UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

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In the Matter of:

SHEHADEH, Michel Ibrahim,
A 30 660 528
and
HAMIDE, Khader Musa,
A 19 262 560

IN DEPORTATION PROCEEDINGS

Respondents.

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Applications: RESPONDENTS' RENEWED MOTION TO DISMISS

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DECISION AND ORDER OF THE IMMIGRATION JUDGE REGARDING RESPONDENTS' RENEWED MOTION TO DISMISS PURSUANT TO SECTION 602(d) OF THE IMMIGRATION ACT OF 1990

I. INTRODUCTION AND SUMMARY

On May 19, 2000, respondents served this Court with a renewed motion to dismiss the Orders to Show Cause of April 5, 1991.[1] Respondents' original motion to dismiss was filed on May 20, 1991, pursuant to section 602(d) of the Immigration Act of 1990 (hereinafter "IMMACT 90"). On April 17, 1992, this Court,

[1] The April 5, 1991 Orders to Show Cause are attached to this decision as Appendix B.

pursuant to the Order of the then, and now late, Chief Immigration Judge, the Honorable William R. Robie, denied respondents' motion.[2]

Respondents' renewed motion has been supported by subsequent pleadings[3] and opposed by the government.[4]

On October 16, 2000, in open Court, counsel for both respondent and the government engaged in oral argument on the renewed motion to dismiss.[5] At that oral argument, government counsel conceded that respondents have not waived their right to renew their instant motion.

Upon a complete review of all relevant pleadings and all relevant statutory, regulatory, and case law, this Court now rules as follows:

(1) that the Court's current consideration of the instant motion is not barred by any legally binding principle of finality; and

(2) that the respondents' renewed motion be granted.

II. RELEVANT CASE HISTORY

The original Orders to Show Cause (hereinafter "OSCs") issued against respondents are dated December 1986,[6] and charge

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[2] Chief Judge Robie's written Order of April 17, 1992 is attached to this decision as Appendix C.

[3] "Respondents' (Corrected) Renewed Motion to Dismiss Pursuant to section 602(d) of the Immigration Act of 1990," (containing non-substantive corrections) was filed on May 23, 2000 to replace "Respondents' Renewed Motion to Dismiss Pursuant to section 602(d) of the Immigration Act," filed May 19, 2000. On August 11, 2000, respondents filed "Respondents' Reply to Government's Opposition to Respondents' Renewed Motion to Dismiss Pursuant to section 602(d) of the Immigration Act of 1990."

[4] "Government's Opposition to Motion to Dismiss," filed July 17, 2000.

[5] Copies of the oral argument hearing tapes are available to the parties upon request.

[6] Copies of the December 1986 OSCs are attached hereto as Appendix A-1.

them with deportability under section 241(a)(6) of the Immigration and Nationality Act of 1952 (hereinafter the "INA"). Specifically, each OSC charged that following his entry into the United States, each respondent had become "a member of the following class... an organization that causes to be written, circulated, distributed, published or displayed, written or printed advocating or teaching economic, international and governmental doctrines of world communism."

On April 28, 1987, the government lodged written amendments to the original OSCs, withdrawing the "world communism" charges and substituting in their place the following: "Section 241(a)(6)(F)(iii) of the Immigration and Nationality Act, in that you [i.e., each respondent] have been, after entry, a member of the following class of aliens, to wit: aliens who advocate or teach or who are members of, or affiliated with, any organization that advocates or teaches the unlawful damage, injury or destruction of property."[7]

Soon thereafter, the Immigration Court terminated proceedings, without prejudice, because the Immigration and Naturalization Service (hereinafter the "INS") officer who had allegedly signed the OSCs failed to appear in Court to authenticate the charging documents.[8] On May 11, 1987, the government again filed OSCs which included the April 28, 1987 charge against respondents under section 241(a)(6)(F)(iii) of the INA.[9] Then, on July 21, 1989, the government in writing lodged an additional charge of deportability against each respondent, as follows: "Section 241(a)(6)(F)(ii) of the Immigration and Nationality Act... in that you have been, after entry, a member of the following class of aliens, to wit: aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of an officer or officers ... of the Government of the United States or of any organized

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[7] Copies of the April 28, 1987 amendments to the OSCs are attached hereto as Appendix A-2. Those amendments also include substitute factual allegations which do not bear on the instant motions.

[8] The Court's termination order appears to have been issued in an oral, not written fashion, and was not appealed.

[9] Copies of the May 11, 1987 OSCs are attached hereto as Appendix A-3.

government, because of his or their official character."[10]

Finally, on April 5, 1991, the government filed with the Court and served on respondents new OSCs which charged them with deportability under section 241(a)(4)(B) of the INA for having "engaged in terrorist activity...."[11] Section 241(a)(4)(B) had been made a part of the INA pursuant to section 602(a)(4)(B) of IMMACT 90, Pub.L.No. 101-649, 104 Stat. 4978. In filing and serving these new charging documents, the government made no motion or other effort to withdraw or terminate the original, amended, pre-IMMACT 90 OSCs. Moreover, the 1991 OSCS are not labeled or entitled "superceding" on their face.[12]

It bears mentioning at this juncture, that there is more -- much more -- of a history to these proceedings. For example, for

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[10] Copies of the July 21, 1989 amendments are attached hereto as Appendix A-4. Again, those amendments include substitute factual allegations which do not bear on the instant motion.

