

28 January 1948

UNITED STATES )

v. )

Joaquin ESPINOZA )

Case No. 000-Mauthausen-19

REVIEW AND RECOMMENDATIONS

I. BACKGROUND: The accused was tried at Dachau, Germany, during the period 9-12 May 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE I: Violation of the Laws and Usages of War.

Particulars: In that Joaquin ESPINOZA, a Spanish National, or person acting with German Nationals, did, at or in the vicinity of Mauthausen, Austria, in or about January 1943, wrongfully encourage, aid, abet and participate in the killing of two or more non-German Nationals, inmates of the Gusen I Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

CHARGE II: Violation of the Laws and Usages of War.

Particulars: In that Joaquin ESPINOZA, a Spanish National, or person acting with German Nationals, did, at or in the vicinity of Mauthausen, Austria, in or about September 1943, wrongfully encourage, aid, abet and participate in committing assaults upon approximately ten non-German Nationals, inmates of the Gusen I Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

CHARGE III: Violation of the Laws and Usages of War.

Particulars: In that Joaquin ESPINOZA, a Spanish National, or person acting with German Nationals, did, at or in the vicinity of Mauthausen, Austria, in or about March 1945 wrongfully encourage, aid, abet and participate in committing assaults upon two or more non-German Nationals, inmates of the Gusen 2 Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

(Surname of ESPINOZA actually spelled ESPINOSA, R 5; P-Ex.1).

III. SUMMARY OF EVIDENCE: The accused, a Spanish national and prisoner of war, was an inmate of Gusen I Concentration Camp, a subcamp of Mauthausen Concentration Camp, from 10 May 1941 until sometime in 1944. He was an inmate at Gusen II Concentration Camp, another subcamp of Mauthausen, in March 1945 and until its liberation. While an assistant capo in the potato

working detail at Gusen I during cold weather in January 1943, the accused



beat two Polish inmates of the detail and immersed them in cold water in the potato peeling vats, hereinafter referred to as "Incident No. 1". About September 1943, the accused beat inmates of all nationalities, members of his potato peeling detail, many times with varying effects, hereinafter called "Incident No. 2". At Gusen II, in March 1945, the accused, as capo of the potato peeling detail, beat an inmate for stealing a potato and beat another inmate, a Pole, on several occasions for no reason whatsoever, hereinafter designated as "Incident No. 3".

IV. EVIDENCE AND RECOMMENDATIONS:

Joaquin ESPINOSA

Nationality:	Spanish
Age:	27
Civilian Status:	Worker
Party Status:	Unknown
Military Status:	Soldier, Spanish Republican Army
Pleas:	NG Charge I; NG Charge II; NG Charge III
Findings:	G Charge I, excepting the word "killing" and substituting therefor the word "mistreating"; of the excepted word, "not guilty" and of the substituted word, "guilty".  G Charge II, excepting the words "approximately ten"; of the excepted words, "not guilty".  G Charge III
Sentence:	3 years imprisonment, commencing 5 May 1945

Evidence for Prosecution: In 1940 the accused, a Spaniard and a former member of the Spanish Republican Army, was taken prisoner of war in France by the German forces (R 3, 70, 101; D-Ex 1). He arrived at Mauthausen Concentration Camp in 1941, and on 10 May 1941, he arrived at Camp Gusen I, a subcamp of Mauthausen (R 71, 101; D-Ex 1) June 1942 the accused was assigned to the potato peeling detail at Gusen I (R 72). He was an assistant capo (R 15). To this detail were assigned exhausted and sick inmates (R 9, 14, 15, 21, 22, 26; P-Exs 2A, 4A). In March of 1945 the accused was at Gusen II Concentration Camp, a subcamp of Mauthausen Concentration Camp



Incident No. 1: Jareszewicz, a former inmate of subcamp Gusen I, testified that in January 1943 at around 1700 to 1800 hours in the evening, the accused searched two Polish inmates, who were working on the potato peeling detail in the kitchen of Gusen I Concentration Camp, and discovered some potatoes and a few pieces of vegetables on them (R 29, 30, 32). After seizing these pieces of food, he beat each of the inmates five times about the face with his fist and hand. The inmates collapsed. The accused pushed them toward a tank or vat used in peeling potatoes and filled with cold water (R 30). He lifted each Pole into the tank (R 108, 109). He caused each victim to remain in the tank for about 20 minutes, often hitting each one while the victim was in the water. Although the water was waist deep, the accused knocked both of the inmates down into it. The temperature at the time of this incident was about zero fahrenheit (R 30). No change of clothing was available to them. At this time there were only two stoves to a room and these were heated only occasionally (R 31, 32).

Next morning, the two Polish inmates were admitted to the infirmary (R 32). Jareszewicz testified that they were never seen again (R 34) and that, although he had never seen the death certificates for these victims (R 36) and the cause of death was unknown (R 37), he heard that they died during the course of the next two or three days (R 33, 37, 41). He talked to no one who had seen the bodies (R 38).

