In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 679 22

FRED TOYOSABURO KOREMATSU,
Petitioner (Appellant Below),
vs.
UNITED STATES OF AMERICA,
Respondent (Appellee Below).

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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Subject Index

Table of Authorities Cited

Codes and Statutes

Miscellaneous

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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Fred Toyosaburo Korematsu petitions that a writ of *certiorari* issue to review a judgment entered against him on December 2, 1943, by the United States Circuit Court of Appeals for the Ninth Circuit in a cause pending in that Court numbered and entitled,

"No. 10248, Fred Toyosaburo Korematsu, Appellant, vs. United States of America, Appellee". (R. 97.) The said judgment (R. 97) and opinion (R. 57 to 96), reported in 138 Fed. (2d) ....., affirms a judgment of conviction and five-year probationary sentence (R. 25) imposed upon the petitioner on September 8, 1942, by the U.S. District Court for the Northern District of California, Southern Division, for the commission of a misdemeanor, to-wit, a violation of Public Law No. 503, 77th Congress, 2nd Session, Chap. 191, H.R. 6758, approved March 21, 1942, 56 Stat. 173, which is now codified as Title 18 USCA, Sec. 97a, and set out at page i in the Appendix to brief herein. The said Circuit Court of Appeals denied petitioner's petition for a rehearing of the cause on January 7, 1944. (R. 98.)

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.

On July 12, 1942, an information (R. 1) was filed in the Southern Division of the United States District Court for the Northern District of California, charging petitioner with the commission of a misdemeanor, to-wit, a violation of Public Law No. 503, which is now codified as Title 18, USCA, Sec. 97a, and is set out at page i of the Appendix herein. The gist of the charge was that the petitioner, a native-born American citizen of Japanese ancestry and a resident of Alameda County, California, on May 30, 1942, knowingly and wilfully remained within the geographical limits of Military Area No. 1

prescribed in Public Proclamation No. 1, under ostensible authority of Executive Order No. 9066, by J. L. DeWitt, Commanding General, Western Defense Command and Fourth Army, and particularly in that portion thereof described in Civilian Exclusion Order No. 34 issued by said General on May 3, 1942, from which said areas he had been ordered excluded, and imprisoned in an assembly center, and was destined to be evacuated therefrom and interned in a concentration camp by said General simply because he was an American citizen of Japanese ancestry and for no other reason whatsoever.

Prior to his arraignment in said District Court the petitioner interposed a demurrer (R. 3) and a supplemental demurrer (R. 22) to said information which were briefed and argued and later overruled. (R. 24.) Thereafter, petitioner was arraigned, entered a plea of not guilty, waived a jury (R. 31), and the cause proceeded to trial before said District Court. During the progress of the trial the petitioner made oral motions for a dismissal of the information and the discharge of the petitioner from custody at the close of the government's examination in chief (R. 38) and at the close of his defense (R. 41) and a motion for arrest of judgment after he had been pronounced guilty by the District Court of the charge preferred against him. (R. 42.) Each of said motions was based upon, reiterated and incorporated each and all of the grounds and reasons set forth in the said demurrer and supplemental demurrer to the information asserting the invalidity and unconstitutionality of the said statute, Executive Order No. 9066, Public

Proclamations Nos. 1, 2, 3 and 4, and Civilian Exclusion Order No. 34 on their faces and as applied to petitioner. Each of said motions was denied by the trial judge and exceptions thereto were properly and timely taken by petitioner and noted by that Court. The trial Court thereafter adjudged petitioner guilty of a violation of the statute as charged in the information and sentenced him to probation for a period of five years. (R. 25, 42.)

Thereafter the petitioner appealed from the said judgment of conviction and probationary sentence to the United States Circuit Court of Appeals for the Ninth Circuit, raising anew the invalidity of said statute, proclamations and civilian exclusion order upon each and all of the grounds therefor originally set forth in his demurrer and supplemental demurrer to the information interposed in the trial Court. While said appeal was pending the appellee, respondent herein, moved to dismiss the appeal on the ground that the probationary sentence was not a final order from which an appeal would lie. After the arguments on said motion and on the merits of the cause and the issues it presented had been concluded the cause was submitted for decision to said Court sitting *in bank*. Owing to a diversity of opinion among the Justices of the Circuit Court of Appeals, said Court pursuant to the provisions of Sec. 239 of the Judicial Code, as amended, 28 USCA Sec. 346, certified to this Court the question whether or not it had jurisdiction to entertain the appeal. This Court, on June 1, 1943, answered the question in the affirmative, *Korematsu v. United States,* 319 U.S. 433, 87 L. Ed.