[11] The differences in wording between the amended factual allegations made against respondents in the pre-IMMACT 90 OSCs and the "new" allegations made against them in the April 1991 OSCs are not substantive, nor has the government argued to the contrary. For example, in its April 28, 1987 and July 21, 1989 amendments to the pre-IMMACT 90 OSCs, the government alleges that the Popular Front for the Liberation of Palestine (hereinafter "PFLP") "is an organization that advocates or teaches the unlawful damage, injury, or destruction of property," and "that advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of an officer or officers of the Government of the United States or of any organized government, because of his or their official character." In a similar vein, in its April 5, 1991 OSCs, the government alleges that the PFLP "is a terrorist organization" and that respondents "after entry, engaged in terrorist activity, as defined in section 212(a)(3)(B)(ii)(as amended by the Immigration Act of 1990), in that you [i.e., respondents] have committed acts, which you knew or reasonably should have known, afforded material support to the Popular Front for the Liberation of Palestine." Clearly, the changes in the wording of the allegation in the April 5, 1991 OSCs were occasioned by the enactment of IMMACT 90 and not by any substantive revision in the factual (as opposed to legal) predicate for the proceedings against respondents. In short, the differences between the pre- and post-IMMACT 90 allegations are differences without a substantial distinction. See Appendices B, A-2, A-3, and A-4.

[12] A chronological history of the events occurring between the filing of the April 5, 1991 OSCs and Judge Robie's April 17, 1992 Order is attached hereto as Appendix D.

approximately four years, further deportation hearings against respondents in this Court were enjoined by the United States District Court for the Central District of California, based on an immediately preceding decision of the United States Court of Appeals in American-Arab Anti-Discrimination Committee v. Reno, 70 F.3d 1045 (9th Cir. 1995). The District Court's injunction was then upheld in American-Arab Anti-Discrimination Committee v. Reno, 119 F.3d 1367 (9th Cir. 1997), in a ruling subsequently reversed in Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999). Deportation proceedings against respondents were then allowed to proceed in this Court.[13] None of the Article III Court proceedings concerned the issue now before this Immigration Court. Accordingly, further discussion of the background history of the instant proceedings is unnecessary at this time in this decision.

III. THE STATUTE AT ISSUE AND THE ARGUMENTS POSED

The present charge against both respondents was made part of the INA on November 29, 1990, as contained in section 602 of IMMACT 90. Section 602(d) of IMMACT 90 reads as follows:

> EFFECTIVE DATE - The amendments made by this section, and by section 603(b) of this Act, shall not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991.

Respondents have argued that they "have been in deportation proceedings continuously since 1987" and therefore may not be subject to a charge established in section 602 of IMMACT 90. Respondents' Reply to Government's Opposition to Respondents' Renewed Motion to Dismiss, August 11, 2000, at 2 (hereinafter "Respondents' Reply"). The government disagrees, and contends that, "Respondents' arguments in support of their motion rest entirely upon the false assumptions, first, that Chief Judge Robie did not terminate the original proceedings, but that those proceedings remain pending and are, in fact, the proceedings being adjudicated here, and, second, that the operative language in section 602 of the Immigration Act of 1990... focuses on 'conduct' when it uses the word 'proceedings.'" Government's Opposition to Motion to Dismiss, July 17, 2000, at 2 (hereinafter

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[13] Pursuant to the agreed briefing schedule, the government filed its pre-trial brief on February 23, 2000. The respondents filed their reply on May 19, 2000. The Respondents' Renewed Motion to Dismiss, the subject of the instant decision, was concurrently, yet separately, filed with their reply on that date.

"Government's Opposition"). Additionally, or in the alternative, the government argues that the late Chief Judge Robie's April 17, 1992 Order which denied respondents' original motion to dismiss (hereinafter "Robie's Order") should be accorded finality by this Court.[14] Id. at 16-17. Respondents make the following arguments that Robie's Order is not a final judgement on the merits of these proceedings and, thus, may be subject to reconsideration by this Court:

1) Chief Judge Robie's determination that the 1991 "Orders to Show Cause superceded all Orders to Show Cause previously issued against these Respondents, rendering those previously filed charges a nullity"[15] was an improper sua sponte act; and

2) the government's claim that the filing of the "new" OSCs in April 1991 (as opposed to amendments to the previously submitted OSCs) overcomes the retroactivity bar and limitation imposed by section 602(d) of IMMACT 90 "would completely eviscerate" that provision of law. Respondents' Reply at pages 3-7, 21-24, and 7 n. 7 (emphasis included).

IV. CHIEF JUDGE ROBIE'S ORDER OF APRIL 17, 1992

The Order at issue was delivered as a denial to the Respondents' Motion to Dismiss Charges Pursuant to Section 602(d) of the Immigration Act of 1990, May 20, 1991 (i.e., the respondents' initial motion to dismiss). In ruling that the April 1991 OSCs "superceded" and made "a nullity" of the 1987 OSCs, as amended, Robie's Order was not responding to a government motion to terminate or dismiss the original, amended OSCs, either under 8 C.F.R. section 242.7(b)(1990)[16] or any other procedure. In fact, Chief Judge Robie cited no statute, regulation, or case precedent for his authority to substitute the 1991 OSCs for the

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[14] Again, however, it should be stressed that the government has conceded that respondents have not waived their right to advance the instant motions. See note 5.

[15] Robie's Order at 2.

[16] This regulation provides as follows: "After commencement of [deportation] proceedings pursuant to section 3.14 of this chapter, any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service." Immigration Judges are not included within the category of "officer" in 8 C.F.R. section 242.7(a)(1990).

pre-IMMACT 90 charging documents.[17]

V. THE COURT'S CURRENT CONSIDERATION OF ROBIE'S ORDER

A. The Issue of Finality

At the time of his April 17, 1992 Order, Chief Judge Robie was possessed of the following rule on pre-decision motions set forth in 8 C.F.R. section 3.22(a)(1990):

> Unless otherwise permitted by the Immigration Judge, motions submitted prior to the final order of an Immigration Judge shall be in writing and shall state, with particularity the grounds therefore [sic], the relief sought, and the jurisdiction. The Immigration Judge may set and extend time limits for the making of motions and replies thereto.