Incident No. 2: Torcal, a former inmate of subcamp Gusen I, testified that at Gusen I during the months of September and October 1943 (R 25), he saw the accused beat sick and exhausted inmates of the potato peeling detail with a rubber hose some 40 to 50 centimeters long (R 14-17, 21, 22). Whenever the detail inmates were sleepy, when their work was heavy, or when the work was to be done quickly (R 15), the accused beat them.

The beating usually fell upon some 20 or 30 inmates of the detail and lasted for varying lengths of time, often 20 or 30 minutes (R 16). The accused beat his victims on their backs, their heads, their ears and front sides with differing effects. Some were bloody. Some fell in their blocks although the falls may have been due to causes other than the beating of the



accused (R 17). Some fainted in the kitchen when the accused beat them (R 18). No one was killed however, in the kitchen detail (R 22). The victims of the accused's beatings included all nationalities (R 16).

Incident No. 3: Clowacki stated in an unsworn pretrial statement that the accused, as a kitchen capo working with the potato peeling detail, some time between 1944 and the liberation, in Camp Gusen II, administered 25 lashings to an inmate as well as a water bath, because the inmate had taken a potato (R 26: P-Ex 4A).

In a pretrial unsworn statement, Galuszko, a former inmate of subcamp Gusen II stated that during the period March 1945 until the liberation, the accused, capo of the potato peeling detail at Gusen II, beat his fellow inmates. On one occasion he beat the witness, a Pole, for "organizing" (stealing) some potatoes and, at other times, without any reason, causing the victim to have kidney trouble. He knew the accused to be "an especially brutal man who took the slightest opportunity to beat his fellow-prisoners \*\*\*\*\*" (R 9; P-Ex 2A).

Jaroszewicz testified that the accused's general reputation was that of "one of the greatest sadists of the kitchen" who beat and mistreated inmates (R 103) although the SS were not present (R 105). In addition, the accused sold the potato peelers' extra food ration to them and divided the spoils with other capos (R 105, 106). The average death rate for the potato peeling detail was three to five inmates per week (R 108).

Evidence for Defense: Folger and Felez, who were former inmates of Gusen I, testified that the accused was not a capo (R 45, 49, 56, 60) and that they had never heard of the accused mistreating inmates in the kitchen (R 45, 46, 60) or being accused by fellow inmates of mistreating (R 60), although everything which was bad was discussed by the inmates assigned to the potato peeling detail (R 46, 58). According to Folger, the accused was quiet, decent, neat and well liked in the camp (R 45). Felez testified that the accused was a poor man who was never in charge of anything (R 56). Folger testified that beating of fellow inmates by the accused were "unlikely, almost impossible" (R 45), for the news would have travelled through the camp (R 46). Neither of the latter witnesses had heard of two Polish inmates



who died as a result of immersion in water (R 53, 59).

Felez testified that he had heard that the SS had immersed two Poles of the potato detail in vats of water at 1830 hours one evening, but he had neither heard of nor seen the accused do anything with the two Poles (R 58). On one occasion the SS discovered potatoes on inmates of the potato peeling detail, beat them, put them in the water of the peeling vats and then sent them out wet to the roll call square (R 63, 64). The accused was on roll call square at the time of this incident (R 64). Felez further testified that he had never heard of the accused either beating or immersing inmates (R 63).

In his testimony, the accused denied being present when two Polish inmates were immersed or having anything to do with it (R 69, 75, 76, 93). He had never seen ~~nor~~ heard of any inmates of the potato peeling detail being immersed in vats of water (R 76). He denied having duties other than peeling potatoes in the potato peeling room and named the persons in charge in 1943 (R 73). He admitted being a helper to a capo in May 1943, in which capacity he washed the capo's clothes and made his bed (R 74, 75). He testified that a search for potatoes among the inmates of the potato peeling detail was conducted regularly by the camp commander, detail leaders and the roll call leader (R 77). Inmates found with potatoes were placed in vats of water in the kitchen, beaten and then ejected from the building by these individuals (R 78).

The accused testified that he was punished for stealing (R 78, 88). He stole potatoes for ill comrades (R 87), for the dispensary (R 89), and for Felez and Folgor (R 90). He was beaten and mistreated many times (R 96).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:



Jurisdiction: While the jurisdiction of the Court to try the accused, a Spanish national, was not questioned by the defense, the question is implicit in the facts and deserves discussion. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Heaton's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case (United States v. Altfuldisch, et al., opinion DJAWC, February 1947), and in the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approvals in these cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country, who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. (See Section 5-300.2 and 5-300.3, Change 1 to Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947.) Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

#### VI. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

RICHARD C. HAGAN  
Major JAGD  
Post Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_ day of  
\_\_\_\_\_ 1948

C. B. STRAIGHT  
Lieutenant Colonel JAGD  
Deputy Judge Advocate  
for War Crimes