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Evacuation and Resettlement

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No. 70

In the Supreme Court of the United States

OCTOBER TERM, 1944

IN THE MATTER OF THE APPLICATION OF MITSUYE
ENDO FOR A WRIT OF HABEAS CORPUS

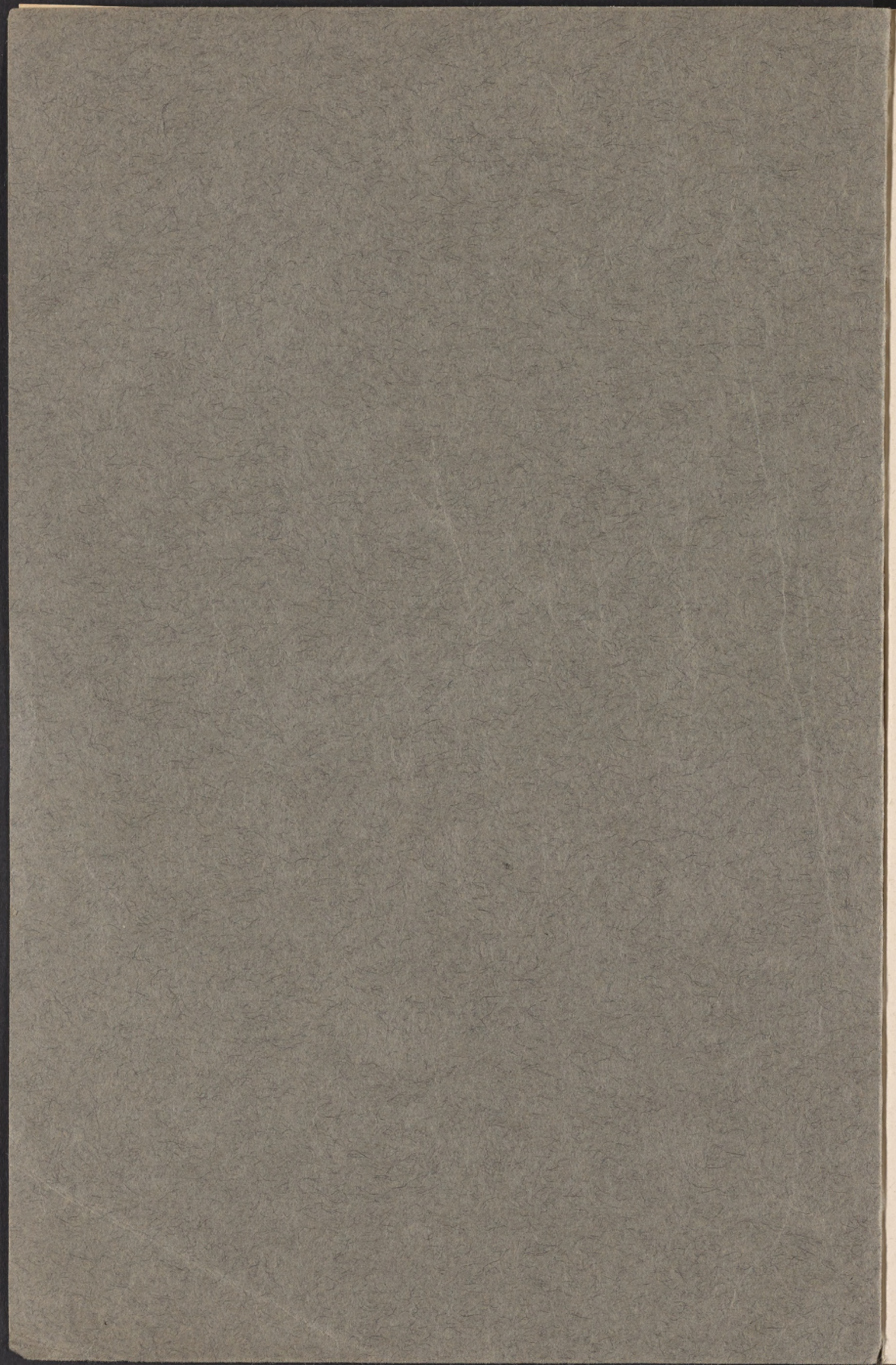
MITSUYE ENDO

v.

MILTON EISENHOWER, DIRECTOR OF WAR RELOCATION
AUTHORITY AND WARTIME CIVILIAN CONTROL AD-
MINISTRATION

UPON CERTIFICATE AND THE RECORD FROM THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

BRIEF FOR THE UNITED STATES



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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 70

IN THE MATTER OF THE APPLICATION OF MITSUYE
ENDO FOR A WRIT OF HABEAS CORPUS

MITSUYE ENDO

v.

MILTON EISENHOWER, DIRECTOR OF WAR RELOCATION
AUTHORITY AND WARTIME CIVILIAN CONTROL AD-
MINISTRATION *

*UPON CERTIFICATE AND THE RECORD FROM THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT*

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the District Court for the Northern District of California, Southern Division (R. 15-16) is not reported. The Cir-

*In order to avoid confusion, the Government is printing on this brief both the title of this case erroneously assigned in the United States Circuit Court of Appeals for the Ninth Circuit and the correct title. Since no respondent was ever served or ever appeared in the District Court, the case is here

cuit Court of Appeals for the Ninth Circuit certified questions, which are not presented in the transcript of record, and did not file an opinion.

JURISDICTION

The certificate of questions of law upon which the Circuit Court of Appeals desired instruction was filed on April 22, 1944. On May 8, 1944, this Court ordered that the entire record be certified up so that the whole matter in controversy might be considered (R. 23). The jurisdiction of this Court rests on Section 239 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The appellant in the court below,¹ an American citizen of Japanese ancestry, while detained in the Tule Lake Relocation Center operated by the War Relocation Authority at Newell, California, in the Northern District of California, on July

as an *ex parte* proceeding and is properly entitled "In the Matter of the Application of Mitsuye Endo for a Writ of Habeas Corpus." Cf. *Ex parte Milligan*, 4 Wall. 2, 113. The United States Attorney filed a brief in the District Court in which he argued that the petition, together with matters of which that court might take judicial notice, showed that, as a matter of law, petitioner was not entitled to the writ. The United States Attorney, however, was not appearing for any individual respondents but was representing the Government. This practice was expressly approved in the *Milligan* case, 4 Wall. 114. The title *Endo v. Eisenhower* was presumably assigned when the record on appeal in the Ninth Circuit was prepared for printing.

¹ Hereinafter designated as appellant.

13, 1942, filed a petition for a writ of habeas corpus in the District Court for that District (R. 2-10). It is conceded, although the fact does not appear of record, that while the petition was pending, the appellant applied for and received "leave clearance" from the W. R. A. which, under W. R. A. regulations applicable to her, satisfied one of the requirements for leave to depart from the Relocation Center. The petition for a writ of habeas corpus was denied on July 2, 1943 (R. 15-16). An appeal from the District Court's judgment was filed (R. 17) and thereafter, on September 22, 1943, appellant was transferred from the Tule Lake Relocation Center to the Central Utah Relocation Center at Topaz, Utah, where she now is. Although appellant has obtained "leave clearance" and may receive a permit for "indefinite leave" from the Relocation Center upon satisfying certain conditions prescribed by W. R. A. regulations (*infra*, pp. 121-131), relating chiefly to her means of support and to the acceptability of persons of Japanese ancestry in a community to which she proposes to go, none of which are shown to be absent in her case, appellant refuses to apply for such a permit (R. 11-15).

The principal questions are:

1. Whether authority has been conferred by the Congress or the President to enforce the regulations which provide for the detention of the appellant under the circumstances presented.

2. If so, whether the regulations as applied are constitutional.

The following subsidiary questions are discussed:

1. Whether the removal of the appellant from the Relocation Center in the district in which the habeas corpus proceeding was commenced to a Relocation Center outside of the district and outside of the circuit, after an appeal had been taken to the Circuit Court of Appeals, renders this proceeding moot by removing the basis of jurisdiction.

2. Whether the legality of the appellant's custody can be determined on the present record, or requires that the cause be remanded for the filing of a return and the trial of any issues of fact presented by the pleadings.

3. Whether the appellant's failure to exhaust the administrative remedy of applying for leave under the W. R. A. regulations deprives her of the right to obtain an adjudication in this habeas corpus proceeding.

4. Whether the validity of the continued exclusion of appellant and other persons of Japanese ancestry from the West Coast area is involved in this case.

STATUTES, PROCLAMATIONS, ORDERS, AND REGULATIONS INVOLVED

The statutes and other official texts involved in the case are printed in the appendices. The more important provisions are summarized in the statement of the case.

STATEMENT

The relevant contents of the record, of pertinent official documents, and of the records of the War Relocation Authority, together with facts which are of general knowledge underlying the program of the Authority and the detention of the appellant, may be summarized as follows:

A. *Facts Relating to the Appellant.*—The petition for a writ of habeas corpus alleges in substance as follows. The appellant is a native born citizen of the United States, born on May 10, 1920, at Sacramento, California. She is a loyal citizen and owes allegiance to and is a citizen of no other country (R. 20). At the time of the petition she was confined in a camp under armed guard against her will, allegedly by the Director of the War Relocation Authority in accordance with orders of the Commanding General of the Western Defense Command and other officials (R. 3-4). The petition alleged as the sole reason for the appellant's detention that she was of Japanese ancestry; that no warrant or process existed to justify her "arrest and imprisonment"; that no charge had ever been made against her and she had never been informed of any other reason for which she was being held and no hearings had been granted to her (R. 4-5). The appellant has never been a member of the military forces of the United States and is not subject to military law. Martial law had not been declared and all courts in and of the State of California were available to any party

charging the appellant with crime or wrongdoing (R. 5).

The petition further alleges that appellant, after investigation of her qualifications, efficiency, fitness and moral responsibility by officials of the State of California, became a permanent civil service employee of that State. She retained her position until April 7, 1942, when the Personnel Board of the State suspended her and gave as one of the reasons for this action that she was subject to being evacuated and consequently would be unable to perform the duties of her position. Thereafter the Personnel Board filed supplementary charges against the appellant, stating that she had been evacuated and was confined and detained and was unavailable to perform her duties as a civil service employee. Unless the appellant is able to establish that she is not subject to detention her Civil Service standing will be imperiled (R. 5-6).

The petition prays for a writ of habeas corpus directed to the military and W. R. A. authorities in charge of the exclusion and relocation programs and that she be discharged and set at liberty.

No answer or other pleading was filed in response to the petition; but the Government, through the United States Attorney, filed a brief urging that the petition on its face, together with the military and other published regulations which were a matter of judicial notice, showed that the detention

was lawful and that the petition should be dismissed.

Thereafter, an affidavit of Elmer L. Shirrell, Project Director of the Tule Lake War Relocation Center, sworn to on November 23, 1942, was filed in the District Court on January 7, 1943. It recited that the appellant was removed to the Tule Lake War Relocation Center pursuant to the authority of Executive Order No. 9066 of February 19, 1942, and of a Public Proclamation of the Commanding General of the Western Defense Command and Fourth Army, promulgated pursuant to that Executive Order; that the Director of the War Relocation Authority had issued regulations providing that persons residing in Relocation Centers might apply for leave to depart from the Centers; that these regulations had been published in the Federal Register and in a newspaper published at the Tule Lake Center and were a matter of common knowledge among the residents of the Center, but that the petitioner had made no application for permission to leave the Relocation Center (R. 11-13).

An affidavit of James C. Purcell, attorney for the appellant, sworn to on January 31, 1943, and filed in the District Court on February 19, 1943, stated that the regulations made no provision for the return of the appellant to her place of residence in Sacramento, California, where she had been employed; that application to return to Sacramento would be useless; and that the petitioner

was confined and detained against her will and continued to be refused the right to return to her previous place of residence and employment (R. 14-15).

The order of the District Court, dated and filed on July 2, 1943, stated that "It appearing upon the face of the petition that petitioner is not entitled to a writ of habeas corpus, and it further appearing that she has not exhausted her administrative remedies under the provisions of Executive Order No. 9102 (7 F. R. 2165) and the regulations promulgated thereunder," it is therefore ordered that the petition be denied. (R. 15-16.)

The records of the War Relocation Authority disclose that on February 19, 1943, the appellant applied for "leave clearance" under the W. R. A. regulations (*infra*, pp. 126-127). Thereafter she received a Notice of Action on Application for Leave Clearance, dated August 23, 1943, which advised her that she was "eligible for indefinite leave for the purpose of employment or residence in the Eastern Defense Command, as well as in other areas," but that the notice did not authorize her departure from the Relocation Center and that a separate application must be made for such authorization and might be made at any time she wished (*infra*, pp. 153-154).

The notice of appeal from the order denying the petition for a writ of habeas corpus, dated August 16, 1943, was filed in the District Court on August 26, 1943 (R. 16-17). On September 22, 1943, ac-

cording to the records of the War Relocation Authority, the appellant was transferred from the Tule Lake Relocation Center to the Central Utah Relocation Center in the District of Utah where she remains.

B. *The Military Regulations.*—The important statutes, Executive Orders, proclamations and regulations involved and referred to in the courts below, may be summarized as follows:

The Joint Resolution of Congress of December 8, 1941 (*infra*, p. 86) declared a state of war to exist with the Empire of Japan, authorized and directed the President to employ the entire naval and military forces and the resources of the Government to carry on the war, and pledged all of the resources of the country to bring the conflict to a successful termination.

On December 11, 1941,² the eight western States and the Territory of Alaska were activated by the War Department as the Western Defense Command and designated as a "theater of operations". An area approximately 100 miles wide extending from the Canadian border along the Pacific Coast to the California-Mexican border was declared to be a "combat zone."³

² General DeWitt's Public Proclamation No. 1 of March 2, 1942 (*infra*, pp. 97-101); General Order No. 1, December 11, 1941. See record in *Yasui v. United States*, 320 U. S. 115.

³ "The *theater of war* comprises those areas of land, sea, and air which are, or may become, directly involved in the conduct of war.

"A *theater of operations* is an area of the theater of war necessary for military operation and the administration and

Executive Order No. 9066 of February 19, 1942 (*infra*, pp. 90-92) recites that the successful prosecution of the war requires every protection against espionage and sabotage to national defense material, premises, and utilities and authorizes the Secretary of War and military commanders designated by him whenever such action is deemed necessary—

* * * 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 * * *.

Pursuant to his designation as Military Commander under the Executive Order by the Secretary of War,⁴ the Commanding General of the Western Defense Command and Fourth Army in

supply incident to military operation. The War Department designates one or more theaters of operation.

"A *combat zone* comprises that part of a theater of operations required for the active operations of the combatant forces fighting" (Field Service Regulations—Operations, War Department, May 22, 1941, Field Manual 100-5, pars. 1, 2, and 3).

⁴ Letter to General DeWitt from Secretary Stimson, dated February 20, 1942, reproduced in *Final Report, Japanese Evacuation from the West Coast (1942)*, hereinafter cited as *Final Report*, at p. 25.

his Public Proclamation No. 1 of March 2, 1942 (*infra*, pp. 97-101), declared the Pacific Coast area of the United States, because of its geographical location, to be particularly subject to attempted invasion and in connection therewith subject to espionage and sabotage, and designated certain "military areas" and "military zones" and declared that persons or classes of persons, as the situation might require, would by subsequent proclamation be excluded from certain of these areas. Public Proclamation No. 2 of March 16, 1942 (*infra*, pp. 101-105) designated further military areas and military zones from which persons might subsequently be excluded.

Executive Order No. 9102 of March 18, 1942 (*infra*, pp. 92-96), established the War Relocation Authority in the Office for Emergency Management in the Executive Office of the President, and authorized the Director of the War Relocation Authority to formulate and effectuate a program for the removal, relocation, maintenance, and supervision of persons or classes of persons designated pursuant to Executive Order No. 9066 for removal from the areas prescribed under that Order. The Director was authorized to prescribe regulations necessary or desirable to promote effective execution of the program.

The Act of March 21, 1942 (*infra*, pp. 86-87), provides that whoever shall enter, remain in, leave,

or commit any act in, any military area or zone prescribed under the authority of an Executive Order of the President by the Secretary of War or a military commander designated by him, contrary to the restrictions applicable to any such area or zone, or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the restrictions and order and his act was in violation thereof, be guilty of a misdemeanor.

(*infra*, p.p. 105-106)

Public Proclamations Nos. 4^A and 6 of March 27, 1942 and June 2, 1942, in terms prohibited all alien Japanese and persons of Japanese ancestry from departing voluntarily from Military Areas Nos. 1 and 2, respectively, until further order, and stated that restriction and regulation of the migration of such persons was necessary in order to provide for their welfare and insure their orderly evacuation and resettlement.

Each one of a series of 108 Civilian Exclusion Orders issued by General DeWitt pursuant to Public Proclamations Nos. 1 and 2 from March 24 to July 22, 1942, ordered the exclusion of persons of Japanese ancestry from a particular described portion of the prohibited military areas on or before the particular date set forth in each order and by the method prescribed in the order and made it an offense under the Act of March 21, 1942, for such a person to be found there after the date specified. The Civilian Exclusion Orders

accomplished the exclusion of persons of Japanese ancestry from the State of California and from the western portions of Washington and Oregon and the southern part of Arizona,⁵ except as they were confined in Assembly Centers or Relocation Centers to which they were removed. The several Civilian Exclusion Orders were supplemented by general provisions for exclusion from Military Areas Nos. 1 and 2, respectively, in Public Proclamations Nos. 7 and 11 of June 8, 1942, and August 18, 1942 (*infra*, pp. 106-109).

The appellant's exclusion was effected by Civilian Exclusion Order No. 52, dated May 7, 1942 (*infra*, pp. 117-120), which ordered that from and after May 16, 1942, all persons of Japanese ancestry be excluded from that portion of Military Area No. 1 described as "all of the City of Sacramento, State of California." The order directed a responsible member of each family and each individual living alone to report on May 8, 9, or 10 to a Civil Control Station in Sacramento. The Civil Control Station was equipped to assist the Japanese population in making arrangements for evacuation. On May 15, 1942, the appellant was evacuated to the Sacramento Assembly Center, a few miles northwest of the City of Sacramento.

⁵ The exclusion orders were published at intervals in the Federal Register. Orders Nos. 1 to 99 were ratified by General DeWitt's Public Proclamation No. 7 of June 8, 1942 (7 F. R. 4498), and Orders Nos. 100 to 108 were ratified by Proclamation No. 11 of August 18, 1942 (7 F. R. 6703).

General DeWitt's Civilian Restrictive Order No. 1 of May 19, 1942 (*infra*, pp. 115-116) prohibited evacuees from leaving Assembly or Relocation Centers except pursuant to authorization obtained from his headquarters.

On June 19, 1942, the appellant was transferred from the Sacramento Assembly Center to the Tule Lake Relocation Center in Modoc County in the northeast corner of California. General DeWitt's Public Proclamation No. 8 of June 27, 1942 (*infra*, pp. 109-111), designated all Relocation Centers then or thereafter established within the Western Defense Command as War Relocation Project Areas⁶ and imposed the same restrictions as were imposed by the order of May 19, 1942. By letter of August 11, 1942, General DeWitt authorized the War Relocation Authority to issue permits for persons to leave these Areas.

The Secretary of War's Public Proclamation No. W. D. 1 of August 13, 1942, designated each Relocation Center outside of the Western Defense Command as a military area⁷ and prohibited the

⁶ The six War Relocation Centers and Project Areas established within the Western Defense Command are: Central Utah Relocation Center, Topaz, Utah; Colorado River Relocation Center, Poston, Arizona; Gila River Relocation Center, Rivers, Arizona; Manzanar Relocation Center, Manzanar, California; Minidoka Relocation Center, Hunt, Idaho; Tule Lake Relocation Center, Newall, California, now known as Tule Lake Center.

