* regarding suggested proposal for disposition of cases

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Address reply to
"The Attorney General"
and refer to initials
and number

WEB/EEE

93-1-1320

UNITED STATES
DEPARTMENT OF JUSTICE

Washington 25, D.C.

COPY

SEPT. 21, 1953

AIRMAIL

Wayne M. Collins, Esquire
Attorney at Law
Mills Tower, 220 Bush Street
San Francisco 4, California

In re: Abo, et al., v. Brownell, etc., et al.,
No. 25294; and
Furuya v. McGranery, No. 25295 (Consolidated
No. 25294). U. S. District Court, San Francisco.

Dear Mr. Collins:

This is in response to your two letters dated August 7, 1953, in which you submitted for consideration alternative proposals for disposition of the remaining individual cases involved in the above entitled actions and with which you enclosed eight copies of each of two sets of lists of the plaintiffs who are in Japan. These letters were sent at my suggestion following our conference at the time of your visit to Washington this summer and your proposals have received very careful consideration.

At the outset we are pleased to inform you that this Department continues to adhere to the policies announced by the Attorney General on October 26, 1949 to the effect that it will not oppose judicial relief in the cases of plaintiffs coming fairly within the coverage of the ruling of the Court of Appeals in the case of Acheson v. Murakami, 176 F. 2d, 953, provided that such plaintiffs produce satisfactory affidavits which can be introduced by stipulation in lieu of other evidence and provided that the cause is within the jurisdiction of the court.

This Department's policies in that regard are fully set forth in the Government's brief on the appeal of the instant cases, with which you are familiar. The substance of the affidavits that will be acceptable is set forth in Appendix E to that brief. No particular form is required but, if desired, the form utilized either by the Department of State or the Immigration & Naturalization Service will be satisfactory. If you decide to design a different form and would like our views before it is mass-produced and sent to the plaintiffs, we are willing to give them to you. We have now had considerable experience with such affidavits not only in litigation but also in matters pending before the Department of State and the Immigration & Naturalization Service, therefore it is possible that we could be of assistance to you.

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Such affidavits should be submitted originally to the United States Attorney with two copies. A third copy may be included in cases where there is possibility that the plaintiffs may wish to obtain passports. In the event of inclusion of a third copy, if the affidavit is deemed satisfactory under the above-described procedure, it will be forwarded to the State Department. A copy of our letter of transmittal which will be sent to you, may be presented by the plaintiff to whom it relates in lieu of the usual supplemental affidavit required of renunciants and will expedite the processing of passport applications prior to final judgments as well as where the courts may deem judicial relief inappropriate. In the event that such an affidavit is deemed unsatisfactory, all copies will, of course, be returned to you.

You request that affidavits submitted to this Department with a view to their stipulation in evidence which are deemed unsatisfactory, be returned to you with the understanding that such affidavits shall not be introduced or offered in evidence by this Department at the trial of the case. This is agreeable. If by the use of the words "statements and other evidence" you desire to obtain a commitment that no effort will be made to prove the contents of the affidavits, I can give you this assurance also, but, of course, the mere recital therein of facts would not preclude their proof by other evidence available to us. However, since we do not know what you have in mind in using that language we must strictly limit our response to the foregoing at this time.

Heretofore, this Department's policy of not opposing relief in cases coming within the coverage of the Murakami decision has been limited to cases within the jurisdiction of the courts in which they are pending. We have raised jurisdictional questions in the instant proceedings which we consider substantial and which we intend to test on appeal. Accordingly, until the jurisdiction of the District Court is finally established it will be necessary to reserve the defendants' right to appeal on jurisdictional grounds. With this qualification (which will have no effect upon the approval of the affidavits in relation to passport proceedings as stated above), we are willing in the instant cases to stipulate to the introduction of satisfactory affidavits and to inform the Court that we have no objection to the granting of relief on the merits where we deem the cases fairly to fall within the coverage of the Murakami decision in the light of the further pronouncements of the Court of Appeals in the instant causes. Moreover, we will continue to withdraw our offers of proof and objections to relief in cases where satisfactory affidavits have been submitted to the Department of State and other agencies, again subject, however, to the preservation of the right to obtain review on jurisdictional grounds. As you know, this latter action has already been taken as to a number of plaintiffs, whose cases, therefore, are now ripe for the entry of individual judgments in view of the District Court's ruling that it has jurisdiction.

