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UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

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GORDON KOYOSHI HIRABAYASHI,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee

No. 10306

- - - - - -

Upon Appeal from the United States District Court

for the Western District of Washington,

Northern Division.

- - - - - -

APPELLANT'S OPENING BRIEF

- - - - - -

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STATEMENT OF PLEADINGS AND FACTS

The indictment charges appellant with violation of Public Law #503 (appendix No. 7) in two counts; Count I for failure to report to the Civil Control Station for evacuation and internment pursuant to Civilian Exclusion Order No. 57 (appendix No. 6) of the Military Commander; Count II for refusal to obey the curfew regulations of Public Proclamation No. 3 (appendix No. 5) of said Military Commander of Military Area No. 1. In each count the appellant is described as "a person of Japanese ancestry residing and being in the geographical limits of said Military Area No. 1." On arraignment appellant pleaded no guilty, reserving the right with permission of the court to further plead to the indictment by way of demurrer and motions. An amended demurrer and plea in abatement of the indictment were duly filed (Tr. pages 14-16), alleging that appellant was born in King County, State of Washington, is now 24 years of age and has never been and is not now a native citizen, denizen or subject of the Empire of Japan and has never borne and does not now bear any faith or allegiance to the said Empire of Japan or to the Emperor or government thereof.

The demurrer was overruled and the plea in abatement was denied by the trial court and the cause was tried before a jury. At the trial the evidence proved that appellant's parents were both born in Japan of Japanese ancestry; that his father came to the United States in 1907, having been converted to the Christian religion prior to his leaving Japan, and that his mother came to the United States in 1914, she likewise having been converted to the Christian religion prior to leaving Japan; that neither parent has ever returned to Japan nor has either ever had any connection with

Japan nor shown any actual allegience to the Emperor or government of Japan; that appellant's parents were married in the United States and have always lived here since their marriage and raised their children to be good American citizens. The testimony further showed that appellant was born in the City of Seattle, County of King, State of Washington, on April 23, 1918; that he was educated in the common and high schools of said County and State and at the time of his arrest herein was a senior at the University of Washington majoring in mathamatics; that he has never been to Japan nor had any connection therewith, nor has he ever corresponded with any Japanese in Japan; that his parents always taught him and his brothers and sisters that they are American citizens and to conduct themselves as good American citizens; that appellant has been active in the Boy Scout Movement and the University Y.M.C.A.; and that in these organizations and in the schools and University he learned what is expected of good American citizens and what his rights and privileges are as an American citizen and that he has at all times earnestly tried to conduct himself as such; that appellant has never before been arrested on any charge whatever; that he had not reported to the Civil Control Station nor remained in his residence during the curfew hours because he honestly believed that the Exclusion Orders and curfew regulations were unconstitutional and the application of them to him would be a denial of his rights as an American citizen and for him to voluntarily obey them would be a waiver of his constitutional rights; that he especially believed that the orders discriminated against him purely on the basis of his ancestry, race and color and had always been taught that such

discrimination violated one of the fundamental principles upon which our government is based; that he believed it his right and his duty as a good American citizen to refuse to obey the Exclusion Orders and curfew regulations and to defend this prosecution in order that he might have the constitutional questions involved properly raised and determined in a court of law (Tr. pages 62, 63).

The issues in this appeal are the constitutionality or validity of the President's Executive Order No. 9066 (appendix No. 2) and of the Public Proclamations Nos. 1, 2 and 3 and Civilian Exclusion Order No. 57 (appendix Nos. 3, 4, 5, and 6). These issues were raised by the amended demurrer and plea in abatement to the indictment, by the motion to suppress evidence at the trial made before any evidence was introduce, by the motions challenging the sufficiency of the evidence, made both at the close of the Government's case in chief and at the close of the trial, and the motion in arrest of judgment made after the appellant had been declared by the court to be guilty of the offenses charged in the indictment.

Appellant was found guilty on both counts of the indictment on October 20, 1942 (Tr. page 35). Judgment and sentence of the court were entered on October 21, 1942 (Tr. pages 45, 46). Notice of appeal was served and filed October 23, 1942 (Tr. pages 47-51). Pursuant to affidavit for appeal in forma pauperis filed October 23, 1942 (Tr. pages 54-56), an order was entered October 23, 1942 (Tr. page 57) dispensing with payment of fees and costs of printing record on appeal.

SPECIFICATION OF ERRORS

Appellant contends that the trial court erred in the following particulars:

1. In overruling the amended demurrer to the indictment, and each count thereof.

2. In denying appellant's plea in abatement to the indictment, and each count thereof.

3. In denying appellant's motions to suppress the evidence, challenging the sufficiency of the evidence and to dismiss the action and discharge the appellant.

Since the amended demurrer, plea in abatement and several motions made at the trial (Tr. 88, 89), all are directed to the issues raised, they will be treated in the argument as one specification or error as including all the assignment of errors in the transcript of record.

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

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GORDON KOYOSHI HIRABAYASHI,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee

No. 10308

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Upon Appeal from the United States District Court

for the Western District of Washington,

Northern Division.

- - - - - - - -

APPELLANT'S OPENING BRIEF

- - - - - - - -

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ARGUMENT

SUMMARY

Appellant contends that:

I

Executive Order No. 9066 of the President, and Public Proclamations No. 1, 2 and 3 and Civilian Exclusion Order No. 57 of the Military Commander are unconstitutional and void for the following reasons: Void on their face as not being authorized by Congress under the Alien Enemy Act (Title 50, Sec. 21-24, U.S.C.A.), or at all; void on their face and by application to American citizens as being a discrimination against a class based entirely upon race and color; void on their face on application to American citizens as class legislation by classing American citizens with alien enemies; void on their face and by application to American citizens by denying them due process of law and equal protection of the laws; that no martial law exists on the Pacific Coast, so the decisions of Ex parte Milligan, 4 Wall (U.S.) 2, 18, U.S. 27, and Sterling v. Constantin, 287 U.S. 378, 77 L. Ed. 375, are controlling in this case.