⁷ Four War Relocation Centers and Project Areas were established outside the Western Defense Command: Granada Relocation Center, Amache, Colorado; Heart Moun-

egress of persons of Japanese ancestry residing in such areas without permission from the Secretary of War or from the Director of the War Relocation Authority (*infra*, pp. 112-114). Violations of these restrictions were punishable as criminal offenses under the Act of March 21, 1942.

On February 16, 1944, Executive Order No. 9423, 9 F. R. 1903, transferred the War Relocation Authority from the Office for Emergency Management of the Executive Office of the President to the Department of the Interior, to be administered as an organizational entity within the Department. Its functions were transferred to the Secretary of the Interior to be exercised through the officers, agents, and employees of the War Relocation Authority. By his Administrative Order No. 1922 of February 16, 1944 the Secretary of the Interior authorized the Director of the War Relocation Authority, under the supervision and direction of the Secretary, "to perform the functions transferred to the Secretary of the Interior in Executive Order No. 9423 * * * until further order * * *."

C. *War Relocation Authority Leave Procedures.*—Pursuant to the authority to make regulations conferred by Executive Order No. 9102 (*infra*, pp. 92-96), and the delegation of authority

tain Relocation Center, Heart Mountain, Wyoming; Jerome Relocation Center, Denson, Arkansas; Rohwer Relocation Center, McGehee, Arkansas. The progress of relocation has permitted W. R. A. to close the Jerome Center.

to permit evacuees to leave Relocation Centers contained in the Secretary of War's Proclamation W. D. 1 of August 13, 1942, and in General DeWitt's letter of August 11, 1942, the Director of the War Relocation Authority has issued administrative instructions and regulations which establish a system for obtaining leave, applicable to the appellant, the development of which may be summarized as follows:

1. *Administrative Instruction No. 22.*—This Administrative instruction, which was issued July 20, 1942 (*infra*, pp. 132-134), provided that, with exceptions not here relevant, any person could apply for a permit to leave a Relocation Center if he could show that he had a specific job opportunity with a prospective employer at a designated place outside the Relocation Center and outside the Western Defense Command. The Administrative Instruction further provided for an investigation of each applicant for leave and provided that any permit for leave could be revoked if the Director of the War Relocation Authority found that such revocation was necessary in the public interest.

2. *W. R. A. Regulations of September 26, 1942.*—These regulations (*infra*, pp. 121-125: 7 F. R. 7656) provided more complete and detailed procedures for issuing leave. In addition to establishing a leave system for persons who desired to leave a Relocation Center for only a specific period, they provided for the issuance of "in-

definite leave." A permit for indefinite leave places no time limit on the permittee's residence outside of the Center and may provide for "travel unlimited except as to restrictions imposed by military authorities with reference to military areas or zones * * *" (Sec. 5.8 (b)). An application for indefinite leave is to be granted when the Director is satisfied that the applicant will have employment or other means of support and can successfully maintain residence at his proposed destination and that the issuance of leave in the particular case will not interfere with the war program or otherwise endanger the public peace and security (Sec. 5.3 (e), (f)), provided the applicant agrees to report his arrival at the proposed destination and any subsequent changes of employer or of address. See par. 6 of Administrative Instruction No. 22; Sec. 5.5 (b) of Regulations; last paragraph of "Application for Indefinite Leave" at present in use, printed *infra*, pp. 154-155. The regulations provide that the Director may revoke any leave when conditions are so far changed or when such additional information has become available that an original application for leave would be denied. Sec. 5.9 (b). Upon the termination of any leave the applicant is to return to the Relocation Center in which he previously resided unless otherwise directed by the Director of the War Relocation Authority. Sec. 5.9 (c).

3. *Revised Administrative Instruction No. 22 of November 6, 1942.*—This revised Administrative

Instruction, issued for the purpose of specifying in greater detail the procedure to be followed under the regulations, divided the procedure for obtaining indefinite leave into two parts by providing that an Application for Leave Clearance must either accompany or precede an Application for Indefinite Leave (Secs. IV-A and V-A, *infra*, pp. 135-137). In considering an application for leave clearance the Director was to "take such steps as may be necessary to satisfy himself concerning the probable effect upon the war program and upon the public peace and security of issuing indefinite leave to applicant;" in this connection he was to consider all information obtainable about the applicant through an investigation at the Relocation Center and through information obtainable from the Department of Justice,⁸ as well as through any other steps appearing to him to be necessary (Secs. V-G and V-C). Upon an application for leave by a person who had received leave clearance, the only investigation to be made was one into "the applicant's prospective employment or other means of support and the conditions and factors affecting the applicant's proposed residence," except in a case in which, because of a considerable lapse of time between the issuance of leave clearance and the application for leave, the Director might deem it necessary to bring the leave clear-

⁸ The source in the Department of Justice for such information is specified in the Regulations as the Federal Bureau of Investigation. Regulations, Sec. 5.3 (b).

ance investigation down to date. Sec. IV-E. Thus, according to the procedure specified in the Revised Administrative Instruction, the evacuee's eligibility for indefinite leave from the standpoint of national security was to be determined pursuant to his application for leave clearance, and his eligibility as respects financial support and the suitability of his proposed place of residence was to be determined upon his application for indefinite leave.

4. *W. R. A. Handbook of July 20, 1943, on Issuance of Leave.*—The Handbook (*infra*, pp. 139-152) supersedes the Revised Administrative Instruction as a supplement to the W. R. A. Regulations and includes further details as to the Director's method of determining the applicant's eligibility for leave from a security standpoint in cooperation with other government agencies. Under Section 60.6.6 a determination is made, in connection with the leave clearance application, by the Provost Marshal General's office as to whether the applicant "is eligible for employment in plants and facilities vital to the war program," and under Section 60.10.2 a further investigation at the Center is prescribed when "the Joint Board"⁹

⁹ The Joint Board referred to is the Japanese American Joint Board established by the War Department on January 20, 1943, and composed of a representative from each of the following agencies: War Relocation Authority, Office of Naval Intelligence, Military Intelligence Service, and Provost Marshal General's Office. The Board undertook to consider the cases of all evacuee American citizens who were 17 years

does not recommend, or is not expected to recommend, that leave clearance be granted," or when the file with regard to the applicant for leave clearance "contains a derogatory intelligence report." Nine factors are specified which are "regarded by intelligence agencies as sufficient to warrant a recommendation that leave clearance be denied unless there is an adequate explanation."

The Handbook also states in greater detail the criteria to be used in determining whether an applicant for leave who has received leave clearance is eligible from the standpoint of financial support and probable community acceptance. Section 60.4.3 (*infra*, pp. 140-143) provides that an application for leave from such a person is to be granted (unless it is necessary for the leave clearance investigation to be brought down to date) under any one of 14 stated circumstances including the following: "The applicant proposes to accept an employment offer or offer of support that has been referred to the Project Director by a Relocation Officer, or that has been investigated and approved by a Relocation Officer at the request of the Project Director;" or "The applicant

or more of age and to make recommendations with regard to the granting of indefinite leave. The Board was abolished in May 1944. During its existence it reviewed nearly 37,000 cases. A statement with regard to the functions of the Board appears in Senate Document No. 96, *Segregation of Loyal and Disloyal Japanese in Relocation Centers*, 78th Cong., 1st Sess., at p. 18. Clearance of evacuees for war plant employment continues to be handled by the Provost Marshal General's Office.

does not intend to work, but has adequate financial resources to take care of himself and a Relocation Officer has investigated and approved public sentiment at his proposed destination" (Section 60.4.3 C, D).

5. *W. R. A. Revised Regulations of January 1, 1944.*—The Revised Regulations (*infra*, pp. 126–131; 9 F. R. 154) include the substance of the Regulations of September 26, 1942, and the major provisions of the leave clearance procedure which was adopted after the promulgation of the original Regulations. The Revised Regulations and the Handbook as amended provide the present procedures for obtaining indefinite leave.

6. *Appellant's Application for Leave Clearance.*—As previously stated (*supra*, p. 3), the appellant has not made an application for indefinite or other leave,¹⁰ but on February 19, 1943, after the petition herein was filed in the District Court on July 13, 1942, she applied for leave clearance, which was granted on August 16, 1943.¹¹

¹⁰ The District Court, in reaching its decision (R. 17), considered the appellant's administrative remedy of applying for leave although it came into existence after the filing of her petition. "The validity of a detention questioned by petition for *habeas corpus* is to be determined by the condition existing at the time of the final decision thereon." *Mensevich v. Tod*, 264 U. S. 134, 137. According to the same principle, this Court may take into account the further developments that have occurred since the District Court's decision.

¹¹ The fact that leave clearance has issued is undisputed. It narrows the issue in the case to one involving an individual who has satisfied security considerations but has not thereupon applied for leave.

The notice of this action which she received (*infra*, pp. 153-154)¹² stated that "You are eligible for indefinite leave for the purpose of employment or residence in the Eastern Defense Command as well as other areas; provided the provisions of Administrative Instruction No. 22, Rev., are otherwise complied with," but that "this notice does *not* authorize departure from the relocation center. A suitable application must be made separately at any time you wish to apply for leave".¹³

On September 22, 1943, after obtaining leave clearance and after filing her appeal from the denial of her petition for a writ of habeas corpus, appellant, as previously stated (*supra*, p. 3), was transferred from the Tule Lake Relocation Center to the Central Utah Relocation Center at Topaz, Utah, outside the circuit in which the cause was pending. This transfer was made in the course of the regular operations of the War Relocation Authority, in order to make the Tule Lake Relocation Center available for evacuees not found to be loyal (see *infra*, p. 32).

D. Development and Nature of the Relocation Program.—The situation leading to the determination of the military authorities to exclude all

¹² The official record of the action in respect to appellant's leave clearance is also printed *infra*, pp. 152-153.

¹³ The notice also stated that the Provost Marshal General's Department had determined that the appellant was not eligible for employment in plants and facilities vital to the war effort. This restriction is not relevant to the case at bar.

persons of Japanese ancestry from California and parts of Washington, Oregon, and Arizona, is reviewed in *Hirabayashi v. United States*, 320 U. S. 81. The exclusion procedure is set forth in the Government's brief in *Korematsu v. United States*, No. 22, this Term, to be argued with this case. The facts there set forth will for the most part not be repeated here,¹⁴ but attention will be centered principally upon the relocation program and the regulations applicable to persons in the situation of appellant.

The operations of the War Relocation Authority, including the leave procedures, have been considered by the Military Affairs and Appropriations Committees of the Senate and by the Select Committee Investigating National Defense Migration (Tolan Committee), the Special Committee on Un-American Activities (Dies Committee), and the Appropriations Committee of the House of Representatives.¹⁵

¹⁴ The Final Report of Lt. Gen. J. L. DeWitt, Commanding General, Western Defense Command, upon the Japanese Evacuation, 1942, hereinafter cited as *Final Report* (which is dated June 5, 1943, but which was not made public until January 1944) is referred to for statistics and other information concerning the actual evacuation and the events that took place immediately subsequent thereto in the Government's brief in the *Korematsu* case. See footnote 2, p. 11, of that brief.

¹⁵ The following are the principal documents which record the hearings and conclusions of the several committees:

Senate Committee on Military Affairs:

Report of the Sub-Committee on Japanese War Relocation Centers to the Committee on Military

A Message from the President and Statement
of the Director of War Mobilization in response
to Senate Resolution No. 166, 78th Congress, 1st

Affairs on S. 444 and S. Res. 101 and 111, 78th
Cong., 1st sess. (May 1943).

Hearings before the Subcommittee on S. 444, 78th
Cong., 1st sess., Parts 1-4 (Jan.-Nov. 1943).

*Select Committee of the House of Representatives In-
vestigating National Defense Migration:*

Preliminary Report and Recommendations on
Problems of Evacuation of Citizens and Aliens
from Military Areas pursuant to H. Res. 113,
H. R. Rep. No. 1911, 77th Cong., 2d sess. (March
1942), hereinafter cited as *Preliminary Report*.

Fourth Interim Report, Findings and Recommend-
ations, etc., H. R. Rep. No. 2124, 77th Cong., 2d
sess. (May 1942), hereinafter cited as *Fourth In-
terim Report*.

Hearings before the Committee pursuant to H. Res.
113, 77th Cong., 2d sess., Parts 29-31: Problems
of Evacuation of Enemy Aliens and Others from
Prohibited Military Zones (Feb.-Mar. 1942).

*Special Committee of the House of Representatives on
Un-American Activities:*

Report and Minority Views on Japanese War Relo-
cation Centers, H. Rep. No. 717, 78th Cong., 1st
sess. (Sept. 1943).

Hearings before the Committee on H. Res. 282, 78th
Cong., 1st sess., vol. 16 (Nov.-Dec. 1943).

*Committee on Appropriations, House of Representa-
tives:*

Hearings before the Subcommittee on the National
War Agencies Appropriation Bill for 1944, pp.
694-780 (1943), hereinafter cited as 1944 Appro-
priation Hearings. *Idem.* for 1945, pp. 608-726
(1944), hereinafter cited as 1945 Appropriation
Hearings.

session,¹⁶ contains a report upon some of the more prominent aspects of the relocation program.

1. *Origin and Principal Features of the Program.*—The program which the War Relocation Authority is engaged in carrying out has three main features: (1) the maintenance of Relocation Centers as interim places of residence for evacuees; (2) the segregation of loyal evacuees from those who could not be released without danger to the national security and the continued detention of the latter group; and (3) the relocation of the former group in communities so far as possible, by means of the Authority's leave procedures.

A program having these features did not develop immediately, but grew initially out of a decision which was made following a meeting of the Director of the Authority with Colonel Karl R. Bendetsen of the Western Defense Command and Governors representing the intermountain states, together with other state and Federal officials and representatives of agricultural interests, which was held in Salt Lake City on April 7, 1942.¹⁷ At the time of the meeting, the Commanding General of the Western Defense Command had determined upon a controlled evacuation of persons excluded

¹⁶ Senate Document No. 96, 78th Congress, 1st sess. hereinafter cited as S. Doc. No. 96.

¹⁷ S. Doc. No. 96, p. 4.

from the West Coast area, involving the use of Assembly Centers for the temporary detention of the evacuees. Public Proclamations Numbers 1, 2, and 4 (*infra*, pp. 97-106) and the initial Civilian Exclusion Orders, which set the evacuation in motion, had been issued. See the Government's brief in *Korematsu v. United States*, No. 22, this Term, pp. 64-67. Thus it had been decided that 110,219 persons of Japanese ancestry (*Korematsu* brief, p. 74) would be removed quickly from their homes, occupations, and accustomed surroundings in the West Coast Area, under control by the Government. The methods to be employed in providing for the evacuees after their detention in Assembly Centers remained to be determined.

Strong opposition was expressed by the Governors present at the meeting to any type of unsupervised relocation of the evacuees. This opposition was based upon the feeling in local communities that the evacuees should not be permitted to enter these communities and there be at large.¹⁸ Other manifestations of community hostility to the evacuees occurred.¹⁹

¹⁸ S. Doc. No. 96, p. 4. The views reflected at the meeting of Governors accorded with those previously expressed to the Tolan Committee, both by the Governors whose opinions it solicited and by witnesses before the Committee. See *Preliminary Report*, pp. 27-30; *Fourth Interim Report*, p. 17; Hearings before the Committee, 77th Cong., 2d sess., Part 29, pp. 11137, 11156.

¹⁹ *Korematsu* brief, pp. 13-14.

Following the meeting, the War Relocation Authority abandoned plans for assisting groups of evacuees in private colonization and temporarily laid aside plans for aiding evacuees to obtain private employment. Instead, the Authority concentrated upon the establishment of Relocation Centers with sufficient capacity to accommodate the entire evacuee population.²⁰ The considerations which led to the use of Relocation Centers were essentially the same as those which had previously caused the military authorities to abandon the plan of encouraging self-arranged migration by persons subject to exclusion from the West Coast area, which had been in effect during March 1942, and which continued with respect to Military Area No. 2 until June 2, 1942.²¹ In all, 4,889 persons left the military areas under their own arrangements.²² These persons have never been detained in Assembly or Relocation Centers.

The decision which was made with regard to the character of the relocation program was in accord with the judgment of the Tolan Committee. Reporting in May 1942, that Committee stated that "private employment [of the evacuees] would appear to be entirely impracticable for some time to come and should not be considered

²⁰ S. Doc. No. 96, p. 4.

²¹ *Korematsu* brief, pp. 62-63.

²² *Final Report*, p. 109.

in present plans as a solution to the resettlement problem." The Committee, however, favored "acceptance of the principle that resettlement shall be for purposes of insuring full preservation of citizenship rights and ultimate participation of the evacuees in normal and productive ways of living."²³

2. *Character of the Evacuee Population.*—The responsibility of the War Relocation Authority arose with respect to each group of evacuees as they were removed from Assembly Centers to Relocation Centers.²⁴ The entire population of which W. R. A. thus assumed charge between May and November 1942²⁵ consisted of three principal elements: (1) the older alien group, numbering approximately 40,000 individuals, who came to the United States largely between 1890 and 1924²⁶

²³ *Fourth Interim Report*, p. 18.

²⁴ For the agreement between the War Department and the War Relocation Authority, defining the functions of each in regard to the evacuees, see *Final Report*, p. 239. Actually, 108,503 persons were evacuated directly to Relocation Centers or transferred from Assembly Centers. Several hundred were released from Assembly Centers to perform agricultural labor or for other special reasons. *Final Report*, p. 279.

²⁵ For details as to the transfer operation see *Korematsu* brief, pp. 69-70.

²⁶ The Immigration Act of the latter year, 43 Stat. 161, 8 U. S. C. Sec. 213, excluded persons of the Mongolian race.

but who were barred from citizenship;²⁷ (2) approximately 25,000 younger adults, composed principally of American born children of the alien group, who were citizens by birth; and (3) approximately 45,000 minor children of both of the preceding groups.²⁸ Members of the several groups had lived together as families in the communities from which they came and were bound together by family ties. At the same time sharp differences existed between members of the first and second groups, not only because of the age differential in itself but also because of different degrees of assimilation to American culture²⁹ and the greater inclination of the second group to seek normal employment in American communities.³⁰ Members of the third group were necessarily dependent largely upon the members of the other two.

The evacuee population as a whole contains much higher percentages in the age brackets above 50 and below 30 years of age than is normal for the population of the country as a whole and con-

²⁷ R. S. Sec. 2169, now, as amended, 8 U. S. C., Supp. III, Sec. 703. See *Ozawa v. United States*, 260 U. S. 178.

²⁸ For age statistics see *Final Report*, p. 84; Hearings before Senate Committee on Military Affairs on S. 444, 78th Cong., 1st sess., p. 65.

²⁹ 1944 Appropriation Hearings, pp. 703-704.

³⁰ *Idem*, pp. 619, 640-641.

tains correspondingly fewer individuals in the most productive brackets between these two ages.³¹ Approximately 40,000 of the evacuees, in all, were thought to be available for employment which would alleviate the national manpower shortage.³²

The facts which gave rise to the danger that the West Coast Japanese population might contain sizable disloyal elements have been reviewed by this Court, *Hirabayashi v. United States*, 320 U. S. 81, 96-99. A significant element among the evacuees in this respect consists of those American citizens who were taken to Japan by their parents at an early age and were brought up in Japanese communities and educated in Japanese schools, but who returned to this country shortly before the involvement of the United States in the present war. There were approximately 2,000 individuals in this category, many of whom appear to have become attached to present-day Japan.³³ Additional Kibei, or persons who had been taken to Japan and had returned, but who had been there for shorter periods of time, numbered perhaps 6,000.³⁴

³¹ S. Doc. No. 96, pp. 8-9.

³² Hearings before Senate Committee on Military Affairs, *supra*, n. 28, p. 37.

³³ 1945 Appropriation Hearings, p. 612.

³⁴ Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d sess., on H. R. 2701 and other bills to expatriate certain nationals of the United States, hereinafter cited as Expatriation Hearings, p. 56.