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We wish again to impress upon you the desireability to all concerned of settling the jurisdictional questions before undertaking large-scale litigation activity, either through the submission of affidavits, if you wish to proceed in that manner, or by holding of hearings. From plaintiff's point of view, particularly is this true in the cases of those now resident in Japan who, if they returned to this country for the purpose of giving oral testimony, not only unnecessarily would suffer the inconvenience, expense and disappointment of a futile trip in the event that it should be determined that the Court lacks jurisdiction, but who in addition probably would have to be taken into custody and possibly returned to Japan before a test as to the validity of their renunciations could be obtained on the merits. Accordingly, any arrangement that we may make as to the trial of these cases must be subject to a test of the jurisdictional questions and this Department must reserve the right to withdraw from such arrangements unless such test is obtained in the relatively near future.

I regret that we cannot comply with your request to agee to blanket relief for the groups of plaintiffs suggested by you. The facts as to each of the groups covered by the defendants' several offers of proof, which were before the Court of Appeals at the time of its decision, apparently, with the exception of certain of those listed in Exhibit XIX, were deemed by that Court to be sufficient to require consideration of the evidence which the individuals concerned can produce. The Court ordered the judgment to stand as to the 58 plaintiffs listed in Exhibit XIX as to whom amendatory offers of additional proof were not made. If there are additional plaintiffs in the same situation, summary relief will not be opposed in their cases; subject, of course, to jurisdictional objections. I assume that you included Exhibit XX by mistake, since the plaintiffs listed therein were expressly mentioned by the Court of Appeals in ordering modification of the judgment.

As to the other groups of plaintiffs suggested in your proposals, except plaintiffs who have submitted satisfactory affidavits in administrative proceedings as mentioned above, we are unable to say that the facts automatically entitle the individuals to the relief sought; hence, unless and until a final court ruling is obtained to that effect we would be unable to comply with your request as to them. However, we are of course willing to consider any of these cases on an individual basis under the procedure mentioned above and we have no doubt that we will be able to withdraw opposition to the according of relief on the merits in many such cases; subject, of course, to a final determination that the Court has jurisdiction.

With reference to your question as to whether or not the Attorney General has power administratively to set aside purported renunciations pursuant to Sec. 401(i) of the Nationality Act of 1940, as amended, it is clear that he may rule that they were invalid when the question comes before him in a proper manner. Thus, when any matter comes before the Department of Justice requiring a determination as to whether or not a renunciant is a

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citizen, such as an application for a certificate of citizenship, he must and does rule upon the validity of the renunciation as well as upon other factors possibly affecting applicant's citizenship status. However, the question of whether or not the Attorney General might administratively withdraw the approval, as not contrary to the interests of national defense, given by a prior Attorney General to a renunciation, would hardly arise in absence of a showing that the renunciation was in fact contrary to the interests of national defense. It is deemed so unlikely that such a case might arise as to make inadvisable the advance formulation of a policy applicable ot it. I may say, however, that I am convinced that Congress would not have intended to make continuation of changed citizenship status dependent upon the possibly differing views of future Attorneys General as to past needs of national defense. If the renunciation was valid, we are aware of no authority in either of the Judicial or Executive branches of the Government to set it aside.

I am pleased to inform you that the lists submitted with your second letter of August 7, have been checked and found accurate. These lists are being forwarded to the Department of State. For your further information in this regard there is enclosed a copy of a self-explanatory letter from Mrs. Ruth B. Shipley, Director, Passport Office, dated September 1, 1953, describing the use to which the lists will be put.

Sincerely yours,

/s/ Warren E. Burger

WARREN E. BURGER
Assistant Attorney General
Civil Division

Enclosure #18377

cc to Lloyd H. Burke, Esq.
United States Attorney
San Francisco, California

Wayne M. Collins
Attorney at Law
Mills Tower, 220 Bush Street
San Francisco 4, California

August 7, 1953

Enoch E. Ellison, Esquire,
Department of Justice Building,
Washington 25, D. C.