This Court is currently possessed of the same rule, now cited as 8 C.F.R. section 3.23(a)(2001). At first blush, then, it appears that if this Court had authority to fully consider respondents' initial, 1991 motion to dismiss, it now retains the same authority to fully consider respondents' renewed motion to dismiss. Specifically, the above-cited rule does not bar an Immigration Judge from reconsidering a party's pre-decisional motion. The absence of such a bar appears particularly appropriate where a pre-decisional motion is renewed after its content is informed by case law published subsequent to the adjudication of any earlier, similar application.[18]

The absence of a bar to reconsideration of a pre-decisional motion is consistent with the absence of any absolute prohibition against a party's renewal of an evidentiary objection during a hearing or any per se limitation on an Immigration Judge's authority to allow for the filing of applications and related

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[17] Robie's Order did cite portions of the INA and 8 C.F.R., but not in its finding that the 1987 OSCs, as amended, were "a nullity." Moreover, in its sua sponte nullification of the pre-IMMACT 90 OSCs, Robie's Order went beyond what even the government had argued in opposing the respondents' May 20, 1991 Motion to Dismiss. See Appendix D ("Government's Supplemental Memorandum" and "Government's Renewed Motion to Consolidate or Clarify the March 4, 1992 Order"). The government had filed the post-IMMACT OSCs and never requested termination of the pre-IMMACT OSCs.

[18] See, e.g., In re G-N-C-, Int. Dec. 3366 (BIA 1998).

documents and responses thereto during the course of a proceeding. See 8 C.F.R. sections 3.23(a) and 240.1(a)(2001) and 3.22(a) and 242.8(a)(1990). It may be occasionally imprudent and sometimes silly for an Immigration Judge to re-visit a pre-decisional motion, or an objection, or the filing of a relief application -- but it is not forbidden. Moreover, it may be more than fitting and even sagacious for an Immigration Judge to give his full, fair, and thorough attention to a renewed motion on a subject of major statutory construction in proceedings which have already faced distinguished and often differing deliberations by a United States District Court, a United States Court of Appeals, and the Supreme Court of the United States.

In support of its claim that finality should apply to Robie's Order, the government cites two cases -- Astoria Federal Savings and Loan Association v. Solimino, 501 U.S. 104 (1991) and University of Tennessee v. Elliott, 478 U.S. 788 (1986)[19] -- neither of which applies to reconsideration of a pre-decisional order by a trial court or administrative tribunal. The two cases concern the application of collateral estoppel in a federal court to prevent re-litigation in that forum of the previous findings of a state administrative agency. The government's citations are therefore inapposite to the issues presented in the instant motion.

The government's arguments on the issue of finality also fail in the face of its concession at oral argument on October 16, 2000, that respondents have not waived their opportunity to renew their objections to either the 1991 OSCs or Robie's Order. It would be disingenuous to hold that a party retains its right to make a motion but waives any chance to have the pleading succeed. Accordingly, the Court concludes that the principle of finality in the law of adjudication deprives the respondents neither of their opportunity to renew their motion to dismiss nor their opportunity to have this Court fully consider such an application.

On the issue of finality, the Court is obliged by common sense to consider the practical reality of these proceedings, which have spanned fourteen years in one form or another, which have been assigned to at least four Immigration Judges, which have seen several serious collateral attacks and appeals, and which have exposed critical controversies on matters of immigration and constitutional law. Given the time and effort already spent on these cases, and given he likelihood of further

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[19] Government's Opposition at 16.

appellate review of any ruling made by this Court, judicial humility and deliberation must and should precede the application of finality to any pre-decisional judicial order. The instant, renewed motions are hereby deemed justiciable.

B. The Issue of Robie Order's *Sua Sponte* Substitution of the 1991 OSCs for the Pre-IMMACT 90 Charging Documents

It is a "black-letter principle that properly enacted regulations have the force of law and are binding on the government until properly repealed." Flores v. Bowen, 790 F.2d 740, 742 (9th Cir. 1986), citing United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 265 (1954). At the time of Robie's Order, 8 C.F.R. section 242.8(a) delegated to Immigration Judges "the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine [certain relief] applications ... and to take any other action consistent with applicable law and regulations as may be appropriate" (emphasis added). The regulations for deportation proceedings, then as now, provided that the dismissal of a pending but not yet adjudicated Order to Show Cause may be rendered by an Immigration Judge upon motion by a finite corps of INS personnel made for specifically delineated reasons. 8 C.F.R. section 242.7(b)(1990).[20] See also 8 C.F.R. sections 242.7(a) and 3.14(1990).

The bifurcation of authority between that agency which may move for dismissal (the INS) and that institution which may or may not grant dismissal (the Immigration Court) is consistent with the overall regulatory scheme by which the Attorney General has delegated his prosecutorial functions under the INA separately from his adjudicative functions under the same statute. Moreover, the separation of these functions helps ensure the reality and appearance of the independence of the Immigration Court from the reality and appearance of the independence of those Justice Department components that advocate before it, such as the INS and the Civil Division's Office of Immigration Litigation. Without such independence, the United States Immigration Judges might just as well whittle down the legs of their benches, and join them to the tables of the

[20] The above-cited procedure of limitation for the dismissal of pending OSCs is virtually identical to that for the dismissal of Notices to Appear after removal proceedings have been commenced. See 8 C.F.R. section 239.2(c)(2001).

government's advocates. The independence of Immigration Judges -- indeed, of all judges -- is not a convenience, but a requirement of due process of law.

Robie's Order was an improper encroachment on the prosecutorial function, a sua sponte attempt to choose between two sets of separately filed charging documents under very different statutory schemes.[21] As such, Robie's Order was no mere effort at judicial housekeeping, at reconciling two, consecutively filed OSCs with identical, similarly worded, or at least compatible charges against the same respondent(s).[22] The Order was a usurpation of the moving power and initiative carefully and specifically delegated to immigration officers other than Immigration Judges by 8 C.F.R. section 242.7(a) and (b) and 8 C.F.R. section 3.14 (1990). In short, Robie's Order went beyond the limited jurisdiction and juridical role of this Court. It must be rescinded.

