
No.

In the
Supreme Court of the United States

SINISA DJURDJIC, Petitioner

v.

UNITED STATES, Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Petition for Writ of Certiorari

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Questions Presented For Review

- I. Whether the Srpska Demokratska Stranka (SDS), predecessor to the Republika Srpska and one side of the entire Bosnian War at the time of the war's outbreak in 1992, was a state actor, a question with enormous ramifications, both nationally and internationally and a question which, for obvious reasons, the Government never argued against, at trial, through expert testimony or on appeal.
- II. Where very first document in Mr. Djurdjic's A-file, provided by Mr. Djurdjic at his November 22, 1999, Refugee Status Interview, states that Mr. Djurdjic was captured by Muslim forces while armed and fighting, during combat operations, on the SDS (Serb) side of the Bosnian Civil War, whether there is sufficient evidence to support Count 1, which charges Mr. Djurdjic with "omitting his his service in the uniformed services of the Bosnian Serb Government," especially given that this information was clearly known to the U.S. Government as it was included in Mr. Djurdjic's A-file and could not be said to have been a "material" omission in the sense that it "would have mattered to an immigration official" had it been known since it clearly was known, and whether there is sufficient evidence to support Counts 2 and 3 of the indictment which both include, among fifteen or so alternative bases, the same language from Count 1 alleging that Mr. Djurdjic, "... did not report his service in the uniformed services of the Bosnian Serb government."

The jury, having decided that same language against Mr. Djurdjic in Count 1 of the indictment (18 U.S.C. § 1546(a) – Visa Fraud), certainly decided that same language against Mr. Djurdjic in Counts 2 and 3 of the indictment (18 U.S.C. § 1425 – Unlawful Procurement of Citizenship or Naturalization).

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Citations of the Official and Unofficial Reports of the Opinions and Orders Entered In The Case by Lower Courts

United States v. Djurdjic, No. 23-3890 (9th Cir. June 30, 2025) (rehearing denied).

United States v. Djurdjic, No. 23-3890, 2025 U.S. App. LEXIS 12477 (9th Cir. May 22, 2025) (unpublished).

Statement of the Basis for Jurisdiction

The order of the United States Court of Appeals for the Ninth Circuit denying Petitioner's Appeal was entered on May 22, 2025. Petitioner's motion for rehearing was denied on June 30, 2025. This Petition for Writ of Certiorari is timely filed within 90 days of that date, pursuant to Supreme Court Rule 13. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

Pursuant to Rule 29.4, service has been made on the Solicitor General.

Constitutional and Federal Provisions Involved

U.S. CONST. amend. V provides in pertinent part:

No person shall be ... deprived of life, liberty, or property, without due process of law ...

18 U.S.C. § 1425 provides in pertinent part:

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing

18 U.S.C. § 1546 provides in pertinent part:

(a) Whoever[,] knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

...

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact ...

Statement of the Case

The district court had subject matter jurisdiction pursuant to 18 U.S.C. § 3231 because the defendant was charged with a federal crime. The Ninth Circuit Court of Appeals had jurisdiction over the direct appeal pursuant to 28 U.S.C. § 1291 based on the entry of the final judgment by the district court on November 28, 2023.

Insufficiency of the evidence claims were raised at trial by Rule 29 Motions for Judgment of Acquittal made at the close of the Government's case and again at the close of all evidence. (5-ER-1092-1095; 6-ER-1494.) Insufficiency of the evidence was raised in Arguments 1 and 2 of Petitioner's Opening Brief in the Court of Appeals.

ARGUMENT

Exceptional Importance

This decision of U.S. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power and has decided an important issue of federal law that has not been, but should be settled by this Court.

It the Srpska Demokratska Stranka (SDS), referred to in the panel decision as the Serbian Democratic Party, were not a state actor, that would have enormous ramifications, both nationally and internationally. For obvious reasons, the Government never argued, at trial, through expert testimony or on appeal, that the SDS was not a state actor. The SDS, as predecessor to the Republika Srpska, was one side of the entire Bosnian War.

Color of law is an important element, for instance, in Hague war crimes prosecutions. *Kadic v. Karadzic*, 70 F.3d 232, 243 (2d Cir. 1995) (“However, torture and summary execution -- when not perpetrated in the course of genocide or war crimes -- are proscribed by international law only when committed by state officials or under color of law.”)