Dear Mr. Ellison:

Enclosed find a copy of the letter I have sent today to Assistant Attorney General Warren E. Burger concerning the Tule Lake cases.

Very truly yours,

Wayne M. Collins
Attorney at Law
Mills Tower, 220 Bush Street
San Francisco 4, California

August 7, 1953

Honorable Warren E. Burger,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

Dear Mr. Burger:

In re: Abo, et al., v. Brownell, etc., et al., No. 25294; and Furuya v. McGranery, No. 25295 (Consolidated No. 25294), U. S. District Court, San Francisco.

I submit to you herewith for consideration alternative proposals for a disposition of the remaining individual cases involved in the above-entitled equity proceedings. I believe that the proposals I suggest are fair and reasonable and that either method would constitute a workable plan whereby a large number of the individual cases would be disposed of within a reasonable period of time and leave a minimum, if any, to be determined by individual court hearing. My first proposal is as follows:

I

(a) You should specify those particular renunciant plaintiffs, if any, as to whom you can produce relevant admissible evidence in court which you, in good faith, believe would convince the trial court that he or she acted freely and voluntarily in renouncing U.S. nationality and thereby expressed a disloyalty to the United States unaffected by the conditions of detention and duress at the time of renunciation. You

should withdraw your offers of proof as to the remaining plaintiffs and permit judgment cancelling their renunciations and the orders approving them to be entered in their favor in the pending cases.

(b) As to each plaintiff you specify, under paragraph (a) hereinabove, you should withdraw your offers of proof and permit judgment cancelling his or her renunciation and the order approving it to be entered in his or her favor upon submission to you of proof that: --

(1) Such plaintiff has served or is serving in the military or naval forces of the United States; or

(2) Such plaintiff has been or is employed by the federal government and has been found, upon investigation by a federal agency, to be a good security risk and loyal to our government; or

(3) Such plaintiff is one to whom the State Department has issued a passport after an application therefor has been made and the special affidavit required of renunciants has been executed by him or her; or

(4) Such plaintiff is the parent, son, brother, or sister of a person who has served or is serving in the military or naval forces of the United States.

(c) As to any plaintiff specified by you under paragraph (a) hereof and as to whom you do not, under paragraph (a) or (b) hereof, withdraw your offers of proof and permit judgment in his or her favor to be entered, I will cause him or her

to submit to you a personal affidavit for examination, upon a form mutually to be decided upon, accompanied where it is deemed necessary or desirable by statements from witnesses and other evidence, explaining the causes and reasons, whether deemed justifiable or not, why he or she renounced U. S. nationality. The affidavit, statements and other evidence, thus submitted, are to be considered and weighed in good faith by you, and, if such convinces you that he or she did not act freely and voluntarily in renouncing citizenship or convinces you that such a person would prevail in a court trial of his or her case, you are to withdraw your offers of proof as to such plaintiffs and permit judgment to be entered in his or her favor.

However, if, after such examination and consideration of such personal affidavit, statements and other evidence, you conclude that the personal affidavit of such a plaintiff is not consistent with the facts contained in the government files and that you can submit to the trial court relevant admissible evidence that such plaintiff acted freely and voluntarily in renouncing U.S. nationality and thereby expressed disloyalty to the United States, unaffected by the conditions of detention and duress at the time of renunciation and that the Government would prevail in a court trial of his or her case, the affidavit, statements and other evidence which have been submitted to you are to be returned to me with the understanding that such affidavit, statements and other evidence shall not be introduced

in evidence or offered in evidence by you at any trial of his or her individual case except by his or her consent thereafter first being had and obtained.

II

My second or alternative proposal is as follows:

(a) You should withdraw your offers of proof and permit judgment cancelling the renunciations and orders approving them as to all the remaining plaintiffs who are listed in Exhibits Numbers V, VI, XIII, XV, XVI, XVIII, XIX and XX specified in your Designations filed Feb. 25, 1949, in proceedings Nos. 25294-5. (I believe you will agree that the offers of proof in these classifications relate to innocuous matters and that the plaintiffs listed therein would prevail in court hearings in their individual cases.)

