

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of KONRADS KALEJS,
Respondent.

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GOVERNMENT'S BRIEF OPPOSING CHANGE
IN CUSTODY STATUS

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The Respondent, Konrads Kalejs, is a 72 year old male, a native of Latvia and a citizen of Australia. He entered the United States for permanent residence on February 6, 1959. On October 29, 1984 an Order to Show Cause was issued charging Respondent with deportability under Sections 241(a)(1), 241(a)(2), and 241(a)(19) of the Immigration and Nationality Act, as amended (8 U.S.C. §1251(a)(1), (2), and (19)). Service of the Order to Show Cause was effected by mail on November 30, 1984, and by tacking to the door of the Respondent's residence on December 4, 1984.¹

On April 19, 1985, Konrads Kalejs was arrested in Miami Beach upon a warrant of arrest issued on February 22, 1985 in connection with his deportation proceeding. He is currently in the custody of the Immigration and Naturalization Service.

Subsequent to his arrest, the District Director in Miami determined that Respondent should be held without bond, pursuant to 8 C.F.R. §242.2(a). Respondent, through his retained attorney Ivars Berzins, immediately applied to the Immigration Judge for a redetermination on the question of bond, pursuant to 8 C.F.R. §242.2(b). A bond hearing was held before the Immigration Judge on April 23. On the basis of the evidence presented at the bond hearing, the Immigration Judge concluded that "the Respondent is an extremely poor bond risk and is virtually certain to abscond." (IJ Decision p. 4.) The Immigration Judge therefore denied the request for a change in Kalejs' custody status.

¹ Subsequently, the Order to Show Cause was served by various other methods, as discussed infra.

It is the Government's position that the determination of the Immigration Court and District Director, that the Respondent should be held without bond, is overwhelmingly supported by the evidence presented at the bond hearing and should be affirmed.

1. FACTS

The Government presented evidence at the bond hearing which clearly showed that the Respondent engaged in a massive effort to prevent service of the Order to Show Cause, to avoid appearance at deportation proceedings, and to evade arrest. The evidence consisted of the following:

- a. Exhibit 1, Affidavit of Jeffrey N. Mausner, Trial Attorney, Office of Special Investigations (OSI), U.S. Department of Justice.
- b. Live testimony of John L. Pascucci, Inspector, United States Marshals Service. Pascucci was assigned in mid-February 1985 to supervise the search for the Respondent.
- c. Proffer of testimony of Glen Bertrand, Investigator, Immigration and Naturalization Service.²
- d. Exhibit 2, letter from Jeffrey N. Mausner to Ivars Berzins dated April 9, 1985, and attached Notice of Hearing in the matter of Konrads Kalejs for April 10, 1985.

² After hearing the testimony of Inspector Pascucci, the Immigration Judge ruled that it would not be necessary to call Investigator Bertrand, and that a proffer of his testimony was sufficient. Defense counsel did not object.

e. Exhibit 3, Order of Administrative Closing in the matter of Konrads Kalejs dated April 10, 1985.

f. Exhibit 4, article from the Miami Herald dated April 3, 1985.

The evidence showed that Respondent maintained two residences, one in St. Petersburg, Florida and the other in Winnetka, Illinois. (Ex. 1, ¶2; Pascucci testimony.) Both of these houses are owned jointly by Konrads Kalejs and Austra Kalnins. (Pascucci testimony.) On or about February 23, 1984, a subpoena was sent to the Respondent at the St. Petersburg address commanding him to appear for an interview on March 1; the subpoena was signed for by the Respondent. (Ex. 1, ¶4.) On or about February 27, 1984, Respondent was contacted by telephone at the St. Petersburg residence. (Ex. 1, ¶5.) On March 1, 1984, the Respondent was questioned under oath at the INS office in Tampa, Florida. At that time he stated that his official residence was the St. Petersburg address. (Ex. 1, ¶6.)