Color of law is an important element for the definition of torture. 18 U.S.C. § 2340 defines “torture” to require acting under color of law for Alien Tort Claims.

Color of law is an important element under the Alien Tort Act/Torture Victim Protection Act of 1991 (28 U.S.C. § 1350). *Doe v. Cisco Sys.*, 73 F.4th 700, 740 (9th Cir. 2023). (“Cisco is correct that “‘certain forms of conduct’ violate the law of nations only when undertaken by state actors or those acting under color of law.”); *Kadic v. Karadzic*, 70 F.3d 232, 245 (2d Cir. 1995).

The Srpska Demokratska Stranka (SDS) Was Undeniably a State Actor

Mr. Djurdjic's capture, at the outset of the Bosnian War, while fighting in the trenches at Zuc Hill on the SDS (Serb) side of the was undisputedly uniformed service and was, also undisputedly, disclosed as part of Mr. Djurdjic's Refugee Application Worksheet which remains as the first document in Mr. Djurdjic's A-file. The status of the SDS as a state actor under international law and under United States law was never an issue at trial or on appeal:

The definition of a state is well established in international law: Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities. Restatement (Third) § 201; accord *Klinghoffer*, 937 F.2d at 47; *National Petrochemical Co. of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 553 (2d Cir. 1988); see also *Texas v. White*, 74 U.S. (7 Wall.) 700, 720, 19 L. Ed. 227 (1868). "Any government, however violent and wrongful in its origin, must be considered a de facto government if it was in the full and actual exercise of sovereignty over a territory and people large enough for a nation." *Ford v. Surget*, 97 U.S. (7 Otto) 594, 620, 24 L. Ed. 1018 (1878) (Clifford, J., concurring).

Although the Restatement's definition of statehood requires the capacity to engage in formal relations with other states, it does not require recognition by other states.

...

The customary international law of human rights, such as the proscription of official torture, applies to states without distinction between recognized and unrecognized states. See *Restatement (Third)* §§ 207, 702. It would be anomalous indeed

if non-recognition by the United States, which typically reflects disfavor with a foreign regime -- sometimes due to human rights abuses -- had the perverse effect of shielding officials of the unrecognized regime from liability for those violations of international law norms that apply only to state actors.

Kadic v. Karadzic, 70 F.3d 232, 245 (2d Cir. 1995).

The SDS controlled a large amount of territory, even most of Bosnia. It represented and governed the vast majority of the Serb population. It negotiated a series of peace agreements and various ceasefires.

The SDS (Serb Democratic Party/Srpska Demokratska Stranka) was the Serb government at the start of the war. The SDA (Party of Democratic Action/Stranka Demokratske Akcije) was the Muslim government at the start of the war. That was never an issue. If it was an issue, the Government would have addressed it with their historian, Dorothea Hanson, who wrote about it extensively and also testified about it at trial.

Dorothea Hanson made the opposite point at trial, emphasizing the transitional nature of the SDS during the period from April to July, 1992, clarifying the direct lineage of the Serbian side of the conflict from the Yugoslavian National Army (JNA) to the Serbian Democratic Party (SDS) to the Republika Srpska and the Republika Srpska Army (VRS), proximate in time to Mr. Djurdjic's June 8, 1992, capture by the Bosnian Muslim forces:

So there was a tremendous distribution and trade in illegal weapons, but the difference is the Serbs received their weapons from the JNA, from the army. The army was helping, was

handing out arms to the Serbian Democratic Party, which in turn then would distribute them in the municipalities. They also took over the TO weapons deposits where they could, and they called up people into -- they created -- if they -- it's always so complicated because of the different nationalities.

...

And they ordered the formation of the army because, if you recall, the JNA was the Yugoslav Army. And in April the remaining Yugoslavia, essentially Serbia had declared they were no longer the old Yugoslavia, they were the new Yugoslavia without Bosnia, so the JNA was supposed to withdraw from Bosnia and go into Serbia.

The troops withdrew. In those places where there was a Serb government or a Serb majority, they left a lot of their arms and materiel. They handed it over, like in the case of an airport around Sarajevo, not the airport but a military, but they simply handed the keys over to the Bosnian Serbs as they withdrew.