(b) Next, you should withdraw your offers of proof and permit judgment cancelling the renunciations of any plaintiff then remaining in the cases, and the order approving it, upon submission to you of proof that: --

(1) Such plaintiff has served or is serving in the military or naval forces of the United States; or

(2) Such plaintiff has been or is employed by the federal government and has been found, upon investigation by a federal agency, to be a good security risk and loyal to our Government; or

(3) Such plaintiff is one to whom the State Department has issued a passport after an application therefor has been made and the special affidavit required

of renunciants has been executed by him or her; or

(4) Such plaintiff is the parent, son, brother or sister of a person who has served or is serving in the military or naval forces of the United States.

(c) I will then cause each of the then remaining plaintiffs listed in Exhibits I, II, III, IV, VII, VIII, IX, X, XI, XII, XIV and XVII specified in your Designations filed Feb. 25, 1949, to submit to you a personal affidavit for examination, upon a form mutually to be decided upon, accompanied where it is deemed necessary or desirable by statements from witnesses and other evidence, explaining the causes and reasons, whether deemed justifiable or not, why he or she renounced U.S. nationality. The affidavit, statements and other evidence, thus submitted, are to be considered and weighed in good faith by you, and, if such convinces you that he or she did not act freely and voluntarily in renouncing citizenship or that he or she would prevail in a court trial of his or her case you are to withdraw your offers of proof as to such plaintiffs and permit judgment to be entered in his or her favor.

However, if, after such examination and consideration of such personal affidavit, statements and other evidence, you conclude that the personal affidavit of such a plaintiff is not consistent with the facts contained in the government files and that you can submit to the trial court relevant admissible evidence that such plaintiff acted freely and voluntarily in renouncing U.S. nationality and thereby expressed disloyalty to the United States, unaffected by the conditions of detention

and duress at the time of renunciation, and that the Government would prevail in a court trial of his or her case, the affidavit, statements and other evidence which have been submitted to you are to be returned to me with the understanding that such affidavit, statements and other evidence shall not be introduced in evidence or offered in evidence by you at any trial of his or her individual case except by his or her consent thereafter first being had and obtained.

(The 22 offers of proof contained in the Government's Designations of February 25, 1949, listing the names of the plaintiffs as to whom made, are set forth as an appendix to this letter.)

It has been my conclusion that there is a likelihood that the Attorney General may not be empowered administratively to cancel a renunciation and an approval order based thereon and that, in consequence, a decree in equity cancelling and rescinding them is required to void or invalidate them or that a judgment in law under the nationality act or under the declaratory judgment statute is necessary to void or invalidate them. However, this presents, I believe, a question for decision by the Attorney General.

To clarify this important question of law I ask for a ruling on the question whether the Attorney General is authorized or empowered to consent to a rescission of an application for renunciation executed under the provisions of Title 8 USCA, Sec. 801 (i), and to a cancellation of an approval order issued on such an application when he or his agents had or are chargeable

with knowledge of defects in the renunciation which voided or invalidated such renunciation.

On this matter I wish to point out that in Paragraph XII of the Second Cause of Action contained in the Amended Complaint it was alleged that each of the plaintiffs twice had notified the Attorney General that he or she rescinded, revoked and cancelled his or her renunciation because it was signed under duress, menace, fraud, coercion, undue influence and mistakes of fact and of law.

In Paragraph XVIII of the Answer to the Amended Complaint filed on September 23, 1946, the defendant Tom C. Clark, as the then Attorney General, and the remaining defendants made the following admissions and assertions:

> "Respondents admit that complainants made the allegations set forth in Paragraph XII of the Second Cause of Action in the Amended Complaint and attempted to revoke their renunciations as there stated; but assert that the failure and refusal to accept the attempted revocation there alleged was necessitated by law, <u>there being no power in the Attorney General to confer citizenship on persons who have lost it</u>." (underscoring supplied).

I do not believe that the underscored assertion is to be construed as a statement that the Hon. Tom C. Clark, then the Attorney General, deemed himself powerless to consent to a cancellation of an application for renunciation and of an approval order which had issued on such an application when he or his agents had or were chargeable with knowledge of defects inherent in the renunciation which voided or invalidated it.

