

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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No. 12-3114

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

VERA DEMJANJUK, as Executrix of the Estate of John Demjanjuk,  
Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO, No. 1:99-cv-1193  
The Honorable Dan Aaron Polster, United States District Judge

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UNITED STATES' MOTION TO DISMISS FOR LACK OF  
JURISDICTION

Pursuant to Federal Rule of Appellate Procedure 27 and Sixth Circuit Rule 27(d)(1), the government moves to dismiss this appeal for lack of jurisdiction.

The factual background and procedural history of this case are set forth in the Brief for the United States, filed on the same day as this motion. *See* U.S. Br. 3-29. In short, John Demjanjuk appealed from the district court's denial of his motion under Federal Rule of Civil Procedure

60 for relief from a judgment of denaturalization entered under 8 U.S.C. § 1451. Demjanjuk died on March 17, 2012, while this case was pending on appeal, and his wife, Vera Demjanjuk, has been substituted as a party in her capacity as executrix of Demjanjuk's estate. *See* Demjanjuk Opening Br. 1; No. 12-3114, Order Granting Mot. to Substitute Party (6th Cir. Apr. 13, 2012).

Given Demjanjuk's death, this appeal should be dismissed as moot. As this Court has recognized, an "appeal must be dismissed as moot" when "events occur . . . that make it 'impossible for the court to grant any effectual relief whatever to a prevailing party.'" *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 713 (6th Cir. 2011) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992)). Because John Demjanjuk can no longer benefit from the relief sought in this appeal—the vacatur of the district court's judgment of denaturalization and the restoration of his citizenship—no live "case[] or controversies[y]" exists between the parties, thus depriving this Court of jurisdiction. *Id.* (citing U.S. Const. art. III, § 2, cl. 1).

Contrary to Vera Demjanjuk's contention, she cannot pursue this

appeal in her capacity as executrix of John Demjanjuk's estate based on the estate's purported interest in the "[r]estoration of social security benefits and similar benefits." Demjanjuk Opening Br. 1. It is unclear whether the Social Security Administration would repay withheld social security benefits if Demjanjuk's denaturalization judgment were vacated after his death, and regardless, any such repayment would be made not to Demjanjuk's estate but instead to Demjanjuk's wife or children *in their personal capacities*. See U.S. Br. 34-36 (citing 42 U.S.C. §§ 402(n), 404(d) and 20 C.F.R. §§ 404.464(a), 404.503(b)-(c)). As for the conclusory reference in Demjanjuk's opening brief to other, "similar benefits," Br. 1, the brief does not specify what those benefits are, much less explain the legal basis for their restitution to Demjanjuk's estate in the event that the district court's denaturalization judgment were vacated. Because Vera Demjanjuk has not established that the denaturalization judgment invades any "legally protected interest" of Demjanjuk's estate, she lacks standing to pursue this appeal in her capacity as the estate's executrix. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

For this reason, along with the other reasons set forth on pages 32-42

of the Brief for the United States filed on this day, this appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

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May 15, 2012

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2012, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I further certify that appellant's counsel, Michael Tigar, Dennis G. Terez, and Vicki Werneke, are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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