C. The Issue of Section 602(d) of IMMACT 90 and Its Applicability to Respondents

Respondents' renewed motion confronts this Court with a problem even larger and more fundamental than the viability of Robie's Order: i.e., the applicability under any circumstance of a charge of deportability against respondents under section 241(a)(4)(B) of the INA pursuant to 602(a)(4)(B) of IMMACT 90. The Court concludes that such a charge is barred by section

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[21] Again, it should be stressed that the government never asked the Court to choose between the pre- and post- IMMACT 90 OSCs, and respondents moved only for the dismissal of the April 1991, post-IMMACT 90 OSCs. In fact, in a November 12, 1991 Memorandum, the government stated that if it were forced to choose between the pre- and post-IMMACT OSCs, it would elect to proceed on the earlier charging documents. See Appendix D. Robie's Order therefore acted sua sponte to "nullify" the pre-IMMACT 90 OSCs.

[22] On a few occasions this Court has been confronted with a case in which INS filed two Orders to Show Cause, different only as to their dates of execution, the signatures of the issuing officers, and the exact language (but not the substance) of the allegations and charges. On such occasions, where one OSC was not clearly filed as an amendment to the other, this Court has consulted with both sides before attempting to decipher (rather than decide on its own initiative) which charging document should proceed. On no occasion does this Court act as a self-appointed, supervening counsel general to resolve competing or substantively different charges.

602(d) of IMMACT 90.[23]

In its application of section 602(d) of IMMACT 90, the Court is most mindful of the well-settled principle enunciated, inter alia, in United States v. Hernandez-Guerrero, 147 F.3d 1075, 1076 (9th Cir. 1998)(citations omitted):

> [F]or more than a century, it has been universally acknowledged that Congress possesses authority over immigration policy as an 'incident of sovereignty'.... The Supreme Court has called Congress's inherent immigration power 'plenary'.... This Court has deemed it 'sweeping'.... Whatever the label, all agree that 'over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.'

Moreover, in giving Congress its considerable due on the subject of section 602(d) of IMMACT 90, this Court must accord its legislation the "plain meaning ... unless 'the literal application of a statute ... produce[s] a result demonstrably at odds with the intentions of its drafters.'" United States v. Flores-Garcia, 198 F.3d 1119, 1123 (9th Cir. 2000), quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997)(citations omitted).

The language and context of section 602(d) of IMMACT 90 function to limit the effect of the preceding provisions of the same section 602 by denying the latter any retroactive

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[23] Judge Robie's Order of April 17, 1992 [Appendix C] reached a contrary conclusion. Specifically, Judge Robie ruled that "[d]eportation proceedings were commenced ... on April 8, 1991, when Orders to Show Cause, dated April 5, 1991, were filed with the Office of the Chief Immigration Judge against Respondents, charging them with deportability under section 241(a)(4)(B) of the Immigration and Nationality Act (as amended by the Immigration Act of 1990). Those Orders to Show Cause superseded all Orders to Show Cause previously issued against these Respondents, rendering those previously filed charges a nullity." Accordingly, Judge Robie concluded, "there are no charges pending against these Respondents for which notice was given prior to March 1, 1991," and, accordingly, the respondents' motion to dismiss the charges pursuant to section 602(d) of IMMACT 90 was denied.

application in a deportation setting. The language of section 602(d) is one of mandatory limitation, and its context is clear from its location in IMMACT 90: situated at the end of section 602, after the "revised grounds for deportation" (including those related to "terrorist activity") are delineated in part (a), part (d) -- entitled "effective date" -- imparts a prospective character to its preceding provisions. In the broader context of the INA as a whole, the meaning of section 602(d) could not be plainer: it reverses the general rule that laws governing the deportation of aliens are presumed to have retroactive application:

> The ex post facto clause of the United States Constitution prohibits the retroactive application of criminal laws that materially disadvantage the defendant... but it only applies to criminal laws.... The Court has consistently classified deportation proceedings as civil in nature and has therefore determined that the ex post facto clause has no application to them.

United States v. Yacoubian, 24 F.3d 1, 9 (9th Cir. 1994) (citations omitted). See also Artukovic v. INS, 693 F.2d 894, 897 (9th Cir. 1982). "Of course, the fact that Congress can apply new deportation law to past... conduct does not mean that it intended to do so in every instance." Hamama v. INS, 78 F.2d 233, 236 (6th Cir. 1996). This Court now holds that in enacting section 602(d) of IMMACT 90, Congress exercised its plenary power to disallow the application in an Order to Show Cause of section 602(a)(4)(B) of IMMACT 90 to any alien in "deportation proceedings for which notice has been provided to the alien before March 1, 1991." See also Gonzalez-Alvarado v. INS, 39 F.3d 245, 246 fn. 2 (9th Cir. 1994)(IMMACT 90 revisions to criminal grounds for deportability in section 241 (a)(4) of INA do not apply under IMMACT section 602(d) to an alien because notice of his deportation proceedings was provided before March 1, 1991).

The Court finds untenable the government's arguments, summarized directly below, that section 602(d) does not bar the initiating of charges against respondents under section 602(a)(4)(B) of IMMACT 90:

(1) because those charges are found in OSCs filed by the government after March 1, 1991; and

(2) because section 602(d) does not contain the words "person in" just prior to the words "deportation proceedings."