1086. Thereafter, on December 2, 1943, said Circuit Court of Appeals rendered its judgment (R. 97) and filed its opinion together with the opinion of Denman, C.J., concurring in the result but dissenting from the grounds of the majority opinion, and the concurring opinion of Stephen, C.J., which dismissed the motion to dismiss the appeal and affirmed the judgment of the trial Court. (R. 57-96.) Your petitioner seeks a review of said judgment affirming the conviction and probationary sentence imposed upon petitioner by the trial Court.

STATEMENT DISCLOSING BASIS UPON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT IN QUESTION.

The Supreme Court of the United States has jurisdiction to review the judgment in question by virtue of the provisions of Sec. 240(a) of the Judicial Code, as amended (28 USCA, Sec. 347(a)).

Public Law No. 503, under which the petitioner was convicted and sentenced to probation in the District Court for disobeying the provisions of Civilian Exclusion Order No. 34 issued by General DeWitt, provides that any person violating the provisions of military orders in prescribed military areas shall be guilty of a misdemeanor and subject to a fine not exceeding $5000 and imprisonment for not more than one year, or both. In the District Court and in the Circuit Court of Appeals there was drawn into issue the validity of said statute, exclusion order and other military orders which destined the petitioner to

evacuation from the prescribed military areas and eventual internment in a War Relocation Center. The petitioner contended therein and contends herein that said statute and military orders he was charged with violating were unconstitutional and void as being repugnant to the provisions of the 4th, 5th, 6th, 8th and 13th Amendments and to Secs. 1 and 9, cl. 3 of Art. I, Secs. 1 and 3 of Art. III and Sec. 2, cl. 1 of Art. IV of the Constitution, but his contentions were resolved against him in both Courts. The judgment of said Circuit Court affirming the judgment of the said District Court herein is both final in form and in substance and disposed of all the elements of the controversy in the trial Court. Said judgment affirms the legality of the conviction of the petitioner and his sentence to probation and therein holds valid the aforesaid military orders in their entirety as construed and as applied to him. The issues presented herein are substantial federal questions and have not heretofore been specifically passed upon by this Court.

QUESTIONS PRESENTED.

The review sought herein presents the following questions:

(1) Is the statute as applied to petitioner void for containing an unconstitutional delegation of *unlimited legislative power* to Courts and juries to determine what acts shall be criminal and punishable thereunder in violation of Sec. 1 of Art. I of the Constitution?

(2) Is the statute applied as the enforcement machinery for military orders void for containing, in violation of Sec. 1 of Art. III of the Constitution, an unlawful delegation of *unlimited judicial power* to the military commander to function in lieu of the Courts by enabling him to hold, in the recesses of his own mind, a mock trial of civilians and to condemn them to deportation and imprisonment on mere suspicion or hearsay or because of a prejudice he harbors in his own mind against them because of their Japanese ancestry?

(3) In being utilized as the enforcement procedure for *lettres de cachet* which discriminate against the petitioner and thousands of other citizens, simply because of the nationality of their forbears, is the statute, as applied, unconstitutional and void upon the following grounds: (a) as depriving him of his liberty and of his property without due process of law guaranteed to him by the 5th Amendment; (b) as taking his private property, under an asserted claim the taking is for a public use, without just compensation in violation of the 5th Amendment; (c) as an abridgment of his fundamental *privileges and immunities* of national and state citizenship guaranteed by the 5th Amendment and Art. IV, Sec. 2, cl. 1 of the Constitution; (d) as a *bill of attainder* forbidden by Art. I, Sec. 9, cl. 3 of the Constitution; (e) as an *infamous punishment* forbidden by the 5th Amendment; (f) as a *cruel and unusual punishment* in violation of the 8th Amendment; (g) as imposing upon him a degrading *condition of slavery and in-*

voluntary servitude forbidden by the 13th Amendment; (h) as infringing his right to be secure in his person, house, papers and effects against *unreasonable searches and seizures* in violation of the 4th Amendment; (i) as subjecting him to internment without an accusation of crime being lodged against him and without affording him a judicial trial or an administrative hearing and the incidents thereof in violation of the 5th and 6th Amendments; and (j) as working a corruption of blood and forfeiture, without trial, upon the theory of the constructive treason of petitioner's remote ancestors in violation of Sec. 3 of Art. III of the Constitution?