Subsequent to the interview of the Respondent, settlement negotiations between the Respondent and OSI took place by telephone. Respondent was contacted by telephone on numerous occasions at his Winnetka residence. (Ex. 1, ¶¶7, 8, 9.) Respondent stated in these conversations that he was considering the Government's settlement proposals, but needed additional time. (Ex. 1, ¶8.) On August 27, 1984, Respondent was given until September 7 to inform OSI whether or not he accepted the Government's proposal. (Ex. 1, ¶9.) On September 4, 1984, the Respondent and Austra Kalnins jointly executed a sell order for a

\$100,000 certificate of deposit in a Chicago bank, although that certificate had not yet reached its maturity date. This \$100,000 was used to purchase a certificate of deposit for the Respondent, with Austra Kalnins named as trustee. (Ex. 1, ¶10.) On that same day, \$129,657.03 was withdrawn from a savings account of the Respondent, closing the account and \$123,597.88 was withdrawn from a jumbo certificate of deposit in the name of the Respondent or Austra Kalnins or Dzintra Kalnins, closing the account. (Ex. 1, ¶11.)

On September 7, 1984, Respondent was contacted by telephone at the Winnetka residence by OSI. Respondent stated that he wanted more time to think about the offer OSI had proposed. The Respondent was informed that unless he agreed to the offer, an Order to Show Cause would be filed against him forthwith. He stated that he could not make a decision at this time and needed several more months. (Ex. 1, ¶12.)

Attempts at service of the Order to Show Cause on the Respondent were begun on or about September 12, 1984, at the Winnetka residence. Respondent could not be found at that address on several occasions in late September and October, and Austra Kalnins and other persons at that address claimed that they did not know where Kalejs was. (Ex. 1, ¶13; Proffer of Bertrand testimony.)

On or about October 12, 1984, INS Investigator Glen Bertrand went to the Winnetka residence and saw through a window a male with what appeared to be gray or light colored hair sitting at the kitchen table, wearing a bath robe. Bertrand went to the

door and Austra Kalnins answered. Upon questioning, Mrs. Kalnins denied that Konrads Kalejs was in the house; she denied that any male was in the house, and claimed that she was the only person home. At that time, there were two cars in the garage, one of which was an Oldsmobile Cutlass registered to Konrads Kalejs and Austra Kalnins. Mrs. Kalnins gave consent to search the house. However, consent was withdrawn prior to completion of the search. Mrs. Kalnins was instructed to contact INS investigators if she saw Konrads Kalejs. (Proffer of Bertrand testimony.)

By subpoenaing credit card records, Pascucci and his team were able to determine that Kalejs was in Toronto, Canada on October 13, 1984. On that day, Kalejs purchased a round-trip ticket to Australia from Toronto. By interviewing the travel agent from which the tickets were purchased, it was determined that Austra Kalnins was with Kalejs at the time the tickets were purchased. On October 14, Kalejs left for Australia. He traveled on an Australian passport which was issued in May 1984. (Pascucci testimony.)

Attempts at service at the St. Petersburg residence were begun on or about October 27, 1984. That residence appeared deserted and neighbors said no one had been living in the house for several months. (Ex. 1, ¶14.)³

Kalejs returned to Toronto on November 10, 1984. On November 11, Kalejs used a credit card in Vancouver, Canada. On

3

On October 29, 1984, the Order to Show Cause was reissued.

November 12, he rented a room in Toronto from a man named Velps. (Pascucci testimony.)⁴

On November 26, 1984, Trial Attorney Mausner spoke with Ivars Berzins by telephone. Berzins stated that he was not at that time representing Kalejs and that he did not know where Kalejs was. However, Berzins agreed to inform Mrs. Kalnins and other contacts that if Respondent did not accept service of the Order to Show Cause, the Government would request that an arrest warrant be issued for him. Berzins told Mausner that he notified Mrs. Kalnins and others. No response was received from the Respondent. (Ex. 1, ¶15.)