As to the first point, the government argues that because it filed new OSCs rather than lodged charges or amendments to the pre-IMMACT 90 OSCs (which it never sought to terminate), the non-retroactivity provisions of section 602(d) do not apply to bar the revised grounds for respondents' deportation. Government's Opposition at 13-15. If this argument were to be adopted by the Court, then section 602(d) would be rendered "a nullity": What Justice Department attorney would lack the intelligence to file a new Order to Show Cause (an INS Form I-221) as opposed to an addition (on an INS Form I-261) to a previously submitted OSC and thereby make an effective end-run around an Act of Congress? In applying the meaning of Congressional legislation, the Court must presume Congressional rationality. See generally Bank One Chicago, N.A. v. Midwest Bank & Trust Co., 516 U.S. 264, 279 (1996)(Scalia, J., concurring)(a statute should be applied by giving credit to its language and not by "psychoanalyzing those who enacted it"). Congress did not write and pass section 602(d) to ensure its easy evisceration. As to its first point, then, the government's argument is rejected.

As to its second, and very similar point, the government appears to argue that section 602(d) bars the application of the revised grounds of deportation of IMMACT 90 only to charging documents but not to persons in "deportation proceedings for which notice has been provided to the alien before March 1, 1991." Government's Opposition at 7-13. Hence, the government apparently believes an alien charged with deportability in a pre-IMMACT 90 OSC may be retroactively charged with engaging in terrorist activity in a post-IMMACT 90 OSC, notwithstanding section 602(d), only because the words "persons in" do not appear in that provision.

The Court finds that in making this point the government has found (and indeed has created) more meaning in the absence of language than in the language itself. No one -- not a "person" or any other entity -- has ever disputed that the INA, as amended by IMMACT 90, governs the deportation of human beings, and human beings only.[24] Given that context, it is neither significant nor

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[24] It is quite true that some provisions of the INA do relate to corporations and other non-human creations. See, e.g., section 274B(a)(1) of the INA; 8 U.S.C. section 1324b(a)(1)("It is an unfair immigraiton-related employment practice for a person or other entity to discriminate against any individual... (A) because of the individual's national origin..." (emphasis added)). However, the deportation and removal provisions of the INA are decidedly not directed at artificial life forms.

surprising that Congress chose not to restate the obvious in circumscribing the subject of its non-retroactivity mandate in section 602(d). Furthermore, and as explained in response to the government's first point, *supra*, the assertion that the limitation of section 602(d) may be avoided by simply initiating a post IMMACT 90 OSC against an alien already placed in pre-IMMACT 90 deportation proceedings is incompatible with the continued existence of section 602(d).[25] Accordingly, that assertion must fail; there is no evidence that Congress gave birth to section 602(d), hoping it would die upon delivery.

In sum, this Court concludes that the plain meaning of section 602(d) prohibits retroactive application of any charges of deportability made against respondents for allegedly engaging in terrorist activity based on the factual allegations contained in both the pre-IMMACT 90 and post-IMMACT 90 OSCs.[26] The Court reaches this decision independently of its previously stated conclusion, that Robie's Order was in excess of his authority as an Immigration Judge.

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[25] That assertion might have some validity if the post-IMMACT 90 OSC did not include the very same or very similar allegations of fact as the pre-IMMACT 90 OSC. See, supra, note 11. For example, section 602(d) may well not prohibit the government from filing revised grounds of deporatiblity under IMMACT 90 against an alien whose pre-IMMACT 90 OSC contained allegations different from those which form the factual predicate for the new charge in a subsequent Order to Show Cause. This, however, is not the case at bar. In the instant proceedings, the factual predicate for the pre-IMMACT 90 and post-IMMACT 90 OSCs are strikingly similar. Accordingly, section 602(d) bars the government from proceeding against respondents under the post-IMMACT 90 OSCs.

[26] The Court does not hold that section 602(d) of IMMACT 90 prohibits the government from seeking termination of all OSCs against respondents and then initiating removal proceedings against them under section 237(a)(4)(B) of the INA, now in effect. Section 602(d) refers only to "deportation proceedings" and not "removal" proceedings, and, thus, arguably, does not appear to bar the filing of Notices to Appear against respondents under 8 C.F.R. section 3.14(a)(2001). However, the viability of removal proceedings against respondents is not now at issue in their cases.

VI. CONCLUSION AND ORDERS OF THE COURT

Accordingly, for the reasons set forth above, the Court Orders that the Respondents' Renewed Motion to Dismiss the Charges Pursuant to section 602(d) of IMMACT 90 be GRANTED. The April 1991 OSCs filed against respondents are deemed dismissed, and the pre-IMMACT 90 OSCs are deemed reinstated.[27]

The Court now directs the parties as follows:

(a) No later than August 5, 2001, the government shall indicate to the Court in writing whether it intends to continue with litigation of the reinstated pre-IMMACT 90 OSCs, and if so, whether the testimonial and documentary evidence already admitted following Robie's Order may and should be retained in the record of proceedings in support of the allegations and charges in those reinstated OSCs.

(b) No later than September 9, 2001, respondents shall indicate to the Court in writing their response to the government's August 5, 2001 submission, including their pleas to the allegations and charges in the reinstated OSCs (unless the government seeks to terminate or amend those charging documents).

IT IS SO ORDERED.

Date: June 21, 2001

Bruce J. Einhorn
U.S. Immigration Judge

[27] At oral argument on October 16, 2000, both respondents and the government agreed that a grant of the renewed motion to dismiss would constitute reinstatement of the pre-IMMACT 90 OSCs.