But there was no one army of the Bosnian Serbs until this was declared on May 12th, and this basically united the municipal forces that had been organized at the local level into a new command structure. And the commander was Ratko Mladic who became the commander of the Bosnian Serb Army.

This took awhile to actually get into place, so it really wasn't until June or July in some places that you would see a robust command structure. They were still -- these units, whatever they were, were commanded on the ground by the municipal leadership until there was a really good command structure of the VRS

(2-ER-364-367.)

In fact, the name Republika Srpska was not even adopted until August 12, 1992. (https://en.wikipedia.org/wiki/Republika_Srpska) So the documentation of Mr. Djurdjic's capture on June 8, 1992, included at page

R6 of Mr. Djurdjic's A-file, dated July 23, 1992, could not very well have referenced Republika Srpska.

Dorothea Hanson's trial testimony summarized her more complete written expositions in her papers entitled "Historical Background on the Conflict in Vogosca" and "Bosnian Serb Crisis Staffs, War Presidencies and War Commissions 1991-1995," describing, among other things, the lineage from the JNA to the SDS to the Republika Srpska and the VRS in early 1992. That paper was attached as an exhibit to a responsive Government pleading addressing a defense motion in limine on expert testimony.

At the same time the SDS at the national level was establishing its own republic organs in order to create a separate Serb state: the National Assembly declared a Serb government, a Serb constitution, and a separate Serb police force.

...

Tensions increased throughout March 1992 and escalated to war in early April 1992 when the United States and the European Union declared recognition of Bosnia, and the Bosnian Serbs then declared their own separate state, Republika Srpska ("Serbian Republic" or RS).

...

On 12 May 1992 the Serbs declared the formation of the Army of the Serbian Republic (Vojska Republike Srpske or VRS). Although it took a month or more for the new VRS command structure to become effective, this force united the Serb TO and other local forces with those parts and personnel of the JNA which remained after their ordered withdrawal.

(FER-24) (emphasis added).

The move of Crisis Staffs from party to governmental organs was completed on 4 April 1992, when Karadzic as President,

not of the SDS, but of the National Security Council, ordered the activation of Crisis Staffs. As mentioned above, the National Security Council itself then began to operate as a public, governmental equivalent of a previously secret SDS republic-level Crisis Staff.

As the party bodies at the republican level evolved into the government organs of the Bosnian Serb state (RS) in early 1992, so too did the municipal Crisis Staffs change from “SDS Crisis Staff” to “Crisis Staff of the Serb Municipality,” without, however, changing their membership or policy. For many ordinary people the first time they heard of the Crisis Staffs was in April 1992, following Karadzic’s “activation” order, when the Crisis Staffs emerged in public and claimed authority as the municipal government, without mentioning their previous clandestine party existence. In some municipalities it may well be that the Crisis Staffs were not formed at all until April 1992, but even those followed the model laid out in the 19 December 1991 Instructions.

(FER-52-53) (emphasis added).

With the activation order from the National Security Council and the Instructions for the Work of Crisis Staffs from the RS Government, the Crisis Staffs were now openly governmental, rather than secret party, organs, under the authority of the National Security Council, the Government and the Presidency; hence the Instructions for the Work of Crisis Staffs came to the Crisis Staff from the Government of RS and not from the SDS party. Similarly the reporting chain was now through state bodies. Nonetheless the Staffs’ membership remained the same, indicating that they were the same bodies, just as at the highest level the party leadership had become the state leadership. The transformation from party to state organs, although generally complete by the end of April, was not instantaneous, and there are many indications that the Crisis Staffs continued to think of themselves as organs of the SDS as much as of the state. In Sanski Most, for example, the Crisis Staff declared in June 1992 that “subcommittees of the SDS shall exercise power over the territory of Sanski Most Municipality.”

(FER-55-56) (emphasis added).

Theoretically all Crisis Staffs should have become War Presidencies after 31 May 1992, while after 10 June 1992 the republic Presidency could intervene and establish War Commissioners where it chose, until 17 December 1992 when the National Assembly abrogated the Decision on the Formation of War Commissions. War Presidencies, on the other hand, were active again in the last year of the war.