The statute does not prohibit the Attorney General from withdrawing his order approving a renunciation. Renunciations

which inherently are void or voidable do not actually deprive a person of citizenship - the substantive right to citizenship remains intact. Obviously the Attorney General is not empowered to confer citizenship on anyone. We do not ask that he confer citizenship upon anyone. All we ask is that he withdraw his orders approving renunciations which he recognizes were inherently defective and thereupon the notice of rescission would become effective.

It would seem that both a renunciant and the Attorney General, the parties to the renunciation application and the order approving such renunciation, mutually could consent that both documents be withdrawn or cancelled just as any two parties to a written contract or document mutually recognized as being void or voidable could agree to a cancellation thereof without necessarily resorting to a court for a decree cancelling such documents. (See Sec. 342 of the Immigration and Nationality Act of 1952 which appears to confer authority on the Attorney General to cancel documents for inherent defects).

I do not know whether J. Howard McGrath, as Attorney General, Philip B. Perlman as Acting Attorney General, and James P. McGranery, as Attorney General, expressed any view as to whether the Attorney General was empowered to cancel a renunciation under such circumstances.

The complaints and also the amended complaints were captioned "Complaint (Amended Complaint) To Rescind Renunciations of Nationality, To Declare Nationality, For Declaratory Judgment And For Injunction."

The suits primarily are in equity to cancel and rescind documents, viz., written renunciations signed by the plaintiffs and written orders approving the renunciation signed by the Attorney General. Original equitable jurisdiction to cancel these documents was invoked under 28 USCA, Sec. 41(1), now Secs. 1331-2. Incidentally the suits also were for declaratory relief under the declaratory judgment statute, 28 USCA, Sec. 400, now Secs. 2201-2, because they involved a justiciable controversy over the renunciations which, on their face, deprived the plaintiffs of citizenship. Incidentally, too, the suits also sought, under 8 USCA, Sec. 903, to determine the U.S. nationality of the plaintiffs and their citizenship rights of which they were alleged to have been deprived.

The district court's Opinion recognized that the suits primarily were in equity to cancel written documents. See Abo v. Clark, 77 Fed. Supp. 806, where that court stated --

> "These plaintiffs, by their amended complaint, seek a decree in equity rescinding their renunciations and declaring that they are still citizens and nationals of the United States. The issue tendered is without precedent and unique in the annals of American jurisprudence."
>
> "The authorities cited by defendants, to support the contention that the duress recognized by equity as the basis for rescinding contractual obligations is absent here, are neither persuasive nor pertinent to the unique facts of these causes. There is adequate power in equity to right the wrong done to the plaintiffs - a wrong inherent in the objective of Section 801(i) and demonstrated by the admitted circumstances of renunciation. This judicial power has never been expressly limited nor circumscribed nor has the domain in which it functions been precisely bounded. 30 C.J.S. 387 et seq."

The government's present contention is that inasmuch as none

of the plaintiffs any longer is detained for deportation to Japan by the Attorney General and the incumbent Attorney General is not presently depriving them of any rights that there is no existing justiciable controversy and that, therefore, the suits at law under 8 USCA, Sec. 903, to determine nationality and suits for declaratory judgment no longer lie and that the causes have become moot.

The Government made the above-mentioned contention in the Court of Appeals when all the plaintiffs with the exception of 302 of them had been released from internment and the threat of removal to Japan under the provisions of the Alien Enemy Act had expired. The appellate court resolved the question against the Government's contention. It held that the suits, initiated by 975 imprisoned plaintiffs, constituting members of a class, were suits over which the district court clearly had jurisdiction at the time the suits were filed because the 975 plaintiffs then were imprisoned for deportation by the Attorney General, citing the Nationality Act of 1940, Sec. 503. It declared that the 3,300 later added parties plaintiff, many of whom had been released from detention when joined as plaintiffs, nevertheless had a right to be joined as plaintiffs despite the fact they had been released because the suits were class suits and these later added plaintiffs satisfied the requirement for joinder in the class suits. (For want of evidence having been introduced against the Secretaries of State, Interior and Treasury and their agents it set aside the judgment against them). That Court's Opinion contains the statement, "Having such jurisdiction

to establish the wrong done, equity may enjoin the threatened continuance of the wrong."