The task of the War Relocation Authority, taken in its entirety, has consisted of caring for the basic needs of the population just described, including education; promoting the loyalty and morale of the great majority; segregating from the others those whose release could not be authorized so far as the maintenance of family groups permitted;³⁵ promoting the permanent relocation in normal communities of as many as possible of the evacuees at the earliest practicable time; and providing indefinitely for those who have not left the Centers. As a means to these ends, detention of the evacuees to the Relocation Centers, subject to the release of individuals and families under the provisions of the leave regulations, has been continued down to the present time.

3. *Segregation of Certain Evacuees.*—In February and March of 1943 a registration of all persons in the Relocation Centers was conducted by the War Relocation Authority and the War Department jointly. The Army was interested in the male citizens over 17 years of age and W. R. A. wished to know as much as possible about the individuals of whom it had charge.³⁶ It was believed that if persons who wished to go to Japan and live there permanently and United States citizens who would not express unqualified loyalty to the United States were segregated and removed

³⁵ See Expatriation Hearings, p. 50.

³⁶ Expatriation Hearings, p. 50. •

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from the Relocation Centers, friction which had arisen in the Centers between groups with different loyalties would be eliminated. All persons 17 years of age and older were requested to fill out a questionnaire. Male citizens of the United States were asked, among other questions, whether they were willing to serve in the armed forces of the United States on combat duty wherever ordered (Ques. 27) and whether they would swear unqualified allegiance to the United States and forswear any form of allegiance to the Japanese Emperor or any other foreign government, power, or organization (Ques. 28). Female citizens were asked the same loyalty question and whether, if given the opportunity, they would volunteer for the Army Nurses Corps or the WAACS. Aliens were asked whether they would be law-abiding residents of the United States. All individuals were asked whether they desired to return to Japan to live.³⁷

Refused

Following the registration, individuals who had expressed a desire to go to Japan to reside and individuals who persisted in a refusal to answer the loyalty questions affirmatively were transferred to the Tule Lake Center. Loyal evacuees previously at Tule Lake, such as the appellant, were transferred to other Centers. The children and other members of the families of persons sent

³⁷ Senate Document No. 96, pp. 20-21; ~~Evacuation~~ ^{expatriation} Hearings, pp. 37-42, 49-58.

to Tule Lake, who expressed a willingness to accompany them, were also transferred there. Approximately 17,000 persons were held at Tule Lake in April 1944.³⁸ Of these approximately 5,000 were minor children of parents who did not themselves come within the categories established for segregation. Approximately 10,000 were included because they or members of their families had expressed a desire for repatriation to Japan.³⁹ It has been estimated that from 5,600 to 6,600 of the 38,816 citizens who filled out questionnaires persisted in refusing to answer the loyalty questions in the affirmative. An estimated additional number of between 3,000 and 4,000 expressed a desire to change negative to affirmative answers, their original negative answers having been caused by one or more of a variety of circumstances, such as temporary bitterness over the evacuation or pressure from elders or from members of the Kibei group.⁴⁰

4. *Progress of Permanent Relocation.*—The nature and development of the War Relocation Authority's program for permanent relocation is indicated by the leave regulations and procedures previously summarized (*supra*, pp. 15-21). In regard to "indefinite leave," however, a number of features of the program, in addition to the con-

³⁸ 1945 Appropriation Hearings, p. 611. The number was 18,684 on July 29, 1944.

³⁹ *Ibid.*

⁴⁰ Expatriation Hearings, pp. 37-42, 49-58.

ditions which must be satisfied before an evacuee can be granted leave, are worthy of note.

Financial assistance, including both a cash grant and travel expenses, has been extended to those persons departing on leave, who have not themselves possessed adequate resources. At present the cash grant which is made in proper cases is \$25 per person. This amount is available for each member of a family, whatever its size, so as to encourage individuals with large families to undertake permanent relocation.⁴¹

In March 1944, in order to encourage less venturesome persons to leave, the procedures were enlarged to permit those granted indefinite leave to go out for a trial period. By agreement the permittee is permitted to return to the Center at the end of four months or at any time during the succeeding two months, with the same assistance upon return as is available in other cases for permittees leaving a Center. Persons granted such trial leave are, however, not given financial assistance upon leaving the Center.⁴²

The War Relocation Authority has established a series of Relocation Offices throughout the country for the purpose of promoting community acceptance of evacuees who locate within the areas covered by these offices, of finding employment op-

⁴¹ 1945 Appropriation Hearings, p. 627; W. R. A. Handbook, Section 60.13. Formerly a single individual received a grant of \$50 and there was a \$100 limit for a family.

⁴² W. R. A. Handbook, Section 60.12.

portunities for evacuees, and of assisting evacuees upon their relocation. At present area offices are located in Denver, Colorado; Salt Lake City, Utah; Kansas City, Missouri; Little Rock, Arkansas; Chicago, Illinois; Cleveland, Ohio; New York City; and Boston, Massachusetts. In each of the areas served by these offices except the New England area, with headquarters in Boston, local or district offices have been established in the principal cities. Twenty~~five~~^{Six} such district offices have been established.

Community hostility toward the evacuees has diminished as a result of these efforts and the satisfactory records which evacuees have made. The instances in which evacuees have been apprehended or returned to Relocation Centers because of misconduct are negligible in number.⁴³

Despite this favorable record, incidents which reflect hostility toward relocated persons have recurred from time to time. Some of these are not matters of general knowledge, but others have been reported.⁴⁴ In 1943 bills directed against persons of Japanese ancestry were introduced in the legislatures of 14 States.⁴⁵ From time to time, as indications of possible trouble have arisen in particular communities because of the relocation

⁴³ 1945 Appropriation Hearings, pp. 610, 618, 634.

⁴⁴ Life Magazine, May 1, 1944, p. 13; Baltimore News and Post, May 13, 1944; "PM", April 25, 1944; Brooklyn Eagle, May 1, 1944; Provo (Utah) Herald, October 4, 1943.

⁴⁵ *Korematsu* brief, p. 15. 1945 Appropriation Hearings, pp. 609, 619.

within them of considerable numbers of evacuees, the War Relocation Authority has suspended the issuance of permits for relocation in these communities until such time as the situation appeared to have improved.

In these ways, by the foregoing administrative devices, the War Relocation Authority has maintained a delicate governance of the flow of relocation, always with the purpose of stimulating it to the greatest extent consistent with its successful accomplishment. Serious incidents, or a large number of instances of opposition to evacuees relocating in communities, it has been thought, would have stimulated general objection to the program and have retarded its progress greatly.

In April 1944 approximately 21,700 persons had received permits for indefinite leave, including both actual workers to the number of at least 15,000 and members of their families. In addition, approximately 2,400 evacuees were at that time out on seasonal leave.⁴⁶ As of July 29, 1944, the number on indefinite leave had increased to 28,911, leaving 61,002 evacuated persons in the eight remaining Centers other than Tule Lake. Consequently a considerable portion of the task of relocating the 40,000 evacuees who were thought to be employable (*supra*, p. 30) had been accomplished. The principal problem now is to induce additional individuals to go out.

⁴⁶ *Idem*, p. 610.

5. *Present Situation of the Appellant.*—As a result of the foregoing measures, the appellant would be free to leave the Relocation Center if she would apply for and receive an indefinite leave permit. The principal requirements for leave in her case would be that she (1) agree to report changes of address and of employment, (2) satisfy the Project Director as to employment or financial support, and (3) select a place of destination which the Project Director would approve as one in which she would be likely to be accepted. In qualifying for a permit, the appellant may have the advantage of the following forms of assistance at the hands of the Relocation Authority: (1) recommendation of communities in which she will be accepted; (2) referral to opportunities for employment by the Relocation Offices maintained by the Authority; (3) a cash grant, if needed, to assist her in reaching a specified destination and becoming established there; and (4) assistance at the point of destination in finding actual employment and becoming adjusted. It would not be necessary for the appellant to select a position before leaving the Relocation Center; she would be permitted to leave if she signified her intention to accept suitable employment opportunities with the aid of a Relocation Office. If the appellant has independent means of subsistence and can give assurance that they will be used to maintain her, she may be authorized to depart for a suitable

destination without reference to possible employment.

SUMMARY OF ARGUMENT

The narrow question presented is whether one in the situation of appellant is lawfully detained in a Relocation Center pending compliance with the War Relocation Authority Leave Regulations, as a means of securing the orderly relocation in communities outside the West Coast area of the group of evacuees from that area, the evacuation itself having been ordered as a matter of military judgment under the circumstances set forth in *Hirabayashi v. United States*, 320 U. S. 81, and in the Government's brief in *Korematsu v. United States*, No. 22, this Term.

I

Certain subsidiary questions are discussed to the following effect:

(1) The removal of the ^{appellant} ~~petitioner~~ by the War Relocation Authority in regular course to a place outside the district and circuit in which the case arose, after the appeal to the Circuit Court of Appeals had been filed, raises the question of whether the courts below were deprived of jurisdiction and whether the case has become moot. The authorities upon this question are inconclusive.

(2) The record in the case, supplemented by the facts and factors relied upon in this brief, affords

an adequate basis for a decision upon the validity of appellant's detention in a Relocation Center.

(3) The Government does not invoke the doctrine that administrative remedies must be exhausted before resort to a court. Appellant has declined to apply for permission to leave the Relocation Center as the W. R. A. leave regulations permit her to do. The question is whether she may be required so to apply as a condition of leave, in order that the determinations for which the leave regulations call may be made.

(4) The issue of continued exclusion of the appellant from the West Coast area, to which she desires to return, is not involved in this case. She is excluded from the West Coast, not by the regulations of the War Relocation Authority, but by military orders which have effect independently of the W. R. A. regulations and of her confinement. If the relief for which she prays is granted, she will be set free. The question of her right to go into any particular part of the country can only arise if she endeavors to go there.

If, however, this Court should be of the view that the validity of continued exclusion of the appellant from the West Coast is involved because of the position the appellant has taken in the affidavit filed in the trial court, we suggest that the cause should be remanded for issuance of the

writ and, if necessary, a trial of the issues which underlay the validity of continued exclusion. The Government is not in a position to present the facts relating to the military situation which would be relevant to the continued West Coast exclusion. These facts may be developed by testimonial processes, as similar facts have been in a number of recent instances.

II

The authority for the appellant's detention involves initially the question of whether Executive Order No. 9102 (*infra*, pp. 92-96), as ratified by appropriation acts of the Congress, or Executive Order No. 9066, as ratified by the Act of March 21, 1942 (*infra*, pp. 86-87, 90-92), or both these Orders as ratified, authorize her detention. The intent of the Orders is evidenced by the actions of the military authorities and executive officials who have been entrusted with their administration. The ratification of the Orders by Congress turns, however, upon their terms and the attention which their administration has received at the hands of the Congress.

Executive Order No. 9102 directs the War Relocation Authority to formulate and effect a program for the relocation, maintenance, and supervision of persons removed from military areas and gives the Director of the Authority power to prescribe regulations to this end. Under

the Order relocation is considered to be an integral part of the evacuation from the West Coast. The detention which is an incident to relocation is, therefore, a continued consequence of the evacuation and, as such, comes within the Executive Order.

There has been continued Congressional awareness of the nature of the War Relocation Authority's regulations and procedures, as is evidenced by hearings and committee reports which have dealt with the subject. In addition, a message from the President and a Statement of the Director of War Mobilization, which were transmitted to the Senate in September 1943 contained a review of the entire relocation program. While possessed of the information which it had thus obtained, the Congress twice appropriated funds for the operations of the War Relocation Authority.

Executive Order No. 9066, in order to provide protection against espionage and sabotage, confers authority to establish military areas and to impose restrictions upon the right of any person to enter, remain in, or leave such areas. Public Proclamation No. 8 of the Commanding General of the Western Defense Command, pursuant to which appellant is restrained until released by the War Relocation Authority, was promulgated under Executive Order No. 9066 for the purpose therein prescribed. It is not argued that the detention of

appellant is directly necessary to the prevention of espionage or sabotage; but the Executive Order was considered by the responsible officials to authorize the detention which has been imposed, as a means of dealing with the consequences of the evacuation which was ordered for the prevention of espionage and sabotage. The authority to deal in this way with the consequences of a measure which was ordered for the prescribed purpose is within the power conferred by the Order.

If appellant's detention is within the authority conferred by Executive Order No. 9066, it is also within the authority granted by the Act of March 21, 1942, since it has been determined in *Hirabayashi v. United States*, 320 U. S., at p. 91, that the Order was ratified and confirmed by the Act.

If Executive Order No. 9066 purports to confer authority to authorize the detention to which the appellant is now subject, the delegation of this authority is not invalid upon the ground that discretion has been unconstitutionally delegated. Not only does the Order lay down the requirement that all measures taken under it be for the purpose of protection against espionage and sabotage, but the legislative history of the Act of March 21, 1942 shows that the exclusion of persons of Japanese ancestry from the West Coast was contemplated at the time the Act was adopted. The delegation of authority, considered with reference to the terms of the Order and the measures con-

templated by Congress, is not broader than others that have been sustained even in peacetime. The delegation of authority of even greater breadth is recognized as appropriate under the war power. *United States v. Chemical Foundation*, 272 U. S. 1; *Yakus v. United States*, 321 U. S. 414, 426.

III

The validity of appellant's detention under the war power, assuming it to have been authorized, depends upon the scope of the war power of both the Congress and the President, rather than of either alone. *Hirabayashi v. United States*, 320 U. S., at pp. 92-93. Their action is to be sustained if there is "any substantial basis" or any "reasonable ground" for concluding that it is related to the war effort. Nor is the war power confined to measures which promote the progress of the war and tend to produce a successful outcome. It embraces also "the power * * * to remedy the evils which have arisen" during the progress of a war. *Stewart v. Kahn*, 11 Wall. 493, 507. The program of the War Relocation Authority has been undertaken as a result of the situation created by the West Coast evacuation, which was itself undertaken as a measure necessary in the prosecution of the war. It can scarcely be questioned that, as such, it comes within the war power if reasonably devised.

The sole question that is open is whether under the circumstances it offends due process of law.

The validity as a matter of due process of the requirement of cooperation on the part of appellant, as a condition of the restoration of her freedom, cannot be negatively determined by the broad assertion that detention *per se* is violative of the Fifth Amendment except as a punishment for crime or for the prevention of criminal conduct. The confinement of individuals under other circumstances may result from executive or administrative action. The confinement of jurors and material witnesses and of persons who are confined in the interests of health, whether for their own protection or that of others, are well-known examples. Hardships in individual cases may arise from a valid system of detention because of general considerations. In emergencies, *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398, 425-426, and in time of war, *Hirabayashi v. United States*, 320 U. S. 81, 93; *Yakus v. United States*, 321 U. S. 414, 443, the public power may be exercised in ways not normally valid. None of the authorities adduced determines the serious issue now confronting the Court; but they suggest applicable considerations. While it is to be stressed, in addition, that the freedom of the individual is not to be unduly infringed, the unusual measures demanded by military necessity affect the application of this principle.

The military necessity for the evacuation and the nature of the problems growing out of it have given rise to the relocation measures. Careful procedures have been devised to enable the evacuees to become established in communities as rapidly as possible. The plan for minimizing their hardships has entailed a restriction of individual freedom. It is not contended that under any set of circumstances less unique or less definitely a product of an extreme war measure, personal liberty might be impaired for similar reasons; but we believe there is a reasonable basis for the view that in the light of the rare conditions which brought on the program the Constitution does not require abandonment of the regulations here involved.

ARGUMENT

The appellant has been granted leave clearance by the War Relocation Authority as a person whose release would be consistent with national security. Under military restrictions and W. R. A. regulations she is prohibited from leaving the Relocation Center until she applies for and obtains leave based on approval of her proposed destination and a finding that she has adequate means of financial support. All possible assistance has been made available to enable the appellant and others in the same category to meet these requirements. Suitable locations and employment have been found for them pursuant

to a policy of encouraging permanent relocation as far as possible. Appellant's application to proceed to any one of many destinations, with financial assistance if needed, there to select from among the opportunities for employment to which she would be referred or to accept employment of her own choosing, would almost certainly be granted. The narrow issue presented, therefore, is whether appellant is lawfully detained in a Relocation Center because of the operation of War Relocation Authority procedures to which she refuses to conform and which have as their purpose an orderly relocation of evacuees, freed so far as possible from the harmful consequences of unregulated and unrestricted resettlement, bearing in mind that those procedures are designed as a means of restoring the liberty of which she was originally deprived because of the exclusion of persons of Japanese ancestry from the West Coast area as a matter of military judgment under the circumstances set forth in the opinion of this Court in *Hirabayashi v. United States* and in the Government's briefs in that case and in the *Korematsu* case, this Term.

Subsidiary Questions

Certain subsidiary questions presented by the procedure in the present case and by the decision of the District Court will be treated briefly before discussion of the principal issue.

1. *The question of jurisdiction.*—As previously pointed out, the appellant, while her appeal to the

Circuit Court of Appeals was pending, was moved from the Tule Lake Relocation Center in the Northern District of California, where she was detained at the time her petition was filed in the District Court, to the Central Utah Relocation Center in a different district and circuit. The Court may wish to consider whether this fact deprives the courts below of jurisdiction.

This Court has recently denied two petitions for writs of certiorari in habeas corpus cases upon the ground that the controversies had become moot under similar circumstances. *United States ex rel. Innes v. Crystal*, 319 U. S. 755; *United States ex rel. Lynn v. Downer*, No. 941, October Term, 1943.

Whether the present proceeding can be said to have been rendered moot by the petitioner's removal involves the question whether the jurisdiction which the District Court acquired has continued. This involves the further question whether jurisdiction in habeas corpus rests primarily upon the presence of a respondent in the jurisdiction of the court in which the petition is filed or upon the location of the petitioner's place of confinement within the territorial jurisdiction. If the former, the cause continues to be a genuine one so long as the respondent retains control of the petitioner; if the latter, the cause terminates upon removal of the petitioner from the territorial jurisdiction of the court, unless a writ has issued or some other basis exists for

regarding a controversy respecting the petitioner's custody as continuing before the court.

No suggestion arises that the removal of the appellant was in any sense improper or in derogation of the court's jurisdiction. The District Court had issued no writ, but had dismissed the petition as insufficient upon its face. No basis is suggested for concluding that the normal operations of an agency of the Executive Branch must be suspended following the refusal of a writ of habeas corpus, merely because an appeal from the refusal is possible or has been filed. On the contrary, it has been held that, absent statutory authority, no basis exists upon which the court which has denied a writ may dispose of the custody of the petitioner pending his appeal. *Bongiovanni v. Ward*, 50 F. Supp. 3 (D. Mass.); see also *In re Collins*, 151 Calif. 340, 351-352, 90 Pac. 827, 91 Pac. 397.⁴⁷

⁴⁷ In *Ex parte Catanzaro*, 138 F. (2d) 100 (C. C. A. 3), it was suggested by the court that Rule 45 (1) of this Court, which provides that "pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed," requires the respondent in the habeas corpus proceeding to retain the custody of the petitioner after an appeal from the denial of a writ has been filed, until a final decision has been rendered. It seems, however, that the purpose of this Rule is to prevent a court from disturbing the custody of the petitioner pending the appeal, when nothing more substantial with reference to the merits than a petition once adjudged invalid, and an appeal, have been filed or issued, rather than to stay the hand of the Executive Branch with reference to the petitioner. *In re McKane*, 61 Fed. 205 (C. C. S. D. N. Y.). Rule 45 (2) which governs appeals from orders discharg-

The present appellant was not wrongly transferred from one Relocation Center to another outside the district and circuit in which her cause was pending. The questions, therefore, are (1) whether a proper respondent remains in the case, (2) whether the fact that the appellant is no longer within the jurisdiction of the District Court and Circuit Court of Appeals renders the cause moot, and (3) whether the cause continues for some other reason.