In practice these various orders and terms were not immediately nor consistently applied, creating confusion noted even at the Government level. Some of the bodies continued to call themselves, or be called popularly, Crisis Staffs. In some places they had called themselves War Staffs or War Presidencies even before the order on War Presidencies. The Sanski Most declaration that “As of today, the Crisis Staff acts and functions as a War Staff. Publicly the old name will be used,” shows that the name itself was not very important. In other places Crisis Staffs continued to meet as such into July 1992, and had to be reminded that they were to become War Presidencies or Commissions, or disband themselves. In some places the Crisis Staffs, War Presidencies, etc., took over all municipal functions; in others municipal Executive Committees and even assemblies co-existed with Crisis Staffs, War Presidencies, etc., although this overlap most often occurred after the crucial months of April-June 1992.

Therefore it is not necessary, nor always possible, to draw distinctions among Crisis Staffs, War Staffs, War Presidencies, and War Commissions, and what is asserted here for Crisis Staffs can be taken to mean all the terms used. As noted in Rajlovac, “A War Presidency was elected, then a War Commission, and again a War Presidency, in general the tasks were the same.”

(FER-58-60) (emphasis added).

As the governing organs of Serbian Municipalities, the Crisis Staffs were the vehicles for establishing and maintaining Serbian control of the territory claimed for the Serbian state. They coordinated, supported, and gave orders to the various forces involved in the municipal takeovers: the armed forces, including the police, the administrative bureaucracy, and local resources.

Of all the various forces with which the Crisis Staffs dealt, it is in military matters that we see the greatest variety of patterns; one pattern does not describe the whole range of relations between Crisis Staff and the military forces. There were a number of factors complicating the relationship between the Crisis Staffs and the military forces, including the personalities involved and the political, demographic, and strategic significance of the municipality. The proportion of Serbs in the population and the SDS control of the municipal government; the makeup of the municipal TO unit and command; the proximity of a JNA unit; the level of violence involved in the seizure of power; all these were factors which influenced the extent of Crisis Staff involvement in military matters.

The crucial factor for understanding the relations between the Crisis Staffs and the military is time. The most important period for the operations of the Crisis Staffs, April-July 1992, was also a period of transition for the military structures involved. As the military structures and forces on the ground changed, so too did their relations to the emerging state organs and municipal authorities. At the outbreak of the conflict there were a variety of armed units involved: regular JNA; regular TO; “irregular TO,” that is, units formed separately and secretly by the SDS, and other paramilitary and volunteer units. By June these various forces were being recombined into the emerging VRS. This process of transition moreover did not take place in the same fashion at the same time everywhere, further complicating the picture.

What the documents show is a spectrum of different relations with the military, but no significant conflicts between them. The common denominator everywhere is coordination and support

by the Crisis Staff. The further end of the spectrum is the Crisis Staff giving operational orders to armed units, and the head of the Crisis Staff personally commanding armed units.

Karadzic explicitly tied the formation of a Bosnian Serb army to the 19 December 1991 Instructions and the establishment of Serbian municipal authorities:

“There was a Brigade or a detachment in each municipality, there was a command, hidden from the JNA, although not so much here... At the moment the war began, in the municipalities where we were in the majority, we had municipal power, held it firmly, controlled everything. In the municipalities where we were in the minority, we set up secret government, municipal boards, municipal assemblies, presidents of executive boards. You will remember, Variant A, Variant B. In the B variant, where we were in the minority - 20%, 15% - we had set up a government and a Brigade, a unit, no matter what size, but there was a detachment with a commander... It was the SDS which organized the people and created the army, it was an army. Together with the police, those were the armed forces of the Serbian Republic of BH, they created the space, liberated and created the space. In some places with the help of the JNA, in others without the help of the JNA, and in yet others, without the JNA knowledge, since Huso and Uso were commanding in the JNA at that time, and what happened? We made various calculations and agreements with Yugoslavia, we decided to set up the TO, the Serbian brigades, which were indeed led by the SDS, but not as a Party army, but as people’s army... the core of the army existed in every municipality. I would like to hear in which municipality it did not exist.”

Or as the Tmovo Crisis Staff said more succinctly in May 1992: “The army is the product of the policy of the SDS.”