(4) In the absence of martial law and rule can the constitutional rights and liberties of the petitioner as a loyal citizen be curtailed by a military commander and this caprice be justified as a proper exercise of war power by a mere recital in his proclamations of the existence of a military necessity when the recital had no rational basis in fact and when not a scintilla of evidence tending to prove the military action taken was conceived in good faith, in the face of an emergency and was directly related to the quelling or prevention of any disorder or threatened crime in which the petitioner had a part was introduced into evidence by the prosecution at the trial below to sustain its burden of proof?

(5) Can the Courts take judicial notice or assume judicial knowledge of highly dubious facts in order to support a finding of the existence of a military necessity justifying an abridgment of fundamental

constitutional rights where a rational basis therefor did not in fact exist and the military commander's action was based upon mere suspicion or hearsay or arose out of his personal prejudice?

(6) If the military commander can do these things with impunity, not by virtue of right but by reason of a usurpation of power, the question remains, can the Courts brand the petitioner a criminal and punish him for resisting these destructive orders, or is it the duty of the Courts to preserve his constitutional rights regardless of what the military commander does to him?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals for the Ninth Circuit has decided several federal questions of national importance which heretofore have not been, but should be, settled by this Court. Its decision upholds the application of the provisions of Civilian Exclusion Order No. 34 to the appellant and the validity of Public Law No. 503 as its enforcement machinery. Thereby it holds valid the whole racial discrimination program of General DeWitt under which the petitioner and approximately 70,000 citizens of Japanese ancestry resident in the Western States were arrested by the military authorities, were confined to stockades designated Assembly Centers and were thereafter imprisoned in concentration camps designated Relocation Centers where the greater number of them are held

in servitude at his caprice until he or a higher governmental authority sees fit to release them. The majority opinion, while recognizing that this Court, in *Hirabayashi v. U.S.*, 320 U.S. 81, 87 L. Ed. 1337, "did not expressly pass upon the validity of the evacuation order" of the military commander nevertheless concluded that the principle established therein was determinative of this issue. It disposed of the petitioner's major contentions without discussion. See concurring opinion of Denman, C. J., criticising this summary disposition of these contentions "without their mention, much less their consideration". (R. 61.) In the *Hirabayashi* case this Court refused to pass upon the precise question of the validity of an exclusion order which had been certified to it for answer because the conviction was held sustainable under a second count in an indictment for a violation of a curfew order. Consequently, the question of the validity of the civilian exclusion order and the whole banishment and imprisonment program of General DeWitt involved herein and the statute as its enforcement procedure have never been passed upon by this Court.

2. The Circuit Court's decision assumes that the questions concerning the authority of the Executive and his subordinate military commander to order this compulsory evacuation and internment of the petitioner and similarly injured citizens was authorized by Congress and that this point had been determined in the *Hirabayashi* case. However, this Court, in the *Hirabayashi* case left undecided the question whether

Congress had authorized or was empowered to authorize these evacuation and imprisonment orders. It neither assumed nor made a finding of fact supporting a reasonable basis for the application of such orders. It restricted its decision to a justification of the statute as the enforcement machinery for a trifling curfew order which it declared had been authorized by Congress and the Executive. It is also of importance to note that the Circuit Court failed to pass upon the specific question whether or not the evacuation program of the military commander was authorized or sanctioned by the President's Executive Order No. 9066. Neither of these questions has heretofore been decided by this Court. They would appear to be substantial federal questions requiring final settlement in order that the division line between military authority and civilian right in time of war be clearly delineated.

3. The opinion of the Circuit Court appears to be at variance and in direct conflict with decisions of certain District Courts upon the precise questions herein presented. In *Schueller v. Drum* (Dist. Ct. Pa. decided 8/20/43), 51 Fed. Sup. 383, and in *Ebel v. Drum* (Dist. Ct. Mass. decided 9/20/43), 52 Fed. Sup. 189, decided since this Court rendered its opinion in the *Hirabayashi* case, individual civilian exclusion orders issued by a military commander in the Eastern Defense Command were held to want validity on the ground that at the time of their application there was not present a reasonable and substantial basis for the judgment the military authorities made that the threat of espionage and sabotage to our military re-

sources was real and imminent. Inasmuch as decisions of Circuit Courts appear to possess only persuasive weight outside their own judicial districts in the absence of a final opinion on the issues by this Court a review herein would seem to be necessary to bring final order out of the reigning confusion.