II

Public Law No. 503, under which the appellant was prosecuted, is void for the following reasons: It is too indefinite and uncertain to constitute a valid criminal statute; it attempts to delegate powers in future, to create military areas and issue restrictions, the violation of which are the basis of the prosecution under it; it attempts to delegate power to define a crime by leaving it to the court and jury to determine.

III

Public Law No. 503, through the application of Executive Order No. 9066, Public Proclamations No. 1, 2 and 3, and Civilian Exclusion Order No. 57, violates the following fundamental constitutional rights and liberties: It becomes a bill

attainder; it denies due process of law and equal protection of the laws; it creates a title of nobility in the white race; it denies right of trial by jury to American citizens of Japanese ancestry; it constitutes an unreasonable seizure of the person of the appellant; internment, enforced by Federal troops and under military guard, is an involuntary servitude which is not a punishment for crime, prohibited by the Thirteenth Amendment; it constitutes cruel and inhuman punishment for an act which is not a crime; it is unconstitutional abridgement of the fundamental "privileges and immunities" guaranteed by the Constitution; it deprives American citizens of liberty and property without due process of law and takes private property without compensation.

IV

The entire procedure set up by the Military Commander and the restrictions and regulations imposed by him in the military areas is a usurpation of power which will result in supplanting our form of government and its democratic processes with a military oligarchy.

ARGUMENT IN GENERAL

INVALIDITY OF EXECUTIVE ORDER NO. 9066, PUBLIC PROCLAMATIONS NO. 1, 2 and 3 and CIVILIAN EXCLUSION ORDER NO. 57.

These are void on their face and as applied to the appellant and other United States citizens of Japanese ancestry as they are a ursurpation by the President and the Military Commander of legislative power which, under Article I, Sec. 1 and Sec. 8, clauses 1, 14 and 18 of the Constitution is lodged exclusively in the Congress. Under our tripartite form of government the President and his subordinate executive officers cannot exercise legislative

power. These constitutional safeguards were adopted for the specific purpose of forever precluding a loss of our democratic government of representatives elected by the people and a substitution of a dictatorship over this nation.

The courts have most jealously guarded this legislative power from any encroachment by the executive branch. No emergency has ever been deemed so great as to warrant any letdown in the vigilance with which the provisions of the Constitution and the liberties and freedoms it guarantees are watched and protected.

Even the emergency of total war which has not reached our shores by invasion cannot justify this attempted suspension of the Constitutional provisions.

As has so many times happened in the past, the courts are now the only sanctuary where citizens can find the needed protection of their rights, privileges and immunities under their Constitution.

Were this court to sustain such unwarranted and unlawful changes in the constitutional powers without the sanction of the people in the manner provided in the Constitution, then when the members of the armed forces return from victory over the totalitarian powers they will return only to find the Constitution and government which they fought to retain and insure to posterity has already been lost and their deeds were in vain.

THE ALIEN ENEMY ACT

The Act of July 6th, 1798, 1 Statutues 577, as amended by Act of April 16th, 1918, 40 Statutes 531, is now contained in Title 50 U.S.C.A. Sec. 21-24. Section 21 reads:

"Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of theose who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety." (Italics ours.)

This law was enacted under the powers vested alone in Congress in order to "provide for the common defense and general welfare of the United States". (Article I, Sec. 8, clause 1.)

Under this statute as well as at common law, alien enemies are subject to apprehension and interment and treatment similar to prisoners of war as a precautionary preventative measure designed to deprive alien enemies in our midst from ability to commit any acts detrimental to the people or government of this nation.

The law has not been further amended, nor has Congress enacted any other or further legislation on this subject. The fact that Congress has not seen fit to enlarge the scope of this law is most significant in this case.

Hence, the President and his subordinate executive officers are limited to the apprehension and interment of alien enemies and no others.

In his proclamation No. 2525 (appendix page 1), of December 7th, 1941, the President quoted said Sec. 21 verbatim, referred to sections 22, 23 and 24 as further authority and then sets forth the conduct to be observed by

alien enemy Japanese and directs the Attorney General "to cause the apprehension of such alien enemies as in the judgment" of the Attorney General "are subject to apprehension or deportation under the regulations" therein established.

The Alien Enemy Act, therefore, is the sole authority of the President or his subordinate officers, including the Military Commander, and they were and are restricted to the powers therein delegated by Congress. Muir v. Louisville & N.R. Co., 277 Fed. 886.

Hence, the President is limited to the exercise of those executive powers enumerated in Article II of the Constitution and, in addition, such "limited discretionary authority" as may be properly delegated to him by Congress. Schechter Poultry Corp. v. U.S., 295 U.S. 495.

Executive Order No. 9066 (appendix Page 2) issued by the President February 19th, 1942, stems, therefore, from the authority of the Alien Enemy Act. Hence, when the order says "any or all person" it could apply only to alien enemies.

Since the Military Commander is but a subordinate officer of the President, the powers of the military to prescribe military areas from which "any or all person" could be excluded and to impose the restrictions relative to the conduct of such person, were limited to restricting or excluding only alien enemies.

So when in Public Proclamation No. 2 the Military Commander provided that "any person of Japanese ancestry" was subject to the exclusion provisions; and when he further in Civilian Exclusion Order No. 57 proceeded to apply the restrictions and exclusion orders to "all persons of Japanese ancestry, both

alien and non-alien", he exceeded his authority so far as he included and applied the restrictions and exclusion provisions to American citizens.

We call the court's attention to the fact that the exclusion orders called for compulsory removal from their homes and internment in concentration camps of American citizens without according them any hearing or any other element of due process of law. Enforcement of the exclusion orders was effected by "the use of Federal troops" (Executive Order No. 9066) and the threat of prosecution under Public Law No. 503 (Civilian Exclusion Order No. 57).

The application, therefore, of the proclamations and exclusion order to the appellant and other American citizens was not only unconstitutional and void but an arbitrary and capricious usurpation of the governmental power by the Military Commander.