The Court of Appeals did not hold that the district court lacked equitable jurisdiction to cancel the renunciations and approval orders based thereon. No contention was made by the Government that the court lacked its traditional equitable jurisdiction to cancel documents. The Government contended, as above-mentioned, that as to the thousands of plaintiffs joined in the suits after their release from internment there was no deprivation of their rights by any of the defendants at the time of their joinder which would confer jurisdiction upon the court to determine their nationality under 8 USCA, Sec. 903. It also contended that there was no existing justiciable controversy as to such plaintiffs at the time they were joined which could confer jurisdiction upon the court to grant such plaintiffs a declaratory judgment.

We believe the Court of Appeals Opinion is susceptible of no interpretation except that the district court originally acquired jurisdiction in equity to cancel written documents and also jurisdiction at law to determine their nationality under 8 USCA, Sec. 903, and also under the declaratory judgment statute at the time the suits were filed and that such jurisdiction having existed when the 975 plaintiffs filed class suits on November 13, 1945, continues as to them and also as to the thousand of plaintiffs since added despite the release of all the plaintiffs from detention and the cessation of the war.

We point out, too, that since the remand of the causes to the district court the Government has contended in the "Defendants' Joint And Several Motions To Dismiss The Complaints Against Them" filed on Oct. 29, 1952, in their "Verified Response And Opposition To Supplemental Pleading And Motion To Substitute Parties Defendant Under Rule 25(d) R.C.P." filed about July 1, 1953, in their memoranda in support thereof and on the oral arguments presented thereon by their counsel that the causes were moot because of the release from detention of all plaintiffs, the cancellation of the last 302 removal orders following the formal end of the war and the termination of any deprivation of plaintiffs' rights and the want of an existing justiciable controversy. (The contentions overlook the fact that the renunciations and approval orders effectively deprived the plaintiffs of citizenship and all citizenship rights and privileges and will continue so to do until cancelled). District Judge Goodman disposed of the Government's contentions in the "Order Re Defendants' Joint And Several Motions To Dismiss" made by the district court on Nov. 26, 1952, and by its order of July 9, 1953, granting plaintiffs' motions to substitute parties defendant and to join additional parties plaintiff, the order of Nov. 26, 1952, reciting: —

> "7. The motion to dismiss the causes in toto on the ground that they are moot, in my opinion, is without merit and is denied."

We suggest, too, that if there was merit in the Government's contention that the suits, insofar as they seek a declaration of

plaintiffs' nationality under 8 USCA, Sec. 903, became moot because the plaintiffs, following their release and the end of the war, no longer were deprived of rights that such a contention would be overcome by the allegations contained in the"Supplemental Pleadings And Motions To Substitute Parties Defendant Under Rule 25(d) R.C.P." and supporting affidavits, filed Nov.15, 1952, and June 15, 1953, and the various affidavits in support of motions to join additional parties plaintiff, filed Nov. 20, 1952, and June 15, 1953, and similar previous affidavits filed over the course of several years last past. These pleadings contain specific allegations that the Attorney General deprived the plaintiffs of their citizenship in 1944-5 by accepting the renunciations and approving them and that he and the defendants ever since have deprived them of all the rights of citizenship and have treated them as aliens and have discriminated against them by enforcing against them the restrictive laws relating to aliens and in blanketly compelling them to fill out special affidavits to obtain passports to leave and to enter the United States, etc. We believe, therefore, that the suits which primarily lie in equity also would still lie under 8 USCA, Sec. 903, for said reasons.

There are now approximately 3,500 plaintiffs remaining in the mass class equity suits whose individual causes require final disposition.

To require individual court hearings in each of these cases would consume several years' time of at least one district judge

and conceivably of two of them. The work burden upon counsel for both sides would be considerable. The expense to which the Government would be put to produce even the scant evidence it asserts it is able to produce in its offers of proof contained in the Designations filed on Feb. 25, 1949, March 7, 1949 and March 18, 1949, would prove to be quite substantial in amount. The expense to which the plaintiffs would be put likewise would be enormous.

If we can agree that a fairly large number of these plaintiffs are entitled to have their renunciations cancelled and their citizenship admitted without resort to the expensive method of preparing and submitting to your office affidavits and evidence on their part much time can be saved and considerable expense can be avoided.