On November 30, 1984, a copy of the Order to Show Cause was mailed by regular mail to the Respondent at both his St. Petersburg and Winnetka addresses. (Ex. 1, ¶16; Certificates of Service). On December 4, 1984, a copy of the Order to Show Cause was tacked to the door at the St. Petersburg address. (Ex. 1, ¶17; Certificate of Service). Pascucci testified that Mrs. Kalnins later complained to him about the Order to Show Cause being on the door, since this allowed all of the neighbors to see it. Pascucci testified that Mrs. Kalnins indicated an awareness of the allegations in the Order to Show Cause and knew the name of Jeffrey Mausner, the trial attorney who had signed it. Mrs. Kalnins told Pascucci that she instructed the neighbors to throw away the Order to Show

⁴ The information concerning Kalejs' whereabouts was not, of course, known at the time. This information was determined by the Marshals by obtaining credit card receipts, airline and other records, and interviewing witnesses.

Cause that had been tacked to the door, since she had the same papers in Chicago. (Pascucci testimony.)

On December 11, Austra Kalnins went to Toronto. She returned from Toronto to Chicago on December 16. During the period December 11 to December 16, Kalejs was in Toronto, living in the room that he had rented from Velps. (Pascucci testimony.)

On approximately December 21, 1984, Austra Kalnins and Konrads Kalejs personally appeared at the Continental Bank in Chicago to conduct banking business regarding their mutual financial holdings. Bank personnel knew Mrs. Kalnins by sight; they identified a photograph of Kalejs as the person who accompanied her. (Pascucci testimony.)

On approximately January 1, 1985, Kalejs discontinued rental of the room in Toronto that he had rented from Velps. (Pascucci testimony.) On January 26, 1985, Kalejs purchased a one-way airline ticket from Toronto to Australia, with the departure date open, using his Visa credit card. The price of this ticket was \$1,397.63. Kalejs was in Toronto at the time this ticket was purchased. The ticket was never used. (Pascucci testimony.)

In mid-February 1985, when he was assigned to the case, Pascucci interviewed the neighbors at the Winnetka address. The neighbors stated that the Respondent had lived at the Winnetka address for part of the year as long as they could remember. They said that Kalejs and Mrs. Kalnins traveled together between the St. Petersburg and Winnetka residences. They stated that the Respondent was usually at the Winnetka house when Austra Kalnins

was there. They stated, however, that Kalejs had not been seen since the fall of 1984, although Austra Kalnins was presently residing at the Winnetka residence. (Pascucci testimony.)

On February 13, 1985, Kalejs and Austra Kalnins spent the night in the Quality Inn in Clarkstown, Tennessee, en route to Florida, driving the Oldsmobile Cutlass registered in the names of Konrads Kalejs and Austra Kalnins. On approximately February 14, they arrived in Ft. Lauderdale at one of the condominiums that they jointly own. On February 21, they departed Ft. Lauderdale in the Cutlass, en route to the single-family residence that they jointly own in St. Petersburg. (Pascucci testimony.)

Based upon the assertions in the Mausner affidavit that Respondent had gone into hiding, an arrest warrant was issued by the Deputy District Director in Miami on February 22, 1985.

On March 6, 1985, Austra Kalnins contacted Mrs. Kurtzwell, legal document supervisor of the Continental Bank in Chicago, and vehemently complained about the bank releasing subpoenaed information regarding Konrads Kalejs and herself.

On approximately March 9, 1985, Austra Kalnins put down a deposit for a room at the Blue Nose Motel in Treasure Island, Florida, near St. Petersburg, reserving the room in the name C. Michaelson. The owners of the motel identified a photograph of Mrs. Kalnins as the person who reserved the room. On March 15, Mrs. Kalnins brought Konrads Kalejs to the hotel; Kalejs registered at the motel under the name C. Michaelson. Several witnesses at the motel identified a picture of Kalejs as the person who registered as C. Michaelson. (Pascucci testimony.)

Pascucci testified that he later determined that C. Michaelson is the deceased second husband of Respondent's late sister.⁵ Pascucci also testified that at a later time, he found a large number of identity and other documents relating to C. Michaelson hidden in the spare tire well of Kalejs' Oldsmobile Cutlass. Pascucci testified that C. Michaelson looked very similar to Kalejs, leading him to believe that the Respondent was attempting to assume Michaelson's identity.