Hence appellant here, being a native born American citizen, was under no duty to report to the Civil Control Station on May 11th or 12th, 1942, or at all. And having no duty to obey the orders, he could be guilty of no crime under Public Law No. 503 in refusing to obey them.

The foregoing argument applies with equal force to the curfew regulations upon which Count II of the indictment was based.

In the report of the Senate Committee on Immigration No. 1496, issued June 18th, 1942, to whom was referred Senate Bill No. 2293 (appellant's Exhibit A-1), the Committee in commenting upon the power of the President under the Alien Enemy Act to issue his proclamation of December 7th, 1941, says:

> "By reason of the decision of the United States Supreme Court in the case of U.S. v. Wong Kim Ark, 169 U.S. 649, (1898), the Department of Justice is of the opinion that

> the descriptive words used in such proclamation and in the statute under the authority of which the proclamation was issued, i.e. 'natives, citizens, denizens or subjects of the Empire of Japan' do not include Japanese born in the United States."

It is thus obvious that Congress itself knew that the President and, hence, the Military Commander, had no authority or power to apprehend and intern native born American citizens such as the appellant here.

It is most significant that the authority to deal with alien enemies was shifted from the Attorney General, who is the head of the Department of Justice, to the Secretary of War and his "appropriate Military Commander", by Executive Order No. 9066 of the President. Having the opinion he did that because of the Wong Kim Ark decision, native born American citizens of Japanese ancestry could not be interned under the Alien Enemy Act, the Attorney General could not under his oath of office issue orders which were in violation of the law of the land.

Some means, therefore, had to be found to circumvent the Constitution, the Act of Congress and the decision of the United States Supreme Court. For pressure from the groups of articulate baiters of Orientals who, as reported by the Tolan Committee in House Report No. 2124, page 147, "advocating complete evacuation, felt that no constitutional right or humanitarian consideration" should prevent the complete evacuation of all Japanese from the Pacific Coast, was too strong to be denied. And who could be more efficient than the Military Commander to fling constitutional rights and humanitarian principles into the discard? The military, which knows only the cold rules of court-martial, was the hand picked tool. Thus we see the steps: (1) The Attorney General recognizes the force of the Supreme Court decision in the Wong Kim Ark case. (2) The evacuation duties are transferred to the Secretary of War and his Military Commander by an executive order which

changed the wording from "alien enemies" to "any or all person". (3) The Military Commander in his proclamations adds a class of person, to-wit: "Any person of Japanese ancestry". (4) Finally, the Military Commander in Civilian Exclusion Order No. 57 included "all persons of Japanese ancestry, both alien and non-alien".

NATIONAL SELF-DEFENSE ARGUMENT IS SPURIOUS

The only justification advanced by the Government in the court below was that the civilian exclusion orders as applied to both aliens and American citizens were necessary to our national defense under the emergency of war. This argument has been repudiated by the United States Supreme Court on several occasions. In Ex parte Milligan, 4 Wall 2 at page 124, the court summed up the question thusly:

> "The proposition is this: That in a time of war, the Commander of the armed force (if, in his opinion, the exigencies of the country demand it, and of which he is to judge) has the power within the lines of his military district to suspend all civil rights and their remedies and to subject citizens as well as soldiers to the rule of his will; and in the exercise of his lawful authority cannot be restrained except by his superior officer or the President of the United States.
>
> "If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is sub-divided into military departments for mere convenience, a commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the executive, substitute military force for and to the exclusion of the laws and punish all persons as he thinks right and proper without fixed or certain rules. The statement of this proposition shows its importance; for if true republican government is a failure, there is an end of liberty regulated by laws. Martial law established on such a basis destroys every guarantee of the Constitution and effectively renders the "military independent of and superior to the civil power"***"Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcileable and in the conflict one or the other must perish."

In Ex parte Gilroy, 257 Fed. 110, in passing upon the right of an American citizen under the Alien Enemy Act, the court said:

> "Vital as is the necessity in time of war not to hamper acts of the Executive in the defense of the nation and in the prosecution of the war, of equal, and perhaps greater importance is the preservation of constitutional rights."

Again in Hamilton v. Kentucky Distillery, 40 U.S. 108, the court said:

> "The war power of the United States like other powers and like the police power of the state, is subject to applicable constitutional limitations."

In U.S. v. Cohen Grocer Co., 255 U.S. 81, the Supreme Court comments upon the ruling of the lower court as to whether or not the existence of a state of war suspended the provisions of the Constitution, as follows:

> "We are of the opinion that the court below was clearly right in ruling that the decisions of this court indisputably establish that the mere existence of a state of war could not suspend or change the operation upon the power of Congress of the limitations of the Fifth and Sixty Amendments. (Citing Ex parte Milligan and other cases).
>
> "It follows that in testing the operation of the Constitution upon the subjects here involved the question of the existence or non-existence of a state of war becomes negligible and we put it out of view."

Finally, in 1932 in Sterling v. Constantin, 287, U.S. 378, 77 L.Ed. 375, the Supreme Court granted an injunction against the Governor of Texas who had tried to control by executive orders, enforced by the military, the output of gasoline in areas where the Governor claimed that threatened riots and insurrections justified his orders as a military necessity. Speaking through Chief Justice Hughes, the court said on this subject:

> "The action of the Governor of a state in limiting, by executive order enforced by the military arm of the state, permissible production of petroleum at a time and place where the courts were open and functioning is not due process of law***The absence of necessity for military order of the Governor as Commander in Chief of the state's military forces***is established by showing that there was no actual uprising or showing of violence or anything more than threats of violence or breaches of the peace against oil producers and that there was no closure of courts or failure of civil authorities.

In rejecting the contentions of the appellants in that case, that the action of the Military Commander may be "taken as conclusive proof of its own necessity and must be accepted as in itself due process of law," the court said on page 402:

> "Appellant's contentions find their appropriate answer in what was said by this court in Ex parte Milligan, 4 Wall 2, 124, 18 L.Ed. 281, 296, a statement as applicable to the military authority of the state in the case of insurrection as to the military authority of the nation in time of war: (Italics ours)

and then follows the foregoing quotation from the Milligan case.

