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No. 25297 G

FURUYA V. Williams

Nov. 13, 1945

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5 Attorney for Applicants and
6 Petitioners

Willa Clark, U. S. Dist. Court
San Francisco

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8
9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA

252976

11
12 In the Matter of the Application

13 For

14 A Writ of Habeas Corpus by

15 Each of the Following Named Applicants:

16 Mary Kaname Furuya,
17 Hisako Mary Genishi,
18 Kazuo Hatanaka,
19 Kikuye Hayashida,
20 Toshiko Hirai,
21 Masao Hirata,
22 Yukio Honda,
23 Yoshio Mori,
24 Fujiko Kajikawa,
25 Etsu Kaide,
26 Mitsuo Kaide,
27 Robert Kaide,
28 Teru Kaide,
29 Kimiko Kaneko,
30 George Kawata,
31 Hideo Kobashigawa,
32 Hideo Konishi,
Toshio Nagata,
Masoru Nakagawa,
Shizuye Nakai,
Kenji Nakayama,
Henry Satoru Narubashi,
Mitsuki Matsuoka,
Satsuki Matsumoto,
Seyer Shizuya Mori,
Teruko Virginia Hayamizu,

Tsuruko Morita,
Teugime Nishimura,
Hiroshi Ota,
Jack Noboru Ota,
Minoru Ota,
Ruth Midori Otsubo,
Masuo Sadakane,
Hatsuko Sakamoto,
Yoshio Tom Sakoda,
Tomihiko Sawada,
Kimi Tabata,
Jun Takuma,
Seizo Tamura,
Yoshiaki Tani,
Yoshiharu Tani,
George Hisami Toshima,
Tamiye Umawateri,
Kiyoshi Wakabayashi,
Namiye Wakabayashi,
Chiyoko Yamamoto,
Chieko Yayasaki,
Masao Yayasaki,
Kiyoto Yoshida,
Muneo Yoshioka,
Tadashi Shingu,

adults, individually, and as constituting
a class, and as representatives of a class,

And

1 Natsue Hayashida,
2 Jack Toshio Ishida,
3 Masao Kato,
4 Tamotsu Kobata,
5 Shiro Matsuura,
6 Harry Miyata,
7 Masumi Mori,
8 Tadasshi Nakavaki,
9 Mitsuye Nishimura,

Tadasshi Obana,
Sumi Sakai,
Shoji Sakauye,
George Sasaki,
Nobuko Sonoda,
Teruko Sonoda,
Masakatsu Takehashi,
Masato Uyeda,
Namio Ohara,

minors, individually, and as constituting a class,
and as representatives of a class, by Harry Uchida,
as the next of friend, and as guardian ad litem of
them and each of them,

Applicants;

And

Said persons (applicants), individually, and as
constituting a class, and as representatives of
a class,

Petitioners,

-vs-

IVAN WILLIAMS, as the Officer-in-Charge, United
States Department of Justice, Immigration and
Naturalization Service, Tule Lake Center, Newell,
Modoc County, California,

Respondent.

-B-

1 hearing upon any charge or accusation that he or she was or is
2 such a danger, and, on the contrary, the Department of Justice,
3 in 1945, made a finding and declaration that each petitioner was
4 not hostile to and was not a danger to the public peace or
5 safety; each petitioner at all times herein mentioned and ever
6 since his or her said birth in this country has been and now is
7 loyal and devoted to the United States; and, by virtue of the
8 circumstances hereinafter set forth, each is a resident within
9 the jurisdiction of this Court.

10 III.

11 The petitioners jointly and severally bring and maintain
12 this proceeding under the procedure authorized in habeas corpus
13 proceedings and the practice conforming to the practice in
14 actions at law or suits in equity and pursuant to the provisions
15 of Rules 20, 23(1), 23(2), 23(3), 18(a), 18(b), 19(a), 19(b),
16 and 81(a)(2), of the Rules of Civil Procedure for the District
17 Courts of the United States, uniting and joining in this single
18 petition for the following reasons and purposes, among others,
19 to-wit: (1) For the convenience and interest of the petitioners
20 and respondents; (2) to promote the orderly, convenient and
21 efficient administration of justice; (3) to avoid and prevent
22 a multiplicity of suits; (4) because petitioners jointly and
23 severally assert rights to release and discharge from the unlawful
24 internment and detention in which they are held and because their
25 rights thereto arise out of the same series of occurrences;
26 (5) because there are several points of litigation and questions
27 of law and of fact arising in said proceeding that are common to
28 each and all of them; (6) because said proceeding is also a
29 class action and the character of the rights sought to be enforced
30 for the persons and class of persons on whose behalf the same is
31 brought and those who hereafter may be joined as petitioners
32 herein is joint, common, and several; and (7) because there are

1 common questions of fact and of law affecting the several rights
2 involved and a common relief is sought by each petitioner against
3 respondent;

4 The questions and issues of fact involved herein which
5 are common to each and all of petitioners are: (1) Whether
6 the petitioners are native-born American citizens and nationals
7 of the United States or stateless persons or alien enemies,
8 it being apparent that if petitioners are not alien enemies their
9 internment was and is unlawful and they are entitled to immediate
10 release therefrom, such internment and detention lawfully being
11 applicable only to alien enemies during the actual period of time
12 in which the United States is engaged in the prosecution of war
13 and then only provided the internment and detention of specified
14 alien enemies is commanded by the President of the United States
15 and his authority so to do is invoked under and arises from the
16 Alien Enemy Act; and (2) whether the renunciations of nation-
17 ality signed by petitioners are void and invalid as having been
18 signed under duress, menace, fraud and undue influence, as here-
19 inafter alleged, and as having been rescinded, the political
20 status of the petitioners depending upon a determination of the
21 legality or illegality thereof;