Immigration and Naturalization Service No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A19 262 560

In the Matter of Mr. Khader Musa HAMIDE
c/o U.S. Immigration & Naturalization Service
Los Angeles, CA 90012
Respondent.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jordan and a citizen of Jordan;
3. You entered the United States at Seattlem Washington on or about September 28, 1971; as an F-1 Student;
(date)

On or about January 31, 1978, your status was adjusted to that of a permanent resident alie
You have been a member of or affiliated with the Popular Front for the Liberation of Palestine, an organization that advocated the economic, international and governmental doctrines of the world communism through written and/or printed publications, issued on or under the authority of such organization.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

The Immigration and Nationality Act, in that you have been, after entry, a member of the following class, set forth in section 241(a)(6) of said act, an organization that causes to be written, circulated, distributed, published or displayed, written or printed matter advocating or teaching economic, international and governmental doctrines of world communism.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at A PLACE AND DATE TO BE SET on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: December 16, 1986

(signature and title of issuing officer)
ACTING DISTRICT DIRECTOR
LOS ANGELES, CALIFORNIA
(City and State)

Immigration and Naturalization Service No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of: File No. A30 660 528

Mr. Michel Ibrahim Nasif SHEHADEH Respondent.
c/o U. S. Immigration & Naturalization Service
Los Angeles, California
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jordan and a citizen of Jordan;
3. You entered the United States at Los Angeles, California on or about January 11,1982;
(date)

(SEE CONTINUATION SHEET ATTACHED HERETO AND MADE A PART THEREOF)

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

(SEE CONTINUATION SHEET ATTACHED HERETO AND MADE A PART THEREOF)

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at A PLACE AND DATE TO BE SET on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: December 12, 1986

(signature and title of issuing officer)
ACTING DISTRICT DIRECTOR
LOS ANGELES, CALIFORNIA
(City and State)

RECEIVED
DEPARTMENT OF JUSTICE
1987 JAN 25 AM 10:21

Form I-221S (Rev. 11-1-86)

(over)

FACTUAL ALLEGATIONS(Cont'd)

4. You were admitted as a Lawful Permanent Resident of the United States;

5. You have been a member of or affiliated with the Popular Front for the Liberation of Palestine, an organization that advocated the economic, international and governmental doctrines of the world communism through written and/or printed publications, issued on or under the authority of such organization.

CHARGES

The Immigration and Nationality Act, in that you have been, after entry, a member of the following class, set forth in Section 241(a)(6) of said act, an organization that causes tobe written, circulated, distributed, published or displayed, written or printed matter advocating or teaching economic, international and governmental doctrines of world communism.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

UNITED STATES OF AMERICA:

File No. A19 262 560

In the Matter of KHADER MUSA HAMIDE Respondent.	)	In Deportation Proceedings under Section 242 of the Immigration and Nationality Act SUBSTITUTED CHARGES OF DEPORTABILITY

To: Khader Musa HAMIDE
c/o Dan Stormer, Esq.
Litt & Stormer, Suite 1200
3550 Wilshire Boulevard
Los Angeles, CA 90012

There is hereby lodged against you the substituted charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(6)(F)(iii) of the Immigration and Nationality Act, in that you have been, after entry, a member of the following class of aliens, to wit, aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the unlawful damage, injury or destruction of property.

In support of the substituted charge(s) there is submitted the following factual allegation(s) in lieu of those set forth in the order to show cause and notice of hearing:

5. You are a member or an affiliate of the Popular Front for the Liberation of Palestine.

6. The Popular Front for the Liberation of Palestine is an organization that advocates or teaches the unlawful damage, injury or destrurction of property.

Apr. 28, 1987
Date

Trial Attorney

Form I-261
(Rev. 12-15-66)

UNITED STATES OF AMERICA

Immigration and Naturalization Service

File No. A30 660 528

In the Matter of

MICHEL IBRAHIM NASIF SHEHADEH

Respondent.

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

SUBSTITUTED ~~ADDITIONAL~~ CHARGES OF DEPORTABILITY

To: Michel Ibrahim Nasif SHEHADEH
c/o Dan Stormer, Esq.
Litt & Stormer, Suite 1200
3550 Wilshire Boulevard
Los Angeles, CA 90012

There is hereby lodged against you the substituted ~~additional~~ charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(6)(F)(iii) of the Immigration and Nationality Act, in that you have been, after entry, a member of the following class of aliens, to wit, aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the unlawful damage, injury or destruction of property.

In support of the substituted ~~additional~~ charge(s) there is submitted the following factual allegation(s) in lieu of ~~addition to~~ those set forth in the order to show cause and notice of hearing:

5. You are a member or an affiliate of the Popular Front for the Liberation of Palestine.

6. The Popular Front for the Liberation of Palestine is an organization that advocates or teaches the unlawful damage, injury or destrurction of property.

April 28, 1987
Date

Trial Attorney

Form I-261
(Rev. 12-15-66)

UNITED STATES OF AMERICA: File No. A19 262 260

In the Matter of Mr. Khader Musa HAMIDE Respondent.

c/o U. S. Immigration & Naturalization Service
Los Angeles, California
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

. You are not a citizen or national of the United States;
. You are a native of Jordan and a citizen of Jordan;
. You entered the United States at Seattle, Washington on or about September 28, 1971 as an F-1 student;

On or about January 31, 1978 (date) your status was adjusted to that of a permanent resident n;

You are a member or an affiliate of the Popular Front for the Liberation of Palestir ;

The Popular Front for the Liberation of Palestine is an organization that advocates eaches the unlawful damage, injury or destruction of property.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation ursuant to the following provision(s) of law:

ion 241(a)(6)(F)(iii) of the Immigration & Nationality Act, in that you have been r entry, a member of the following class of aliens , to wit; aliens who advocate or h or who are members of or affiliated with any organization that advocates or hes the unlawful damage, injury or destruction of property.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the nmigration and Naturalization Service of the United States Department of Justice at A PLACE AND DATE TO BE SET

n _____ at _____ m, and show cause why you should not be eported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the gulations issued pursuant thereto, I have commanded that you be taken into custody for roceedings thereafter in accordance with the applicable provisions of the immigration laws and gulations, and this order shall serve as a warrant to any Immigration Officer to take you into stody. The conditions for your detention or release are set on the reverse hereof.