We submit that it is still the law as established by the foregoing decisions that since no military law has been declared and there has been no closure of the courts or failure of civil authorities, the President, Secretary of War and Military Commanders were and are without constitututional power or authority to enforce either the exclusion order or the curfew law against American citizens.

FIFTH AND SIXTH AMENDMENTS

Under the "due process" clause of the Fifth Amendment and the requirements of trial in the Sixth Amendment, before any person, especially a native born American citizen, can be interned, he must be charged with a violation of some law, be granted a hearing before an impartial tribunal where he can appear and defend himself, have counsel to assist him and compel the attendance of

witnesses to testify on his behalf. The appellant and other American citizens were accorded none of these. They have not had their "day in court". "Any deprivation of any right guaranteed by the Constitution or any act of Congress or by the settled usage of the common law, is a denial of due process of law". Felts v. Murphy, 201 U.S. 123, 50 L.Ed. 689, and Ong Chang Wing v. U.S., 218 U.S. 272, 54 L. Ed 1040.

It is so elementary and fundamental as to require no citation of authority that even Congress cannot enact legislation which denies a person this right of due process and a hearing. As was said in Truax v. Corrigan, 257 U.S. 312 at 322:

> "The due process clause requires that every man shall have the protection of his day in court and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

In the preamble to Executive Order No. 9066, the President said:

> "****the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities."

Acts of espionage and acts ofsabotage of national defense materials, premises or utilities are acts of treason against our government. So that the purpose expressed in the order is to protect us against acts of treason by persons within our midst.

There exists a sound reason for a suspicion that alien enemies, those who owe their allegiance to hostile powers, would commit such acts of treason-- it would be but the natural thing for them to do, but there is no reason or ground based upon any facts which justifies any suspicion that American citizens

born, raised and educated in our country will commit treason against their own government.

Yet the application of the exclusion orders against American citizens without according them any hearing where they could prove their loyalty, and especially the manner in which the exclusion orders were applied to American citizens, constituted not only an attaching of a suspicion of treasonable intent to them as a class merely because of their ancestry, but more -- it amounted to an imposition of guilt of such treasonable intent.

It is incredible that in this "last stronghold of democracy" innocent persons could thus be ground under the heel of a military autocracy which set itself up as a prosecutor, judge, jury and executioner. The entire procedure has all the earmarks of the totalitarian Nazi-ism as applied in Germany to a class because of its racial origin.

CLASS LEGISLATION

Executive Order No. 9066, Public Proclamations No. 2 and 3 and Civilian Exclusion Order No. 57 on their face and as applied to American citizens of Japanese ancestry constitute unlawful and discrimitory class legislation.

A.

Classing American Citizens as Alien Enemies:

That in time of war the Federal Government has power to take the person and property of an alien enemy is conceded. Brown vs. U.S. (1814) 8 Cranch 110, 121.

Although during World War I alien enemies were given individual hearings to determine whether they were dangerous to the prosecution of the war or a menace to public safety. See report of Attorney General 1918, page 26.

On page 35 of that report the Attorney General said that this power to apprehend and intern even enemy aliens under the Alien Enemy Act was:

"anomalous under the American judicial system in that it provides for the summary exercise of executive authority and no power is vested in the courts to modify the action or review the grounds of the Chief Executive when once exercised for the internment of an alien enemy." (Italics ours)

But as to American citizens, there is no legal authority for placing them in a class with alien enemies (House Report No. 2124, page 166), for the constitutional guarantees are not suspended in war time, Ex parte Milligan, supra; U.S. v. Cohen Grocery Co., supra, Sterling v. Constantin, supra.

So even the Congress has no such plenary power of interment without a hearing and any act of it to discriminate against a minority of citizens of the United States, even in time of war, would be arbitrary, unreasonable and oppressive and repugnant to the due process of law and guarantee of equal protection of the laws. YW Cong Eng v. Trinidad, 271 U.S. 528, U. S. v. Yount, 267 Fed. 861, Sims v. Rives, 84 Fed (2) 871, certiorari denied, 298 U.S. 682, and Civil Rights Statutes, 8 U.S. C. A. 41-43, 18 U.S.C.A. 51, 52.

Obviously, what Congress cannot of itself do, it cannot delegate to the executive or his subordinate officers to do.

B.

Discrimination Based on Race or Color:

Any classification, even by Congress or a legislative body, which is based upon race or color has been held to be purely arbitrary, offensive and capricious. See American Sugar Refining Co. v. Louisiana, 179 U.S. 89, 45 L.Ed 102; State v. Mitchell (Main) 53 Atl. 889, 94 A.S. R. 481.

Civilian Exclusion Order No. 57 completely omits Japanese, German and Italian alien enemies as classes, a classification based upon allegiance which would have been lawful under the Alien Enemy Act, but, quite to the contrary,

ancestry or race. Such action on the part of the Military Commander was not only without power or authority but was in direct conflict with the decisions of the Supreme Court. In Yu Cong Eng v. Trinidad, 271 U.S. 500, was involved a Philippine statute which prohibited merchants from keeping account books in any language except English, Spanish or a Filipino dialect. Appellant was a Chinese merchant who could read, write and speak only the Chinese language. In holding the statute unconstitutional and void, the court said:

> "We are clearly of the opinion that it is not within the police power of the Philippine legislature, because it would be oppressive and arbitrary, to prohibit Chinese merchants from maintaining a set of books in the Chines language and in Chinese characters, and thus prevent them from keeping advised of the status of their business and directing its conduct. *** It would greatly and disastrously curtail their liberty of action and be oppressive and damaging in the preservation of their property."
>
> "In Holden v. U. S., 169 U. S. 366, at 398, 42 L. Ed. 780, at 793, this court said:
>
> > 'The question in each ase is whether the legislature has adopted a reasonable discretion or whether its action is a mere excuse for an unjust discrimination or the oppression or spoiliation of a particular class.'
>
> "As against the Chinese merchants of the Philippines, we think the present law, which deprives them of something indispensable and is obviously intended chiefly to affect them as distinguished from the rest of the community, is a denial to them of the equal protection of the laws."