The petition alleged that appellant's liberty was restrained by the Commanding General of the Western Defense Command, in addition to the local officials of the Relocation Center and the Director of W. R. A. That officer continues to have his official headquarters at the Presidio in San Francisco within the Northern District of California and continues to have power over the custody of the appellant, since the restraint upon her is exercised by virtue of Public Proclamation No. 8 of his command (*supra*, p. 14). Neither he nor the Director of the War Relocation Authority, however, was properly named as a respondent, since neither of them was the immediate physical custodian of the appellant in the sense which would warrant the issuance of a writ of habeas corpus directed to him. *Jones v. Biddle*, 131 F. (2d) 853 (C. C. A. 8), certiorari denied, 318 U. S. 784.

ing writs of habeas corpus, by contrast provides that pending an appeal the prisoner may be remanded to custody or enlarged upon recognizance as the court rendering the decision may determine.

It is probably immaterial whether a particular respondent who remains within the territory of the District Court can be identified, since no respondent was ever served with process or appeared in the proceedings. The United States Attorney for the Northern District of California argued before the Court that the appellant's petition for a writ of habeas corpus was invalid upon its face. This Court held in *Ex parte Milligan*, 4 Wall. 2, that a cause exists in this state of the proceedings, the parties to which are the petitioner and the Government of the United States. Accordingly, an appeal lies from the refusal of a writ, without appearance by any respondent. 4 Wall., at p. 112; *Ex parte Quirin*, 317 U. S. 1, 24.

It is possible, nevertheless, that the cause disappears if the petitioner's place of custody ceases to be within the jurisdiction of the court in which the petition was filed or if the original respondent ceases to be the custodian. Such may be the inference to be derived from the *Innes* and *Lynn* cases, *supra*. In the *Lynn* case a writ had issued and been discharged. Pending an appeal to the Circuit Court of Appeals, the petitioner, who was in the Army, was moved overseas. The original respondent had retired from active duty. It was held that the cause had become moot. In the *Innes* case also a writ had issued and been discharged.

The petitioner in that case was moved from the territorial jurisdiction of the courts below during the course of the proceeding.

The basic question of the ground of jurisdiction appears on the basis of older authorities to be somewhat doubtful. In *Ex parte Milligan, supra*, the fact seems to have been that the petitioner had been removed from the District of Indiana, in which the cause arose, and from the Seventh Circuit within which the district lay, and also from the custody of the original respondent, before the case was argued in the Supreme Court. Klaus, *American Trials, Ex parte: In the Matter of Lamdin P. Milligan*, p. 41. It does not appear from the report of the case, however, that the attention of the Court was called to the change in the place of Milligan's detention. Answering the Circuit Court's question,⁴⁸ the Court stated "that on the facts stated in said petition and exhibits a writ of *habeas corpus* ought to be issued, according to the prayer of the said petitioner" (4 Wall., at

⁴⁸ It is suggested in *McMaster v. Gould*, 240 N. Y. 379, 148 N. E. 556, 40 A. L. R. 792, that a question certified by an intermediate court should be answered as of the time of the trial court decision to which it relates. This principle would not apply to the present case, since the entire record has been certified up and the Court will proceed to "decide the whole matter in controversy in the same manner as if it had been brought * * * [up] by appeal." Judicial Code, Section 239, 28 U. S. C. Sec. 346; Act of February 13, 1925, c. 229, Sec. 6, 43 Stat. 940, 28 U. S. C. Sec. 463 (d).

p. 107); but the Court did not say to whom the writ should be directed. The case was never concluded, however, since the President, following the Supreme Court's decision, remitted Milligan's sentence and ordered his release. Klaus, *op. cit.*, p. 44.⁴⁹

In *United States v. Davis*, 5 Cranch C. C. 622, 25 Fed. Cas. 775; *Ex parte Fong Yim*, 134 Fed. 938 (S. D. N. Y.), and *Ex parte Ng Quong Ming*, 135 Fed. 378 (S. D. N. Y.), it was held that the presence of a respondent in the jurisdiction, having power with respect to the petitioner's custody within or without the jurisdiction, is the basis of a court's authority to entertain a habeas corpus proceeding.⁵⁰ In *Sanders v. Allen*, 100 F. (2d) 717 (App. D. C.), it was held that habeas corpus would lie in the District of Columbia against an official of the District who was holding the petitioner in custody in a District of Columbia institution located in Virginia. The circumstances of this case are somewhat unusual, but the court expressed the view that jurisdiction depends upon the presence of a respondent within the area of the

⁴⁹ Milligan's counsel assumed that the original ~~District~~ ^{Circuit} Court would no longer have had jurisdiction, for he proceeded to Columbus and there secured a writ of habeas corpus. *Ibid.*

⁵⁰ In Great Britain it was held in *Ex parte O'Brien* [1923] 2 K. B. 361, that a writ of habeas corpus might issue to the Secretary of State in England who had transferred the petitioner's custody to the Government of the Irish Free State, since there was an arrangement whereby the respondent was able to control the disposition of the petitioner.

court's authority and not upon the place of detention.

Apparently to the contrary, holding that the place of confinement must be within the court's territorial jurisdiction, are *In re Boles*, 48 Fed. 75 (C. C. A. 8); *Ex parte Gouyet*, 175 Fed. 230 (D. Mont.); *United States ex rel. Belardi v. Day*, 50 F. (2d) 816 (C. C. A. 3), and *United States ex rel. Harrington v. Schlotfeldt*, 136 F. (2d) 935 (C. C. A. 7). In the *Boles*, *Gouyet*, and *Harrington* cases, however, the respondents, as well as the place of detention, were outside the jurisdiction of the particular courts.

In a leading American case, *In the Matter of Samuel W. Jackson*, 15 Mich. 417, the four judges of the Supreme Court of Michigan divided evenly with regard to the jurisdictional question involved in the present case. Cooley, J., with whom Christianity, J. concurred, took the view that jurisdiction depended upon the presence of a proper respondent within the territorial jurisdiction of the court; Campbell, J. and Martin, Ch. J. took the position that habeas corpus cannot lie to test the detention of an individual in another State.

It seems to be fairly certain that a court will rarely entertain a habeas corpus proceeding to challenge the detention of a petitioner beyond its territorial jurisdiction; but there are cases in which it has been done, usually because of circumstances which caused the actual controversy to relate to matters arising within the jurisdiction.

The statute upon which the jurisdiction of the Federal courts in habeas corpus rests, R. S. 752, 28 U. S. C. Sec. 452, is inconclusive upon the question. It reads as follows:

The several justices of the Supreme Court and the several judges of the circuit courts of appeal and of the district courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty. A circuit judge shall have the same power to grant writs of habeas corpus within his circuit, that a district judge has within his district; and the order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

The concluding sentence of this section was added by Section 6 of the Act of February 13, 1925, c. 229, 43 Stat. 940. It is believed not to be significant with regard to the present question, since its purpose was to designate the court, after the termination of the circuit courts, in which a habeas corpus proceeding conducted by a circuit judge should be recorded. It does not appear that there was any intention to change the extent of jurisdiction in habeas corpus proceedings.

Ex parte Catanzaro, 138 F. (2d) 100, *supra*, holds that under circumstances similar to those in the present case an appeal is not defeated by the removal of the petitioner from the jurisdiction.

As previously mentioned, however, reliance is placed in part upon Rule 45 (1) of this Court. The *Catanzaro*, *Lynn* and *Innes* cases seem to be the authorities most directly in point upon the question of possible mootness as it arises in the instant case.⁵¹

2. *Issues Presented by the Record.*—The present record consists of the petition (R. 2-10) and two affidavits in respect to the appellant's failure to make application for leave from the Relocation Center after the regulations providing for such leave had been promulgated (R. 11-15). The data relevant to the appellant's detention embrace allegations in the petition and the statutes, Executive Orders, proclamations and regulations which govern persons in a Relocation Center and of which the District Court properly took judicial notice. The affidavits in the record disclose facts pertinent to appellant's failure to apply for leave from the Relocation Center. Although affidavits are ordinarily not an adequate substitute for properly adduced evidence, it is believed that in this case it is unnecessary to give effect to this rule. The affidavit of appellant's counsel may be treated as an amendment to the petition. So far as appellant's detention in a Relocation Center is concerned, we submit to the Court in this brief the facts and factors which are relied upon. If

⁵¹ The authorities cited in the memorandum decisions in the *Innes* and *Lynn* cases relate to the effect of a complete release from custody upon pending habeas corpus proceedings.

the question of continued exclusion from the West Coast is involved (see *infra*, pp. 55-60), it is believed, for reasons which will be stated, that the cause should be remanded. We do not urge that the issue of the validity of the War Relocation Authority leave regulations cannot be satisfactorily determined on the basis of the present record and the facts and factors which are set forth in this brief, assuming jurisdiction. Final decisions in habeas corpus proceedings upon such a basis are, of course, common. *Ex parte Quirin*, 317 U. S. 1; *Ex parte Milligan*, 4 Wall. 2; *Ex parte Watkins*, 3 Pet. 193, 201.

3. *Applicability of Doctrine of Exhaustion of Administrative Remedies.*—The decision of the District Court dismissing the petition was based in part on the ground that the petitioner had not exhausted her administrative remedy under W. R. A. regulations (R. 15). The regulations were called to the court's attention by the affidavit of the Acting Director at the Tule Lake War Relocation Center where the appellant was detained (R. 11-13) and were properly noticed by it. The regulations provided for indefinite leave upon application when the Director of the War Relocation Authority was satisfied that the applicant was willing to report changes of residence and employment to W. R. A. following departure, that the applicant would have employment or other means of support and could successfully maintain

residence at the proposed destination, and that the issuance of a permit would not interfere with the war program or otherwise endanger public peace and security (*infra*, pp. 122-123). An affidavit on behalf of appellant by her attorney alleged that the regulations made no provision for the return of the appellant to her place of residence in Sacramento, California; that it would be useless to make application for her return there; and that the appellant was confined against her will and was refused the right to return (R. 14-15).

~~The Government does not invoke the doctrine that administrative remedies must be exhausted prior to a judicial determination of the question presented, because the issue which petitioner poses in seeking habeas corpus is the validity of the regulations under which the administrative remedy is prescribed.~~

The Government does not invoke the doctrine that administrative remedies must be exhausted prior to a judicial determination of the questions presented, because the issue which appellant poses in seeking habeas corpus is the validity of the regulations under which the administrative remedy is prescribed.

Her failure to apply for leave can not foreclose the question whether her rights were invaded by the requirement that she make such an application. The more difficult problem is the scope of the issue upon which the merits of the controversy

turn. Since it cannot be said that she will not obtain her liberty should she apply for leave, it may be urged that the question before the Court is the narrow one whether she may be detained pending such application and an opportunity to act thereon, that is, that she has no standing to put in issue the invalidity of detention should her application, if filed, be denied. It may be argued in reply that unless individuals can validly be detained after an adverse determination with respect to the conditions for leave they can not validly be detained for the more limited purpose of permitting such determinations to be made. While no decision directly controls, we have presented the case on the basis of the broader issue being involved.

4. *Disposition of Issue of Continued Exclusion From the West Coast.*—It appears from the affidavit of appellant's counsel with respect to her reason for not making application for leave from the Relocation Center (R. 14-15) that she declines to employ the available procedures because they could not eventuate in an authorization for her return to Sacramento, California, where she desires to go. Sacramento is in the West Coast area from which Public Proclamations Nos. 7 and 11 (*infra*, pp. 106-109) continue to exclude her. Thus it appears her objection to the regulations is centered upon their omission of any provision for permitting her to return to the West Coast. She is also excluded from Sacramento itself by

Civilian Exclusion Order No. 52 (*infra*, pp. 116-117).

It is the Government's view that the issue of continued exclusion of persons of Japanese ancestry from the West Coast area is not involved in this case. The appellant is not confined within the forbidden zones. She seeks her release from custody. If the relief for which she prays is granted, she will be set free. The question of her subsequent right to go into any particular part of the country⁵² would arise if she then endeavored to go there. Habeas corpus does not lie to test a geographical restriction upon freedom of movement, *Wales v. Whitney*, 114 U. S. 564, just as it does not lie to test the validity of allegedly excessive bail. *Stallings v. Splain*, 253 U. S. 339; *Johnson v. Hoy*, 227 U. S. 245.

It is true that the validity of the continued detention of the appellant depends upon the purposes for which this detention is maintained and that these purposes include the continued exclusion

⁵² If the Relocation Center were in the coastal area, as several are, the question would then be whether she would be under a duty to leave the area upon regaining her freedom. Only if the court thought it necessary to require her to leave as a condition of granting relief would the issue of continued exclusion arise. See *Tod v. Waldman*, 266 U. S. 113; *U. S. ex rel. Chong Mon v. Day*, 36 F. (2d) 278 (S. D. N. Y.); *U. S. ex rel. Rizzo v. Curran*, 13 F. (2d) 233, 235 (S. D. N. Y.), with regard to the conditional release of habeas corpus petitioners. The courts are directed by statute "to dispose of the party as law and justice require." R. S. Sec. 761, 28 U. S. C. Sec. 461.

of persons of Japanese ancestry from the West Coast area. That exclusion, however, rests upon military regulations distinct from War Relocation Authority regulations. The military regulations will be in effect whether the evacuees are released from War Relocation Centers or whether they continue to be there restrained. The military authorities in maintaining the exclusion are not governed by the War Relocation Authority's leave clearance and leave determinations. It would seem that the question of the validity of the W. R. A. regulations applicable to the appellant may be determined without deciding the question of her right to return to Sacramento.

Should this Court be of the view that the validity of continued exclusion of the appellant from the West Coast is involved, or is the issue which appellant tenders, we suggest that the cause should be remanded for issuance of the writ or a rule to show cause, followed by an answer or return and, if necessary, trial of the issues which underlie the validity of such continued exclusion. The Government is not in a position to present to the Court, in the manner in which the relocation problem has been presented, the facts relating to the military situation which would be relevant to the issue of continued exclusion from the West Coast. It would require, as we now believe, evidence adduced by testimonial processes to permit a satisfactory determination of this question.

This Court, of course, has frequently remanded cases which involved constitutional issues for a hearing upon relevant facts, where these facts are not already in the record and are not before the Court by virtue of judicial notice. *Chastleton Corp. v. Sinclair*, 264 U. S. 543; *City of Hammond v. Schappi Bus Line*, 275 U. S. 164; *Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194, 212; *Polk Co. v. Glover*, 305 U. S. 5; *Gibbs v. Buck*, 307 U. S. 66. Habeas corpus cases, as well as others, may be remanded. *Johnson v. Zerbst*, 304 U. S. 458; *Walker v. Johnson*, 312 U. S. 275. The facts relating to a widespread military situation may, of course, be developed by testimonial processes, as they have been in a number of recent instances.⁵³

I

THE QUESTION OF WHETHER CONGRESS OR THE PRESIDENT HAS GRANTED AUTHORITY TO DETAIN SUCH PERSONS AS APPELLANT PENDING THEIR COMPLIANCE WITH THE CONDITIONS FOR OBTAINING PERMISSION TO LEAVE A RELOCATION CENTER

The authority for the appellant's detention is contained either in Executive Order No. 9102 as

⁵³ In *Schueler v. Drum*, 51 F. Supp. 383 (E. D. Pa.); *Ebel v. Drum*, 52 F. Supp. 189 (D. Mass.); *Wilcox v. DeWitt*, decided September 4, 1943 (S. D. Cal.); and *Scherzberg v. Grunert*, decided July 21, 1944 (E. D. Pa.), direct testimony was obtained from the military authorities concerning the domestic military situation. The facts as to the necessity for the suspension of the privilege of the writ of habeas corpus and for martial law in Hawaii have also been tried recently. *U. S. ex rel. Duncan v. Kahanamoku*, decided April 13, 1944 (D. Hawaii).

ratified by appropriation acts of the Congress, or in Executive Order No. 9066 as ratified by the Act of March 21, 1942 (18 U. S. C., Supp. III, Sec. 97a), or in both of these Executive Orders as ratified. In measuring the scope of the Executive Orders it is of prime significance that the challenged regulations were publicly issued by the officers of the Government authorized to carry the program into effect; their action constitutes an administrative construction which we believe is entitled to great weight. The texts of the Orders and Congressional understanding of their meaning and knowledge of the actions taken determine whether these actions have been ratified. The question will be considered with reference to each Order separately.

A. *Scope, Application, and Ratification of Executive Order No. 9102.*—This Executive Order, dated March 18, 1942 (*infra*, pp. 92–96), recites that its purpose is to provide for the removal of persons from designated areas in the interest of national security. It directs the Director of the War Relocation Authority to formulate and to effectuate a program for the removal, relocation, maintenance and supervision of such persons and gives the Director authority to provide for the relocation of such persons in appropriate places, to supervise their activities, to provide for their employment, and to prescribe regulations necessary or desirable to promote the effective execution of the program.

The broad terms of the Order make it clear that relocation was considered to be a phase of the program of evacuation and, as such, a responsibility of the Government. In order to discharge this responsibility the Director of the War Relocation Authority was expressly given power to prescribe regulations for the relocation of the evacuees in appropriate places, for their employment, and for the supervision of their activities. It seems clear that the Director was thus authorized to provide in the regulations that in relocating persons community conditions and available means of financial support should be considered. We think there is a reasonable foundation for the view that the Order supplies a basis for the detention pending the issuance of leave which is required by Public Proclamations No. 8 and No. W. D. 1 (*infra*, pp. 109-114) and in the W. R. A. leave regulations.

The heart of the relocation program has lain in (1) the segregation of evacuees who could not be released from those who could be, consistently with national security, and (2) the leave procedures, involving supervised relocation of those found to be loyal and the detention of individuals pending its accomplishment. The leave regulations provide for a planned and orderly relocation in place of one that might be helter-skelter and spasmodic. They enable the preparation of public opinion in the communities to which the evacuees wish to go, with consequent avoidance of opposi-

tion, including possible violence, and other evil consequences, as well as assistance to individuals in securing economic opportunity. The Leave Regulations "stem the flow" and convert what might otherwise be a dangerously disorderly migration of unwanted people to unprepared communities into a planned migration to communities that give promise of being able to assimilate the newcomers without incidents, to mutual advantage and with resulting furtherance of additional relocations.

The facts stated above (pp. 25-28) and in the Government's brief in *Korematsu v. United States*, No. 22, this Term, indicate the basis upon which the responsible government authorities apprehended that the unsupervised evacuation of over 100,000 persons of Japanese ancestry from the West Coast to the interior might have resulted in hardship and in disorder in the communities through which the evacuees might travel or in which they might attempt to settle. Similar considerations underlie the belief that the unsupervised release at the present time from the War Relocation Centers of persons in the situation of the appellant might have similar results, although the situation has mitigated since the time of the original evacuation. The fact that these persons are free from suspicion of disloyalty does not insure that their release might not produce serious consequences both to them and to others who have relocated. The detention for an additional period

of the group which has been granted leave clearance but which has not yet received indefinite leave, is a continued consequence of the original exclusion, growing out of the decision to resort to a controlled evacuation. The effects of the evacuation remain to be dealt with, a fact which supports the view that the leave regulations as maintained are authorized by the Executive Order.

On September 14, 1943, the President forwarded to the Senate a message in response to its Resolution No. 166, transmitting a Statement of the Director of War Mobilization with Reference to the Treatment of Persons of Japanese Ancestry in Relocation Centers (Sen. Doc. No. 96, n. 16, p. 25, *supra*). The Statement refers to the requirement that an applicant for leave must have means of support outside the areas from which he has been excluded and to the requirement that the Authority must be reasonably assured that the community in which he proposes to relocate will accept him without incident. The Statement advances the view that "the detention * * * of citizens of the United States against whom no charges of disloyalty or subversiveness have been made, for longer than the minimum period necessary to screen the loyal from the disloyal, and to provide the necessary guidance for relocation, is beyond the power of the War Relocation Authority" (pp. 18-19), thus calling attention to the fact that loyal persons were being detained for periods necessary to arrange for relocation.