(FER-69-70) (emphasis added).

The SDS was the Bosnian Serb Government referenced in Count 1 of the indictment. While the JNA withdrew from Bosnia to the remaining Yugoslavia in April, 1992 (2-ER-366), the SDS was very much a uniformed service. Beginning on May 2, 1992, Svrake was captured by infantry forces supported by artillery, tanks and aerial bombardment with the detainees taken to the JNA barracks by armed uniformed Serbian soldiers. (3-ER-474, 477, 649, 651; 4-ER-715.) There were various commanders such as General Dragan Josipovic and prison commander Branko Vlaco. (3-ER-483; 5-ER-1255.) Roadblocks were manned by armed soldiers and APC's. (3-ER-592.) Vogosca had a military command post. (5-ER-1250.) Mr. Djurdjic was in uniform. (3-ER-654; 5-ER-1250.) By May of 1992, UN General MacKenzie had visited the Serb forces in Vogosca. (4-ER-695.) The Republika Srpska Ministry of Labor, War Veterans and Disabled Persons' Protection records extend back to May 1, 1992, before the name "Republika Srpska" was adopted, to include Mr. Djurdjic's activation in the infantry at the 7033 Vogosca military post. (7-ER-1540.)

Or, as Special Agent Gavin Weidman even more simply described it as, "the Yugoslav National Army which kind of morphed apparently into the VRS which was the Bosnian Serb Republika Srpska Army." (5-ER-1035.) Witness Slaven Duka also made it clear that the Republika Srpska Army was just establishing itself from the Yugoslav People's Army. (5-ER-1168.)

Mr. Djurdjic described it in his trial testimony consistently with the other witnesses, if in somewhat broken English:

A It's actually Yugoslavia which is -- when Yugoslavia broke down and especially in the Bosnian region, whoever majority population that time and that area turning over same like part of my, where I live, it's kind of integrating with -- with the military Republika Srpska. Same way in Bosnian side, with the Bosnian military. It just -- but it was still wear uniform at the Yugoslavian military.

(5-ER-1218.) Mr. Djurdjic reported to the Army recruiter in Vogosca after he absconded from the JNA. (5-ER-1246.) And it was the recruiting office that came to get him on May 1, 1992. (5-ER-1248.) The recruiting office provided him with a uniform and a weapon. (5-ER-1248, 1250; 6-ER-1403.) Mr. Djurdjic mustered out every morning, prior to his capture, at the Vogosca command post. (5-ER-1251.) After his release, Mr. Djurdjic was taken to the military base at Rajlovac where he was met by a general and by other commanders of the base. (6-ER-1319.)

At trial, the Government described the Serb forces in this timeframe leading up to Mr. Djurdjic's capture as "the Serb military."

Q How else were these tensions being seen around your hometown the months prior to the war starting in May 1992?

...

Q Can you explain some of the movements that you observed by the Serb military that was going around leading up to the war.

A Well, they started concentrating their forces in Hotel Park. The police was moving around. They were also on

the banks of a stream in my community.

Q Did you see the Serbs starting to pull tanks and armaments up the hillsides?

(4-ER-713-714.)

The former Yugoslavia had mandatory conscripted military service for all able-bodied males over age eighteen. (2-ER-346; 3-ER-453.) So arithmetic also says that Mr. Djurdjic (born January 11, 1973) was in the military when the war broke out in 1992.

It is useful, also, to understand the Yugoslav military doctrine of Territorial Defense units as described by Dorothea Hanson. Each municipality within former Yugoslavia was intended to be capable of operating independently with each unit commanded by a crisis staff. (2-ER-360-362.) So crisis staff control was very much in keeping with Yugoslav military doctrine.

The June 8, 1992, Battle of Zuc Hill was a well-known, widely reported and decisive battle in the Siege of Sarajevo and even has its own Wikipedia page. (https://en.wikipedia.org/wiki/Battle_of_Žuč.) Mr. Djurdjic's documentation of his capture, during combat operations, on Zuc Hill on June 8, 1992, was crystal clear to everyone. It was trench warfare at its most brutal. Mr. Djurdjic's account of it begins at 5-ER-1246.