In Buchanan v. Warley, 245 U. S. 60, 62 L. Ed. 149, was involved an ordinance in a city in Kentucky which prohibited people of the colored race from owning property in blocks where the owners were predominantly of the white race. In holding the ordinance void as denying property without due process of law and not a valid use of the police power, the court said:

"The contention that the ordinance prohibits amalgamation of races and promotes public peace by preventing race conflicts cannot obtain against the direct prohibitions of the Federal Constitution."

In City of Richmond v. Deans, 37 Fed. (2) 712 (CCA), which was affirmed in 281 U. S. 704, an ordinance was held unconsititutional which prohibited the use of buildings as residences in a street where a majority of the residences were occupied by persons with whom the person prohibited was forbidden to intermarry. After citing Buchanan v. Warley, supra, and Harmon v. Tyler, 273 U. S. 668, and Irvine v. City of Clifton Forge (Va.), 97 S. E. 310, the court said:

"An attempt is made to distinguish the case at bar from these cases on the ground that the zoning ordinance here under consideration bases its interdiction on the legal prohibition to marry, and not on race or color; but as the legal prohibition to marry is itself based on race, the question here, in final analysis, is identical with that which the Supreme Court has twice decided in the cases cited."

Finally, in the leading case of Yick Wo vs. Hopkins, 118 U.S. 356, 30 L.Ed. 220, an ordinance licensing laundry businesses was so administered by the public officials that only Chinese applicants were denied licenses while all other applications were granted. In holding the application of the ordinance as being discriminatory against Chinese on account of race and color and, hence, a denial of due process of law and equal protection of the law's clauses, the court said:

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution *** It appears that both petitioners have complied with every requisite deemed by the law or the public officers charged with

> its administration necessary for the protection of neighborhood property from fire or as a precaution against injury to public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on in the accustomed manner their harmless and useful occupation on which they depend for a livelihood, and while this consent of the supervisors is withheld from them and two hundred others who have also petitioned, all of whom happen to be Chinese subjects, eighty others, not Chinese subjects, are permitted to carry on under similar conditions. The fact of this discrimination is admitted. No reason for it is shown and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong and which in the eye of the law is not justified." (Italics ours)

The proclamations and exclusion orders of the Military Commander on their face and in their application openly and admittedly discriminate purely on the basis of race and color.

PURPOSE OF EXCLUSION ORDER

What then was the purpose behind the issuance of an exclusion order which specifically singled out persons, aliens and non-aliens, of the yellow race? The preamble to Executive Order No. 9066 declares that the purpose of the order was to provide "every possible protection against espionage and against sabotage to national defense materials, premises and utilities." That order was issued two months and twelve days after Pearl Harbor and the declaration of war against Japan. In the order the President attempted to authorize the Military Commander to exclude "any and all person" from the military areas. In view of the preamble, that phrase "any and all persons" was meant to include only such persons as might be found to be engaged in espionage or sabotage, regardless of race or color, whether aliens or citizens, or alien enemies or alien nationals.

Yet there were not necessities or exigencies of war which required the exclusion of any person without a hearing in each individual case. Eleven

months have expired, at the time of writing this brief, since Pearl Harbor. But there have been no exclusions as to German or Italian aliens or German or Italian citizens; nor, for that matter, of any other persons except Japanese.

Why then this mass exclusion without hearings applied only to persons of the yellow race, regardless of citizenship? Why the wielding of un-American despotic power over the lives, liberties and properties of people of this one race? On the Atlantic Coast the Government set up boards before whom suspects were brought and charged with subversive activities. Hearings were had upon each individual case where the accused was accorded some form of due process of law.

The Federal Bureau of Investigation has the full confidence of the people of this nation that its members are "fully competent to handle sabotage and the espionage problem on the west coast". See House Report No. 2124, page 156.

On October 12th, 1942, ten months and five days after Pearl Harbor, the Attorney General of the United States announced through the President that alien enemy restrictions no longer applied to Italian alien enemies because "We find that out of a total of 600,000 there has been cause to intern only 228, or fewer than one-twentieth of one per cent".

Statistics show that of the 126,947 Japanese in the United States, the west coast states of Washington, Oregon and California contained 88.5 per cent, or 112,353. (House Report No. 2124, page 91). That is, in the Pacific Coast states the total number of Japanese, both citizens and aliens, was slightly over one-sixth of the toal Italians in the whole county.

It took but ten months for the FBI and other agencies to investigate the

600,000 Italians and grant hearings to those demanding them, yet no attempt was made to investigate the 112,000 Japanese nor to set up hearing boards where they could defend themselves -- though the exclusion orders were not made effective until five months after Pearl Habor.

What then is the obvious answer to the query? Why a mass exclusion of all Japanese without benefit of hearing and without due process of law?

The answer is that the military were and are the tool of pressure groups on this coast who seek the elimination of all members of the Japanese race from this coast.

In his testimony before the Tolan Committee, Mr. Louis Goldblatt, Sec etary pf the California State Congress of Industrial Organisations, testified as folloews:

> "We feel, however, that a good deal of this problem has gotten out of hand, Mr. Tolan, inasmuch as both the local and State authorities, instead of becoming bastions of defense, of Democracy and justice, joined the wolf pack when the cry came out "Let's get the yellow menace". As a matter of fact, we believe the present situation is a great victory for the yellow press and for the fifth column that is operating in this country, which is attempting to convert this war from a war against the Axis Powers into a war against the "yellow peril". We believe there is a large element of that particular factor in this present situation."

Again, Dr. Eric C. Bellquist, of the Department of Political Science, the University of California, said:

> "Here on the coast we have a radio commentator who reviews the news at 9 o'clock in the morning. For some time he has been urging that every Japanese, alien or citizen, be transplanted to the other side of the Rockies. In appeal after appeal he has incited the people and aroused their suspicion. We have a former far eastern newspaper correspondent who, toward the end, had difficulties in Japan and has since been reviling the Japanese in our country and urging restrictive action of far-reaching scope against both aliens and citizens. We have certain interests in the State -- some agricultural, some "patriotic", some closely affiliated with certain newspapers -- which have

long been hostile to orientals in general as well as other aliens, and which have now found a golden opportunity to come out against the Japanese on the Pacific Coast.