4. The Circuit Court's opinion appears also to have decided, either expressly or by silence, each of the questions propounded and urged by the petitioner in a way probably in conflict with applicable decisions of this Court. It appears to have ignored the application of the principles established in *Ex parte Milligan,* 4 Wall. (U.S.) 2, to the issues herein, to have rejected the rules testing the limits of military authority which were laid down in *Sterling v. Constantin,* 287 U.S. 378, and to have failed to apply the rules relating to a delegation by Congress of a limited discretionary power to executive officers enunciated in *Schechter Poultry Corp. v. U.S.,* 295 U.S. 495. In addition, it appears that the Circuit Court failed to consider that the action of the military commander taken herein did not conform to any standard approved by Congress and that his orders arresting, banishing and imprisoning the petitioner were not supported by findings showing they so conformed. In consequence these orders violated the rules of the *Schechter* case and the rules reiterated in the *Hirabayashi* case. Attention is also drawn to the fact that Executive Order No. 9066 authorizes the transportation and accommodation of persons from excluded areas but confers no power upon a military commander to imprison them, conse-

quently, the banishment and imprisonment of petitioner was not authorized by the President. This point was a major contention of the petitioner but was either ignored by the Circuit Court or was decided adversely to him *sub silentio.*

PRAYER FOR THE ISSUANCE OF THE WRIT.

Wherefore, the petitioner prays that this Court issue its writ of certiorari directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings in the cause numbered and entitled in said Court, "No. 10,248, Fred Toyosaburo Korematsu, Appellant, vs. United States of America, Appellee", to the ends that said cause may be reviewed by this Court as provided by law, that said judgment of said Circuit Court of Appeals be reversed and that your petitioner have such other and further relief in the premises as may seem just.

Dated, San Francisco, California,
February 2, 1944.

JACKSON H. RALSTON,
Attorney for Petitioner.

WAYNE M. COLLINS,
Of Counsel.

CERTIFICATE OF COUNSEL.

The foregoing petition for writ of certiorari, together with the hereinafter contained supporting brief, is well founded in point of fact and law, is presented in good faith, and is not interposed for delay.

Dated, San Francisco, California,
February 2, 1944.

JACKSON H. RALSTON,
Attorney for Petitioner.

In the Supreme Court
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OCTOBER TERM, 1943

No.

FRED TOYOSABURO KOREMATSU,
Petitioner (Appellant Below),
vs.
UNITED STATES OF AMERICA,
Respondent (Appellee Below).

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

JURISDICTION.

A. Dates of entry of judgments of District and Circuit Courts.

(1) The judgment of conviction and probationary sentence was entered in the District Court on September 8, 1942. (R. 25, 26.)

(2) The judgment (R. 97) and opinion (R. 57-97) of the Circuit Court of Appeals for the Ninth Circuit affirming the judgment of the District Court were

rendered, filed and entered on December 2, 1943, and said opinion is reported in 138 Fed. (2d) .....

(3) The petitioner's petition for a rehearing of his cause was filed in the Circuit Court of Appeals on December 31, 1943, and was denied by an order of said Court entered on January 7, 1944, said order staying the issuance of its mandate until February 8, 1944, pending the docketing of his petition for a writ of certiorari in the United States Supreme Court and thereafter until this Court passes thereon. (R. 98.)

B. Statute under which jurisdiction is invoked.

The jurisdiction of the Supreme Court of the United States is invoked herein by virtue of the provisions of Section 240 (a) of the Judicial Code, as amended. (Title 28 USCA, Sec. 347, subd. (a).)

C. Statement of grounds on which the jurisdiction of the Supreme Court is invoked.

In the District Court and the Circuit Court of Appeals, as in this petition, there was drawn into issue by the petitioner the validity of Public Law No. 503 (18 USCA, Sec. 97a), Public Proclamations Nos, 1, 2, 3 and 4, Civilian Exclusion Order No. 34 and subsequently issued imprisoning orders of General DeWitt on the ground that said statute in being applied to the petitioner as the enforcement procedure for said military orders was void as being repugnant to the provisions of the 4th, 5th, 6th, 8th and 13th Amendments and to Secs. 1 and 9, cl. 3 of Art. I, Secs. 1 and 3 of Art. III, and Sec. 2, cl. 1 of Art. IV of the U.S. Constitution. Petitioner's chief contentions so drawn