Congressional awareness of the nature of the War Relocation Authority's regulations and procedures is evidenced generally by the reports and hearings referred to above (p. 24), which have been directed to all aspects of the Authority's operations. The prompt release of the loyal evacuees, as well as the effective segregation of the disloyal, have at times been an object of concern in Congress.⁵⁴ In the light of this awareness, Congressional ratification of the detention of loyal evacuees under the leave regulations through the adoption of the 1944 and 1945 Appropriation Acts⁵⁵ may be judged. The W. R. A. leave program was mentioned in both House and Senate committee hearings and on the floor of the House prior to passage of the 1944 Act.⁵⁶ During the discussion of the bill Congress had before it a report of a subcommittee of the Senate Committee on Military Affairs (approved by the

⁵⁴ Report and Minority Views of the Special Committee on Un-American Activities, H. R. Rep. No. 717, 78th Cong., 1st sess., Minority Views, pp. 18, 23-24; Hearings before Subcommittee of the Senate Committee on Military Affairs, *supra*, n. 15, p. 24, at pp. 45-46.

⁵⁵ National War Agencies Appropriation Act for 1944, P. L. 139, 78th Cong., 1st sess., approved July 12, 1943; *idem* for 1945, P. L. 372, 78th Cong., 2d sess., approved June 28, 1944.

⁵⁶ 1944 Appropriation Hearings, p. 710; Hearings before Senate Appropriations Subcommittee, p. 382; 89 Cong. Rec. 6071, 6073; see also 89 Cong. Rec. pp. 5983-5985, 6008, 6834, 6836, 7138.

Senate Committee on May 7, 1943), in which there are references to the detention of loyal persons.⁵⁷

B. *Scope, Application and Ratification of Executive Order No. 9066.*—Executive Order No. 9066, in order to provide for all possible protection against espionage and sabotage to national defense materials, premises and utilities as defined by statute, conferred upon the Secretary of War and military commanders designated by him the authority to establish military areas and to impose restrictions on the right of any person to enter, remain in, or leave such areas. General DeWitt's Public Proclamation No. 8 of June 27, 1942 (*infra*, pp. 109–111) designated all Relocation Centers in the Western Defense Command as War Relocation Project Areas and prohibited any person of Japanese ancestry from leaving a Center without written authorization executed by authority from his Command. By letter of August 11, 1942, General DeWitt authorized W. R. A. to issue permits for persons to leave such War Relocation Project Areas.⁵⁸

⁵⁷ Report of the Subcommittee on Japanese War Relocation Centers to the Committee on Military Affairs, on S. 444 and S. Res. 101 and 111, 78th Cong., 1st sess., pp. 4–5.

⁵⁸ The Secretary of War's Public Proclamation No. W. D. 1 of August 13, 1942, designated all War Relocation Centers outside of the Western Defense Command as military areas and prohibited the egress of any person without permission from the Secretary of War or the Director of the War Relocation Authority.

Public Proclamation No. 8 expressly refers to the establishment of military areas by Public Proclamations Nos. 1 and 2 (*infra*, p. 97-105) and then recites that the situation within these military areas requires, as a matter of military necessity, that evacuees be removed to Relocation Centers for relocation, maintenance, and supervision; that these Centers be designated War Relocation Project Areas; and that appropriate restrictions be promulgated with respect to the right of the evacuees and of all other persons to enter, remain in, or leave such areas. In view of the reference in Proclamation No. 8 to Proclamations Nos. 1 and 2 and the fact that these Proclamations recite the military necessity for protection against espionage or sabotage such as might accompany an invasion, it may be said that Proclamation No. 8 was founded upon these recitals and was issued to further the same objective of preventing espionage and sabotage in connection with an attempted invasion.⁵⁹

In view of the grant of leave clearance to the appellant upon the determination that her release would not impede the war effort or be contrary

⁵⁹ In *Hirabayashi v. United States*, 320 U. S. 81, 103, this Court stated that Proclamation No. 3, which established the curfew regulation involved in that case, prescribed regulations of the type which Public Proclamations Nos. 1 and 2 had announced would be prescribed at a future date and was thus founded on the findings of Proclamations Nos. 1 and 2 in respect of protection against espionage and sabotage even though Proclamation No. 3 did not repeat these findings.

to public peace and safety, which means in effect that she is found not to be disloyal, it is not argued that the appellant's detention pending compliance with the W. R. A. Leave Regulations is of itself directly connected with the prevention of espionage and sabotage at the present time. The Executive Order, however, authorizes regulations for the supervision and protection of persons affected by the evacuation which had been found to be necessary for protection against espionage and sabotage. The Executive Order thus confers power to make regulations necessary and proper for controlling situations created by the exercise of the powers expressly conferred for protection against espionage and sabotage. Detention, pending leave, is required by the regulations prescribed. The appellant is in the Relocation Center as a result of the method adopted to accomplish the evacuation which was ordered for the prescribed purpose. She is detained only pending compliance with a regulation designed to effect an orderly termination of the evacuation. Supervised relocation, as the chosen method of terminating the evacuation, is the final step in the entire process, flowing from the first step taken. Its inclusion within the scope of the Executive Order, as a matter of legal interpretation, rests upon this fact.

It has been determined that the "conclusion is inescapable that Congress, by the Act of March 21, 1942, ratified and confirmed Executive Order

No. 9066." *Hirabayashi v. United States*, at p. 91. Accordingly, if appellant's detention under Public Proclamation No. 8 is within the authority granted by Executive Order No. 9066, it is also within the authority granted by the Act of March 21, 1942, even apart from possible later Congressional ratification of the measures adopted. The question remains, however, whether this construction of the Act results in an unconstitutional attempt to delegate legislative power.

In the *Hirabayashi* case this Court determined that the delegation of the authority to issue a curfew regulation pursuant to the Executive Order and the Act was not excessive because the legislative history of the statute showed "that Congress was advised that curfew orders were among those intended" (320 U. S., at 91), and because the statute therefore left to the military commanders only the power to determine whether, when, and where curfew orders should be promulgated. The legislative history does not demonstrate that detention was contemplated, however, or that Congress was advised that it was anticipated, at the time of the enactment of the statute. The exclusion was proceeding on a basis of self-arranged migration at that time (*supra*, p. 12), and Congress was advised that it was being undertaken (*Hirabayashi v. United States*, 320 U. S., at pp. 90-91). Accordingly, the detention of evacuees was ordered under the power, which Congress consciously conferred, to exclude persons

of Japanese ancestry from the West Coast and to impose conditions upon the right of persons to remain in or leave that area. We think the validity of the authority to impose the detention required by Public Proclamation No. 8 may be judged in the light of the specific measures contemplated by Congress and of the requirement that all measures taken must be directed to the prevention of espionage and sabotage, or related to measures that were so directed.

Thus construed, the standard laid down by the legislature is not less adequate than others that have been sustained even in peace time. *United States v. Grimaud*, 220 U. S. 506; *Curriu v. Wallace*, 306 U. S. 1; *United States v. Rock Royal Co-op.*, 307 U. S. 533; *Sunshine Coal Co. v. Adkins*, 310 U. S. 381; *Opp Cotton Mills v. Administrator*, 312 U. S. 126. With reference to delegations of authority under the war power, standards of even greater breadth are recognized as appropriate. *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 319-322. Upon this principle, broad powers have frequently been granted to the President in wartime legislation and sustained. See, for example, *Northern Pac. Ry. Co. v. North Dakota*, 250 U. S. 135; *Dakota Cent. Tel. Co. v. South Dakota*, 250 U. S. 163; *Highland v. Russell Car Co.*, 279 U. S. 253; *The Thomas Gibbons*, 8 Cranch 421; *United States v. Chemical Foundation*, 272 U. S. 1; *Yakus v. United States*, 321 U. S. 414, 426; *Bowles v. Willingham*, 321 U. S. 503, 514-

515. In the *Chemical Foundation* case the Court states:

The Act went as far as was reasonably practicable under the circumstances existing. It was peculiarly within the province of the Commander-in-Chief to know the facts and to determine what disposition should be made of enemy properties in order effectively to carry on the war
* * *. (272 U. S., at p. 12.)

In addition to the Act of March 21, 1942, Congressional approval of, and thus authorization for, detention in Relocation Centers under Public Proclamation No. 8, as well as under Executive Order No. 9102, may be reflected in the Acts appropriating funds for the War Relocation Authority (*supra*, p. 65). Congress has been fully advised of the whole program from the beginning and has acted in the light of this knowledge to enable the program to continue.

II

THE QUESTION OF WHETHER APPELLANT'S DETENTION UNDER THE REGULATIONS IS WITHIN THE JOINT WAR POWER OF CONGRESS AND OF THE PRESIDENT AND IS CONSISTENT WITH DUE PROCESS OF LAW

A. *The extent of the War Power.*—If the appellant's detention has been authorized through either or both of the Executive Orders and the Act of March 21, 1942 by reason of the foregoing considerations, its constitutionality depends upon the scope of the war power of both the Congress

and the President.⁶⁰ As was the case with the curfew regulation involved in *Hirabayashi v. United States*, the question is not the power of either the President or the Congress, acting alone, but the authority for the relocation program and the detention of evacuees in "the Constitutional power of the national government, through the joint action of Congress and the Executive" (*Hirabayashi* case, 320 U. S. at p. 92).

In the *Hirabayashi* opinion this Court stated (p. 93):

The war power of the national government * * * extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces * * * *Prize Cases*, *supra*; *Miller v. United States*, 11 Wall. 268, 303-14; *Stewart v. Kahn*, 11 Wall. 493, 506-07; *Selective Draft Law Cases*, 245 U. S. 366; *McKinley v. United States*, 249 U. S. 397; *United States v. Macintosh*, 283 U. S. 605, 622-23. Since the Constitution commits

⁶⁰ The war power of Congress rests in the main on the powers given to it by Article 1, Section 8 of the Constitution "to declare War" and "to make all Laws * * * necessary and proper for carrying into Execution" this power. The war power of the President rests on Article 2, Section 2 of the Constitution which states that "the President shall be Commander in Chief of the Army and Navy" and, generally, upon his position as Chief Executive, which necessarily entails broader duties in times of emergency than otherwise.

to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it.

And in order to assure that this wide scope for judgment and discretion is unobstructed, the Court held that if there is "any substantial basis" or any "reasonable ground" for the belief of the Executive and Legislative Departments that a matter or activity is so related to the war as substantially to affect its progress, their judgment is to be accepted by the courts.

In addition to the broad power to adopt measures to promote the progress of the war and produce a successful outcome, reaffirmed in the *Hirabayashi* decision, the war power encompasses the power to provide for the general welfare in ways which become appropriate because of the prosecution of a war. As stated by this Court in *Stewart v. Kahn*, 11 Wall. 493, in which the authority of Congress to toll state statutes of limitation during and after the Civil War was upheld, the war power not only covers measures designed to prosecute a war successfully but also "carries with it inherently the power * * * to remedy the evils which have arisen from its rise and progress." 11 Wall., at p. 507. See also *Raymond v.*

Thomas, 91 U. S. 712, 714-715, in which the Court, citing the *Stewart* case, upheld the validity of statutes providing for reconstruction governments in the Southern States following the Civil War, and *Hamilton v. Kentucky Distilleries Co.*, 251 U. S. 146, 161, in which the Court held that a war-time enactment could be continued in force during the demobilization period, since the war power covers enactments with respect to an "emergency or necessity arising out of the war or incident to it."

It is clear from the facts stated above that the program and procedures of the War Relocation Authority have been undertaken as a result of the situation arising from the evacuation of persons of Japanese ancestry from the West Coast area. If the evacuation is upheld by this Court (*Korematsu v. United States*) as a measure validly undertaken in the prosecution of the war, conditions occasioned by it may properly be dealt with under the war power by reasonable means. A relocation problem was inescapable as a result of the evacuation. By the removal of 110,000 persons from the West Coast area the Government assumed moral and political responsibility for their fate and for the wise handling of conditions which their relocation might precipitate. It can scarcely be questioned that measures reasonably designed to meet this responsibility come within the war power. The sole question that is open is whether

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the measures applicable to petitioner are so unreasonable, even under the circumstances, as to offend due process of law and, therefore, to fall outside the scope of the extraordinary powers which it was sought to exercise.

B. *Due Process of Law*.—The nature of the question of due process of law, involved in the present case, has already emerged from what has been said as to the relation of the leave regulations to the concluding phase of the evacuation ordered in the exercise of the war power. The validity of the requirement of cooperation on the part of appellant, as a condition of the restoration of the liberty of which she was initially deprived, cannot be negatively answered by the broad assertion that detention *per se* is violative of the Fifth Amendment except as a punishment for crime or for the prevention of criminal conduct, since the confinement of individuals may under other circumstances result from executive or administrative action with or without statutory authorization. Confinement of jurors⁶¹ and material witnesses⁶² is a well-known illustration of this type of measure. The protection of the individuals confined or of others affords adequate justification for detaining persons who are subject to some disability or condition which threatens harm.⁶³ And, of course,

⁶¹ *State v. Netherton*, 128 Kans. 564, 279 Pac. 19.

⁶² *United States v. von Bonin*, 24 F. Supp. 867 (S. D. N. Y.).

⁶³ *People ex rel. Barmore v. Robertson*, 302 Ill. 422, 134 N. E. 815.

new grounds of detention in the interest of the public welfare are recognized as expanded knowledge or changed social conditions disclose adequate reason. *Minnesota v. Probate Court*, 309 U. S. 270.

That hardships not justified in an individual case considered alone may arise from a system of detention which is valid because of larger considerations, is also a familiar fact. The arrest and confinement of persons suspected of crime but presumed to be innocent until proven guilty perhaps give rise in the course of a year to more suffering on the part of blameless individuals the country over who cannot furnish bail than the Japanese evacuees have suffered in the same length of time. See National Commission on Law Observance and Enforcement, *Penal Institutions, Probation and Parole: Report of Advisory Committee*, pp. 271-279; Hutcheson, *The Local Jail*, 21 A. B. A. J. 81 (1935). The law surrounds the exercise of public force with safeguards;⁶⁴ but it is not required to stay its hand because irreparable hardship arises from the measures taken.

Even in emergencies short of war the public power may be exercised in ways not normally valid. *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398, 425-426. In time of war

⁶⁴ The requirement that an arrested person be taken promptly before a magistrate is, of course, intended to minimize the danger that individuals against whom no case can be made will be subjected to prolonged detention.

its content rises to its maximum and frequently justifies measures which in normal times might not be sustained. *Meyer v. Nebraska*, 262 U. S. 390, 402; *Block v. Hirsch*, 256 U. S. 135, 150-56; *Hirabayashi v. United States*, 320 U. S. 81, 93; *Yakus v. United States*, 321 U. S. 414, 443. No severer test of its nature and scope in time of war could be suggested than that already supplied in *The Selective Draft Law Cases*, 245 U. S. 366. See also *Highland v. Russell Car Co.*, 279 U. S. 253.

This Court has sustained the detention of individuals by State executive decree to prevent disorder during an "insurrection" declared to have arisen, the civil courts being open to afford a remedy to persons seeking to question their detention. *Moyer v. Peabody*, 212 U. S. 78; cf. *Sterling v. Constantin*, 287 U. S. 378, 400. In Great Britain the two World Wars have produced legislation which, in its present form, authorizes the Secretary of State to detain "persons whose detention appears to the Secretary * * * to be in the interests of the public safety or the defence of the realm";⁶⁵ and the judges have expressed the view that such drastic action, under stress of the emergency of modern war, is not out of accord with the traditional liberty of the British subject.⁶⁶

⁶⁵ Emergency Powers (Defence) Act, Aug. 24, 1939, 2 & 3 Geo. VI, c. 62, Sec. 1 (2).

⁶⁶ See the views expressed and the authorities cited in the opinions of Lord Macmillan and Lord Wright in *Liversidge v. Sir John Anderson* [1942], A. C. 206, 251-273.

The issue now confronting the Court is not ruled by any of these precedents, although all of them suggest considerations which bear upon it. While it is to be borne in mind, in addition, that the "power to regulate must be so exercised as not, in obtaining a permissible end, unduly to infringe the protected freedom" of the individual (*Cantwell v. Connecticut*, 310 U. S. 296, 304), this principle of peacetime enunciation is not to be read with the same content as respects undue infringement when applied to unusual measures found necessary by reason of military necessity. Immunities from governmental control are less numerous and less broad. The question is whether, in view of the purposes sought to be achieved and the character of the measures taken, the leave regulations, with their attendant detention of individuals such as the appellant, can be sustained as a valid exercise of the war power or must be stricken down as a denial of due process to the persons affected.⁶⁷

⁶⁷ The difficulty of the question presented appears from the following passage in the Statement of War Mobilization Director James F. Byrnes, *supra* (p. 25) :

"Detention within a relocation center is not, therefore, a permanent part of the evacuation process. It is not intended to be more than a temporary stage in the process of relocating the evacuees into new homes and jobs.

"The detention or internment of citizens of the United States against whom no charges of disloyalty or subversiveness have been made, or can be made, for longer than the minimum period necessary to screen the loyal from the disloyal, and to provide the necessary guidance for reloca-

The reasons for the evacuation and the problems growing out of it, which have complicated the relocation problem, have been stubborn and could not be ignored by the Government. Careful procedures have been devised for the clearance of individuals from a loyalty standpoint, and an elaborate organization constructed to enable the evacuees to become reestablished as rapidly as possible, with means of self-support, in a manner deemed most helpful to the group as a whole. The program has proceeded in the face of passions aroused by the war and the inherent difficulty of relocating a large number of individuals of all ages and capacities who have been uprooted from their homes, their occupations, and their accustomed surroundings. The success of the program has been thought by the responsible officials in charge to require the knowledge that the Government was maintaining control over the evacuated population except as the release of individuals could be effected consistently with their own peace and well-being and

tion, is beyond the power of the War Relocation Authority. In the first place, neither the Congress nor the President has directed the War Relocation Authority to carry out such detention or internment. Secondly, lawyers will readily agree that an attempt to authorize such confinement would be very hard to reconcile with the constitutional rights of citizens" [Sen. Doc. No. 96, pp. 19-20].

For a similar discussion of the problem by the Attorney General see his testimony before the Dies Committee, Hearings, Special Committee on Un-American Activities, Vol. 16, pp. 10071-10080, 78th Cong., 1st sess.

that of the nation. The demand for a program which should have this as its central feature led in the beginning to the adoption of the Relocation Centers.⁶⁸ Obviously the working out of the whole problem has taken time and further time is required for its completion.

The purpose of the relocation program has been to minimize the sufferings of the evacuated population. This purpose has entailed a restriction of the liberty of the individuals affected—liberty to go and come, to seek out opportunity wherever they might choose, to meet with such failure or success in the world at large as fortune and individual capacity might yield. This restriction is each day becoming less as additional persons are granted leave. The principle of restoration of the citizen's liberty has been kept constantly in mind. We do not contend that under any set of circumstances less unique or less definitely a product of an extreme war measure the Government might bestow advantage, as viewed by officials, at the price of the elementary personal freedom of individuals *sui juris*. We suggest, however, that the issue here involved must be judged in the light of its origin in a measure adopted in the course of a declared war, under a threat of invasion to which it was related—a measure fraught with the gravest human consequences, which the Govern-

⁶⁸ *Supra*, pp. 25-28.

ment has striven to render as little productive of permanent harm as the forces with which it has had to cope permitted.

CONCLUSION

The program which has been begun and carried forward has not been completed. We believe there is a reasonable basis for the view that under the rare conditions which gave rise to the program the Constitution does not require abandonment of the requirement of leave application and that, in the light of the extraordinary powers invoked by reason of the war, detention pending such application is not so unreasonable or so unrelated to the causes which gave rise to it as to transcend the war power and fall under the condemnation of the Fifth Amendment.

Respectfully submitted.

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EDWIN E. FERGUSON,
Acting Solicitor,
War Relocation Authority.

OCTOBER 1944.