22 Among the questions of law involved herein, which are
23 common to each and all of the petitioners herein, are the follow-
24 ing, to-wit: (1) The constitutionality and validity of Title 8,
25 USCA, sec. 801(1), and the nationality regulations adopted pur-
26 suant thereto, on their face and as construed and applied to
27 petitioners who contend the same are unconstitutional and void for
28 being repugnant to the provisions of the 4th, 5th, 6th, 8th, 9th,
29 10th, 13th, and 14th Amendments of the Constitution and to the
30 following provisions of the Constitution, viz., Article I, sec. 1;
31 sec. 8 subd. 4; sec. 9 subd. 3; Article III, sec. 1; and sec. 3
32 subds. 1 and 2; and Article IV, sec. 2 subd. 1; and (2) whether
33 the Alien Enemy Act, Title 50, USCA, secs. 21 and 22, which

1 respondent asserts was invoked against petitioners and under
2 which respondent asserts petitioners were and are interned as
3 alien enemies, was lawfully invoked against them and was and is
4 lawfully applied to them, and the constitutionality and validity
5 of said Alien Enemy Act on its face and also as construed and
6 applied to the petitioners who contend the said Act was unlawfully
7 invoked against them and was and is unlawfully applied to them
8 and also that it is unconstitutional and void on its face *and as*
9 construed and applied to them for being repugnant to each of the
10 aforementioned amendments and provisions of the Constitution.

11 IV.

12 Each petitioner, contrary to his or her will and desire,
13 is unlawfully interned, detained for the purpose of an involuntary
14 removal or deportation to Japan and restrained of his or her
15 liberty by the Officer in Charge, United States Department of
16 Justice, Immigration and Naturalization Service, at the Tule Lake
17 Center, situated within the jurisdiction of this Court, at Newell,
18 Modoc County, California, said Officer in Charge acting under the
19 order or orders of the Attorney General of the United States and
20 presently being one, Ivan Williams, respondent herein; and the
21 said Attorney General and said Officer in Charge; acting under
22 his order or orders, has announced and given notice of intention
23 summarily to remove and deport each petitioner involuntarily to
24 Japan;

25 The United States Department of Justice has publicly
26 announced the early closing of the said Tule Lake Center where
27 persons of Japanese descent and the petitioners, as such, hereto-
28 fore have been and now are detained by the Government, and has
29 ordered each petitioner and all other persons of like ancestry,
30 there interned, who have signed applications for renunciation
31

of U. S. nationality, detained and restrained of his or her liberty for deportation purposes and has publicly announced that commencing on and after November 15, 1945, each petitioner and all persons who have signed such renunciation application will be forcibly removed and deported to Japan, and that petitioners and all such persons so scheduled for such removal and deportation to Japan will be so deported without any notice being given and without any hearings being accorded any of them thereon;

Said Officer in Charge at the Tule Lake Center, the respondent, Ivan Williams, acting under the orders of the Attorney General of the United States, under a claim of color of authority of the Alien Enemy Act, Title 50 USCA, sec. 21, asserts each of said petitioners is an alien enemy and that as such each has been and is interned and restrained of his or her liberty and is held and scheduled for such an involuntary removal or deportation thereunder to Japan, albeit that such assertion that petitioners are alien enemies or that any of them is an alien enemy is a false and fictitious assertion, claim, and assumption wholly unsupported by fact and by law and is a gross mistake and error of fact and of law.

Each petitioner for a long period of time has been and now is interned and detained at said Tule Lake Center and now is under an order of removal or deportation to Japan, as each is informed and believes and therefore alleges, by reason of a claim that each, by a renunciation of United States nationality, thereby became an alien enemy and subject to such internment, detention and removal or deportation under the provisions of the Alien Enemy Act, Title 50 USCA, sec. 21, the facts out of which such claim arises being as follows:

Each petitioner has had, in his or her ancestral line
an unknown number of ancestors who, at some remote time in the

1 past, were born in a geographical area over which a Japanese
2 sovereign ruled and over whom such sovereign claimed, asserted
3 and enforced, through the then instrumentalities of police power,
4 a temporal jurisdiction, solely because of said type of ancestry
5 each petitioner, pursuant to proclamations, commands and orders
6 of General John L. DeWitt, then Commander of the Western Defense
7 Command and Fourth Army, during the year 1942, first was imprison-
8 ed in the immediate vicinity of his or her then home, situated
9 within the geographical area embraced by the Western Defense
10 Command, then driven into and imprisoned in stockades called
11 assembly centers, thereafter transported to concentration camps
12 called War Relocation Centers and there confined for approximately
13 three years, and thereafter imprisoned in the Tule Lake Center,
14 Newell, Modoc County, California, said imprisonment having been
15 continuous from 1942, to date, all without a charge of crime or
16 accusation of crime having been lodged against any of them, and
17 without any hearing having been given them on the reasons for
18 such treatment and in spite of the fact that the Attorney General
19 of the United States in 1945 caused each to be notified that he
20 or she had been found to be a person not dangerous to the security
21 of the United States;

22 That during the entire period of his or her unlawful
23 imprisonment, commencing in 1942, and continuing ever since, as
24 aforesaid, each petitioner has been and still is deprived of
25 substantially all his or her rights, liberties, privileges and
26 immunities guaranteed by the Constitution to him or her as a
27 native-born citizen and national of the United States and subject
28 to the jurisdiction thereof, as also those guaranteed to him or
29 her as a person thereunder, said deprivations having been committed
30 by governmental authorities under a claim of color of authority
31 of the United States;