In summarizing the attitude of these groups, the Committee on page 147 of the Report says:

"These groups advocating complete evacuation felt that no constitutional right or humanitarian consideration nor any consideration of the effect on agricultural production on the west coast should prevent the complete evacuation of the Japanese from the area."

It is inconceivable, yet apparently true, that groups of persons who parade as good American citizens would take advantage of the condition of war to stir up a racial hatred and attempt to have their selfish, mercenary and un-American prejudice satisfied in such an inhuman manner.

It is history well known to the members of this Court that the Dred Scott decision of the United States Supreme Court was a contributing factor of no small weight in involving this nation in a civil war to decide whether inhuman discrimination of a race because of its color could obtain in this country.

NO MARTIAL LAW HAS BEEN DECLARED

Congress, which alone has the power, has not declared martial law in any portion of this country. There is on the Pacific Coast no "theatre of war" where alone martial law can prevail. See Ex parte Milligan, 4 Wall 2. There have not been and were not between December 7th, 1941 and May 12th, 1942 any riots or civil disturbances which might partially justify some use of military force. The civil courts have at all times been open and the civil authority is still active.

The rules laid down in Ex parte Milligan, supra, U.S. v. Cohen Grocery Co., supra, and Sterling v. Constantin, supra, are still the supreme law of this land and are controlling and must be followed by this Court in

this case. In Bishop v. Vandercook, 228 Mich. 299, 200 N.W. 278, the Court laid down the rule that martial law or rule cannot exist in company with civil law or authority and until the civilian power is suspended or when civil law is in force, a civil martial law cannot be enforced either in whole or in part in the same territory.

Therefore, as long as the civil agencies and authorities are functioning in the State of Washington, martial law could not exist and all of the provisions, limitations and protections of the Constitution were in full force and effect.

CONSTITUTIONAL RIGHTS INVADED

Public Law No. 503 is a Bill of Attainder.

Article 1, Section 9, clause 3 of the Constitution prohibits Congress from enacting a bill of attainder. A bill of attainder at English law pronounced a death sentence on the accused by an act of Parliament, while a bill of pains and penalties was an act pronouncing milder punishment. The bill of attainder in our Constitution includes both.

> "In the case of either bills of attainder or bills of pains and penalties, the legislative body, in addition to its legitimate functions, exercised the powers and office of judge, pronounces upon the guilt of the party, without any forms abd safeguards of trial, determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise, and fixes the degree of punishment in accordance with its own notions of the enormity of the offense." 11 A.J. 1175.

Public law No. 503, assisted by the application of the exclusion orders, become in effect a bill of attainder because the Military Commander was the legislature in issuing the Exclusion Order and also the prosecutor, judge and jury -- he pronounced the appellant and all other American citizens of Japanese ancestry guilty without any form or safeguards of trial -- he determined the sufficiency of the proof to be produced (merely that a person was of Japanese

ancestry), he fixed the punishment (internment in a concentration camp under a military guard) according to his own notions and will.

TITLE OF NOBILITY GRANTED

The Exclusion Order and the statute, being applied only to members of the yellow race, appear to grant the title of nobility of "white" or"Aryan" as to all citizens except those who belong to the yellow race. In other words, if one has a white pedigree his constitutional rights are still indestructible but, if he belongs to the yellow race, he no longer has the rights of a citizen and a free man but is only a serf to his "noble" overlord, the white man.

INVOLUNTARY SERVITUDE

The Constitution by the Thirteenth Amendment prohibits slavery or involuntary servitude except as a punishment for crime of which the person must have been duly convicted.

The American citizen of Japanese ancestry by the application of the Exclusion Order was, against his will and volition, apprehended and interned in a place not of his choice, yet he had been convicted of no crime nor even charged with the commission of one.

It has always been understood that the Thirteenth Amendment was adopted by the people of the United States to forever prohibit such vicious practice.

TREASON

The appellant merely reiterates what he has heretofore said that for one to engage in espionage or commit an act of sabotage against national defense materials, premises or utilities is an act of treason against t is country and the Alien Enemy Act was enacted to protect the country against such acts of treason by alien enemies.

So the application of the Exclusion Order against American citizens of

Japanese ancestry was, in effect, a judgment or conviction of treason without one iota of evidence of even a treasonable intention, to say nothing of overt acts proven by the testimony of at least two witnesses as required by Article III, Section 3 of the Constitution.

FUNDAMENTAL LIBERTIES

The Exclusion Order and Public Law No. 503 deprive the appellant and all other citizens of the same ancestry of the fundamental privileges and immunities of citizenship guaranteed by the Constitution, which privileges, immunities and rights are "so vital to the maintenance of democratic institutions and which are immutable principles of justice which inhere in the very idea of free government" and are "fundamental rights which belong to every citizen as a member of society". To further enumerate them or cite all of the authorities in support of them is unnecessary before this Court, for the decisions of the Supreme Court under the due process clause and equal protection of the laws clause are replete with definitions of these rights, privileges and immunities.

UNREASONABLE SEARCH AND SEIZURE

Finally, Civil Exclusion Order No. 57 on its face and on its application to the appellant and all other American born citizens of Japanese ancestry upon whom it is operated violates the constitutional provision against the unreasonable seizure of their persons as prohibited in the Fourth Amendment.

It has been held that a person cannot be convicted and sentenced on the charge of being a suspicious person when the suspicion of which the accused is the object is wholly undefined and in no manner connected with any criminal act or conduct. Stoutenburgh v. Frazier, 16 App. Cas. (D.C.) 229, 48 L.R.A. 220.