into issue were and are that said statute and orders as applied to him unconstitutionally deprived him of substantially all his rights of national citizenship in the absence of crime upon his part without due process of law, constitute a bill of attainder and effectually imprison and detain him in involuntary servitude. The decision of the Circuit Court affirming the judgment of the District Court upheld the validity of the statute and the military orders in their entirety, summarily disposing of petitioner's major contentions under the mistaken impression that the issues involved herein had been determined in *Hirabayashi v. U.S.*, 87 L. Ed. 1337. The questions involved herein, however, have not heretofore specifically been passed upon by this Court. They appear to be substantial federal questions requiring final settlement by this Court.

D. Cases believed to sustain the jurisdiction.

The following cases are believed to sustain the jurisdiction of the Supreme Court:

Hirabayashi v. U.S., 87 L. Ed. 1337;
Ex parte Milligan, 4 Wall. (U.S.) 2;
Sterling v. Constantin, 287 U.S. 378;
Schechter Poultry Corp. v. U.S., 295 U.S. 495;
Truax v. Raich, 239 U.S. 33, 38;
U.S. v. L. Cohen Grocery Co., 255 U.S. 81.

II.

STATUTE, EXECUTIVE ORDER AND MILITARY ORDERS THE APPLICATION AND VALIDITY OF WHICH ARE INVOLVED HEREIN.

(See Appendix to this Brief.)

III.

STATEMENT OF FACTS.

The appellant is an adult native born male citizen of the United States who was born on January 30, 1919, in Oakland, Alameda County, California, of parents who resided therein and were nationals of Japan. (R. 32, 39.) He was reared in Oakland, educated in the public schools of California and has never been outside the continental limits of the United States. Since attaining his majority he had been a registered voter and taxpayer. (R. 39.) He registered under the Selective Training and Service Act of 1940 but when called for examination was rejected for military service because of a physical defect. (R. 39.) Thereafter, in order, as an American citizen, to be of service to this nation in our defense effort, he took up the study of welding, exhausting his savings therefor. Upon completion of the course he found temporary employment as a welder in various shipyards engaged in defense production. (R. 39-41.) When refused employment because of his ancestry he returned to labor in his father's nursery. (R. 39.)

On May 30, 1942, he was arrested in the City of San Leandro, Alameda County, California, was de-

livered to agents of the Federal Bureau of Investigation and thereafter was charged with a violation of Public Law No. 503 in the information. (R. 1.) At the time of his apprehension he had deliberately remained in the said City of San Leandro knowing he was then within the confines of Military Area No. 1 prescribed by Public Proclamation No. 1 of General DeWitt dated March 2, 1942, and knowing that he had been ordered excluded therefrom by the provisions of Civilian Exclusion Order No. 34 issued by said General on May 3, 1942, commanding him as a person of Japanese ancestry to submit to evacuation therefrom by the Army for internment in a concentration camp. (R. 33.) His reasons for refusing to obey the military mandate were that he did not wish to abandon his girl and to leave his home and friends. (R. 36-37.) To avoid detection and escape evacuation from his home and eventual internment in a concentration camp he adopted the pseudonym of "Clyde Sarah", which he inserted on his draft card and had a surgical operation performed to alter his facial characteristics. (R. 41.) The surgical operation was a failure.

The appellant has but a trifling speaking knowledge of colloquial Japanese but has neither a reading nor writing acquaintance with that language. He has never attended a Japanese language school. (R. 40.) He has never renounced or lost his citizenship in the United States and owes no allegiance to any country other than the United States or to any nation other than the people of the United States. (R. 40.) He is and ever has been ready and willing to bear arms for this

country and to render any service he might be called upon to perform by our government in our war against the axis nations, including the Empire of Japan. (R. 41.)

He was tried, found guilty and convicted by the District Court of a violation of Public Law No. 503 as charged in the information and was sentenced to probation for a period of five years. (R. 25.) Being released into the custody of the Army he was dragged away and confined to an assembly center situated at Tanforan, San Mateo County, California, then under the control of the Wartime Civil Control Administration, a military agency set up by General DeWitt. Thereafter he was removed under military guard to a war relocation center set up by the War Department and situated in the vicinity of Topaz, an arid spot in the State of Utah.

