

## ZUNDEL WAIVED HIS HABEAS RIGHTS, RULES APPELLATE COURT

Cincinnati, Ohio – (3/19/07) -- In a decision issued February 27, the Court of Appeals for the Sixth Circuit in Cincinnati has unanimously upheld a lower court's judgment stripping German pacifist publisher Ernst Zundel of his right to be heard on a petition for writ of habeas corpus which was filed when Zundel was first arrested by U.S. authorities in February 2003.

The court held that the controversial writer, married to Russian Mennonite novelist Ingrid Rimland since 2000, had effectively bargained away his right to appear before a court because he last entered the United States under the Visa Waiver Pilot Program in May 2000. The court of appeals ignored Zundel's arguments based on the U.S. Constitution and rejected his argument based on the expiration of the Pilot Program April 30, 2000.

Zundel has asserted that, because the Pilot Program or VWPP had sunset by the time of his May 2000 entry, the Attorney General and INS could not have permitted him entry as a "visa waiver" alien in May 2000, and were not entitled to enforce the agreement that "visa waiver" candidates have to enter into as a condition for not having to obtain a visa. Zundel was in a routine waiting period for U.S. permanent residence through his wife Ingrid, a U.S. citizen, at the time of his arrest at their Tennessee home.

"Once again, Ernst Zundel has been betrayed by a federal judiciary which, in its rush to judgment, has tread roughshod on the Constitution and the letter and intent of the law in order to achieve a politically correct result," said , Bruce Leichty, a California Mennonite lawyer who has been fighting to overturn Zundel's deportation since 2003.

There is no precedent for denying an individual of Zundel's immigration status a hearing on a habeas petition, said Leichty, who noted that the courts have routinely allowed habeas hearings even to illegal immigrants. Recent appellate decisions have focused on whether enemy combatants held outside the U.S. have the right to habeas proceedings, but Zundel was arrested in the U.S. and never labeled an enemy combatant or terrorist—despite ultimately being declared a "national security" risk by Canadian authorities after his summary removal from the U.S.

“The law in this area is well established,” said Leichty, “and a different panel of the Sixth Circuit recognized in an earlier decision that immigrants like Zundel can obtain habeas hearings even after they are deported if they face a 20-year bar like the one imposed on Mr. Zundel. But this panel was not willing to apply the law.”

“At the time of his arrest, Ernst Zundel was a target of several countries based on his controversial historical views about ‘the Holocaust,’ and even though he was protected by the First Amendment here in the U.S., those protections have proved meaningless without judges willing to uphold them,” notes Leichty.

Prior to his removal an FBI investigation had been closed after it was determined that Zundel was involved in no criminal conduct, Leichty adds. Zundel disputes essentially three articles of faith of standard Holocaust dogma, says Leichty: that six million Jews were killed, that Hitler ordered Jews exterminated, and that any Jews died in homicidal gas chambers.

If the Sixth Circuit decision is allowed to stand, Zundel would be banned from reentering the U.S. until 2023. He is currently 67 years old. Ingrid Rimland Zundel has compared his arrest to her childhood experience of seeing her father, a principal at a Mennonite school in Halbstadt, Ukraine, taken away by Stalinist officers; she never saw him again.

Just weeks before the Sixth Circuit decision, Ernst Zundel was convicted in a German courtroom of “inciting racial hatred” because of his Holocaust revisionist views. Zundel has asserted that he is neither anti-semitic nor racist but that he is simply a champion of his German people, and that he has the right to express different views about what happened during World War II, including what happened to Jews and how certain Jews have exploited their accounts of the Holocaust for their own political advantage.

Zundel will seek a rehearing from different judges at the Sixth Circuit based on the unconstitutional suspension of his habeas rights and on known conflicts of interest of at least two members of the panel, says Leichty. One of the judges gave a prohibited campaign contribution to the Bush reelection campaign after being appointed to the federal bench and another has a daughter working in Tennessee for the U.S. Attorney’s office, which handled the opposition against Zundel’s petition in Knoxville federal court.

Zundel's attorney says he discovered both facts after the case was argued in January 2007. The judges adopted almost to the letter the argument of the Justice Department that sought to assert a distinction between the expiration of a "Visa Waiver Pilot Program period" and the expiration in April 2000 of the Attorney General's visa waiver authority itself—a distinction which was farcical, says Leichty.

The February appellate decision was issued "per curiam," meaning that none of the judges acknowledged writing the decision, and it was also designated "not for publication." There have been recent attempts to limit the extent to which federal judges can issue unpublished decisions because it is believed that judges are less accountable to the law if they know their decisions will not be widely read and inspected, notes Leichty.

Only if Zundel was found to have entered the U.S. under the VWPP could the authorities have even thought about arresting him without a hearing, says Leichty. Typically, persons alleged to be deportable get hearings in front of immigration judges. Moreover, Leichty adds, even as to visa waiver entrants there are no published federal court decisions in which a court has ever denied jurisdiction over a habeas petition filed by someone who overstayed his visitor status.

Leichty states that at the time of Zundel's arrest, INS had a policy of not taking deportation action against immigrants awaiting permanent residence through U.S. citizen spouses, even if they had overstayed visa waivers. Zundel had been given work authorization in the U.S. and permission to leave and reenter. Because a Knoxville judge and now the Sixth Circuit have claimed not to have jurisdiction, however, he has never been able to present those arguments.

"The case of Ernst Zundel is a paradigmatic case of modern-day persecution for conscience, conducted in stealth and in the name of historical and cultural orthodoxy, certainly paralleling how Anabaptist dissenters were treated when they challenged state creed in the 1500's," according to Leichty.

When Zundel challenges the latest decision, he will have legal challenges pending in three countries. He has appealed his German "thought crime" conviction, and is also hoping to benefit from a recent Canadian Supreme Court decision which held that the "security certificate" proceedings under which he was detained in Canada are unconstitutional, because they permit secret evidence.

After a Canadian court declared him to be a national security risk, the Canadian government spent over \$100,000 on a charter plane to fly Zundel to Germany, where he was promptly arrested on criminal speech charges for views expressed in Canada and the United States. Some of those views were allegedly expressed on the internationally-known website operated by Ingrid Zundel, in which she has talked of her origins and protested her vilification by Mennonite historian Jim Juhnke, professor emeritus at Bethel College and chair of the MWR board.