APPENDIX A

Constitution of the United States:

ARTICLE I

SECTION 8. The Congress shall have Power
To lay and collect Taxes, Duties, Imposts
and Excises, to pay the Debts and provide
for the common Defence and general Wel-
fare of the United States; * * *

* * * * *

To declare War, grant Letters of Marque
and Reprisal, and make Rules concerning
Captures on Land and Water;

To raise and support Armies, but no Ap-
propriation of Money to that Use shall be
for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and
Regulation of the land and naval Forces;

To provide for calling forth the Militia
to execute the Laws of the Union, suppress
Insurrections and repel Invasions;

To provide for organizing, arming, and
disciplining, the Militia, and for governing
such Part of them as may be employed in
the Service of the United States, reserving
to the States respectively, the Appointment
of the Officers, and the Authority of train-
ing the Militia according to the discipline
prescribed by Congress;

* * * * *

To make all Laws which shall be neces-
sary and proper for carrying into Execu-
tion the foregoing Powers, and all other
Powers vested by this Constitution in the

Government of the United States, or in any
Department or Officer thereof.

* * * *

ARTICLE II

SECTION 1. The executive Power shall be
vested in a President of the United States
of America. * * *

* * * *

SECTION 2. The President shall be Com-
mander in Chief of the Army and Navy of
the United States, and of the Militia of the
several States, when called into the actual
Service of the United States; * * *

* * * *

SECTION 3. * * * he shall take Care
that the Laws be faithfully executed, * * *.

Fifth Amendment:

No person shall be held to answer for a
capital, or otherwise infamous crime, unless
on a presentment or indictment of a Grand
Jury, except in cases arising in the land or
naval forces, or in the militia, when in
actual service in time of war or public dan-
ger; nor shall any person be subject for the
same offence to be twice put in jeopardy of
life or limb; nor shall be compelled in any
criminal case to be a witness against him-
self, nor be deprived of life, liberty, or prop-
erty, without due process of law; nor shall
private property be taken for public use,
without just compensation.

Fourteenth Amendment:

SECTION 1. All persons born or natural-
ized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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APPENDIX B

STATUTES

Declaration of War Between United States and Japan (c. 561, 55 Stat. 795) :

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 8, 1941, 4:10 p. m.,
E. S. T.

Act of March 21, 1942 (c. 191, 56 Stat. 173, 18 U. S. C. (Supp. III), Sec. 97a) :

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order 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 one year, or both, for each offense.

Act of April 20, 1918, c. 59, 40 Stat. 533, as amended by c. 926, 54 Stat. 1220, and c. 388, 55 Stat. 655 (50 U. S. C. Secs. 104, 105):

SEC. 4. That the words "national-defense material" as used herein, shall include arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies munitions, and all other articles of whatever description and any part or ingredient thereof, intended for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part of ingredient thereof.

The words "national-defense premises", as used herein, shall include all buildings,

grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States.

The words "national-defense utilities", as used herein, shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which water or gas may be furnished to any national-defense premises or to the military or naval forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, power, or facilities of communication to any national-defense premises or to the military or naval forces of the United States.

SEC. 5. That whoever, with intent to injure, interfere with, or obstruct the national

defense of the United States, shall willfully injure or destroy, or shall attempt to so injure or destroy, any national-defense material, national-defense premises, or national-defense utilities, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than ten years, or both.

APPENDIX C

EXECUTIVE ORDER No. 9066, Dated February 19,
1942, 7 F. R. 1407

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 whom 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 accommodations 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 order. 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 the 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.

EXECUTIVE ORDER No. 9102

Dated March 18, 1942, 7 F. R. 2165

ESTABLISHING THE WAR RELOCATION AUTHORITY IN
THE EXECUTIVE OFFICE OF THE PRESIDENT AND
DEFINING ITS FUNCTIONS AND DUTIES

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to provide for the removal from designated areas of persons whose removal is necessary in the interests of national security, it is ordered as follows:

1. There is established in the Office for Emergency Management of the Executive Office of the President the War Relocation Authority, at the

head of which shall be a Director appointed by and responsible to the President.

2. The Director of the War Relocation Authority is authorized and directed to formulate and effectuate a program for the removal, from the areas designated from time to time by the Secretary of War or appropriate military commander under the authority of Executive Order No. 9066 of February 19, 1942, of the persons or classes of persons designated under such Executive Order, and for their relocation, maintenance, and supervision.

3. In effectuating such program the Director shall have authority to—(a) Accomplish all necessary evacuation not undertaken by the Secretary of War or appropriate military commander, provide for the relocation of such persons in appropriate places, provide for their needs in such manner as may be appropriate, and supervise their activities.

(b) Provide, insofar as feasible and desirable, for the employment of such persons at useful work in industry, commerce, agriculture, or public projects, prescribe the terms and conditions of such public employment, and safeguard the public interest in the private employment of such persons.

(c) Secure the cooperation, assistance, or services of any governmental agency.

(d) Prescribe regulations necessary or desirable to promote effective execution of such program, and, as a means of coordinating evacuation and relocation activities, consult with the Secre-

tary of War with respect to regulations issued and measures taken by him.

(e) Make such delegations of authority as he may deem necessary.

(f) Employ necessary personnel, and make such expenditures, including the making of loans and grants and the purchase of real property, as may be necessary, within the limits of such funds as may be made available to the Authority.

4. The Director shall consult with the United States Employment Service and other agencies on employment and other problems incident to activities under this order.

5. The Director shall cooperate with the Alien Property Custodian appointed pursuant to Executive Order No. 9095 of March 11, 1942, in formulating policies to govern the custody, management, and disposal by the Alien Property Custodian of property belonging to foreign nationals removed under this order or under Executive Order No. 9066 of February 19, 1942; and may assist all other persons removed under either of such Executive Orders in the management and disposal of their property.

6. Departments and agencies of the United States are directed to cooperate with and assist the Director in his activities hereunder. The Departments of War and Justice, under the direction of the Secretary of War and the Attorney General, respectively, shall insofar as consistent with the national interest provide such protective, police and investigational services as the Director shall find necessary in connection with activities under this order.

7. There is established within the War Relocation Authority the War Relocation Work Corps. The Director shall provide, by general regulations, for the enlistment in such Corps, for the duration of the present war, of persons removed under this order or under Executive Order No. 9066 of February 19, 1942, and shall prescribe the terms and conditions of the work to be performed by such Corps, and the compensation to be paid.

8. There is established within the War Relocation Authority a Liaison Committee on War Relocation which shall consist of the Secretary of War, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Labor, the Federal Security Administrator, the Director of Civilian Defense, and the Alien Property Custodian, or their deputies, and such other persons or agencies as the Director may designate. The Liaison Committee shall meet at the call of the Director and shall assist him in his duties.

9. The Director shall keep the President informed with regard to the progress made in carrying out this order, and perform such related duties as the President may from time to time assign to him.

10. In order to avoid duplication of evacuation activities under this order and Executive Order No. 9066 of February 19, 1942, the Director shall not undertake any evacuation activities within military areas designated under said Executive Order No. 9066, without the prior approval of the Secretary of War or the appropriate military commander.

11. This order does not limit the authority granted in Executive Order No. 8972 of December 12, 1941; Executive Order No. 9066 of February 19, 1942; Executive Order No. 9095 of March 11, 1942; Executive Proclamation No. 2525 of December 7, 1941; Executive Proclamation No. 2526 of December 8, 1941; Executive Proclamation No. 2527 of December 8, 1941; Executive Proclamation No. 2533 of December 29, 1941; or Executive Proclamation No. 2537 of January 14, 1942; nor does it limit the functions of the Federal Bureau of Investigation.

APPENDIX D

PUBLIC PROCLAMATION No. 1, 7 F. R. 2320

WAR DEPARTMENT

(Public Proclamation No. 1)

Headquarters Western Defense Command and
Fourth Army, Presidio of San Francisco,
California

MILITARY AREAS NOS. 1 AND 2 DESIGNATED AND
ESTABLISHED

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, Oregon, 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:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2.

2. Military Areas Nos. 1 and 2, as particularly described and generally shown hereinafter and in Exhibits 1 and 2 hereto, are hereby designated and established.

3. Within Military Areas Nos. 1 and 2 there are established Zone A-1, lying wholly within Military Area No. 1; Zones A-2 to A-99, inclusive, some of which are in Military Area No. 1, and the others in Military Area No. 2; and Zone B, comprising all that part of Military Area No. 1 not included within Zones A-1 to A-99, inclusive; all as more particularly described and defined and generally shown hereinafter and in Exhibits 1 and 2.

Military Area No. 2 comprises all that part of the States of Washington, Oregon, California and Arizona which is not included within Military Area No. 1, and is shown on the map (Exhibit 2) as an unshaded area.

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 A-99, inclusive, as are within Military Area No. 2.

Certain persons or classes of persons who are by subsequent proclamation excluded from the

zones last above mentioned may be permitted, under certain regulations and restrictions to be hereafter prescribed, to enter upon or remain within Zone B.

The designation of Military Area No. 2 as such does not contemplate any prohibition or regulation or restriction except with respect to the zones established therein.

5. Any Japanese, German or Italian alien, or any person of Japanese Ancestry now resident in Military Area No. 1 who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within the States of Washington, Oregon, California and Arizona. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

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.

PUBLIC PROCLAMATION No. 2

7 F. R. 2405

WAR DEPARTMENT

(Public Proclamation No. 2)

Headquarters Western Defense Command and
 Fourth Army Presido of San Francisco,
 California

ESTABLISHMENT OF MILITARY AREAS 3, 4, 5, AND 6

MARCH 16, 1942.

*To: The people within the States of Washington,
 Oregon, California, Montana, Idaho, Nevada,
 Utah and Arizona, 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, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the West-

ern 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 persons 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 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:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones in addition to those established in Public Proclamation No. 1, this headquarters, dated March 2, 1942.

2. Pursuant to the determination and statement of military necessity in paragraph 1 hereof, there are hereby designated and established the following Military Areas:

Military Area No. 3, embracing the entire State of Idaho.

Military Area No. 4, embracing the entire State of Montana.

Military Area No. 5, embracing the entire State of Nevada.

Military Area No. 6, embracing the entire State of Utah.

3. Within Military Areas Nos. 1 and 2 as designated and established in Public Proclamation No. 1, above mentioned, and within Military Areas Nos. 3, 4, 5 and 6, as defined herein, there are hereby established, pursuant to paragraph 1 hereof, Zones A-100 to A-1033, inclusive, all as more particularly described and defined in Ex-

hibit 1, hereto attached, and as generally shown on the maps attached hereto and marked Exhibits 2, 3, 4, 5, 6, 7, 8 and 9.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from Zones A-100 to A-1033, inclusive.

The designation of Military Areas Nos. 3, 4, 5 and 6 as such does not contemplate any prohibition, regulation or restriction except with respect to the Zones established therein, and except as provided in paragraph 5 hereof.

5. Any Japanese, German, or Italian alien, or any person of Japanese ancestry now resident in the states of the Western Defense Command, namely, Washington, Oregon, California, Montana, Idaho, Nevada, Utah, and Arizona, who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within any of the states mentioned. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

6. The duty and responsibility of the Federal Bureau of Investigation with respect to the in-

vestigation of alleged acts of espionage and sabotage are not altered by this proclamation.

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

PUBLIC PROCLAMATION No. 4, 7 F. R. 2601

Headquarters Western Defense Command and
 Fourth Army, Presidio of San Francisco,
 California

PUBLIC PROCLAMATION No. 4

MARCH 27, 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 was designated and established Military Area No. 1 and

Whereas, It is necessary, in order to provide for the welfare and to insure the orderly evacuation and resettlement of Japanese voluntarily migrating from Military Area No. 1, to restrict and regulate such migration:

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 that the present situation requires as a matter of military necessity that, commencing at 12:00 midnight, P. W. T., March 29, 1942, all alien Japanese

and persons of Japanese ancestry who are within the limits of Military Area No. 1, be and they are hereby prohibited from leaving that area for any purpose until and to the extent that a future proclamation or order of this headquarters shall so permit or direct.

Any person violating this proclamation will be subject 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 Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones." In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

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

Headquarters Western Defense Command and
Fourth Army, Presidio of San Francisco, California

PUBLIC PROCLAMATION No. 7¹

JUNE 8, 1942.

*To: The People within the States of Washington,
Oregon, California and Arizona, and the
Public Generally:*

Whereas, by Public Proclamation No. 1, dated March 2, 1942, this headquarters, there was designated and established Military Area No. 1; and

¹ Public Proclamation No. 11, of August 18, 1942, similarly ratifies Civilian Exclusion Orders Nos. 100 to 108

Whereas, by Civilian Exclusion Orders Nos. 1 to 99 inclusive, this headquarters, all persons of Japanese ancestry, both alien and non-alien, were excluded from portions of Military Area No. 1; and

Whereas, the present situation requires as a matter of military necessity that all citizens of Japan and all persons of Japanese ancestry, both alien and non-alien, be excluded from all of Military Area No. 1:

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 that:

1. Civilian Exclusion Orders Nos. 1 to 99 inclusive, this headquarters, together with all exclusions and evacuations accomplished thereunder, are hereby ratified and confirmed.

2. All citizens of Japan and all persons of Japanese ancestry, both alien and non-alien, except as provided in paragraph 3 hereof, are hereby excluded from all portions of Military Area No. 1.

3. The following persons are hereby temporarily exempted or deferred from exclusion and evacuation:

and provides for the exclusion of citizens of Japan and other persons of Japanese ancestry from the California portion of Military Area No. 2. It contained the following additional provision, however:

"3. All citizens of Japan and all persons of Japanese ancestry, both alien and non-alien, except under the written authority of this headquarters, are hereby prohibited from entering Military Area No. 1 and the California portion of Military Area No. 2."

(a) Those individuals who are within the bounds of an established Wartime Civil Control Administration Assembly Center or the area of a War Relocation Authority Project, while such individuals are therein pursuant to orders or instructions of this headquarters.

(b) Those individuals who are involuntarily interned or confined in Federal, State, or local institutions and who are in the custody of Federal, State or local authorities, while such individuals are so interned or confined.

(c) Those individuals who, by written permits of this headquarters, have been heretofore or are hereafter expressly authorized to be temporarily exempted or deferred from exclusion and evacuation, subject to the terms and conditions of such permits.

4. All citizens of Japan and all persons of Japanese ancestry, both alien and non-alien, who are now in Military Area No. 1 and who are not excluded from all portions of said Area by Paragraph 2 hereof, and who are not temporarily exempted or deferred from exclusion and evacuation under Paragraph 3 hereof, shall, and they are hereby required to report in person to the nearest established Wartime Civil Control Administration Assembly Center, or, in the alternative, to the nearest Federal, State, County, or local law enforcement agency, within 8 hours from 12:00 o'clock, noon, P. W. T., June 8, 1942. Failure to so report will constitute a violation of this Proclamation.

5. Any person violating this Proclamation will be subject 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 Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones," and any alien Japanese will be subject to immediate apprehension and internment.

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

PUBLIC PROCLAMATION No. 8, 7 F. R. 8346

Headquarters Western Defense Command and
Fourth Army, Presidio of San Francisco, California

PUBLIC PROCLAMATION No. 8

JUNE 27, 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 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

Whereas the present situation within these military areas requires as a matter of military necessity that persons of Japanese ancestry who have been evacuated from certain regions within Military Areas Nos. 1 and 2 shall be removed to Relocation Centers for their relocation, mainte-

nance and supervision and that such Relocation Centers be designated as War Relocation Project Areas and that appropriate restrictions with respect to the rights of all such persons of Japanese ancestry, both alien and non-alien, so evacuated to such Relocation Centers, and of all other persons to enter, remain in, or leave such areas be promulgated;

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:

1. Pursuant to the determination of military necessity hereinbefore set out, all the territory included within the exterior boundaries of each Relocation Center now or hereafter established within the Western Defense Command, as such boundaries are designated and defined by orders subsequently issued by this headquarters, are hereby designated and established as War Relocation Project Areas.

2. All persons of Japanese ancestry, both alien and non-alien, who now or shall hereafter be or reside, pursuant to exclusion orders and instructions from this headquarters, or otherwise, within the bounds of any established War Relocation Project Area are required to remain within the bounds of such War Relocation Project Area at all times unless specifically authorized to leave as set forth in Paragraph 3 hereof.

3. Any person of Japanese ancestry, both alien and non-alien, who shall now or hereafter so be or reside within any such War Relocation Project Area shall, before leaving said Area, obtain a written authorization executed by or pursuant to the express authority of this headquarters setting forth the effective period of said authorization and the terms and conditions upon and purposes for which it has been granted.

4. No persons other than the persons of Japanese ancestry described in Paragraph 2 hereof, and other than persons employed by the War Relocation Authority established by Executive Order No. 9102, dated March 18, 1942, shall enter any such War Relocation Project Area except upon written authorization executed by or pursuant to the express authority of this headquarters first obtained, which said authorization shall set forth the effective period thereof and the terms and conditions upon and purposes for which it has been granted.

5. Failure of persons subject to the provisions of this Public Proclamation No. 8 to conform to the terms and provisions thereof shall subject such persons to the 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 Respect to Persons Entering, Remaining in, Leaving, or Committing any Act in Military Areas or Zones."

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

PUBLIC PROCLAMATION No. WD 1

WAR DEPARTMENT,
Washington, August 13, 1942.

To: The People within the States of Arkansas, Colorado, and Wyoming, and the Public Generally:

Whereas, by Executive order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War, whenever he deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he 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 may impose in his discretion; and

Whereas, the United States has been subjected to attacks and 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 emanating from within as well as from without the national boundaries; and

Whereas, the present situation requires as a matter of military necessity that persons of Japanese ancestry who have been evacuated from certain regions of the United States shall be removed to Relocation Centers for their relocation, maintenance and supervision in War Relocation Projects and further requires the promulgation of appropriate restrictions regulating and controlling

the rights of all such persons of Japanese ancestry, both alien and non-alien, so evacuated to such Relocation Centers, and of all other persons to enter, remain in, or leave such areas;

Now, therefore, I, Henry L. Stimson, Secretary of War, by virtue of the authority vested in me by the President of the United States, and my powers and prerogatives as Secretary of War, do hereby declare that:

1. Pursuant to the determination of military necessity hereinbefore set out, all the territory within the established boundaries of Heart Mountain Relocation Project, approximately twelve miles northeast of Cody, Wyoming; Granada Relocation Project, approximately two miles southwest of Granada, Colorado; Jerome Relocation Project, approximately one mile northeast of Jerome, Arkansas; and Rohwer Relocation Project, adjacent to and west of Rohwer, Arkansas, are hereby established as Military Areas, and are designated as War Relocation Project Areas.

2. All persons of Japanese ancestry and all members of their families, both alien and non-alien, who now or shall hereafter be or reside, pursuant to orders and instructions of the Secretary of War, or pursuant to the orders or instructions of the Commanding General, Western Defense Command and Fourth Army, or otherwise, within the bounds of any of the said War Relocation Project Areas are required to remain within the bounds of said War Relocation Project Areas at all times unless specifically authorized to leave as set forth in Paragraph 3 hereof.

3. Any person of Japanese ancestry and any member of his family, whether alien or nonalien,

who shall now or hereafter be or reside within any of said War Relocation Project Areas, before leaving any of said Areas, shall obtain a written authorization executed by or pursuant to the express authority of the Secretary of War or the Director, War Relocation Authority, setting forth the effective period of said authorization and the terms and conditions upon and purposes for which it has been granted.

4. No persons other than the persons of Japanese ancestry and members of their families described in Paragraph 2 hereof, other than military personnel on duty at a given War Relocation Project, and other than persons employed by the War Relocation Project, established by Executive Order No. 9102, dated March 18, 1942, shall enter such War Relocation Project Areas except upon written authorization executed by or pursuant to the express authority of the Secretary of War or the Director, War Relocation Authority, first obtained, which said authorization shall set forth the effective period thereof and the terms and conditions upon and purposes for which it has been granted.