After the entry of the judgment of conviction and probationary sentence the petitioner appealed to the United States Circuit Court of Appeals for the Ninth Circuit, raising therein the same federal constitutional questions and issues as originally set forth in his demurrer (R. 3) and supplemental demurrer (R. 22) to the information and in his motions for a dismissal made at the close of the government's case in chief (R. 38) and at the close of his defense (R. 41) and in his motion in arrest of judgment (R. 42) after conviction by the District Court. While said cause was pending before that Court the appellee, respondent herein, moved to dismiss the appeal on the ground that the probationary sentence was not a

final order from which an appeal would lie. After oral arguments on said motion and on the merits of the cause and issues it involved had been concluded and the matter submitted to that Court, sitting *in bank,* owing to a diversity of opinion among the Justices of the Circuit Court of Appeals, said Court, pursuant to the provisions of section 239 of the Judicial Code as amended (28 USCA, sec. 346), certified to this Court the question whether or not it had jurisdiction to entertain the appeal. This Court, on June 1, 1943, answered the question in the affirmative. *Korematsu v. United States,* 87 L. Ed. 1086. Thereafter, on December 2, 1943, said Circuit Court of Appeals rendered its judgment (R. 97) and filed its opinion (R. 57) together with the opinion of Denman, C.J. (R. 60), concurring in the result but dissenting from the grounds of the majority opinion, and the concurring opinion of Stephen, C.J. (R. 86), which dismissed the motion to dismiss the appeal and affirmed the judgment of the trial Court.

IV.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals for the Ninth Circuit erred in affirming the action of the District Court in overruling the demurrer (R. 3) and supplemental demurrer (R. 22) to the information interposed by the petitioner, in denying his motion to dismiss the information and to render a judgment of not guilty made during the course of the trial at the close of the

government's case in chief (R. 38), his like motion made at the close of defendant's case (R. 41) and his motion in arrest of judgment (R. 42), each of which motions was made upon all of the grounds set forth in the demurrer and supplemental demurrer, and in affirming the judgment of conviction and probationary sentence imposed upon him by the District Court. (R. 97.)

Petitioner intends to urge the errors be assigned in the Circuit Court (R. 45-48) which, in substance, assert the invalidity of the statute under which he was convicted and the military orders he was charged with violating. The specific errors which petitioner assigns as having been made by the District Court and by the Circuit Court in affirming the judgment and which he urges and intends to rely upon herein are that said Courts erred in failing to hold that the statute as applied to the petitioner was void on the following grounds:

1. For delegating unlimited legislative powers to Courts, juries and military commanders to determine what acts shall be deemed criminal and punishable thereunder in violation of section 1 of Art. I of the Constitution;

2. For delegating unlimited judicial power to military commanders to regulate the activities of civilians engaged in civil occupations in violation of section 1 of Art. III of the Constitution;

And in failing to hold the military orders involved herein and the statute applied as their enforcement

machinery unconstitutional and void on the following grounds:

3. As depriving him of his liberty and property without due process of law, as taking his private property under an asserted claim of taking for a public use without just compensation and as subjecting him to an infamous punishment, all in violation of the 5th Amendment;

4. As constituting a bill of attainder forbidden by section 9, clause 3 of Art. I of the Constitution;

5. As inflicting upon him a cruel and unusual punishment in violation of the 8th Amendment;

6. As infringing his right to be secure against unreasonable searches and seizures in violation of the 4th Amendment;

7. As subjecting him to internment without a charge of crime being brought against him and without affording him a hearing in violation of the 6th Amendment;

8. As imposing upon him in an internment camp a condition of slavery and involuntary servitude in violation of the 13th Amendment.

9. As working a corruption of blood and forfeiture upon him, without trial, upon the theory of the constructive treason of his remote ancestors in violation of section 3 of Art. I of the Constitution.

V.

ARGUMENT.

SUMMARY OF ARGUMENT.

The petitioner contends that the statute under which he was convicted and placed on probation is void as applied for delegating unlimited legislative power to Courts, juries and military commanders to determine what acts shall be deemed criminal and punishable in violation of section 1 of Art. I of the Constitution and is also void for delegating unlimited judicial power to military officers to exercise authority and control over civilians engaged in civilian pursuits in violation of section 1 of Art. III of the Constitution.