You doubtlessly are cognizant of the fact that the evacuation and the subsequent long internment of the plaintiffs occasioned them losses from which they have not fully recovered. If all of them were required to submit such affidavits and evidence in an endeavor to clear their status administratively and such a procedure left a substantial number which your Department thereby impelled to proceed with court hearings the financial burden on them would rise in proportion. These people now are scattered over the United States, Hawaii, Japan and a good number of them are abroad in our armed forces. To obtain the affidavits and evidence from them to submit to your Department probably would cost between $100 and $150 apiece. It would be necessary for me to have them and their witnesses who could make affidavits on their behalf come to my office or to

the office of associate attorneys to be selected by me in various areas for questioning and preparation of the affidavits to be submitted to you. Those who were not successful through such a medium in convincing your Department that their renunciations should be cancelled thereafter would be set down for court trials. The financial burden on these would rise enormously.

If your Department, upon examination and reconsideration of the files relating to the plaintiffs, will concede that certain of the plaintiffs or certain classifications of them are entitled to cancellation of their renunciations, or that certain of them, individually or by classes, would prevail in individual court hearings I believe you should consent that judgment in the pending causes be entered in their favor. Entry of such judgments could be made simply by amendment of the Order Executing The Mandate of the Court of Appeals which already covers approximately 1,000 plaintiffs as to whom the judgment of the District Court has become conclusive. The amendments could be made ministerially to include the names of such plaintiffs simply as additions to those therein specified. Such a procedure seems to me to be suggested and authorized by the Court of Appeals Opinion which ordered the judgments amended to state the names of the successful plaintiffs as to whom judgment was affirmed. It seems to me that the copy of the letter of Holmes Baldridge, Assistant Attorney General, addressed to Chauncey Tramutolo, United States Attorney, and dated Nov. 2, 1951, which was sent to me suggests that such a procedure would be acceptable.

As to the plaintiffs then remaining in the suits I would be willing to submit to your office for consideration the personal affidavits and other evidence, as hereinabove mentioned. If you conclude therefrom that any of them acted involuntarily in renouncing or that they would prevail in court hearings I suggest that you consent to like judgments being entered for them in the pending suits. The residue thereupon can be scheduled for trial by the court.

Even if you believe that the causes are moot it seems to me that consenting to the entry of such judgments in the pending causes would not be subject to collateral attack or to direct attack from any source except in the event of appeals being taken therefrom and being successful. It is obvious, however, that I would not initiate any such appeal. It is apparent, too, that the Government would not gain anything by initiating appeals therefrom but that such a course would serve only to complicate matters and make the problems more involved.

Your Department then could appeal from any favorable court decision as to any successful plaintiff if it believed the facts did not warrant a cancellation of his renunciation and, in such a case, test the jurisdictional question on appeal or test it out in the event I took an appeal on behalf of an unsuccessful plaintiff. I wish to point out, however, that if you were satisfied that the trial court was correct in its finding of fact in favor of a plaintiff that no appeal should be taken.

Were the mass suits, for any reason, to be declared moot the

causes of the plaintiff would not be abandoned by me. I would appeal from any such decision to conclusion and if unsuccessful on my appeal I would immediately initiate new individual suits in equity against the appropriate government officers to cancel the renunciations and approval orders in the District of Columbia. In addition, I would have each plaintiff apply for a passport which, in due course, would be denied or search for other particular deprivations of the rights of each and thereupon institute an independent individual suit for each to determine his or her nationality under the provisions of the McCarran Act, Section 360 of the Immigration and Nationality Act of 1952, and seek the declaratory relief thereby prescribed.

Although such a procedure would place an onerous burden upon my shoulders and upon those of associate counsel whom I would select to prosecute such cases to conclusion I believe it would place no less a burden upon numerous U.S. Attorneys in the various district courts where such suits would be filed.

For the foregoing reasons I believe that it would serve the interest of justice for us to agree to clear as many plaintiffs as possible in the pending causes first by negotiation, then by the submission of affidavits and evidence to your Department relating to each of the remainder and thereafter proceed to trial in the cases of those plaintiffs whose only remedy thereafter left open to them was by court trial.