Before the person of any citizen can be lawfully seized, a warrant for

his seizure must first be issued and then only on an oath or affirmation made by a responsible person which states a prima facie case against the accused. 24 R.C.L. 707, sec. 9. Mere suspicions that the accused committed a crime without a reasonable ground for believing them to be based on facts, will not amount to a probable cause which will support a valid warrant and arrest.

The provisions of this Amendment apply to all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of life. As the Court said in one case, the breaking of doors and rummaging of drawers is not the essence of the offence of unlawful seizure, but it is an invasion of his indefeasible right of personal security and personal liberty and private property where that right has never been forfeited by his conviction of a public offense. Boyd v. U.S., 116 U.S. 616, Weeks v. U.S., 232 U.S. 383, 58 L. Ed. 652, Newberry v. Carpenter (Mich.) 65 N.W. 630, 61 A.S.R. 346.

CONCLUSION

Executive Order No. 9066 and the public proclamations and Civilian Exclusion Order No. 57 are both on their face and in their application unconstitutional and void for: They exceed the "limited discretionary authority" which the Alien Enemy Act granted to the Chief Executive and his subordinate officers; they deny the appellant and all other American Citizens of Japanese ancestry the "due process of law" and "equal protection of the laws" guaranteed by the Fifth and Sexth Amendments to the Federal Constitution; they are arbitrary, offensive and cruel; they unjustly discriminate against a class of American citizens purely on the basis of race and color; they attempt to create military zones and establish restrictions therein without any reasonable relation to the objects to be accomplished by the exclusion refulations; the

attempt to supplant our constitutional government and its established democratic processes with a military oligarchy; they effect an unreasonable seizure of the persons of American citizens of Japanese ancestry in violation of the Forth Amendment; as applied, they convict American Citizens of treason or treasonable intent against the United States Government without any trial or proof of any overt acts; they deny to this class of American citizens the privileges and immunities enjoyed and exercised by all other persons, including Italian and German enemy aliens; they deprive these American citizens of their property and its enjoyment without compensation and deny them liberty and property without due process of law; they set up in the white or "Aryan" race a title of nobility, since American citizens of a colored race are denied the traditional rights, blessings and privileges of citizenship; they impose upon the American citizens of Japanese ancestry an involuntary servitude forbidden by the Thirteenth Amendment. Because of the foregoing vital, constitutional and statutory defects, the appellant here was under no duty to obey or comply with either the Exclusion Order No. 57 upon which Count I of the indictment is based or the curfew regulation upon which Count II of the indictment is based. Further, it was his constitutional and void -- more, it was his duty as a good American citizen who believes in our constitutional form of government to refuse to obey them to the end that he might challenge their validity.

Public Law N. 503 is unconstitutional and void for: It is too indefinite and uncertain on its face to constitute a criminal statute; it fails to delineate any course of conduct or inform any person of the acts he must avoid; it fails to

fix any ascertainable standard of guilt; it fails to inform any person accused of its violation of the nature and cause of the accusation against him; it fails to disclose any act of omission or commission which is proscribed or to be proscribed in the military areas; it attempts to delegate the power, which resides in Congress alone, to define the crimes involved, to the court or jury, or both; it fails to prescribe the nature, number, character, extent, duration or limitation of the military areas or zones referred to or to declare any purpose for the creation of such areas or zones. It attempts to unlawfully delegate in future to the Chief Executive or his subordinate officers constitutional powers which the Congress cannot delegate; it fails to prescribe the type and manner of notice that must be given to the public of the restrictions or regulations which will givern the conduct of civilians in the military areas or zones. The foregoing defects in Public Law No. 503 cannot be cured and were not cured by the executive orders or the proclamations or the exclusions orders of the Military Commander issued after the enactment. The Law could ratify orders issued in the past, but not any as to the future. To have the effect of ratification in future admits to the creation of an ex post facto law which the Constitution prohibits.

The incorporation of future executive orders in the law purely by reference makes the law and its application, pursuant to such future orders, void. For instance, how on March 21st, 1942, the date of the enactment of Public Law No. 503, could Congress know that the military exclusion orders issued in May 1942 would not violate constitutional rights?

When Congress passed Public Law No. 503, Civilian Exclusion Order No. 57 was not even contemplated. So Congress could not validate any provisions of the Exclusion Order or any of the regulations or restrictions contained therein

even if it had the constitutional power. Hence, since the Executive Order and military orders were void for the reasons herein given, and the attempted criminal act of Public Law No. 503 is void on the grounds above stated, the instructions of the trial court that if they found that the defendant had knowledge of the Exclusion Order or curfew regulation and also found that he had failed or refused to obey them, they must bring in a verdict of guilty, were erroneous and against the law, and the Court erred in refusing to give the defendant's proposed instruction.

We further submit that the trial court erred in overruling the amended demurrer to the indictment and denying the plea in abatement and in refusing to dismiss the action and discharge the defendant when proper motions so to do were made at the opening of the trial, at the close of the Government's case in chief and, finally, at the close of the entire case. This Court has no alternative but to hold that Executive Order No. 9066 and the military proclamations and Exclusion Order no. 57 are unconstitutional and void and to hold that Public Law No. 503 is unconstitutional and void. Hence, the judgment must be reversed with instructions to the Court to sustain the amended demurrer to the indictment and discharge the appellant.

Respectfully submitted,

FRANK L. WALTERS
Attorney for Appellant.

APPENDIX NO. 1

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION - No. 2525

WHEREAS it is provided by section 21 of title 50 of the United States Code as follows:

(Section 21 quoted verbatim.)

and

WHEREAS by sections 22, 23, and 25 of title 50 of the United States Code further provision is made relative to alien enemies:

PROCLAMATION

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, as President of the United States and as Commander in Chief of the Army and Navy of the United States, do hereby make public proclamation to all whom it may concern that an invasion has been perpetrated upon the territory of the United States by the Empire of Japan.

(Hereafter follows delineation of duties and authority of said officers "regarding conduct of alien enemies within continental United States".)

REGULATIONS

(Here contained are regulations relative to conduct of alien enemies which are not material to the issues of this cause.)