Based on confidential information, the United States Marshals and Sheriffs Deputies attempted to execute the arrest warrant at the St. Petersburg residence on March 19. A canvas of the neighborhood revealed that Kalejs was known to reside at that residence with Austra Kalnins. Positive photo identifications of Kalejs were made by the neighbors. Kalejs' Oldsmobile Cutlass was parked in the garage of the residence. A consent entry was made of the residence, and it was determined that Kalejs was not present. Austra Kalnins and all other persons present in the house were read 8 U.S.C. §1071 ("concealing person from arrest"), supplied a copy of the statute and interviewed concerning Kalejs' whereabouts. Austra Kalnins stated that she had not seen Konrads Kalejs this year, nor had she had any contact with him for the past year. (Pascucci testimony.)

Pascucci testified that a confidential informant advised that on dates subsequent to March 19, 1985, Austra Kalnins

⁵ Kalejs gave the name "Michaelson" as his next of kin when he filed an application for a credit card on April 9, 1978. (Pascucci testimony.)

departed her St. Petersburg residence with groceries for places unknown. (Pascucci testimony.)

Subsequent to March 19, 1985, Kalejs' car remained parked in the garage of the St. Petersburg residence and was not used by Kalejs or Kalnins. (Pascucci testimony.)

On or about March 26, 1985, the Government submitted a Motion to Calendar to the Immigration Court, moving for the setting of a date for the initial hearing in the deportation proceeding.⁶ Copies of the Government's Motion to Calendar were mailed by certified mail, return receipt requested, to the Respondent at both the St. Petersburg and Winnetka addresses on March 22, 1985. (Certificates of Service.)

The Immigration Judge's decision states that notices of hearing were sent by certified mail to the Respondent at both the Winnetka and St. Petersburg addresses.

On April 1, 1985, Austra Kalnins purchased a money order in the amount \$1,397.63 to pay Kalejs' Visa credit card bill in that amount for the one-way airline ticket to Australia. (Pascucci testimony.)

On April 2, 1985, Austra Kalnins was observed by the owners of the Blue Nose Motel picking up Respondent at the motel. When checking out of the motel, Mrs. Kalnins stated to the owners that

⁶ On March 26, 1985, the Order to Show Cause that had been issued on October 29, 1984 was filed with the Immigration Court. Starting at that time and up to the present, there has been a great deal of publicity connected with this case. Newspaper articles appeared in St. Petersburg and Miami, as well as in other cities. The April 10, 1985 edition of Laiks, the most widely read Latvian newspaper in the United States, reported that OSI had started deportation proceedings against the Respondent.

she was taking Mr. Michaelson to "the other side" (which in that area means the other side of the Florida peninsula) for a few days, and then they were traveling to Chicago. (Pascucci testimony.)

On or about April 3, 1985, Austra Kalnins stated to Lydia Roms, a house guest at her residence, that Ms. Roms should not answer any phone calls at that residence while Mrs. Kalnins was away. Austra Kalnins then left on foot without any luggage or visible means of transportation and did not return until late evening of April 13. (Pascucci testimony.)

The April 3, 1985 edition of the Miami Herald reported that a woman friend of Konrads Kalejs stated that Kalejs "went into hiding ten months ago when he first suspected the government might seek to deport him." (Ex. 4.)

On April 8, 1985, Trial Attorney Mausner received a telephone call from Ivars Berzins. Mr. Berzins stated that he was now representing the Respondent in connection with negotiations with the Justice Department. Mr. Mausner informed Mr. Berzins of the hearing that was scheduled for April 10. Mr. Berzins stated that he was not representing the Respondent for purposes of appearance at any hearings, but only for negotiations with the Justice Department. He stated, however, that he was in contact with the Respondent. (Representations of Mr. Mausner at the April 10, 1985 hearing.) In telephone conversations on April 9, Mr. Mausner again reminded Mr. Berzins of the April 10 hearing. (Id.)