1 During the preceding period of 1945, at said Tule Lake
2 Center, each petitioner signed an application for renunciation
3 of United States nationality, as provided for by Title 8 USCA,
4 sec. 801(1), and the Rules and regulations adopted by the
5 Department of Justice under the Nationality Act of 1940, as
6 amended, said Rules being more particularly designated as
7 Sections 316.1 to 316.9, inclusive, of Chapter I, sub-chapter D,
8 part D, of Nationality Regulations; that none of said applica--
9 tions has been approved by the Attorney General of the United States,
10 nor has he ever issued an order approving any of them, as is
11 required by Title 8 USCA, sec. 801(1) and Rule 316.7 of the
12 Nationality Regulations, before such becomes effective;
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19 The signing of said application for renunciation was
20 neither under oath nor real nor free nor voluntary on the part of
21 any of said petitioners but was caused by and was the result of
22 duress, menace, fraud, undue influence, mistakes of fact and of
23 law and was the product of the fear, coercion and intimidation
24 under which each then and there was held and subjected to and
25 under which he or she labored, all as hereinafter set forth;

26 In signing said renunciation applications, none of the
27 petitioners was informed, knew, intended or expected, by reason
28 thereof to be interned, detained and restrained of his or her
29 liberty as an "alien enemy" or otherwise, and none was informed,
30 knew, intended, or expected that he or she would be involuntarily
31 removed or deported to Japan by reason thereof, and, on the
32 contrary, was led to believe by the Government, its agents,

1 servants, and employees, that the signing thereof was not final,
2 but tentative, and subject to being rescinded and revoked.

3 VI.

4 The internment and detention of each petitioner and the
5 restraint upon the liberty of each, as aforesaid, and the
6 threatened, imminent and impending involuntary removal and
7 deportation of each to Japan, as aforesaid, are, and each of said
8 things, is, in violation of the Constitution and laws of the
9 United States, as heretofore stated, and deprives each of the
10 due process of law guaranteed by the 5th Amendment of the
11 Constitution, in the following particulars, to-wit:

12 At The unconstitutionality and illegality of the internment
13 and detention of each petitioner and the restraint upon his or her
14 liberty;

15 (1) That none of the applications for renunciation of
16 nationality signed by petitioners has at any time whatsoever been
17 approved by the Attorney General of the United States nor has an
18 approval nor an order approving any of the said applications at
19 any time been made by him nor has he at any time passed upon or
20 considered any of them as required by the provisions of Title 8
21 USCA, sec. 801(1), and by the provisions of sec. 316.1 to 316.9,
22 inclusive, of Part 316, sub-chapter D, Chapter I of Nationality
23 Regulations, before a renunciation therein provided for becomes
24 effective;

25 (2) That at the time each petitioner signed said
26 renunciation application the United States was engaged in the
27 prosecution of a war and, by reason thereof, any approval of a
28 renunciation of nationality by any of the petitioners necessarily
29 would have been contrary to the interests of national defense
30 and to the sovereignty of the United States and violative of the
31 provisions of Article III, section 3, subdiv. 1 of the
32 Constitution;

1 (3) That the hearing accorded each petitioner upon
2 his or her application for renunciation was nothing but a
3 perfunctory pseudo-hearing or command appearance before a hearing-
4 officer designated by the then Attorney General of the United
5 States and was wanting in each and all of the elements of a fair
6 and impartial hearing, and in the incidents thereof, in that each
7 petitioner was deprived of the benefits of independent advice
8 and counsel and of the assistance of counsel in and about said
9 hearing, was denied the right to be confronted by any evidence
10 and to examine witnesses against him or her or to produce witnesses
11 in his or her behalf, albeit none of the petitioners waived his
12 or her rights thereto; that at each such pseudo-hearing, the
13 hearing officer's recommendation on each application was based,
14 either in whole or in part, upon secret information and data
15 available to and used by the hearing officer but which was with-
16 held, concealed and kept secret from each petitioner, as provided
17 by the provisions of Section 316.6 of the Nationality Regulations
18 of the Department of Justice, and any approval thereof, had any
19 approval or order approving any of said renunciations been issued
20 or made by the Attorney General of the United States, necessarily
21 would have been based wholly or partially thereon;

22 (4) The signing of the renunciation applications by
23 each petitioner was neither under oath nor real nor free nor
24 voluntary but was caused by and was the result of duress, menace,
25 fraud, undue influence, mistakes of fact and of law and was the
26 product of the fear, coercion and intimidation under which each
27 then and there was held and subjected by the government and by
28 groups and gangs, and by individuals, as hereinafter set forth;

29 (a) Commencing with their unwarranted and
30 unjustified evacuation from their homes in 1942, as aforesaid,
31 and continuously since then to date, the United States government,
32 acting by and through its agents, servants and employees, and as

