

ZUNDELS SAY SUPREME COURT REJECTION WON'T END HOPES

Washington, DC (2/12/08)--Despite being rebuffed by the U.S. Supreme Court in his bid for a habeas corpus hearing, Ernst Zundel still has hopes of returning to the United States when he is eventually released from a German prison, his wife Ingrid said this week.

The Supreme Court issued a terse one-line ruling in January stating that it had denied Zundel's petition for a writ of certiorari from the adverse decision of the Sixth Circuit Court of Appeals. No explanation was given for the ruling, says Zundel attorney Bruce Leichty, which Leichty says is typical when such petitions are denied.

What is not normal about the decision, says Leichty, is that the long-recognized right of a deported immigrant to present evidence on a petition for writ a habeas corpus appears to be irreparably breached. "If the courts can treat the constitutional protection for habeas corpus in such a cavalier way as to Ernst Zundel, that erodes the protection for all of us," says Leichty.

Zundel had argued to the Sixth Circuit that he was constitutionally entitled to have an evidentiary hearing under his petition for a writ of habeas corpus, based on his filing of the petition when he was still detained in Tennessee, and on the fact that he was ultimately removed from the United States to his previous domicile of Canada, and banned from returning to the U.S. for "20 years."

Zundel, a pacifist and revisionist publisher who had been vilified for two decades in Canada as a "Holocaust denier," was

confined for two years in Ontario after his removal, and was declared a national security risk by a Canadian court through the use of secret evidence. He was then deported from Canada to Germany, where he was charged criminally and convicted of agitating the people under "Section 130" of Germany's criminal code. He is serving a five-year prison term in Mannheim.

The Sixth Circuit, in an unpublished opinion in February 2007, denied what it termed Zundel's "petition for review" without specifically treating his constitutional habeas corpus argument. By virtue of its January 2008 decision the Supreme Court let that ruling stand.

"This ruling from the Supreme Court is extremely disappointing, not only to Zundel's personally but because one of the most fundamental of all Americans' constitutional right was at stake--the right to challenge the executive branch through habeas corpus when one's freedoms are taken away," says Leichty. "But we are not yet out of legal options."

Leichty said that there has been a developing line of cases, particularly in the immigration context, which suggest that an alien need not be given a "habeas corpus" hearing if he can challenge the illegalities he has identified through some other means which provide protections equivalent to those of habeas corpus. "So," he says, "we are going to take the Supreme Court decision as an indication that Ernst Zundel can still obtain equivalent relief by other measures."

Zundel's petition for habeas corpus was only one claim for relief in a much broader action that Zundel's had filed in the

federal district court in Knoxville, says Leichty. Now that the Supreme Court has acted, the Sixth Circuit has sent the case back to Knoxville. The Knoxville court has not yet acted on claims made in that case for remedies other than habeas corpus that would also allow Ernst Zundel to rejoin his wife in the United States.

The Zundels also hope to pursue the Knoxville action in order to find out why Ernst was brutalized with dogs and black-clad handlers in a Tennessee prison after being taken into custody, adds Leichty. "Zundel was doing nothing more than exercising his constitutionally-protected right of free speech in this country before he was taken into custody, and yet he has been treated like a heretic of the Middle Ages by a series of governments that seem almost as despotic as those of the Inquisition."

Most important, Zundel has good arguments that the United States acted illegally when it told him he would be refused admission to the U.S. for 20 years after the date of his deportation, says Leichty. Leichty says that government bureaucrats concluded that since Zundel had been removed he would be barred from reentering for 10 years, and since he had been in the U.S. "unlawfully" for more than a year, he would be barred for an additional 10 years.

But Leichty says that even if the government is right about those underlying contentions, the bars of inadmissibility of 10 years for each of those events would run concurrently under the law, not consecutively. And Leichty says that Zundel will dispute that he was ever lawfully removed--something that the Sixth Circuit Court of Appeals never got around to ruling on--or that he was in

the United States unlawfully before he was apprehended.

Zundel thought he was waiting for an interview on his application for permanent residence through his U.S. citizen wife Ingrid at the time armed agents came to his home and arrested him in February 2003. Later he discovered that the government claimed that he had failed to show up for an interview, and that the INS had lost two letters from his then-attorney confirming that the interview was to be postponed and rescheduled.

Not only that, says Leichty, but the government claimed that when Zundel had not appeared for an interview in 2001, the INS had decided that Zundel had "abandoned" his application, but failed to notify Zundel of this alleged "abandonment" until Zundel was apprehended more than a year later. Only that lag time of more than a year allowed the government to claim that Zundel was present in the U.S. unlawfully for more than a year, says Leichty.

"We believe we will still have the legal right to discover more about the machinations that went on behind the scenes to cause Ernst Zundel to be taken into custody and to be told he was barred for 20 years, even if we can't force the U.S. government to bring him back in the same status that he had in 2003," says Leichty. "But the process has been extremely costly and burdensome, and Ingrid is just hoping that she can keep up the fight."

"Nothing that can be done at this point will ever compensate Ingrid and Ernst for their loss--but we keep hoping for honest judges who will recognize some of the wrongs done to them."