On April 9, 1985, Mr. Mausner sent a letter to Mr. Berzins by express service, confirming the telephone conversations of

April 8 and April 9, in which Mr. Berzins was informed of the April 10 hearing. A copy of the Notice of Hearing was attached. (Ex. 2.) A copy of the Order to Show Cause was also enclosed. (Certificate of Service.)

On April 10, 1985, the deportation hearing was held before the Immigration Judge. Neither Respondent nor his attorney appeared at the hearing, and neither provided any excuse for not appearing or attempting to reschedule the hearing. (Exhibit 3.)

On April 10, 1985, another copy of the Order to Show Cause was served at the St. Petersburg residence on Ms. L. Roms. Respondent was not home at that time. Ms. Roms is a resident of the St. Petersburg house of Mr. Kalejs and Mr. Kalejs is known to her. (Affidavit of Service of John L. Pascucci.)

On April 12, 1985, a Federal search warrant was executed at the residence in St. Petersburg. Three motel receipts from the Blue Nose Motel, in the name of Mr. Michaelson, were found in Austra Kalnins' bedroom dresser drawer. Also found were checks from the personal checking account of Konrads Kalejs; the checks were signed by Kalejs, but the person to whom they were payable, the amount of money, and the date were not filled in. Receipts were also found reflecting that \$3,500 worth of traveler's checks in the name of Konrads Kalejs had been purchased but were at that time unused. (Pascucci testimony.)

Pascucci testified that on April 14, 1985, he received a report from Sergeant Mickey Stepanov, who was conducting surveillance of the St. Petersburg residence. On April 14, Stepanov had observed Austra Kalnins walking in an evasive manner and by an

indirect route near her residence to a pay phone in a shopping center located at 38th Avenue North and 58th Street, St. Petersburg, Florida. At that location Sergeant Stepanov observed Austra Kalnins deposit numerous coins and make a telephone call. At the completion of the first call, Sergeant Stepanov observed Mrs. Kalnins walk to a second pay phone approximately 30 yards away and place another call by depositing numerous coins. At the completion of the second call, Sergeant Stepanov observed Mrs. Kalnins return to the first pay phone and place a third phone call by depositing numerous coins. After the completion of this call, Mrs. Kalnins walked away from the pay phone and was stopped by Sergeant Stepanov for identification purposes. Initially, she denied being Austra Kalnins and claimed to have no identification. She gave an incorrect address and attempted to conceal and then discard a small piece of paper containing several phone numbers. (Pascucci testimony.)

One of the telephone numbers on the piece of paper led to an apartment/hotel at 8118 Harding Avenue, Miami, Florida. United States Marshals and Metro-Dade Police surrounded the building. Kalejs was arrested in apartment 1A. Kalejs had in his possession at the time approximately \$5,000 in cash and \$3,500 in traveler's checks. (Pascucci testimony.) Pascucci determined that Kalejs had checked into this apartment/hotel on April 13. According to the owner, Respondent registered under the name Konrad, but refused to give his last name. (Pascucci testimony.)

Pascucci testified that Kalejs has at least \$300,000 in cash and certificates of deposit held jointly with Austra Kalnins or

jointly with Austra and Dzintra Kalnins. Kalejs also owns jointly with those same individuals a house in St. Petersburg, Florida; a house in Winnetka, Illinois; and two condominiums in Ft. Lauderdale, Florida. Pascucci testified, however, that this property had been discovered incidental to their efforts to locate Kalejs; Pascucci could not exclude the possibility that Kalejs owns other property as well.

Kalejs' only relative in the United States is a nephew. The nephew told United States Marshals that he was unable to get in touch with Kalejs during the approximately six months preceding his arrest and that even Austra Kalnins had not allowed him to speak with Kalejs during that time. Kalejs and the nephew were not close. (Pascucci testimony.)

Kalejs is not currently employed. (Pascucci testimony.)