1 the jailor, custodian and guardian of petitioners, its wards,
2 has discriminated and still discriminates against the petitioners
3 and each of them simply because of their descent from persons of
4 Japanese origin and, ever since their unlawful imprisonment in
5 the vicinity of their homes immediately preceding their said
6 evacuation and continuously thereafter during their imprisonment
7 in concentration camps and during their internment in the Tule Lake
8 Center, has unlawfully confined them and members of their families
9 and subjected them and members of their families there confined
10 to governmental duress, menace, fraud and undue influence and
11 harassment and held and still holds them in a continual mental
12 state of fear and terror simply because of their Japanese ancestry;
13 the United States government, pursuant to its said policy and
14 program of discrimination and in furtherance thereof, steadily and
15 systematically has subjected them to a course of abusive treatment
16 during said period of time; pursuant to said policy and program
17 it has, by said continuous imprisonment without according them
18 or any of them a hearing on the reasons therefor, regarded,
19 classed and treated them as though they were alien enemies; all
20 the males among them of draft age, including the many who have
21 served faithfully in our armed forces and hold honorable dis-
22 charges therefrom, the many others who were transferred to and
23 now are in the enlisted reserve and subject to being called for
24 active duty and the many who repeatedly have volunteered to
25 enlist in the Army but were refused and denied the right to serve
26 and to fight for and defend this country by prejudiced and hostile
27 draft boards and by draft boards denying them such rights upon
28 governmental orders and who are still denied this birthright,
29 were classified "4-C" under the Selective Training and Service Act
30 of 1940, that is, as "Alien Enemies", by draft boards acting upon
31 governmental orders, without good cause and without justification
32 and in violation of their rights as American citizens, simply

1 because they were of Japanese descent; by reason whereof,
2 petitioners and all of said persons of like descent likewise
3 confined to said Center were led to believe and feared and had
4 good cause to believe and fear that the Government of the United
5 States viewed them as alien enemies and desired and intended to
6 deprive them of the right to remain in and to fight for this
7 country and to imprison them for an indefinite period of time
8 and thereafter to remove and banish them and their families and
9 all like descended persons from the United States; that the
10 government, after having encompassed their ruin by the aforesaid
11 evacuation and their subsequent continuous confinement, led
12 petitioners to believe that the alien Japanese members of their
13 families were scheduled and held for removal and deportation to
14 Japan and that the citizen members of said families would be
15 detained in this country and thereby caused alien parents, who
16 feared the splitting of their families, to coerce their citizen
17 children into signing renunciation applications, and led petitioners,
18 to believe that the signing of said applications was a matter
19 commanded by the government, compliance with which was a pre-
20 requisite to their right and that of their families to remain in
21 the protective security of said Center and to prevent a disuniting
22 of their families and to save themselves and their families from
23 physical harm and violence were they to be released and sent back
24 into civil life in communities where hostility to persons of
25 Japanese ancestry reigned and where they feared they would suffer
26 great physical harm and probable loss of life from lawless
27 elements; and the government very recently has initiated the
28 practice of permitting aliens to leave said Center and return to
29 their former homes while it holds their children who have signed
30 said renunciation applications for involuntary removal and
31 deportation to Japan and now also compels those who have been
32 released from confinement and those who were lucky enough to have

1 escaped it altogether, including those of our soldiers of
2 Japanese ancestry returning from the battlefields of Europe
3 and the Pacific who have parents, wives, sisters, brothers, or
4 children interned in said Center and scheduled for deportation
5 to Japan, to the choice of an involuntary banishment from the
6 United States to accompany them to preserve family unity or
7 to remain here separated from them; that the signing of said
8 applications and the pseudo-hearing held thereon was a trap
9 designed by the Government of the United States to cause and
10 result in the involuntary deportation of each signer to Japan
11 and of the involuntary removal of members of his or her family
12 to Japan and thus to result in a mass banishment of persons of
13 Japanese descent from the United States, which design and purpose,
14 was at all times heretofore withheld, concealed and kept secret
15 from the signers and petitioners; and, by reason of said
16 governmental duress, menace, fraud, and undue influence, and the
17 threats, coercion and intimidation practiced upon each petitioner
18 and members of his or her family each petitioner was compelled
19 by the government to sign a fictitious renunciation of a citizen-
20 ship of which each already, in fact, had been deprived by the
21 Government of the United States;

22 (b) That neither at the time each petitioner
23 signed an application for renunciation at the pseudo-hearing held
24 thereon at said Center nor at any time prior thereto during his
25 or her unlawful confinement, was he or she a free agent in any
26 sense of the words but then and there was unlawfully confined
27 and restrained of his or her liberty and was held in duress by
28 the United States government, its agents, servants, and employees,
29 as the jailor, custodian and guardian of petitioners, its wards,
30 and by it and its agents, servants, and employees, knowingly was
31 permitted to be exposed and subjected to the duress, menace,
32 fraud and undue influence practiced upon and against each petitioner

1 by organized terroristic groups and gangs of persons, likewise
2 there confined, who were fanatically pro-Japanese and committed
3 to forsaking this country and who were engaged in and allowed
4 to engage in a continuous campaign to engender, develop and
5 promote loyalty to Japan among the internees;

6 The said groups and gangs there were engaged
7 in and were permitted to engage in a generalized campaign of
8 lawlessness prior to the time said renunciation hearings were held
9 and at the time of said hearings had established and then and
10 thereafter maintained a veritable rule and reign of terror over
11 petitioners, their families and internees residing in said Center;
12 they preached and practiced sedition; they endeavored, by all
13 means at their command, to proselyte to the cause of the enemy
14 the petitioners, their families and other loyal internees there
15 residing; they actively engaged in the engendering, development
16 and promotion of loyalty to the cause of Japan which they openly
17 and notoriously espoused; they informed petitioners that
18 petitioners and their families were regarded by the United States
19 government as alien enemies and that it had scheduled them and
20 their families for deportation to Japan; they informed petition-
21 ers and internees at said Center that innumerable acts of physical
22 violence had occurred to persons who had been relocated in civil
23 life and that their lives would be in jeopardy, because of com-
24 munity hostility, if any succeeded in being returned to civil life
25 in this country; they threatened the petitioners and internees
26 that if any of them talked to, communicated with, or associated
27 with any of the Caucasians in and about said Center those so doing
28 would be assaulted by goon-squads, gangsters and hoodlums
29 sponsored and commanded by them; they sent in spurious letters to
30 the Department of Justice requesting applications be forwarded to
31 internees whose names they signed to such letters and then informed
32 the receivers that the government demanded that each receiver sign