Very truly yours,

APPENDIX

The 22 offers of Proof contained in the government's Designations of February 25, 1949, are as follows, the names of the plaintiffs there listed, being ommitted:

I

With respect to the foregoing designated plaintiffs, the defendants will introduce additional documentary evidence showing that such persons received their education and formal schooling in Japan, were leaders of pro-Japanese organizations at Tule Lake, and subsequent to their renunciation of citizenship at Tule Lake voluntarily returned to Japan.

II

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of pro-Japanese organizations at Tule Lake and subsequent to their renunciation of citizenship voluntarily returned to Japan.

III

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their education and formal schooling in Japan, were members of a pro-Japanese organization at Tule Lake and subsequent to their renunciation of citizenship voluntarily returned to Japan.

IV

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were members of a pro-Japanese organization at Tule Lake and subsequent to their renunciation of citizenship at Tule Lake voluntarily returned to Japan.

V

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence to show that such persons received their education and formal schooling in Japan and subsequent to their renunciation at Tule Lake voluntarily returned to Japan.

VI

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons subsequent to their renunciation at Tule Lake voluntarily returned to Japan.

VII

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their education and formal schooling in Japan, were leaders of pro-Japanese organizations at Tule Lake, applied for expatriation prior to their renunciations of citizenship and are presently under alien enemy removal orders of the Attorney General.

VIII

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their education and formal schooling in Japan, applied for expatriation at Tule Lake prior to their renunciations of citizenship and are under alien enemy removal orders of the Attorney General.

IX

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of a pro-Japanese organization at Tule Lake, applied for expatriation prior to their renunciations of citizenship and are under alien enemy removal orders of the Attorney General.

X

With respect to the foregoing plaintiff, the defendants will introduce documentary evidence which will show that such person received his education and formal schooling in Japan,

was a leader of a pro-Japanese organization at Tule Lake, and is under alien enemy removal order of the Attorney General.

XI

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons are under alien enemy removal orders of the Attorney General and have otherwise demonstrated that their renunciation of citizenship was voluntary.

XII

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their schooling and formal education in Japan, were leaders of a pro-Japanese organization at Tule Lake and applied for expatriation prior to their renunciations of citizenship, but are not under removal orders of the Attorney General.

XIII

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their schooling and formal education in Japan and applied for expatriation prior to their renunciation of citizenship at Tule Lake but are not under removal orders of the Attorney General.

XIV

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of a pro-Japanese organization at Tule Lake and applied for expatriation prior to their renunciation of citizenship but are not under removal orders of the Attorney General.

XV

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons applied for expatriation prior to their renunciation of citizenship at Tule Lake but are not under removal orders of the Attorney General.

XVI

With respect to the foregoing plaintiffs the defendants will introduce documentary evidence which will show that such persons received their schooling and formal education in Japan and applied for expatriation subsequent to their renunciation of citizenship at Tule Lake but are not under removal orders of the Attorney General.

XVII

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of a pro-Japanese organization at Tule Lake and applied for expatriation subsequent to their renunciation of citizenship at Tule Lake but are not under removal orders of the Attorney General.

XVIII

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons applied for expatriation subsequent to their renunciation of citizenship at Tule Lake.

XIX

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons, although they did not receive their education in Japan, were not leaders of pro-Japanese organizations at Tule Lake, did not apply for expatriation prior or subsequent to their renunciation of citizenship and are not under removal orders of the Attorney General, nevertheless otherwise demonstrated that their renunciation of citizenship was voluntary.

XX

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons did not renounce their citizenship at the Tule Lake Segregation Center, and were not therefore subjected to the factors which this Court held, in its interlocutory decree, to be of such a nature that they cast the taint of incompentency upon the acts of renunciation of citizenship.

XXI

With respect to the plaintiffs listed in this exhibit the defendants suggest that such persons should be dismissed from this suit for the reason that their purported acts of renunciation were never approved by the Attorney General as required by Sec. 801(i), Title 8 U.S.C.

XXII

If it should be finally determined that the Court has jurisdiction in these actions then, and in that event only, the defendant do not offer any objection to the entry of a final decree in favor of the plaintiffs listed in this exhibit for the reason that at the time of their respective renunciation of citizenship or immediately subsequent thereto, reports of competent medical doctors indicated that such persons did not have sufficient mental capacity to accomplish a legally binding act.