Mr. Djurdjic Disclosed His Uniformed Service in The Serb Forces in the Very First Document, Attached to his Refugee Application Worksheet, Still Contained at Page R6 of His A-File – it Was How he Qualified to Even be Interviewed for Refugee Status

The very first document in Mr. Djurdjic's A-file, provided by Mr. Djurdjic at his November 22, 1999, Refugee Status Interview, states that Mr. Djurdjic was captured by Muslim forces while armed and fighting, during combat operations, on the SDS (Serb) side of the Bosnian Civil War.

On June 4, 1992, in Vogosca, during the war in the Republic of Bosnia and Herzegovina, with the purpose of serving in the enemy's armed units, he joined the armed formation of Serbian Democratic Party, on which occasion he commissioned the semi-automatic rifle and 60 bullets for the same, then, with an already organized armed group of individuals, members of Serbian Democratic Party, went to Zuc hill, where he held the positions on the aggressor's side from June 8, 1992, when during the combat engagements, fled from his line position in the direction of Kobilja Glava, where he surrendered, along with his personal weapon, to Bosnia and Herzegovina's Territorial Defense members ...

(Exhibit 1099, translated at Exhibit 1108; 7-ER-1514-1526, 1566-1569.)

This document, at page R6 of the Refugee Application Worksheet package, still contained in Mr. Djurdjic's A-file, was how Mr. Djurdjic proved that he had been held as a prisoner to even qualify to be interviewed as a refugee. They were not interviewing just anybody to be a refugee. They were interviewing former prisoners.

Count 1, which charges Mr. Djurdjic with “omitting his his service in the uniformed services of the Bosnian Serb Government” in violation of 18 U.S.C. § 1546(a), is rebutted, in documentary form, by the very first document still contained in Mr. Djurdjic’s A-file. Mr. Djurdjic documented his service from the very start. Furthermore, given that this information was clearly known to the U.S. Government as it was included in Mr. Djurdjic’s A-file and as the interviewing officer made handwritten notes regarding Mr. Djurdjic’s capture on the documentation that Mr. Djurdjic provided, it could not be said to have been a “material” omission in the sense that it “would have mattered to an immigration official” had it been known since it clearly was known and it clearly did not change the outcome of the proceeding.

Counts 2 and 3, both include, among fifteen or so alternative bases, the same language from Count 1 alleging that Mr. Djurdjic, “... did not report his service in the uniformed services of the Bosnian Serb government.” (7-ER-1573, 1575.) The jury, having decided that same language against Mr. Djurdjic in Count 1 (18 U.S.C. § 1546(a) – Visa Fraud), certainly decided that same language against Mr. Djurdjic in Counts 2 and 3 (18 U.S.C. § 1425 – Unlawful Procurement of Citizenship or Naturalization). *United States v. Henning*, 286 F.3d 914, 921-22 (6th Cir. 2002) (“While normally the Government could rely on the [*Griffin*] presumption that jurors convicted on the factually sufficient theory, in this

case there is evidence to the contrary, indicating that the jurors may have convicted on the factually inadequate theory.”). *See also, United States v. Gonzales*, 841 F.3d 339, 348 (5th Cir. 2016); *United States v. Frampton*, 382 F.3d 213 (2d Cir. 2004).

Conclusion

Mr. Djurdjic’s A-file still contains proof, submitted by Mr. Djurdjic at his November 22, 1999, Refugee Status Interview, that he, Mr. Djurdjic, was captured by Muslim forces while armed and fighting, during combat operations, on the Serb side of the Bosnian Civil War.

Counts 2 and 3 both include, among various alternative bases, the same language from Count 1 alleging that Mr. Djurdjic, “... did not report his service in the uniformed services of the Bosnian Serb Government.”

Page R6 of Mr. Djurdjic’s A-File is clear enough all by itself, disclosing that Mr. Djurdjic was captured while:

- ... serving in the enemy’s armed units ...
- ... joined the armed formation ...
- ... commissioned the semi-automatic rifle and 60 bullets ...
- ... held positions on the aggressor’s side ...
- ... during combat engagements ...

(7-ER-1566.)

If there was ever a serious point to be made that the SDS referenced at page R6 was somehow not “uniformed service,” the Government would

would have made that point through its very first witness, Bosnian War expert Dorothea Hanson.

Dated September 1, 2025.

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