Pascucci estimated that approximately 1,500 man hours were spent by the U.S. Marshals Service in tracking down Kalejs, costing the taxpayers approximately \$42,000. (Pascucci testimony.)

Pascucci further testified that a confidential informant notified the Marshals Service that Austra Kalnins had made statements to a Latvian war veterans association that she would get Respondent out on bond and "go to the Islands." Pascucci

testified that this confidential informant had given prior information that had turned out to be correct.⁷

The Respondent did not testify at the bond hearing. None of the evidence submitted by the Government was controverted. Defense counsel proffered information which he believed related to the question of whether Respondent should be released on bond. However, none of the factors recited by defense counsel demonstrate that Respondent would appear at a deportation proceeding if released on bond, or rebut the Government's overwhelming showing that Respondent had been in hiding from the government for over six months.

The advanced age of the Respondent (almost 72) and his "slightly below average health," factors raised by defense counsel, did not prevent the Respondent from traveling extensively in the six months prior to his arrest and did not keep the

⁷ It is clear that a determination not to grant bond may be based, at least in part, on information provided by a confidential informant. Compare United States ex rel Barbour v. District Director of INS, 491 F.2d 573, 578 (5th Cir. 1974), cert. denied, 419 U.S. 873 (1974), in which it was held that a no bond determination may be based entirely on confidential information which was presented to the BIA ex parte, which respondent was not privy to, and which he had no opportunity to refute. In Kalejs' case, only the source of the information was not revealed; the content of the information was known and Kalejs had an opportunity to refute it. This 1974 Fifth Circuit case is binding precedent in the Eleventh Circuit.

Respondent from avoiding arrest for several months despite the massive manhunt for him.

Defense counsel claimed that Respondent's return to the United States from Australia and Canada evidenced his desire to face the deportation charges against him. However, after his return to the United States, Respondent did not voluntarily come forward. He went to great efforts to elude arrest, registered under a false name in a motel and hid identity documents relating to another person, all after his return from Australia and Canada. Subsequent to his return from Australia and Canada, he failed to appear at a properly scheduled deportation hearing before the Immigration Judge. It is clear that Respondent returned to the United States to live in hiding or under another identity, rather than to face the charges against him.

2. WEIGHT OF THE EVIDENCE

While BIA cases do not specifically list the weight of the evidence against the respondent as one of the factors to be considered in a bail determination, and while the criminal bail provisions are not applicable to bail in deportation proceedings, Carlson v. Landon, 342 U.S. 524 (1952); United States ex rel Barbour v. District Director of INS, 491 F.2d 573, 577 (5th Cir. 1974), cert. denied, 419 U.S. 873 (1974), we will make a short proffer of the weight of the Government's case, since this is a factor in criminal bail determinations. 18 U.S.C. §3146(b).

The Government alleges that Kalejs served as a First Lieutenant and Company Commander in the Latvian Security

Auxiliary Police or Latvian Security Section, also known as the Arajs Kommando. The Arajs Kommando was primarily an execution squad. The leader of this unit, Viktors Arajs, was convicted of murder of at least 13,000 people and sentenced to life imprisonment by the District Court of Hamburg, FRG, in 1979. The Court found the following concerning the Arajs Kommando:

Just in July 1941, the ARAJS Kommando was deployed at least ten times for mass shootings in the vicinity of Riga, for the most part in the Bickernicker Forest. Even after July, mass shootings were conducted there and at other locations in Latvia with the Kommando ARAJS.

* * *

The victims were brought to the shootings in the Bickernicker Forest by bus or by truck. They had to sit on the ground in the forest, and either watch or listen to the shooting of the other victims, until their time came to be forced into the trenches. The persons were conducted to the edge of the trenches through a gauntlet of men from the ARAJS Kommando, and there stood facing the trench. For the most part, the shooting was conducted by ten kneeling men from the ARAJS Kommando aiming for the backs, and ten standing men aiming for the head or the neck of the victims. The officers of the Latvian Security Auxiliary Police gave the order to fire.