1 it; they maintained and operated schools in said Center
2 to coach the victims of their fraud, menace, deceit and undue
3 influence into giving false and untrue answers to questions the
4 hearing officers were to propound to them at the hearings on
5 renunciation applications; they informed petitioners, as did
6 governmental announcements publicly made just prior to the time
7 said hearings were held in 1945, that the deportation of each
8 petitioner and that of alien members of his or her family, on
9 an exchange ship, was imminent and impending, and said groups
10 and gangs informed and threatened each petitioner that he or she
11 would be deported in any event and that if he or she failed to
12 sign an application for renunciation the security of each and
13 that of their families upon arrival in Japan would be endangered
14 because the pro-Japanese leaders of said nationalistic pressure
15 groups and gangs would report them to the Japanese government
16 as being dangerous alien enemies to Japan and as American spies
17 and that they would there be seized and punished as such;
18 they maintained an elaborate system of black-listing and
19 espionage over the internees in said Center as part of their plan
20 of systematic tyranny and terror to which they subjected
21 petitioners and the other internees in said Center; that said
22 groups and gangs threatened, coerced and intimidated petitioners
23 into signing said renunciation application by means of threats,
24 displays, shows, exhibitions and demonstrations of force and
25 violence and by threats against their lives and by threats of
26 inflicting great physical injury upon them and upon members of
27 their families in the event he or she failed to obey their
28 mandates and to sign such renunciation applications and thereby
29 compelled each of them to sign such renunciation application;
30 that each petitioner believed in and feared and had good cause
31 and reason to fear that said threats would be carried into
32 execution and that he or she and his or her family would be exposed

1 to physical violence and probable loss of life if he or she
2 failed to heed said threats and failed to obey the mandates of
3 said pressure groups and gangs and thereby was compelled to sign
4 such renunciation application; that by reason of said rule of
5 terror prevailing over said Center which, together with the
6 failure of the government to take steps to prevent, halt and put
7 a stop thereto and to accord them protection against the same,
8 and by reason of the duress practiced by the government against
9 them, as aforesaid, the petitioners and other internees in said
10 Center were kept in a constant state of fear, fright, mass
11 hysteria and terror and, by reason thereof, and because of the
12 absence of protection against the terroristic activities of said
13 groups and gangs being afforded by the government which was their
14 due many loyal and innocent internees were driven into becoming
15 nominal but inactive members of such groups simply to save them-
16 selves and their families from danger, physical violence and
17 probable loss of life from such sources, and petitioners were
18 compelled involuntarily to sign said renunciation applications
19 by reason thereof;

20 That at all times during said rule and reign
21 of terror imposed upon the internees in said Center the United
22 States government, and its agents, servants and employees, were
23 aware of and knew of the purposes and activities of said groups
24 and gangs and of the duress, menace, fraud and undue influence
25 said groups and gangs practiced upon and against petitioners,
26 members of their families and other internees in said Center, but
27 condoned the same and was responsible for, and actually aided and
28 abetted the same by permitting such activities and by failing to
29 prevent and to stop the same and by failing to arrest and prosecute
30 the leaders and active members thereof and to put a stop to their
31 criminal activities and lawlessness and by failing to invoke the
32 federal sedition and espionage laws or other criminal laws against

1 them and by failing to segregate such criminal elements from
2 the petitioners and other loyal internees and to isolate them;

3 By reason of the duress, menace, fraud and
4 undue influence practiced and exerted upon and against each
5 petitioner by the government and by the groups and gangs, as
6 aforesaid, and the failure of the government to accord them the
7 protection against the aforesaid lawless acts of said groups and
8 gangs, the petitioners were caught in the grip of terror which
9 ruled throughout said Center and the wave of terror that engulfed
10 them when they and members of their families were confronted
11 with a possible return to face hostility in the communities from
12 which they had been excluded and driven by the 1942 imprisonment
13 program which was termed an evacuation and was initiated by
14 civilian exclusion orders issued by General John L. DeWitt, as
15 aforesaid;

16 That none of said renunciations was real, free
17 or voluntary on the part of any of petitioners, but each was the
18 product of fear, torment and terror induced in each petitioner's
19 mind by virtue of the duress, menace, fraud and undue influence
20 to which each was subjected by the government and by the groups,
21 gangs, and individuals, as aforesaid, all of which operated to
22 deprive and did deprive each petitioner of freedom of choice,
23 will and desire in and about the signing of such applications for
24 renunciation and each of said renunciations was and is false,
25 fictitious, null and void by reason thereof;

26 (5) That if it should be adjudged by the Court that any
27 of the petitioners has lost his or her nationality by reason of
28 signing such renunciation application, coupled with a valid order
29 having issued thereon by the Attorney General of the United States
30 approving the renunciation as not contrary to the interests of
31 national defense, none of the petitioners thereby became an alien
32 enemy within the meaning and intent of the provisions of the

1 Alien Enemy Act, 50 U.S.Code, sec. 21, et seq., but became a
2 mere inhabitant of this country and a stateless persons entitled
3 to remain here as an inhabitant and resident of this country
4 and to be free from internment, detention and restraint under
5 said Act;

6 (6) The provisions of the Alien Enemy Act and of
7 Title 8 U.S.Code, sec. 801(1), are not now in effect as to any
8 of the petitioners or at all, inasmuch as the United States is
9 not now engaged in the prosecution of a war within the meaning,
10 intent and purview of said provisions.