The petitioner also contends that the military orders he disobeyed and the military orders providing for his imprisonment and detention in a concentration camp and the statute in being applied as their enforcement machinery are unconstitutional and void as operating to deprive him, in the absence of crime on his part and without a hearing, of his rights of national citizenship, his liberty and property without due process of law and his private property under an asserted claim the taking is for a public use without just compensation and as an infamous punishment, all forbidden by the 5th Amendment; as a bill of attainder forbidden by section 9, clause 3 of Art. I of the Constitution; as a cruel and unusual punishment in violation of the 8th Amendment; as infringing his right to be secure against unreasonable searches and seizures in violation of the 4th Amend-

ment; as subjecting him to internment without an accusation of crime being lodged against him and without affording him a hearing in violation of the 6th Amendment; as imposing upon him a condition of slavery and involuntary servitude forbidden by the 13th Amendment and as working a corruption of blood and forfeiture, without trial, upon the theory of the constructive treason of his remote ancestors in violation of section 3 of Art. I of the Constitution.

The petitioner also contends that these military orders providing for the arrest, banishment and internment of the petitioner and similarly affected citizens were never authorized by Executive Order No. 9066 or any presidential order or by Congress.

The petitioner also contends that there exist no provable facts or facts of actual public notoriety which a Court can take for granted by an assumption of judicial knowledge in order to sustain the existence of a military necessity justifying the application of military orders arresting, banishing and detaining the petitioner in custody at the whim of a military commander in an area which is not under martial rule.

THE MILITARY ORDERS CHALLENGED HEREIN AND THE STATUTE AS APPLIED ARE VOID FOR ABRIDGING FUNDAMENTAL CONSTITUTIONAL PROVISIONS.

Preliminary statement.

The majority opinion of the Circuit Court of Appeals disposed of the petitioner's "major contentions without their mention, much less their consideration."

(See statement of Denman, C. J., in his concurring opinion, R. 61.) It was based upon the belief that the principles decided in *Hirabayashi v. U. S.*, 87 L.Ed. 1337, were decisive of all the issues involved herein, sustaining the whole evacuation program of General DeWitt. This Court, however, has never passed upon the validity of a civilian exclusion order upon which the evacuation program hinged or upon the statute involved herein as the enforcement procedure for this mass banishment. In the *Hirabayashi* case this Court upheld a curfew regulation promulgated by General DeWitt, limiting its decision to this one issue in the following language:

> "We decide only the issue as we have defined it—we decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power."

Without the express sanction of a statute the curfew order might have been sustained as a proper exercise of federal police power (war power) by the military authorities if applied impartially to civilians. There is an obvious difference, however, between a mere curfew regulation and the military orders involved herein commanding the arrest and confinement in a concentration camp of a loyal and law abiding citizen engaged in civilian pursuits simply because he is descended from ancestors who once owed allegiance to Japan.

The whole sad, sorry and sordid plot and plan of these unprecedented military orders, of which the civilian exclusion order involved herein was but one

step in a unit succession of orders constituting a single program of incredible cruelty to the petitioner and some 70,000 similarly injured citizens, is reviewable by this Court. *Hirabayashi v. U. S.*, 87 L.Ed. 1337; *Lovell v. Griffin*, 303 U.S. 444; and *Thornhill v. Alabama*, 310 U.S. 88. These orders are nothing if not penal *lettres de cachet*. They discriminate against the petitioner and thousands of other citizens likewise engaged in civilian pursuits simply because they are descended from ancestors who once were nationals of Japan. Public Proclamations Nos. 1 and 2 set up military districts of States-embracing extent. Under extraordinary orders the petitioner and some 70,000 citizens of like ancestry were first ordered to report changes in their places of residence (Public Proclamation Nos. 1 and 2); then subjected to curfew regulations and travel restrictions in the military areas (Public Proclamation No. 3) and were then ordered to remain frozen in these areas. (Public Proclamation No. 4.) Thereafter the civilian exclusion orders were issued and the mass exodus was under way. Civilian Exclusion Order No. 34 excluded petitioner from the portion of Alameda County where he resided, ordered him into an Assembly Center under penalty of being charged with a violation of Public Law No. 503 and destined him for final imprisonment in an internment camp. From various Assembly Centers these people were thereafter deported and confined to concentration camps called War Relocation Centers, a few of which were within and a few outside General DeWitt's military district. (See Public Proclamation WD-1 dated August 13, 1942, published in 7 F.R. 6593.) Thus was

a whole chapter lifted from Hitler's "Mein Kampf" and applied in America. Thus the counterpart of the European ghetto and the Russian pale arose in America.