5. Failure of persons subject to the provisions of this Public Proclamation No. WD 1 to conform to the terms and provisions thereof shall subject such persons to the 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 Respect to Persons Entering, Remaining in, Leaving, or Committing any Act in Military Areas or Zones."

HENRY L. STIMSON,
Secretary of War.

CIVILIAN RESTRICTIVE ORDER No. 1

WAR DEPARTMENT

8 F. R. 982

(Civilian Restrictive Order 1)

PERSONS OF JAPANESE ANCESTRY—PROCEDURE FOR
DEPARTURE FROM ASSEMBLY CENTERS, ETC.

MAY 19, 1942.

Headquarters Western Defense Command and
Fourth Army, Office of the Commanding General,
Presidio of San Francisco, California

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this headquarters, dated March 2, 1942, and March 16, 1942, respectively: *It is hereby ordered*, that all persons of Japanese ancestry, both alien and non-alien, who now, or shall hereafter reside, pursuant to exclusion orders and instructions from this headquarters, within the bounds of established assembly centers, reception centers or relocation centers, as such bounds are designated on the ground by boundary signs in each case, shall during the period of such residence be subject to the following regulations:

(a) All such persons are required to remain within the bounds of assembly centers, reception centers or relocation centers at all times unless specifically authorized to leave as set forth in paragraph (b) hereof.

(b) Any such person, before leaving any of these centers, must first obtain a written authorization executed by or pursuant to the express authority of this headquarters setting forth the

hour of departure and the hour of return and the terms and conditions upon which said authorization has been granted.

2. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto will be liable to the penalties and liabilities provided by law.

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

Headquarters Western Defense Command and
Fourth Army, Presidio of San Francisco, California, May 7, 1942

CIVILIAN EXCLUSION ORDER No. 52

1. Pursuant to the Provisions of Public Proclamations Nos. 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: All of the City of Sacramento, State of California.

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., Friday, May 8, 1942, or during the same hours on Saturday, May 9, 1942, or Sunday, May 10, 1942, to the Civil Control Station located at: Civic Memorial Auditorium, Fifteenth and I Streets, Sacramento, California.

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 Respect 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 within 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.

C. E. Order 52

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: ALL
 OF THE CITY OF SACRAMENTO, STATE OF CALI-
 FORNIA

Pursuant to the provisions of Civilian Exclu-
 sion Order No. 52, this Headquarters, dated May

7, 1942, all persons of Japanese ancestry, both alien and nonalien, will be evacuated from the above area by 12 o'clock noon, P. W. T., Saturday, May 16, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P. W. T., Thursday, May 7, 1942, without obtaining special permission from the representative of the Commanding General, Northern California Sector, at the Civil Control Station located at: Civic Memorial Auditorium, Fifteenth and I Streets, Sacramento, California.

Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

The following instructions must be observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This

must be done between 8:00 A. M. and 5:00 P. M. on Friday, May 8, 1942, or between 8:00 A. M. and 5:00 P. M. on Saturday, May 9, 1942, or between 8:00 A. M. and 5:00 P. M. on Sunday, May 10, 1942.

2. Evacuees must carry with them on departure for the Assembly Center, the following property:

(a) Bedding and linens (no mattress) for each member of the family;

(b) Toilet articles for each member of the family;

(c) Extra clothing for each member of the family;

(d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;

(e) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.

4. No personal items and no household goods will be shipped to the Assembly Center.

5. The United States Government through its agencies will provide for the storage, at the sole risk of the owner, of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone, will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 8, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Saturday, May 9, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Sunday, May 10, 1942, to receive further instructions.

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

MAY 7, 1942.

See Civilian Exclusion Order No. 52.

APPENDIX E

REGULATIONS OF THE WAR RELOCATION AUTHORITY

Excerpts From Regulations of September 26, 1942, Governing Issuance of Leave for Departure From a Relocation Area (7 F. R. 7656)

Pursuant to the provisions of Executive Order No. 9102 of March 18, 1942, the following regulations are hereby prescribed:

* * * * *

§ 5.1. *Types of leave.*—Leaves are of the following types:

(a) A short term leave, for not more than thirty days, for attending to affairs requiring the applicant's presence outside the relocation area;

(b) A leave to participate in a work group, for employment and residence with a group of center residents outside the relocation area, or for such employment with residence remaining within the relocation area; and

(c) An indefinite leave, for employment, education or indefinite residence outside the relocation area.

§ 5.2. *Application for leave.*—Any person residing within a relocation center who has been evacuated from a military area or who has been specifically accepted by the War Relocation Authority for residence within a center may apply for leave.

§ 5.3. *Proceedings upon application for leave.*—

(a) The Project Director may interview an ap-

plicant for leave, shall secure a completed individual record on form WRA-26 for the applicant, and shall secure such further information concerning the applicant and the proposed leave as may be available at the relocation center.

* * * * *

(d) The file on each application for indefinite leave, which shall include the application, all related papers, and the Project Director's findings and recommendations, shall be forwarded by the Project Director to the Director. * * *

(e) In the case of each applicant for indefinite leave, the Director, upon receipt of such file from the Project Director, will secure from the Federal Bureau of Investigation such information as may be obtainable, and will take such steps as may be necessary to satisfy himself concerning the applicant's means of support, his willingness to make the reports required of him under the provisions of this part, the conditions and factors affecting the applicant's opportunity for employment and residence at the proposed destination, the probable effect of the issuance of the leave upon the war program and upon the public peace and security, and such other conditions and factors as may be relevant. The Director will thereupon send instructions to the Project Director to issue or deny such leave in each case, and will inform the Regional Director of the Instructions so issued. The Project Director shall issue indefinite leaves pursuant to such instructions.

(f) A leave shall issue to an applicant in accordance with his application in each case, subject to the provisions of this part and under the procedures herein provided, as a matter of right,

where the applicant has made arrangements for employment or other means of support, where he agrees to make the reports required of him under the provisions of this Part and to comply with all other applicable provisions hereof, and where there is no reasonable cause to believe that applicant cannot successfully maintain employment and residence at the proposed destination, and no reasonable ground to believe that the issuance of a leave in the particular case will interfere with the war program or otherwise endanger the public peace and security.

(g) The Director, the Regional Director, and the Project Director may attach such special condition to the leave to be issued in a particular case as may be necessary in the public interest. The special conditions to be so attached shall be governed by regulations or instructions issued from time to time. Every leave issued under the provisions of this Part shall state the conditions that are applicable thereto.

* * * * *

(1) The Project Director shall promptly notify the Regional Director and the Director of the names of any persons who have failed to return to the relocation center upon expiration of leave.

* * * * *

§ 5.5 *Transportation and reports during leave.*—

(a) The Project Director shall provide transportation for the applicant to whom a leave has been issued to the most convenient railroad or bus station. All other necessary transportation shall be arranged for by the applicant and shall not be paid for by the War Relocation Authority. The Authority may, however, make arrangements with

employers for transportation connected with group work leave. * * *

(b) * * * Every indefinite leave shall require the person to whom such a leave has been issued to report his arrival, his business or school and residential addresses, and every change of address, to the Director. Reports of changes of addresses shall be required to be made, so far as possible, before leaving any employment, institution or address. The person to whom an indefinite leave has been issued shall further be required to report upon arrival at a new location, and to transmit any further appropriate information concerning his exact business, school and residence addresses promptly upon ascertaining them. The Project Director shall send to the Director reports of all such information received by him.

* * * * *

§ 5.8. *Restrictions on leave.*— * * *

(b) An indefinite leave may permit travel unlimited except as to restrictions imposed by military authorities with reference to military areas or zones, or may permit only travel within designated states, counties, or comparable areas.

(c) Whenever the military authorities of the United States require a pass or other authorization to enter any designated area, no leave shall be issued under the provisions of this part to permit entry into such area until the required pass or authorization has been obtained for the applicant. Whenever such military authorities impose restrictions on movement or conduct within any area, the continuance of such leave shall be contingent upon the observance of any such re-

strictions in addition to the observance of the other conditions of such leave.

§ 5.9. *Expiration of leave and furlough.*—(a) Any leave issued, and the furlough granted in connection therewith, under the provisions of this part shall expire:

(1) On the expiration date stated in the leave;
or

(2) At any time that the person to whom the leave has been issued shall violate any of the conditions applicable to such leave; or

(3) Upon notice from the Director or Project Director that the leave is revoked pursuant to the provisions of paragraph (b) of this section.

(b) The Director may revoke any leave when conditions are so far changed, or when such additional information has become available, that an original application by such person for leave would be denied under the provisions of this part. The Project Director may, on similar ground with the prior approval of the Regional Director, revoke any short term leave. When the Director shall revoke a leave, he will promptly notify the Regional Director and the Project Director. When a Project Director shall revoke a leave, he shall promptly notify the Director and the Regional Director.

(c) Upon the expiration of any leave issued under this part, the person to whom the leave was issued shall return to the relocation center in which he previously resided unless new leave has been granted or unless he is otherwise directed by the Director.

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Excerpts From Revised Regulations of War Relocation Authority, Dated January 1, 1944 (9 F. R. 154)

Pursuant to the provisions of Executive Order No. 9102 of March 18, 1942, Part 5, Chapter I, Title 32 of the Code of Federal Regulations is hereby revised to read as follows:

* * * * *

SEC. 5.1. *Types of leave.*—Leaves are of the following types:

(a) A short term leave, for not more than sixty days, for attending to affairs requiring the applicant's presence outside the relocation area;

(b) A seasonal work leave, for seasonal employment and residence outside the relocation area; and

(c) An indefinite leave, for indefinite employment, education, or residence outside the relocation area.

SEC. 5.2. *Application for leave.*—Any person residing within a relocation center who has been evacuated from a military area or who has been specifically accepted by the War Relocation Authority for residence within a relocation center may apply for leave. No such person shall depart from a relocation area before receiving leave.

SEC. 5.3. *Proceedings upon application for leave.*—(a) Short term leaves, seasonal work leaves, and indefinite leaves may be issued by the Project Director in accordance with the provisions of this part, as supplemented by instructions issued by the Director from time to time.

(b) Except as may otherwise be determined by the Director, every person eligible to apply for

leave who is 17 years of age or older shall file an application for leave clearance before he shall be eligible for leave. After such investigation as may be prescribed by instructions issued by the Director, the Project Director shall forward the application to the Director with his recommendations. The Director will secure from the Federal Bureau of Investigation such information as may be obtainable and will take such additional steps as may be necessary to determine the probable effect of the issuance of indefinite leave to the applicant upon the war program and upon the public peace and security. The Director will thereupon approve or disapprove the application and instruct the Project Director accordingly. A person whose application for leave clearance is disapproved shall be ineligible to receive indefinite leave and shall be transferred to the Tule Lake Center in northern California. A person resident at the Tule Lake Center whose application for leave clearance is approved shall be transferred to another center.

(c) Indefinite leave may be issued prior to approval of an application for leave clearance only in accordance with instructions issued by the Director from time to time. In the case of each application for indefinite leave, the Director will cause such steps to be taken as may be necessary to satisfy himself concerning the applicant's willingness to make the reports required of him under the provisions of this Part, his means of support, the conditions and factors affecting his successful maintenance of residence at the proposed destination, the probable effect of the issuance of the leave upon the war program and upon the public

peace and security, and such other conditions and factors as may be relevant. The Director will issue instructions covering the issuance or denial of indefinite leave in each such case. The Project Director shall issue or deny indefinite leaves pursuant to such instructions.

(d) A leave shall issue to an applicant in accordance with his application in each case, subject to the provisions of this Part and under the procedures herein provided, as a matter of right, where the applicant agrees to make the reports required of him under the provisions of this Part and to comply with all applicable provisions hereof, where there is no reasonable cause to believe that he will not have employment or other means of support or that he cannot otherwise successfully maintain residence at the proposed destination, and where there is no reasonable cause to believe that the issuance of leave in the particular case will interfere with the war program or otherwise endanger the public peace and security.

(e) Such special conditions may be attached to the leave to be issued in a particular case as may be necessary in the public interest. The special conditions to be so attached shall be governed by instructions issued from time to time. Every leave issued under the provisions of this Part shall state the conditions that are applicable thereto.

(f) The Project Director shall promptly notify the applicant of the approval or disapproval of an application for leave or leave clearance, and of any special conditions attached to the approval of

an application for leave, with a statement of the reasons therefor. In the case where the application for leave has been disapproved, or has been approved subject to special conditions, the Project Director shall advise the applicant of his right to appeal under the provisions of Sec. 5.4.

* * * * *

(h) The Project Director shall promptly notify the Director of the names of any persons who have failed to return to the relocation center upon expiration of leave.

* * * * *

SEC. 5.5. *Leave Assistance; reports during leave.*

(a) The Project Director shall provide transportation for the applicant to whom a leave has been issued to the most convenient railroad or bus station. Assistance in meeting transportation costs to destination and initial subsistence expenses may be provided, in accordance with instructions issued by the Director from time to time, to persons to whom indefinite leave has been granted.

(b) * * * Each applicant for indefinite leave shall be required to agree to notify the Director promptly of his arrival at destination, his business or school and residential addresses, and all subsequent changes in school, employment, or residence.

* * * * *

SEC. 5.7. *Restrictions on leave.*— * * *

* * * * *

(b) An indefinite leave may permit travel unlimited except as to restrictions imposed by mili-

tary authorities with reference to military areas or zones, or may permit only travel within designated states, counties, or comparable areas.

(c) Whenever the military authorities of the United States require a pass or other authorization to enter any designated area, no leave shall be issued under the provisions of this Part to Permit entry into such area until the required pass or authorization has been obtained for the applicant. Whenever such military authorities impose restrictions on movement or conduct within the area, the continuance of such leave shall be contingent upon the observance of any such restrictions in addition to the observance of the other conditions of such leave.

* * * * *

SEC. 5.8. *Expiration of leave.*—(a) Any leave issued under the provisions of this Part shall expire:

(1) On the expiration date stated in the leave; or

(2) On the return to a relocation center, as a resident, of the person to whom the leave has been issued; or

(3) At any time that the person to whom the leave has been issued shall violate any of the conditions applicable to such leave; or

(4) On notice from the Director, the Project Director, or the Relocation Supervisor that the leave is revoked pursuant to the provisions of paragraph (b) of this section.

(b) The Director may revoke any leave when conditions are so far changed, or when such additional information has become available, that an

original application by such person for leave would be denied under the provisions of this Part. The Project Director may revoke any short term leave and the Relocation Supervisor may revoke any seasonal work leave on similar grounds. When the Project Director or Relocation Supervisor revokes a leave he shall promptly notify the Director.

* * * * *

APPENDIX F

RULES OF PROCEDURE AND FORMS OF WAR RELOCATION AUTHORITY

WAR RELOCATION AUTHORITY'S ADMINISTRATIVE INSTRUCTION NO. 22

WAR RELOCATION AUTHORITY,
WASHINGTON, *July 20, 1942.*

Administrative Instruction No. 22

Subject: Temporary procedure for issuance of permits to individuals or single families to leave relocation centers for employment outside such centers and the Western Defense Command.

This Instruction applies only to the issuance of permits to individuals or single families to leave relocation centers for employment outside such centers and outside the Western Defense Command. It does not apply to such outside employment for groups of evacuees; in the case of such groups, present procedures may continue to be followed.

The program of outside employment will be further developed as we accumulate experience.

1. Any American citizen of Japanese ancestry within a relocation center, who has never at any time resided or been educated in Japan, may apply to the Project Director for a permit to leave the

center for employment outside the center and outside the Western Defense Command.

2. The applicant for a permit must show that he has a specific job opportunity with a prospective employer at a designated place outside the relocation center and outside the Western Defense Command. If the applicant has dependents, he must state what arrangements will be made for the dependents who are to accompany him and for those who are to remain in the center. Preference will be given by the Director to applications for leave to accept employment within the Middle West.

3. The Project Director will promptly investigate as thoroughly as practicable each applicant who applies for a permit, through interviews with the applicant and those who know him or have information about him, and by other suitable means. The Project Director will then forward to the Regional Director the application and all related papers, * * *.

4. The Regional Director, upon receipt of an application for a permit, will obtain from the Federal Bureau of Investigation any information or record it can supply regarding the applicant or his family, and will make such further investigation in connection with the application as may be necessary. The Regional Director will then forward to the Director the application and all related papers, together with a full report of his findings and recommendations thereon.

5. Each application for a permit will be approved or disapproved by the Director. * * *

6. When the Project Director is advised of the approval of an application for a permit, he will

issue a permit to the applicant. The permit will show * * * any special conditions upon which the permit is issued; will state that the permittee is required to notify the Director of the War Relocation Authority of any change of employer or change of address * * *

* * * * *

9. Every applicant issued a permit pursuant to this Instruction, and his accompanying dependents, will remain in the constructive custody of the military commander in whose jurisdiction lies the relocation center in which the applicant resides at the time the permit is issued. Any such permit may be revoked at any time upon the order of the Director, and the applicant and any dependents accompanying him may be required to return to the relocation center or such other place as the Director specifies, if the Director shall find such revocation to be necessary in the public interest.

10. This Instruction applies only to relocation centers which have been designated military areas pursuant to Executive Order No. 9066 of February 19, 1942.

(S) D. S. MYER, *Director*.

Excerpts from War Relocation Authority's Administrative Instruction No. 22, Revised, issued November 6, 1942

I. INTRODUCTION

A. *Statement of Purpose*.—The issuance of leave for departure from a relocation area is governed by the regulations issued by the Director

on that subject, published in the Federal Register, September 29, 1942, title 32, c. 1, pt. 5. This Administrative Instruction is issued for the purpose of specifying in greater detail the procedure to be followed under those regulations. This Instruction does not alter the regulations. All administrative action with reference to leave shall be taken with due regard to both the regulations and this Instruction.

* * * * *

IV. INDEFINITE LEAVE

A. *Execution of Application.*—Unless an applicant for an indefinite leave has already executed Form WRA-126, for leave clearance, he shall be required to execute that form in duplicate in connection with his application for indefinite leave. * * *

* * * * *

D. *Transmission of Application to Director.*—When the Project Director is satisfied that the file of the case contains all the relevant information more accessible from the project than from Washington, he shall transmit to the Director the application for indefinite leave, Form WRA-130, and the project investigation record. * * *

E. *Director's Investigation and Ruling.*—The Director, upon receipt of such file from the Project Director or the employment investigator, will investigate the applicant's prospective employment or other means of support and the conditions and factors affecting the applicant's proposed residence. If the applicant has not previously obtained leave clearance, the Director will conduct the further investigation described in Section V, Paragraph G of this Instruction.

Where a considerable time has elapsed since the applicant secured a leave clearance, the Director will take such measures as he deems appropriate to bring down-to-date the investigation pertinent thereto.

* * * * *

V. LEAVE CLEARANCE

A. *Application*.—An application for leave clearance * * * must be filed, either before or simultaneously with, an application for indefinite leave or an application for leave to participate in a work group. Any evacuee wishing to obtain leave clearance and have his references checked, so that a subsequent application for leave of any type may be expeditiously processed, may file an application for leave clearance. * * *.

B. *Examination of Applicant*.—Upon the execution of the application for leave clearance, Form WRA-126, the Project Director shall interview the applicant, shall elicit any information necessary to check or to complete the answers, and shall complete and correct the answers accordingly. He shall pursue any further line of questions that seem pertinent if he has any doubt concerning the frankness of the intentions of the applicant. Any further pertinent information elicited suitable for certification by the applicant's signature shall be written on to the form or stapled thereto. If sheets in addition to the printed form are used, the applicant shall be asked to sign those sheets separately. Separate applications shall be filed and fully processed for applicant's wife and for each dependent 17 years

of age or over whom it is proposed to have accompany the applicant.