ated: May 11, 1987

(Signature and title of issuing officer)
DISTRICT DIRECTOR
LOS ANGELES, CALIFORNIA
(City and State)

RSEDING ORDER TO SHOW CAUSE.

rm I-221S (Rev. 8-1-77) Y (over)

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. ~~A30 660 528~~

In the Matter of Mr. Michel Ibrahim Nasif SHEHADEH Respondent.
c/o U. S. Immigration & Naturalization Service
Los Angeles, California

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jordan and a citizen of Jordan;
3. You entered the United States at Los Angeles, California on or about January 11, 1982;
4. You were admitted as allawful permanent resident of the United States;
5. You are a member or an affiliate of the Popular Front for the Liberation of Palestine;
6. The Popular Front for the Liberation of Palestine is an organization that advocates or teaches the unlawful damage, injury or destruction of property.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(6)(F)(iii) of the Immigration & Nationality Act, in that you have been after entry, a member of the following class of aliens, to wit, aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the unlawful damage, injury or destruction of property.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at A PLACE AND DATE TO BE SET

on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: May 11,1987

(signature and title of issuing officer)
DISTRICT DIRECTOR
~~LOS ANGELES, CALIFORNIA~~
(City and State)

✓ SUPERSEDING ORDER TO SHOW CAUSE.

Form I-2215 (Rev. 8 1-77) Y (over)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

UNITED STATES OF AMERICA:

File No. A19 262 560

In the Matter of

KHADER MUSA HAMIDE

Respondent.

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

ADDITIONAL CHARGES OF DEPORTABILITY

To: Khader Musa Hamide
c/o Marc Van Der Hout, Esq.
(name)
3689 - 18th Street
San Francisco, CA 94110
(address)

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(6)(F)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(6)(F)(ii), in that you have been, after entry, a member of the following class of aliens, to wit: aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of an officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any organized government, because of his or their official character.

In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

In addition to the allegations in the Order to Show Cause, dated May 11, 1987, hereby is added the additional allegation Number 7:

7. The Popular Front for the Liberation of Palestine is an organization that advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of an officer or officers of the Government of the United States or of any organized government, because of his or their official character.

Form I-261
(Rev. 12-15-66)

July 21, 1989
Date

James A. Hunolt

UNITED STATES DEPARTMENT OF JUSTIC
Immigration and Naturalization Service

UNITED STATES OF AMERICA:

File No. A30 660 528

In the Matter of MICHEL IBRAHIM NASIF SHEHADEH Respondent.	In Deportation Proceedings under Section 242 of the Immigration and Nationality Act ADDITIONAL CHARGES OF DEPORTABILITY

To: Michel Ibrahim Nasif Shehadeh
c/o Marc Van Der Hout, Esq.
(name)
3689 - 18th Street
San Francisco, CA 94110
(address)

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(6)(F)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(6)(F)(ii), in that you have been, after entry, a member of the following class of aliens, to wit: aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of an officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any organized government, because of his or their official character.

In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

In addition to the allegations in the Order to Show Cause, dated May 11, 1987, hereby is added the additional allegation Number 7:

7. The Popular Front for the Liberation of Palestine is an organization that advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of an officer or officers of the Government of the United States or of any organized government, because of his or their official character.

Form I-261
(Rev. 12-15-66)

July 21, 1989
Date

James A. Hunolt

TOTAL P.04

Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A19 262 560

In the Matter of Khader Musa HAMIDE Respondent.
12413 Oxnard Street, Apt. #204
North Hollywood, California 91601
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jordan and a citizen of Jordan.
3. You entered the United States at Seattle, Washington on or about September 28, 1971, as an F-1 student;
4. On or about January 31, 1978, your status was adjusted to that of a permanent resident alien;
5. You have, after entry, engaged in terrorist activity, as defined in Section 212(a)(3)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. Section 1182(a)(3)(B)(iii) (as amended by the Immigration Act of 1990), in that you have committed acts, which you knew or reasonably should have known, afforded material support to the Popular Front for the Liberation of Palestine.
6. The Popular Front for the Liberation of Palestine is a terrorist organization.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(4)(B) of the Immigration and Nationality Act, 8 U.S.C. Section 1251(a)(4)(B) (as amended by the Immigration Act of 1990), in that you have engaged in terrorist activity, as defined in Section 212(a)(3)(B)(iii), 8 U.S.C. Section 1182(a)(3)(B)(iii) (as amended by the Immigration Act of 1990).

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at A PLACE AND DATE TO BE SET

on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: APR 5 1995

District Director
(signature and title of issuing officer)

Los Angeles, California
(City and State)

Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A30 660 528

In the Matter of Michel Ibrahim Nasif SHEHADEH Respondent.
935 Molina Avenue
Long Beach, California 90804
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Jordan
   and a citizen of Jordan.
3. You entered the United States at Los Angeles, California on or about January 11, 1982; (date)
4. You were admitted as a lawful permanent resident of the United States;
5. You have, after entry, engaged in terrorist activity, as defined in Section 212(a)(3)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. Section 1182(a)(3)(B)(iii) (as amended by the Immigration Act of 1990), in that you have committed acts, which you knew or reasonably should have known, afforded material support to the Popular Front for the Liberation of Palestine.
6. The Popular Front for the Liberation of Palestine is a terrorist organization.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(4)(B) of the Immigration and Nationality Act, 8 U.S.C. Section 1251(a)(4)(B) (as amended by the Immigration Act of 1990), in that you have engaged in terrorist activity, as defined in Section 212(a)(3)(B)(iii), 8 U.S.C. Section 1182(a)(3)(B)(iii) (as amended by the Immigration Act of 1990).

