

EMBATTLED ZUNDEL SEEKS SUPREME COURT HEARING

Washington, DC (11/28/07)--Embattled dissident Ernst Zundel, currently detained for speech crimes in a German prison, has asked the United States Supreme Court to address the judicial misconduct that led to his deportation from the United States and ultimately from Canada.

Zundel lawyer Bruce Leichty says he filed a Petition for Writ of Certiorari with the U.S. Supreme Court on November 14, 2007, in which the Court has been confronted squarely with the denial by U.S. courts of Zundel's constitutional right to have a habeas corpus court hearing.

"The Supreme Court has long recognized the right of all residents of the United States to be able to challenge acts of the sovereign leading to their detention or deportation, and to present evidence about the illegality of the acts," says Leichty. "We have documented to the Court that Ernst Zundel did not get that right before or after his deportation, and that the Court of Appeals in Cincinnati shirked its duty to protect the constitutional right of Mr. Zundel."

Zundel was deported from the United States without a hearing on February 19, 2003, after being taken into custody at his Tennessee home on February 7, 2003 on the pretext of a missed immigration appointment. That charge was later changed to overstaying the terms of his 2000 entry to the U.S., even though Zundel had married a U.S. citizen--ethnic Mennonite author and revisionist website operator Ingrid Rimland--and was awaiting routine processing for permanent residence.

After being forcibly removed from the United States, Zundel spent two years in custody in Canada, where he was branded a national security threat based on his alleged reputation as a white supremacist leader, before being deported to Germany in 2006.

"The Canadian law under which Zundel was labeled a national security threat to Canada has since been declared unconstitutional in the case of another man because it permits the use of secret evidence that the accused cannot confront," notes Leichty. "Secret evidence was in fact used extensively in the Zundel case in Canada. But the favorable ruling in Canada didn't happen until after he was already deported to Germany."

Leichty also notes that the FBI had recommended closing its file on Zundel shortly before he was arrested in the U.S. because his activities were protected under U.S. law. The Zundels obtained that FBI report through the Freedom of Information Act.

Leichty says that a favorable U.S. Supreme Court ruling can still help Zundel because he is currently barred from returning to the U.S. for 20 years, even though his wife's petition for him was approved. His German prison sentence is for a five-year term. Both a federal judge in Knoxville and a three-judge panel in Cincinnati agreed with a Justice Department lawyer that Zundel had waived his rights to a habeas hearing in the U.S. even though the government was relying on a law that had expired and could not be enforced when Zundel last entered the U.S. in 2000, says Leichty.

Most immigrants get to have both an evidentiary hearing before an immigration judge and a federal habeas hearing based on some kind of factual record before being removed, says Leichty, but

Zundel got neither. The Sixth Circuit panel in Cincinnati held that when Congress passed the REAL ID Act in 2006 stripping most immigrants of the right to have an evidentiary hearing in a federal court, that didn't amount in Zundel's case to an unconstitutional act depriving him of his habeas rights.

Zundel also contends in his Supreme Court petition that the Sixth Circuit fatally compromised itself by engaging in improper ex parte communications with INS officers after he was taken into custody in February 2003. When Zundel asked for an emergency stay of deportation from the Sixth Circuit shortly after his arrest, court officers contacted INS without the knowledge of Zundel's attorney to ask about Zundel's status and were told that he had last entered the U.S. under the visa waiver pilot program, thereby waiving his right to contest his deportation--information which was inaccurate on multiple grounds, says Leichty.

No federal court is permitted to engage in "back channels" communication with one of the parties, and Leichty contends in the Petition to the Supreme Court that once the Sixth Circuit did so--leading to disastrous consequences for Zundel--its judges may have felt intense pressure to simply ratify the inaccurate information presented by INS and then parroted by the Justice Department.

"We are hoping that even though Canadian justice was too little, too late for Ernst Zundel, the U.S. Supreme Court will have the courage to recognize the error of the lower courts even in the case of an unpopular man," says Leichty. Zundel has been demonized as a "Holocaust denier" and admirer of Hitler.

Leichty, who visited Zundel in his German prison cell in April

2007, says that Zundel considers himself a German human rights activist and that he denies being anti-semitic or neo-Nazi, even as he challenges historical orthodoxy about the events of World War II. "Zundel is not an advocate of genocide as some would want to portray him; he simply doesn't believe there is historical evidence that Hitler ordered gassing or mass extermination of the Jews, and he believes that the gas chambers are a myth. Even though those beliefs are criminalized in Germany and regarded with derision by many U.S.-educated persons, we are still supposed to have the freedom to voice those opinions in this country and not to be targeted for our opinions, regardless of whether the majority agrees with them."

Leichty says that the Supreme Court accepts very few certiorari petitions, which are first read and voted on by clerks, and the high court will now take months to decide whether to accept or deny the petition. The Supreme Court has also been asked in a widely-covered case to grant a petition of a number of detainees at Guantanamo who have claimed, like Zundel, that they are entitled to habeas corpus hearings. If that petition is granted Zundel's petition may also have to be granted, according to Leichty; he says Zundel's right to an evidentiary hearing is even clearer than the rights of the detainees since Zundel was arrested in the U.S. and filed his petition while still on U.S. soil.

"There are certainly overwhelming grounds for granting the petition if the law is applied evenhandedly," says Leichty. "Both personal freedom and national freedom are at stake."