C. *Investigation on Project.*—The Project Director shall make such further investigation as may be practical to verify and supplement at the project the information supplied by the applicant. This shall include a check with the Internal Security Officer of the project and may include interviews with any reference the applicant gives and interviews with persons with or for whom the applicant has worked, so far as any of such references or other people are on or accessible from the project for personal interviews. He shall send out to all other references given by the applicant a franked envelope addressed to the Director in Washington and a form letter, WRA-138, which requests a reply to be sent to the Director in Washington. He shall embody in a project investigation record any material information not certified by the applicant's signature.

D. *Recommendations by Project Director.*—The Project Director shall then recommend the disposition to be made of the application for leave clearance—which may be either allowed, disallowed, or allowed with special conditions. Unless he deems the applicant entitled to clearance without doubt, he shall state reasons for the recommendation made. It will be recognized that in many instances these recommendations will be made upon only incomplete evidence, but they are to be recorded for consideration with such evidence as may be developed by subsequent investigation. These reasons may be stated briefly or

at length, according to the circumstances, but in any case the significant facts shall be referred to and identified by their location on Form WRA-126 or by the page number of the project investigation record.

E. *Investigation Outside Project*.—When the case suggests a need for further investigation concerning particular matters, such as addresses, ship manifests, or organizations, which cannot be investigated on the project, the project investigation record shall call particular attention to these matters and shall list them together with any available leads for further investigation.

F. *Transmission of Papers*.—When the Project Director is satisfied that the file on the application contains all the relevant information more accessible from the project than from Washington, he shall transmit the Individual Record, Form WRA-26, in quadruplicate, and one copy of the application for leave clearance, the project investigation record, and his findings and recommendations, to the Director. He shall retain a copy of these papers. At the same time, he shall send the Regional Director a copy of applicant's Form WRA-26 and a statement of the recommendation made by him. When an applicant is likely to be accompanied by members of his family or other dependents 17 years of age or older, a full set of such papers shall be transmitted for each such family member or dependent. Forms WRA-26 for children under seventeen should accompany Form WRA-126, whenever possible. If they do not accompany Form WRA-126 they shall be transmitted along with an application for indefinite leave as specified in Section IV, Paragraph D.

G. Director's Investigation and Ruling.—The Director, upon receipt of such file from the Project Director or employment investigator, will secure from the Department of Justice such information as may be obtainable, will examine any letters received from applicant's references, and will take such steps as may be necessary to satisfy himself concerning the probable effect upon the war program and upon the public peace and security of issuing indefinite leave to applicant. The Director will thereupon instruct the Project Director whether applicant is eligible to be entered upon the register of those cleared for indefinite leave, and whether any special conditions are to attach to any leave issued pursuant to such clearance, and will inform the Regional Director of such instructions in each case. The Director will further advise the Project Director of the reasons for denying such clearance or for directing that such conditions attach to any leaves issued pursuant thereto. He will assign such reason or reasons in the language of paragraph 5.3 (f) of the leave regulations.

Excerpts from War Relocation Authority's Handbook on Issuance of Leave for Departure from a Relocation Center issued July 20, 1943

Statement of Purpose

60.1. The issuance of leave for departure from a relocation area is governed by the regulations issued by the Director on that subject, published in the Federal Register, September 29, 1942, title

32, c. 1, pt. 5, as amended. This Handbook is issued for the purpose of specifying in greater detail the procedure to be followed under those regulations. This Handbook does not alter the regulations. All administrative action with reference to leave shall be taken with due regard to both the regulations and this Handbook.

* * * * *

60.4.3. In cases where the applicant meets the following eligibility requirements:

A. He has previously received leave clearance pursuant to an application filed either on DSS Form 304A and Form WRA-126a, or on Form WRA-126, Revised (notice of such leave clearance will be given on Forms WRA-258, 258a, and 258b), and the Project Director believes there is no need for the Director to bring the leave clearance investigation down to date, * * *

* * * * *

The Project Director, without further authority from the Director, may issue the leave on the appropriate form (WRA-137, WRA-137a, or WRA-138) under any one of the following circumstances;

C. The applicant proposes to accept an employment offer or offer of support that has been referred to the Project Director by a Relocation Officer, or that has been investigated and approved by a Relocation Officer at the request of the Project Director.

D. The applicant does not intend to work, but has adequate financial resources to take care of himself and a Relocation Officer has investigated

and approved public sentiment at his proposed destination.

E. The applicant has made arrangements to live at a hotel or in a private home approved by a Relocation Officer while arranging for employment.

F. The applicant proposes to go to a given area pursuant to a notice from the Relocation Officer to the Project Director to the effect that the Relocation Officer can place a certain number of evacuees in a given area within a given time. This notice will describe the types of jobs that are available, including all pertinent information relating to wages, housing, cost of living, and community relations affecting evacuees. Relocation Officers shall take care not to encourage several projects to send competing groups for the same positions and it shall be the duty of Project Directors to notify the Relocation Officer of any and all leaves contemplated in response to such a notice of vacancies, in order that the Relocation Officer may keep the supply adjusted to the demand for evacuees.

* * * * *

H. The applicant proposes to accept an employment offer by a Federal, State, or local governmental agency.

I. The applicant proposes to attend a college, university, or professional school on the approved list, has evidence (obtained through the National Student Relocation Council or otherwise) that he has been admitted to the school, and has sufficient funds or a reasonably certain opportunity for part

time employment to enable him to finish one quarter or semester of work. Leave may be granted under this subparagraph only if the applicant has received leave clearance pursuant to a notice from the Director on Form WRA-258a or 258b indicating that the application has been considered by the Japanese-American Joint Board in the Provost Marshall General's Department.

* * * * *

J. The applicant is a parent going to live with a son or daughter.

K. The applicant is a son or daughter going to live with one or both parents.

L. The applicant is a wife going to live with her husband, or is a husband going to live with his wife.

M. The applicant is going to live with a brother or sister.

N. The applicant is a dependent going to live with a person who will support him.

O. The applicant proposes to marry a person living outside a Relocation Center and live with him or her, as the case may be.

P. The applicant is away from the project on seasonal work leave and has been recommended by the appropriate Relocation Officer for indefinite leave (see Section 60.7.3). It is not necessary for the applicant to show that he has made arrangements for employment at his destination.

No leave shall be issued under the provisions of this paragraph to an applicant whose proposed place of residence or employment is within the Eastern Defense Command unless leave clearance has been approved by the Director on Forms WRA-258a or WRA-258b, or unless the notice of

leave clearance specifically authorizes entry into the Eastern Defense Command.

No conditions shall be attached to the leave so issued unless they have previously been approved by the Director. When issuing the indefinite leave under Paragraphs G through N above, it shall be the responsibility of the Project Director to determine that the applicant has employment or other means of support at his destination, and the applicant should be informed that no check has been made of local sentiment at his destination. If the applicant wants such check to be made, the Project Director shall ask the appropriate Relocation Officer to make it. When an indefinite leave is issued under this paragraph, the Project Director shall immediately send to the Director in accordance with Section 60.4.5 of this Handbook, a copy of Form WRA-130 completely filled out with the notation: "Indefinite leave has been issued under Section 60.4.3, Paragraph --, of the Administrative Handbook on Issuance of Leave." If the Director should subsequently deny an application for leave clearance by an applicant who has been granted indefinite leave under the provisions of this paragraph, appropriate instructions with respect to the indefinite leave will be issued to the Project Director. If the Project Director should receive a notice that, leave clearance has been denied without such instructions, he shall request them by wire.

* * * * *

Transmission of Application to Director

60.5. Whether or not a case is within the special provisions of Section 60.4.3 or 60.4.4, the

Project Director, when satisfied that the file of the case contains all the relevant information more accessible from the project than from Washington, shall transmit to the Director the application for indefinite leave, Form WRA-130, and the project investigation record. He shall also comply with the provisions of Section 60.6 of this Handbook with reference to any accompanying application for leave clearance. * * *

Director's Investigation and Ruling

60.6. Upon receipt of such file from the Project Director, the Director will take such further steps as may be required to review the action of the Project Director or to make his own ruling. If the Project Director has not granted indefinite leave, the Director will investigate the applicant's prospective employment or other means of support and the conditions and factors affecting the applicant's proposed residence. If the applicant has not previously obtained leave clearance, the Director will conduct the further investigation described in Section 60.6.6 of this Handbook. Where a considerable time has elapsed since the applicant secured a leave clearance, the Director will take such measures as he deems appropriate to bring down-to-date the investigation pertinent thereto. Upon completing the investigation appropriate in any case where leave has not been granted by the Project Director, the Director will instruct the Project Director to issue or to deny indefinite leave, or to issue such leave on special conditions. * * *

* * * * *

60.6.1. Every evacuee who has reached or who hereafter reaches his seventeenth birthday shall file an application for leave clearance. Application for leave clearance must accompany or precede an application for short term, seasonal work, or indefinite leave. * * *

2. The Project Director shall make such investigation as may be practical to verify and supplement at the project the information supplied by the applicant. This shall include a check with the Internal Security Officer of the project and may include interviews with any reference the applicant gives and interviews with persons with or for whom the applicant has worked, so far as any such references or other people are on or accessible from the project for personal interviews. He shall embody in a project investigation record any material information not certified by the applicant's signature. He shall send out to all other references given by the applicant a franked envelope addressed to the Director in Washington and a form letter, WRA-140, which requests a reply to be sent to the Director in Washington. * * *

3. The Project Director shall then recommend the disposition to be made of the application for leave clearance—which may be either allowed, disallowed, or allowed with special conditions. Unless he deems the applicant entitled to clearance without doubt, he shall state reasons for the recommendation made. * * *

4. When the case suggests a need for further investigation concerning particular matters, such as addresses, ship manifests, or organizations, which cannot be investigated on the project, the

project investigation record shall call particular attention to these matters and shall list them together with any available leads for further investigation.

5. When the Project Director is satisfied that the file on the application contains all the relevant information more accessible from the project than from Washington, he shall transmit to the Director five copies of the Individual Record, Form WRA-26, three copies of the application for leave clearance, Form WRA-126, Revised, and one copy of the project investigation record and his findings and recommendations. * * *

6. * * * Upon receipt of such forms or upon receipt of the papers transmitted from the projects pursuant to this Section 60.6.5, the Director will obtain from the Department of Justice such information as may be obtainable, will examine any letters received from applicant's references, and will take such steps as may be necessary to satisfy himself concerning the probable effect upon the war program and upon the public peace and security of issuing indefinite leave to applicant. He will thereupon instruct the Project Director whether applicant is eligible for indefinite leave for the purpose of employment or residence anywhere in the United States except prohibited military areas, whether any subsequent application for indefinite leave involving residence or employment in the Eastern Defense Command must be submitted to the Director, whether the Provost Marshal General's Department has determined that the applicant is eligible for employment in

plants and facilities vital to the war program, and whether any special conditions are to attach to any leave issued pursuant to such clearance. Forms WRA-258, 258a, and 258b will be used for this purpose. * * *

7. The Project Director will enter these instructions in the applicant's leave file and make suitable entry upon the register of those eligible for indefinite leave. He shall also notify the applicant on Form WRA-131, Revised, of the disposition of this application for leave clearance. * * *

* * * * *

60.10.1. This section supplements Section 60.6.6 of this Handbook by prescribing procedures to be followed in the case of applications for leave clearance that present difficult problems of clearance because the files do not clearly indicate eligibility for indefinite leave.

2. In each case in which the Director determines that the facts submitted do not clearly indicate the applicant's eligibility for leave clearance, the file or suitable parts thereof, including the application and all information available to the Director about the applicant, will be returned to the center at which the applicant then resides, or last resided, for further investigation. Some files will be completely analyzed before they are returned and the analysis will indicate the factors requiring further investigation. This procedure will usually be followed when the file contains a derogatory intelligence report. Most other files,

however, will be returned under Form WRA-261 without a complete analysis. For example, this action will be taken in cases where the Joint Board does not recommend, or is not expected to recommend, that leave clearance be granted; the files will be returned without complete analysis in order to expedite further consideration by the Project Director. Such files must be examined at the project in order to determine which of the factors listed below are present. All of the factors that occur in a particular file must be adequately covered by the further investigation provided for in Section 60.10.5-C, because each of them throws some doubt on eligibility for leave clearance. Any one of the first nine factors listed below (A through I) is regarded by intelligence agencies as sufficient to warrant a recommendation that leave clearance be denied unless there is an adequate explanation. One function of the investigation is to determine whether an adequate explanation exists. Particular care must be taken to cover these factors thoroughly in the investigation. The remaining factors are of lesser importance but must also be covered by the investigation, since in combination they may present a case in which leave clearance should be denied. The factors are listed as follows:

A. A negative answer to question 28 of the application whether or not subsequently changed either during or after the registration.

B. Failure to answer question 28.

C. A late registration during the special registration in February and March.

D. A request for repatriation or expatriation whether or not subsequently retracted.

E. Military training in Japan. (It is assumed that men have received military training—Gunji Kyoren—if they received any of their education in Japan after the age of 15 and returned to the United States after 1930.)

F. Employment on Japanese naval vessels.

G. Three trips to Japan after the age of six, except in the case of seamen whose trips were confined to ports of call.

H. Ten years residence in Japan by a male citizen of the United States after the age of six, unless he is married to a citizen of the United States and has children.

I. An officer, organizer, agent, member, or contributor to any of the organizations on list "A," which intelligence agencies consider to be organizations known to be subversive. This list will be furnished in a restricted memorandum.

J. An officer, organizer, agent, member, or contributor to any of the organizations on list "B," which intelligence agencies consider potentially or mildly subversive. This list will also be furnished in a restricted memorandum.

K. A qualified answer to question 28 that raises a substantial doubt about loyalty.

L. Attendance at Japanese language school beyond high school age, which is assumed for this purpose to be 14.

M. Trips to Japan (the trips are regarded as most significant if made for a Japanese firm).

N. Residence in Japan.

O. Education in Japan.

P. Marriage to a Japanese alien in the case of American citizens.

Q. Employment by a Japanese governmental agency or a semi-official company.

R. Employment by any of the business enterprises on list "C", which intelligence agencies say have had at least semi-official connections with the Japanese government or have engaged in subversive activities in the United States. This list will be furnished in a restricted memorandum.

S. Employment as a Japanese language school instructor.

T. Shinto religion.

U. Investments in Japan.

V. An answer to question 27 on the application qualified to indicate an unwillingness to fight in the Pacific.

W. Misrepresentations of fact when filling in application.

X. A bad project record.

Y. Derogatory intelligence report about the individual.

Z. Derogatory intelligence report about close relatives.

AA. Close relatives are interned or paroled.

BB. Close relatives are members of organizations listed above in paragraph "I".

CC. Close relatives, particularly males, are living in Japan (not much significance is attached to married females living in Japan).

DD. Close relatives have asked for repatriation.

EE. Close relatives have answered question 28 in the negative.

FF. Close relatives who are citizens of the United States have lived in Japan for extended periods of time or have received most of their education in Japan.

GG. Close relatives have investments in Japan.

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Policy

60.13.1. It is the policy of the War Relocation Authority to assist evacuees to whom indefinite leave has been granted (except when the leave is primarily for the purpose of attending a college or university) in meeting costs of transportation and initial subsistence expenses where this is necessary in order to enable any evacuee to establish himself and his family in the community to which he is going. Assistance will be given only once and will ordinarily be given only when indefinite leave is first issued. An evacuee who has been granted indefinite leave without receiving assistance, and who then returns to the center and leaves a second time will be given no assistance when he leaves the second time, unless his return to the center was on the recommendation of a Relocation Officer, and the Project Director in the exercise of his discretion concludes that by reason of special circumstances a leave assistance grant is proper.

Amount of Assistance

2. * * * The *maximum of assistance* will be coach fare for each member of the family, plus \$3.00 per person per day of travel for meals en route, plus five dollars per day for five days (\$25.00) for each member of the family, the latter

sum being designed to meet initial subsistence expenses at the place of destination. This maximum of assistance shall be given in all cases in which the family's resources in cash amount to \$100 per family member, or less. * * *

WRA Form 258a

WAR RELOCATION AUTHORITY

WRA-258a—Formerly at Tule Lake Project Central Utah. Date August 16, 1943

No. 29—List of Evacuees Granted Leave Clearance by the Director of the War Relocation Authority

Name, Endo, Mitsuye; family No., 27908; address, 2916-C; occupation, office clerk-typist; sex, F; age, 22.

(Tule Lake Address)

(Signed)-----

Assistant Director

This leave clearance is based on a consideration of Forms DSS 304A and WRA 126a, or upon Form WRA 126 Rev. A check of question 28 need not be made by the Project Director. Pursuant to a recommendation of the Japanese-American Joint Board, the Project Director may issue to these individuals indefinite leaves for the purpose of employment or residence in the Eastern Defense Command as well as in other areas, provided the provisions of Administrative Instruction No. 22, Revised, are otherwise complied with. The Provost Marshal General's Depart-

ment of the War Department has determined that these individuals are not at this time eligible for employment in plants and facilities vital to the war effort.

WRA Form 131

WRA-131—WAR RELOCATION AUTHORITY

Notice of Action on Application for Leave
Clearance

To ENDO, MITSUYE, 29-16-C,
Newell, California.

You are hereby notified that your application for leave clearance dated 2-19-43 has been considered by the Director, and he has instructed me that

- x -- you are eligible to be entered on the list of those cleared for indefinite leave
- * -- the following special conditions are to attach to any leave issued pursuant to such clearance:
- your application for leave clearance has been denied because:

This notice does *not* authorize departure from the relocation center. A suitable application must be made separately at any time you wish to apply for leave.

(Signed)-----

Date 8/23/43.

Project Director

*You are eligible for indefinite leave for the purpose of employment or residence in the Eastern Defense Command as well as in other areas; provided the provisions of Administrative Instruction

No. 22, Rev., are otherwise complied with. The Provost Marshal General's Dept. of the War Department has determined that you, Endo, Mitsuye are not at this time eligible for employment in plants and facilities vital to the war effort.

WAR RELOCATION AUTHORITY

APPLICATION FOR INDEFINITE LEAVE

Note: This application will not be accepted unless an application for leave clearance has been earlier filed on Form WRA-126, or accompanies this application.

Relocation Center-----

Family No.-----

Center address-----

1. Name-----
 (Last) (First) (Middle)

2. What is the purpose of the proposed leave?

3. If you plan to attend any educational institution, state its name and address:

Name

Address

 Has your leave been taken up with the National Student Relocation Council?

 (Yes) (No)

4. Have you arranged for any employment?

 (Yes) (No)

Name of employer: -----

Address of employer: -----

Occupation of employer: -----

Your prospective occupation: -----

Salary: \$-----

Attach copy of letter from employer or other evidence of employment.

-
5. How much money are you starting out with?
 \$----- Have you property providing an
 income? ----- If so, state nature,
 (Yes) (No)
 amount and what arrangements have been
 made for management or conservation of this
 property:

-
6. What arrangements have been made to meet
 your expenses while on leave? If you have not
 arranged for employment (as specified in 4
 above) or for your subsistence at an educational
 institution, attach proof that you have adequate
 means of support.

Upon arrival at the first destination of this
 leave, I undertake within 24 hours to report to
 the Director of the War Relocation Authority
 in Washington, D. C., my arrival, and to con-
 firm my business or school and residential
 addresses. In case of any change of school,
 employment, or residence, I will give prompt
 notice of such change.

 (Date)

 (Signature)

THE
JOURNAL OF THE
AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.

Subscription price, Five Dollars Per Annum in Advance.
Single Copies, Fifteen Cents.
Entered as Second-Class Matter, May 2, 1912.
Postage Paid at Chicago, Ill.

Acceptance for mailing at special rate of postage provided for in
Act of October 3, 1917, authorized on July 10, 1918.
Postage paid by addressee.

Published by the American Medical Association, 535 North Dearborn Street,
Chicago, Ill., U.S.A.
Copyright, 1918, by American Medical Association

Printed at the Chicago Press and Publishing Co., Chicago, Ill., U.S.A.
No. 1000
Subscription orders, notices, and other correspondence should be sent to the
Editor, American Medical Association, 535 North Dearborn Street, Chicago, Ill., U.S.A.

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