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at A PLACE AND DATE TO BE SET

on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: APR 5 1991

District Director
(signature and title of issuing officer)

Los Angeles, California
(City and State)

5107 Leesburg Pike, Suite 2545

Falls Church, Virginia 22041

In the Matter of	)	In Deportation Proceedings
	)	
KHADER MUSA HAMIDE and	)	A 19 262 560
MICHEL IBRAHIM SHEHADEH	)	A 30 660 528
	)	
Respondents	)	Order of the
	)	Chief Immigration Judge

ORDER

Having considered the RESPONDENTS' MOTION TO DISMISS CHARGES PURSUANT TO § 602(d) OF THE IMMIGRATION ACT OF 1990, the GOVERNMENT'S MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTIONS TO DISMISS, and the Respondents' REPLY TO GOVERNMENT'S MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS, it is hereby ordered that said MOTION TO DISMISS is DENIED.

Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an Order to Show Cause (OSC) with the Office of the Immigration Judge." 8 C.F.R. § 242.1(a). Among other things, the OSC must contain a statement of the statutory provisions alleged to have been violated and "shall call upon the respondent to appear before an Immigration Judge for a hearing. 8 C.F.R. § 242.1(b). Service of the OSC, or "notice of the hearing" may be accomplished either by personal or routine service. 8 C.F.R. § 242.1(c).

Section 602(d) of the Immigration Act of 1990 states that "[t]he amendments made by this section [i.e., the revisions to the grounds for deportation], and by section 603(b) of this Act [conforming amendments to the Immigration and Nationality Act § 241], shall not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991."

Deportation proceedings were commenced in the instant case on April 8, 1991, when Orders to Show Cause, dated April 5, 1991, were filed with the Office of the Chief Immigration Judge against the Respondents, charging them with deportability under § 241(a)(4)(B) of the Immigration and Nationality Act (as amended by the Immigration Act of 1990). Those Orders to Show Cause superseded all Orders to Show Cause previously issued against these Respondents, rendering those previously filed charges a nullity.

Accordingly, there are no charges currently pending against these Respondents for which notice was given prior to March 1, 1991. For that reason, this Motion to Dismiss is denied.

Ordered this 17th day of April, 1992.

William R. Robie

William R. Robie
Chief Immigration Judge

Chronological history of events between the filing of the April 5, 1991 OSCs and Judge Robie's April 17, 1992 Order

April 5, 1991 **Government files Post-IMMACT 90 OSCs**
Thereafter, government moved to consolidate the Pre-IMMACT 90 and post-IMMACT 90 OSCs.

May 20, 1991 **Respondents file two Motions to Dismiss**
1) Motion to Dismiss for Failure to State a Claim
2) Motion to Dismiss Pursuant to section 602(d) of IMMACT 90
Respondents opposed consolidation.

July 9, 1991 **Government's Opposition to Respondents' Motions to Dismiss**

August 16, 1991 **Respondents' Reply to Government's Opposition**

October 10, 1991 **ORAL ARGUMENT ON THE MOTIONS**
According to the subsequent pleadings, on October 10, 1991, Judge Robie issued a tentative, oral ruling concluding that the government could not proceed under both the pre- and post-IMMACT 90 OSCs based on the same conduct and directed the government to choose whether it wished to proceed under the pre-IMMACT 90 OSCs or the post-IMMACT 90 OSCs. Judge Robie indicated that if the government refused to decide, the Court would view the post-IMMACT 90 OSCs as superceding the pre-IMMACT OSCs.

November 12, 1991 **Government's Supplemental Memorandum** (minor amendments filed 1/13/92)
Objected to Judge Robie's tentative ruling, but indicated that if forced to choose, it would select to proceed under the pre-IMMACT 90 OSCs.

January 7, 1992 **Respondents' Reply to Government's Supplemental Memorandum**
Agreed with Robie's tentative ruling that the government could not proceed under both OSCs, but argued that the post-IMMACT 90 charges are barred by section 602(d) of IMMACT 90.

January 13, 1992 **Government's Reply Memorandum**
Reiterated its desire to proceed on both OSCs.

March 4, 1992 **JUDGE ROBIE ISSUES ORDER**
Denied Respondents' Motion to Dismiss Pursuant to 602(d) of IMMACT 90 in light of government's "election" to proceed under the pre-IMMACT 90 OSCs.

March 5, 1992 **ROBIE SEEKS PRE-TRIAL HEARING TO SET SCHEDULE**

March 13, 1992 **Government's Renewed Motion to Consolidate or Clarify the March 4, 1992 Order**
Government continued to argue that it may proceed under both OSCs and objected to Judge Robie's characterization that it elected to proceed only under pre-IMMACT 90 OSCs. The government pointed to Robie's tentative order indicating that if it failed to choose, the post-IMMACT 90 OSCs would be viewed as superceding. The government asserted that only under compulsion would it choose the pre-IMMACT 90 OSCs, and requested a specific order from the Court ordering the government to withdraw the post-IMMACT 90 OSCs.

March 17, 1992 **Respondents' Reply to Government's Renewed Motion**
Agreed that a formal order is appropriate, but denied applicability of post-IMMACT 90 OSCs.

March 30, 1992 **JUDGE ROBIE ISSUES ORDER**
Denied Government's (Renewed) Motion to Consolidate. "Clarified" March 4, 1992 Order. Held that pre-IMMACT 90 OSCs no longer have force and effect and are superceded by post-IMMACT 90 OSCs.

April 17, 1992 **JUDGE ROBIE ISSUES ORDER** [See Appendix C]
Denied Respondents' Motion to Dismiss Pursuant to section 602(d) of IMMACT 90. Held that filing of the post-IMMACT 90 OSCs rendered the pre-IMMACT 90 OSCs "a nullity." Hearings to proceed on post-IMMACT 90 OSCs.

April 28, 1992 **JUDGE ROBIE ISSUES ORDER**
Denied Respondents' Motion to Dismiss for Failure to State a Claim.