11 (7) The provisions of Title 8 USCA, sec. 801(1), are
12 unconstitutional and void for uncertainty and also for containing
13 an improper delegation of legislative and judicial powers to the
14 Attorney General of the United States, in violation of the
15 provisions of Art. I, sec. 1, and Art. III, sec. 1, of the
16 Constitution.

17 B: The Unconstitutionality and illegality of the removal
18 and deportation of each of petitioners:

19 (1) None of the petitioners is an alien enemy within
20 the intent, meaning and purview of the provisions of Title 50,
21 USCA, sec. 21, as aforesaid;

22 (2) No warrant for the deportation of any of the
23 petitioners has at any time issued from the President of the
24 United States or from any court, judge or justice, as is a pre-
25 requisite to involuntary removal or deportation under Title 50,
26 USCA, sec. 24;

27 (3) No complaint at any time whatever has been filed
28 against any of the petitioners, as required by Title 50, USCA,
29 sec. 23, nor has any of the petitioners ever had a judicial hear-
30 ing on such removal or deportation, in any court of competent
31 jurisdiction, nor has any such court at any time issued any order
32 of removal or deportation against any of the petitioners, all

1 of which are jurisdictional prerequisites to removal or deportation
2 in involuntary removal or deportation proceedings under the
3 said Alien Enemy Act;

4 (4) That none of the petitioners has been allowed a
5 reasonable period of time consistent with the public safety and
6 according to the dictates of humanity and national hospitality
7 within which to recover, dispose of and remove his or her goods
8 and effects and prepare for his or her departure, all as required
9 by Title 50 USCA, sec. 22, in involuntary removal or deportation
10 proceedings under the said Alien Enemy Act;

11 (5) None of the petitioners has been accorded and
12 none will be accorded any hearing with respect to his or her
13 said involuntary removal and deportation to Japan but summarily
14 will be removed and deported, as aforesaid, and in such summary
15 removal and deportation en masse without any hearing having been
16 given or intended to be given to petitioners and each of them
17 thereon prior thereto the respondent and the United States Depart-
18 ment of Justice have grossly discriminated against and do still
19 continue to discriminate against them and each of them in that
20 respondent and said Department of Justice heretofore have followed
21 the practice and policy and now do follow the practice and policy
22 of granting individual prior hearings in similar removal and
23 deportation proceedings to all persons of German and Italian
24 nationality whom the respondent and said Department of Justice
25 have sought to remove and deport and are seeking to remove and
26 deport under the provisions of the Alien Enemy Act; and said
27 discriminatory treatment meted to petitioners and each of them
28 denies them and each of them the equal protection of the laws
29 and deprives them and each of them of the due process of law
30 guaranteed them and each of them by the 5th Amendment of the
31 Constitution;

32 (6) That neither a declared nor an undeclared war

1 now exists between the United States and any foreign nation or
2 government; that no invasion or predatory incursion is being
3 perpetrated, attempted or threatened against the territory of
4 the United States by any foreign nation or government; that the
5 United States is now at peace with the world;

6 (7) Many of the petitioners were minors at the time
7 they signed the renunciations applications and many still are
8 minors and their said renunciations have been rescinded and
9 revoked, as hereinafter mentioned, and, consequently, the
10 internment, detention and restraint of each of them and the
11 threatened and intended removal and deportation of each is
12 unconstitutional, invalid and void for each of said reasons.

13 That the written orders, records and documents
14 relating or pertaining to any and all of the petitioners in con-
15 nection with the matters and things set forth in this petition
16 are in the exclusive possession, custody and control of the
17 respondent and the United States Department of Justice and neither
18 the petitioners nor any of them know the nature or contents there-
19 of and none of them now has or at any time has had access thereto
20 and the same never have been made available to petitioners or any
21 of them or to their counsel and the same are now withheld from
22 them and each of them and their counsel by the respondent and said
23 Department of Justice.

24 VII.

25 Prior to the time of the filing of this petition each
26 petitioner, twice in writing, notified the Attorney General of
27 the United States, his agents and representatives, and the
28 respondent as one of his agents, of the circumstances under which
29 he or she signed such renunciation application, and that he or
30 she withdrew, retracted, rescinded, revoked, cancelled and
31 annulled his or her said application for renunciation of United
32 States nationality for the reasons that the same was signed under

1 duress, menace, fraud, undue influence and mistakes of fact and
2 of law, as aforesaid, and informed him and them of the grounds
3 and reasons on which said rescission and revocation was based
4 and made but said Attorney General failed and still does fail to
5 accept said rescission and revocation; that in each of said
6 written notifications sent to the Attorney General of the United
7 States each of said petitioners demanded of him and of respondent,
8 Ivan Williams, as the aforesaid Officer in Charge at said Tule
9 Lake Center, that he or she be released and discharged from said
10 internment, detention and unlawful restraint upon his or her
11 liberty, asserting therein the various grounds and reasons there-
12 for, both factual and legal, but the Attorney General of the
13 United States, his agents and representatives, and Ivan Williams,
14 as the Officer in Charge of said Tule Lake Center, as aforesaid,
15 acting under his orders, failed and refused and do still fail
16 and refuse to release and discharge each and all of said petitioners
17 from said internment, detention and restraint and threatened
18 removal or deportation to Japan; that a copy of the last written
19 demand so made by each petitioner on November 1, 1945, by
20 registered air-mail letter, is annexed hereto, incorporated here-
21 in, and made a part hereof, and is marked Exhibit "1";

22 None of the petitioners is held by virtue of any complaint,
23 indictment, presentment, warrant, or quarantine law, rule,
24 regulation, arrest or order, except as hereinabove specifically
25 set forth;

26 That no prior application for a writ of habeas corpus in
27 regard to the internment, detention or restraint complained of
28 in this petition has been made by petitioners or by any of them,
29 in this or any other court.