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington, this 7th day of December in the year of our Lord one thousand nine hundred and forty-one, of the independence of the United States of America the one hundred and sixty-sixth.

FRANKLIN D. ROOSEVELT.

By the president:

CORDELL HULL,
Secretary of State.

APPENDIX NO. 2

Executive Order - No. 9066

AUTHORIZING THE SECRETARY OF WAR TO PRESCRIBE MILITARY AREAS

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104):

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders who he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accomodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this orde . The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal Troops and other Federal Agencies, with authority to accept assistance of State and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972, dated December 12, 1941 nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

THE WHITE HOUSE,

February 19, 1942.

(Italics ours)

APPENDIX NO. 3

PUBLIC PROCLAMATION NO. 1

HEADQUARTERS, WESTERN DEFENSE COMMAND AND FOURTH ARMY,
Presidio of San Francisco, California, March 2, 1942.

TO THE PEOPLE WITHIN THE STATES OF ARIZONA, CALIFORNIA, OREGON, AND WASHINGTON, AND THE PUBLIC GENERALLY.

WHEREAS, by virtue of orders issued by the War Department on December 11, 1941, that portion of the United States lying within the States of Washington, Oregpon, California, Montana, Idaho, Nevada, Utah, and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

WHEREAS, by Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion; and

WHEREAS, the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

WHEREAS, the Western Defense Command embraces the entire Pacific Coast of the United States, which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

NOW, THEREFORE, I, J. L. DeWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that -

(Here is included description of military areas and zones.)

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A99, inclusive, as are within Military Area No. 2.

(Here follows instructions to aliens or "any person of Japanese ancestry now resident in Military Area No. 1" relative to changes of residence.)

6. The designation of prohibited and restricted areas within the Western Defense Command by the Attorney General of the United States under the Proclamations of December 7 and 8, 1941, and the instructions, rules, and regulations prescribed by him with respect to such prohibited and restricted areas, are hereby adopted and continued in full force and effect.

The duty and responsibility of the Federal Bureau of Investigation with respect to the investigation of alleged acts of espionage and sabotage are not altered by this proclamation.

J. L. DeWITT
Lieutenant General, U. S. Army,
Commanding.

(Italics ours)

APPENDIX NO. 4

PUBLIC PROCLAMATION NO. 2

(This proclamation re-establishes military area No. 1 and zones therein, and adds further military areas and zones not material to this action.)

APPENDIX NO. 5

Public Proclamation No. 3

HEADQUARTERS, WESTERN DEFENSE COMMAND AND FOURTH ARMY,
PRESIDIO OF SAN FRANCISCO, CALIFORNIA, March 24, 1942.

TO THE PEOPLE WITHIN THE STATES OF WASHINGTON, OREGON, CALIFORNIA, MONTANA, IDAHO, NEVADA, UTAH AND ARIZONA, AND THE PUBLIC GENERALLY:

WHEREAS, by Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and

WHEREAS, by Public Proclamation No. 2, dated March 16, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5, and 6 and Zones thereof, and

WHEREAS, the present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof:

NOW, THEREFORE I, J. L. DeWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations coveringthe conduct to be observed by all alien Japanese, all allien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned.

1. From and after 6:00 A.M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 p.m. and 6:00 A.M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their palce of residence.

(Here follows instructions and regulations not material to this cause.)

8. The Federal Bureau of Investigation is designated as the agency to enforce the foregoing provisions. It is requested that the civil police within the states affected by this Proclamation assist the Federal Bureau of Investigation by reporting to it the names and addresses of all persons believed to have violated these regulations.

J. L. DeWitt
Lieutenant General
U. S. Army, Commanding.

APPENDIX NO. 6

HEADQUARTERS
WESTERN DEFENSE COMMAND
AND FOURTH ARMY

Presidio of San Francisco, California
May 10, 1942.

CIVILIAN EXCLUSION ORDER NO. 57

1. Pursuant to the provisions of Public Proclamations No. 1 and 2, this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P.W.T., of Saturday, May 16, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from that portion of Military Area No. 1 described as follows:

(Here follows a description of portion of King County, State of Washington in Military Area No. 1, not involved in this cause.)

2. A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A.M. and 5:00 P.M., Monday, May 11, 1942, or during the same hours on Tuesday, May 12, 1942, to the Civil Control Station located at:

Christian Youth Center
2203 East Madison Street
Seattle, Washington.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P.W.T., of Saturday, May 16, 1942, will be liable to the criminal penalties provided by Public Law No. 503 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respects to Persons Entering, Remaining in, Leaving or Committing any Act in Military Areas or Zones," and alien Japanese will be subject to immediate apprehension and internment.

4. All persons with in the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the provisions of this order while those persons are in such Assembly Center.

J. L. DeWitt
Lieutenant General, U. S. Army
Commanding.

(Map of Area on reverse side).

WESTERN DEFENSE COMMAND AND FOURTH ARMY
WARTIME CIVIL CONTROL ADMINISTRATION

Presidio of San Francisco, California

INSTRUCTIONS
TO ALL PERSONS OF
JAPANESE
ANCESTRY
LIVING IN THE FOLLOWING AREA:

(Same description as above.)

Pursuant to the provisions of Civilian Exclusion Order No. 57, this Headquarters, dated May 10, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P.W.T., Saturday, May 16, 1942.

(Instructions relative to leaving the area and being evacuated therefrom.)

Go to the Civil Station between the hours of 8:00 A.M. and 5:00 P.M., Monday, May 11, 1942, or between the hours of 8:00 A.M. and 5:00 P.M., Tuesday, May 12, 1942, to receive further instructions.

J. L. DeWITT
Lieutenant General, U. S. Army
Commanding

(Italic ours)

APPENDIX NO. 7

Public Law 503, 77th Cong., 2nd sess., ch. 191

Provides:

"That whoever shall enter, remain in, leave or commit any act in any military area or military zone prescribed, under the the authority of an Executive Order of the President, by the Secretary of War, or by any military commander designated bytthe Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the orde of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than 1 year, or both, for each offense."

Approved March 21, 1942.