TO RESIDE IN THE UNITED STATES.

THE UNITED STATES ALSO NOTES THAT THE COMMUNICATIONS DO NOT REVEAL A CONSISTENT PATTERN OF GROSS AND RELIABLY ATTESTED VIOLATIONS OF HUMAN RIGHTS. TO THE CONTRARY, THE COMMUNICATIONS CONCERN THE UNIQUE SITUATIONS OF ONLY A FEW INDIVIDUALS AND IN NO WAY SUBSTANTIATE THE ALLEGATIONS THAT TREATMENT OF THESE INDIVIDUALS RESULTED IN HUMAN RIGHTS VIOLATIONS OF ANY KIND.

IN ADDITION, THE COMMUNICATIONS DO NOT ESTABLISH THE EXHAUSTION OF DOMESTIC REMEDIES, OR ALLEGE THAT THE PURSUIT OF SUCH REMEDIES WOULD BE FUTILE. IN FACT, THE COMMUNICATIONS THEMSELVES REVEAL THAT, AT THE TIME THEY WERE SUBMITTED, JUDICIAL PROCEEDINGS INVOLVING THREE OF THE FOUR INDIVIDUALS IN QUESTION REMAINED PENDING. IN EACH OF THESE CASES, PROCEEDINGS ARE STILL PENDING. (THE FOURTH, MARTIN BARTESCH, LEFT THE UNITED STATES VOLUNTARILY IN 1987 AND SUBSEQUENTLY DIED OF NATURAL

CAUSES.)

FOR THESE REASONS, THE GOVRNMENT OF THE UNITED STATES SUBMITS THAT THESE COMMUNICATIONS MUST BE DEEMED INADMISSIBLE UNDER THE RELEVANT CRITERIA, WHICH ARE SET FORTH AT THE END OF THE U.S. RESPONSE. DAVIS

ADMIN
END OF MESSAGE CONFIDENTIAL