1 WHEREFORE, each petitioner prays that a Writ of Habeas
2 Corpus be granted and issued herein directed to the said Ivan
3 Williams as the Officer in Charge, United States Department of
4 Justice, Immigration and Naturalization Service, at the Tule Lake
5 Center, Newell, Modoc County, California, commanding him to have
6 the body of each petitioner before the above-entitled Court at
7 a time to be specified therein, to do and receive what then and
8 there shall be commanded by the Court concerning each petitioner,
9 together with the time and cause of the detention of each, and
10 said writ; that each petitioner be restored to his or her liberty;
11 that the Court find and adjudge that his or her application for
12 renunciation of United States nationality was and is null, void
13 and of no effect, and that any approval thereof made by the
14 Attorney General of the United States or order issued by him
15 approving the same, if any ever was made, was and is null, void
16 and of no effect; that the Court find and adjudge that each
17 petitioner is not an alien enemy and that each is a national and
18 citizen of the United States; that the Court find and adjudge
19 that his or her internment, detention and restraint was and is
20 void and illegal; that any and all orders for his or her involun-
21 tary removal or deportation to Japan or to any foreign country
22 or elsewhere be vacated and cancelled; that each have his or her
23 costs of suit; and each petitioner prays for such other and
24 further relief as may be just.

25 DATED: November 5, 1945.

26 *Wayne M. Collins*

27 WAYNE M. COLLINS
28 1721 Mills Tower
29 San Francisco, 4, California
30 Garfield-1218

31 Attorney for Petitioners.

32 21.

1 UNITED STATES OF AMERICA

2 STATE OF CALIFORNIA

SS

3 COUNTY OF MODOC.

4 HARRY UCHIDA being first duly sworn, deposes and says:

5 That he is one of the petitioners in the foregoing application
6 and petition for writ of habeas corpus named; that he is confined
7 and detained at the Tule Lake Center, Newell, Modoc County, Calif-
8 ornia, as alleged therein; that he makes this affidavit and
9 verification of said application and petition on his own behalf
10 as such an applicant and petitioner and on behalf of each and all
11 the applicants and petitioners in said application and petition,
12 each of whom likewise is confined and detained at said Tule Lake
13 Center by the respondent, as alleged therein, and each of whom has
14 authorized him so to do, and, because it is impracticable to have
15 the same verified by each of them by reason of the aforesaid con-
16 finement and detention of each, their large number and the long
17 period of time which would be required and be consumed to have such
18 done and because of the shortness of time due to the threatened
19 and imminent involuntary removal and deportation of each and all
20 of said petitioners, as alleged therein; that he personally knows
21 the facts set forth in said application and petition which apply
22 equally to each and all of said petitioners; that he has read the
23 foregoing application and petition and knows the contents thereof;
24 that the same is true of his own knowledge except as to the matters
25 therein stated upon information or belief and as to such that he
26 believes it to be true.

27 *Harry Uchida*
28 Harry Uchida

29 SUBSCRIBED and SWORN to before me

30 this 7th day of November, 1945.

31 *Joe J. Thomas*
32 Notary Public in and for the County
of Modoc, State of California.

1 WAYNE M. COLLINS
2 1721 Mills Tower
3 San Francisco, 4, California

4 Garfield-1218.

5 Attorney for Applicants and
6 Petitioners.

ORIGINAL
FILED

NOV 13 1945

WILLIAM CLARK, U. S. DIST. COURT
SAN FRANCISCO

9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA

11 In the Matter of the Application

12 For

13 A Writ of Habeas Corpus by

14 MARY KANAME FURUYA, et al., etc.,

15 Applicants,

16 And

17 MARY KANAME FURUYA, et al., etc.,

18 Petitioners,

19 -vs-

20 IVAN WILLIAMS, as the Officer in Charge,
21 etc.,

22 Respondents.

252976
No.

23 POINTS AND AUTHORITIES IN SUPPORT OF PETITION

24 I.

25 Where a person claims to be a citizen of the United States
26 he cannot be deported without a judicial hearing first being had
27 thereon.

28 Ng Fung Ho v. White, 259 U.S. 276

29 Petitioners claim citizenship by birth in this country
30 under the 14th Amendment and Title 8 USCA, sec. 601(a) and that
31 the renunciations are void, ineffectual and should be set aside.

32 1.

Deportation without a fair and impartial hearing is a denial of due process of law forbidden by the 5th Amendment.

Bridges v. Wixon. 323 U.S. 709

II.

Treason is a constitutional crime, consisting, among other things, of "adhering" to the Enemies of the United States. U.S. Constitution, Art. III, sec. 3,. Treason cannot be authorized by Congress. (Where agents of the government take the initiative to induce acts, which otherwise would be criminal, the action constitutes entrapment.)

Woo Wai v. U.S. (CCA-9), 223 Fed. 412.

Title 8 USCA, sec. 801(1) is void on its face and as applied herein for being in violation of the Constitution, Art. III, sec.3, for authorizing treason.

XII.

A renunciation of nationality by a native-born American does not convert the renunciant into an alien enemy or an alien but renders him a stateless person and an inhabitant of this country. Such a renunciation would not in any event make such a person subject to removal or deportation under the provisions of the Alien Enemy Act, 50 USCA, sec. 21, et seq., or to deportation under any other statute. A stateless person is entitled to due process of law under the 5th Amendment as a "person" and is not subject to detention or removal under the Alien Enemy Act. Even the existence of a state of war does not suspend the provisions of the 5th and 6th Amendments.