* * *

The victims of the mass shootings were first and foremost Jews, but also Latvians, especially Politruks and others who were considered to be Communists. In individual cases, even gypsies and the mentally ill were shot. During the first shootings, only men were shot, but later this included women and children. During the initial period, the victims were shot while fully clothed, but later at least the men had to disrobe.

* * *

On 8 December 1941, the [Riga] ghetto evacuation was continued according to the same procedure employed on 30 November 1941. This time, the ARAJS Kommando was also called upon to participate.

All available men from the Kommando, approximately 300 to a maximum of 400, were deployed. In the morning, they drove to the Forest of Rumbula in vehicles and were instructed on

their assignments by their officers on location. On this day, the men of the ARAJS Kommando were utilized as a cordoning force at the pits. They formed two opposing cordons. The Jews were driven into the pits through the gauntlet formed by these two lines. Within this gauntlet they were forced to either completely or partially disrobe.

* * *

The Jews were driven into the gauntlet formed by the ARAJS Kommando. They were forced to disrobe. Some screamed and cried, others were beaten. Naked or in their undergarments, the persons stood next to the pits, until they, one after another, went in and were shot by the Germans with single shots from submachine guns into the neck or into the head.

[State Court of Hamburg Verdict in the Criminal Case Against Viktor Bernhard Arajs, pages 25-37.]

SS General Walther Stahlecker was the commander of Einsatzgruppe A, charged with murdering all Jews and other "undesirable" elements in the Baltic States. He was the author of the infamous Stahlecker Report, in which he describes in detail how the mass murder of Jews was accomplished in the Baltic region. See Matter of Laipenieks, 18 I&N Dec. 433 (BIA 1983); In re Maikovskis, A8-194-566 (BIA August 14, 1984). Arajs reported to Stahlecker. Verdict in the Criminal Case Against Viktor Arajs, supra.

Kalejs has already admitted, in a sworn interview taken on March 1, 1984, that he served in a police unit and that he reported directly to General Stahlecker. Kalejs also conceded the authenticity of a document dated 18 November 1941, signed by Viktors Arajs, which states "1st Lt. Konrads Kalejs has been a member of the Latvian Security Auxiliary Police from July 29, this year, to the present."⁸ Although Kalejs claimed in his interview that this document was only used to gain admission to

⁸ Arajs has confirmed signing the document.

the University of Riga and that he never served with the Arajs Kommando, witnesses in the United States and overseas have already identified Kalejs as a member of the Kommando.

Kalejs also admitted in the March 1, 1984 interview that in 1944 he joined the 15th SS Grenadier Battalion of the Latvian Legion, as a First Lieutenant.

When Kalejs entered the United States, he claimed on his visa application that he had been a "farm laborer" in Talsi, Latvia from 1941 to 1944. He admitted in his March 1984 interview that he misrepresented and concealed his police service (under Stahlecker) and service in the Latvian SS Legion when he applied for a visa.

3. THE IMMIGRATION COURT'S DECISION

The Immigration Court concluded that Respondent was aware of the Government's case as long ago as February 26, 1984. Nevertheless, he engaged in "a pattern of delay, then avoidance and evasion." (IJ Decision p. 2.) The Immigration Court cited the following factors proven by the Government, which relate to the inadvisability of releasing Respondent on bond:

- a) The Respondent's high degree of mobility since September 1984, including temporary stays in Toronto, Canada and Australia;
- b) Respondent's return to the United States and avoidance of his legal residences in Winnetka, Illinois and St. Petersburg, Florida;
- c) The assistance that Respondent has received from his lady friend, Mrs. Austra Kalnins, in avoiding service of process and arrest. Mrs. Kalnins even lied to investigators in saying that she had not seen the Respondent in almost one year when the investigation had shown otherwise;