U.S. v. L. Cohen Grocery Co., 255 U.S. 81.

IV.

Title 8 USCA, sec. 801(1), is void for containing an unconstitutional delegation of legislative power to the Attorney General of the United States. (Field v. Clark, 143 U.S. 649, 692.).

Title 8 USCA, sec. 801(1), is void for uncertainty and for delegating to the Attorney General as an executive officer a discretionary authority without having set up any standards, guides or policies to which he is to conform. Such a delegation of legislative power is unconstitutional as forbidden by Art. I of the Constitution.

Panama Refining Co. vs Ryan, 293 U.S. 388;

Schechter Poultry Corp. vs. U.S., 295 U.S. 495.

V.

A person under twenty-one (21) years of age cannot renounce citizenship in the absence of a clear and unambiguous statutory authorization. "Rights of citizenship are not to be destroyed by an ambiguity."

Perkins v. Elg., 307 U.S. 325, 337.

Title 8 USCA, sec. 801(1), lodges no power in the Attorney General to approve renunciations of persons under 21 years of age. (Title 8 USCA, sec. 803(b), merely states that persons under 18 years cannot be expatriated under the conditions therein specified -- nothing more.).

VI.

The Alien Enemy Act, 50 USCA, sec. 21 et seq., authorized the detention and removal of hostile alien enemies during the actual time of war, not before or afterward; and even an alien enemy is deportable in wartime only after judicial hearing in which his rights first are determined. 50 USCA, sec. 23.

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VII.

A loyal citizen cannot be detained.

Ex parte Endo, 65 S.Ct. 208.

Respectfully submitted,

Wayne M. Collins

WAYNE M. COLLINS,
1721 Mills Tower,
San Francisco, 4, California.

Attorney for Applicants and Petitioners.

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

In the Matter of the Application

For

A Writ of Habeas Corpus by

MARY KANAME FURUYA, et al., etc.,

Applicants,

And

MARY KANAME FURUYA, et al., etc.,

Petitioners,

-vs-

IVAN WILLIAMS, as the Officer in Charge,
etc.,

Respondent.

No. **25297 G.**

ORDER FOR WRIT OF HABEAS CORPUS TO ISSUE

Upon reading and filing the verified petition for Writ of Habeas Corpus herein from which it appears that a writ of habeas corpus ought to issue, it is ordered that a writ of habeas corpus issue out of and under the seal of this court directed to the respondent, IVAN WILLIAMS, as the Officer in Charge, United States Department of Justice, Immigration and Naturalization Service, Tule Lake Center, Newell, Modoc County, California, commanding him to have the body of each of the petitioners before the above entitled court, in the courtroom of said Court, Department _____,

1 Post Office Building, 7th and Mission Streets, San Francisco,
2 California, on the _____ day of _____, 1945, at the
3 hour of 10 o'clock, A.M. of said day, to do and receive what shall
4 then and there be considered concerning the said petitioners and
5 each of them, together with the time and cause of the detention
6 of said petitioners and each of them; and that he have then and
7 there the said writ.

8 DATED: November _____, 1945.

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10 _____
11 United States District Judge.
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1 WAYNE M. COLLINS
2 1721 Mills Tower
3 San Francisco, 4, California

4 Garfield 1218

5 Attorney for Applicants and
6 Petitioners.

ORIGINAL
FILED

NOV 13 1945

WILLIAM C. GLOVE, U.S. DIST. CLERK
San Francisco

9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA

11 In the Matter of the Application

12 For

13 A Writ of Habeas Corpus by

14 MARY KANAME FURUYA, et al., etc.,

15 Applicants,

16 And

17 MARY KANAME FURUYA, et al., etc.,

18 Petitioners,

19 -vs-

20 IVAN WILLIAMS, as the Officer in Charge,
etc.,

21 Respondent.

252976
No. _____

22 ORDER APPOINTING NEXT OF FRIEND AND GUARDIAN AD LITEM
23 FOR MINOR APPLICANTS AND PETITIONERS

24 Upon reading and filing the verified application and petition
25 for Writ of Habeas Corpus herein, and on the motion of Wayne M.
26 Collins, Esq., attorney for applicants and petitioners, and good
27 cause appearing therefor,

28 It is ORDERED That the minors named in the above-named
29 cause be and each of them is hereby authorized to appear herein
30 by Harry Uchida as his or her next of friend and as guardian ad
31 litem of them and each of them.

32 DATED: November 13, 1945.

A. F. St. Sure

United States District Judge.

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TO THE HONORABLE, THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:

The application and petition of each of the applicants and petitioners above-named for a writ of habeas corpus respectfully shows:

I. 1.

Each petitioner is authorized to bring and maintain this proceeding in habeas corpus and this court is authorized and empowered to entertain original jurisdiction of this petition and proceeding under and by virtue of the provisions of the Habeas Corpus Acts, Title 28 USCA, sec. 451 et seq., and also by virtue of the provisions of Title 8 USCA, sec. 903.

11.

Each petitioner is a person having Japanese ancestry, and at all times herein mentioned has been domiciled in and a resident of the United States, a native-born American, a citizen and national of the United States and subject to the jurisdiction thereof, as provided by the 14th Amendment of the Constitution, the provisions of Title 8 U.S. Code, sec. 601(a), and as defined in Title 8 U.S. Code, sec. 501(a) and 501(b); none of the petitioners at any time whatever has been and none is an alien enemy and none at any time has been an alien; none at any time has been and none is a native, citizen, denizen or subject of Japan or of any hostile nation, government or country; none has at any time been and none is a danger to the public peace or safety and none has at any time been accorded a judicial