- d) The existence of other possible confederates who assisted Respondent in hiding and who would not cooperate with the government;
- e) A pattern of non-cooperation with the investigation on the part of certain persons in the Latvian community;
- f) Respondent's registering at a motel in Treasure Island, Florida under the name C. Michaelson. C. Michaelson is the deceased second husband of Respondent's late sister. Other C. Michaelson documents were located hidden in Respondent's car, leading investigators to believe that Respondent was attempting to assume a new identity;
- g) Respondent's ownership of substantial and highly liquid assets, his withdrawal of substantial funds from his accounts, and his possession of \$10,000 cash upon arrest;
- h) Respondent's purchase of an open airline ticket from Toronto to Australia, and his possession of a currently valid Australian passport;
- i) Respondent's lack of family ties in the U.S. except for one nephew to whom he is not particularly close;
- j) Respondent's joint ownership with Austra Kalnins of substantial real property holdings, including the Winnetka and St. Petersburg homes, and two Ft. Lauderdale condominiums;
- k) Confidential information from an informant that Austra Kalnins had made statements to a Latvian War Veterans Association that she would get Respondent out on bond and "go to the islands";
- l) The expenditure of approximately 1,500 man-hours on the investigation, costing taxpayers some \$42,000. [IJ Decision pp. 2-3.]

The Immigration Court also noted that "Respondent failed to appear without explanation" at the April 10, 1985 deportation proceeding. There is no doubt that both Respondent and his attorney were fully aware of the hearing.

The Immigration Court concluded that "the Respondent is an extremely poor bond risk and is virtually certain to abscond."

IJ Decision p. 4. The Court noted that although Respondent returned to the United States from Australia and Canada, he never came forward. "He had to be pursued and arrested." IJ Decision p. 4. The Court found that Respondent "has the means and inclination to abscond." The Immigration Court's factual findings are clearly supported by the record.

4. ARGUMENT

It is clear that in certain cases an alien may be held in custody, without bond, pending a determination of deportability. 8 U.S.C. §1252(a); Carlson v. Landon, 342 U.S. 524 (1952); INS v. Lopez-Mendoza, 82 L.Ed.2d 778, 786 (1984) (Eighth Amendment does not require bail to be granted in certain deportation cases); United States ex rel Barbour v. District Director of Immigration and Naturalization Service, 491 F.2d 573 (5th Cir. 1974), cert. denied, 419 U.S. 873 (1974); Matter of Moise, 12 I&N Dec. 102 (BIA 1967); Matter of SYL, 9 I&N Dec. 575 (BIA 1962); United States ex rel Zapp v. District Director of Immigration and Naturalization Service, 120 F.2d 762 (2d Cir. 1941).

A finding that an alien is a poor bail risk is grounds for denying bail. Matter of Patel, 15 I&N Dec. 666 (BIA 1976); Matter of Moise, supra; Matter of SYL, supra; United States ex rel Barbour v. District Director of INS, supra. It is difficult to imagine a poorer bail risk than Kalejs. Compare United States v. Botero, Case No. 81-6018-CR-Spellman (S.D. Fla. March 14, 1985) (copy attached). Kalejs purposefully eluded a massive manhunt for more than six months; he used another

person's name in order to avoid apprehension; he failed to appear at a scheduled deportation hearing which he and his attorney knew about; he failed to turn himself in even after he was in contact with his attorney. At the time of his arrest, Respondent had false identity papers hidden in his car and a large sum of cash and travelers checks on his person. He also has ready access to several hundred thousand dollars in cash and certificates of deposit. Subsequent to his arrest, the woman who assisted him in avoiding arrest for six months stated that they would flee.⁹

The determination of the Immigration Court and the District Director that Kalejs is an extremely poor bail risk should be affirmed.

Respectfully submitted,

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⁹ Mrs. Kalnins has been charged criminally with violation of 18 U.S.C. §1071, concealing a person from arrest.

CERTIFICATE OF SERVICE

This hereby certifies that a copy of the foregoing Government's Brief Opposing Change In Custody Status was mailed by DHL express mail service, postage prepaid, to Ivars Berzins, Esq., 484 West Montauk Highway, Babylon, New York, 11702, Attorney for Respondent, this 6th day of May, 1985.

Jeffrey M. Maurner