It is strange that General DeWitt made no provision whatever to examine into the loyalties of these citizens if any among them were regarded by him with suspicion. It is to be noted that it is the function of the Department of Justice to protect the civilian population against acts of espionage and sabotage and that this Department was competent to ferret out subversive civilians. It had adequately performed its duties in arresting all persons suspected of being a menace to our security, whether German, Italian or Japanese, and had confined them to special internment camps and had given each of them an individual hearing. (See, survey of the activities of the Department of Justice issued by Attorney General Biddle during week of December 1, 1942.) Like hearings were neither given nor provided to be given to the prospective evacuee citizens by General DeWitt although the Army or the Department of Justice could have given such examinations within the period elapsing between December 7, 1941, and the time the respective civilian exclusion orders were issued, the last of which was issued in August of 1942. Consequently it cannot be argued that he did not have ample time within which to examine them to ascertain if there were any disloyal members in their midst. Under these orders the petitioner and these other citizens were stripped of their belongings. Their vocations were ruined. They were torn from their homes at

the points of bayonets and driven into stockades which the military authorities have steadily endeavored to term, in more polite terms, Assembly Centers. Thereafter they were evacuated, a euphemistic term meaning they were driven into concentration camps where they are compelled to suffer the indignities of involuntary servitude. Substantially all their rights of national and state citizenship have been destroyed. Despite these facts, the Circuit Court sustained the validity of the statute, Civilian Exclusion Order No. 34, and the internment on the strength of the *Hirabayashi* case without giving much consideration to the following major contentions of the petitioner.

(1)

THE STATUTE UNLAWFULLY DELEGATES UNLIMITED LEGISLATIVE POWER TO COURTS, JURIES AND MILITARY COMMANDERS.

The statute is void on its face and as applied to the petitioner for containing an unconstitutional delegation of *unlimited legislative power* to Courts and juries to determine what acts shall be criminal and punishable thereunder in violation of Sec. 1 of Art. I of the Constitution. *U. S. v. L. Cohen Grocery Co.*, 255 U.S. 81. It would also seem void as applied herein when read in conjunction with Executive Order No. 9066. The presidential order authorized the removal of persons from necessary military areas and the employment of federal transportation means and accommodation facilities for evacuated persons. It neither prescribed specific military areas of the states-embracing nature later set up by General DeWitt nor

authorized the indiscriminate mass deportation and imprisonment of prospective evacuees upon the basis of the nationality of their ancestors.

Congress is empowered to delegate a *limited discretionary power* to executive officials in aid of the enforcement of a statute if it sets up a standard for their guidance and leaves to them the determination of facts to which the congressional policy is to apply. *Schechter Poultry Corp. v. U. S.*, 295 U.S. 495. Neither Congress in the statute in question nor the President in Executive Order No. 9066 set up any specific standards for the guidance of the military commander, but this failure did not lodge unlimited or arbitrary authority in his hands to be wielded as prejudice or caprice might dictate. In the *Hirabayashi* case, this Court decided that Congress and the Executive, acting together, could authorize a temporary curfew restriction as an emergency war measure. It likened the trifling infringement on personal liberty to that imposed by the police establishment of fire lines during a fire and the confinement of people to their houses during an air raid alarm. The orders involved herein, however, are not of a comparable nature or trifling in their infringement of personal liberty.

The set of hypothetical and highly disputable facts which the Court felt impelled to assume as true and labelled facts of public notoriety in the *Hirabayashi* opinion to sustain the validity of a curfew measure was necessitated by the failure of General DeWitt to reveal to the public any factual findings and reasons

for the application of his curfew order. A similar assumption of facts would not be justifiable in this case where we are concerned with military orders which strike at the very roots of constitutional rights and have no reasonable relation to public safety. It is just such military orders as are involved herein that this Court had in mind in declaring:

> "It is unnecessary to consider whether or to what extent such findings would support orders differing from the curfew order."

Confronted with a similar set of assumed facts in cases involving citizens of German extraction on the East Coast, two District Courts, since the *Hirabayashi* decision was rendered, have held individual exclusion orders invalid. These decisions were made on the basis of taking judicial knowledge that there was not present at the time of the application of the orders a substantial basis for the judgment of a military commander that the threat of espionage and sabotage to our military resources was real and imminent. See *Schueller v. Drum,* 51 Fed. Sup. 383, and *Ebel v. Drum,* 52 Fed. Sup. 189.

General DeWitt's "Final Report, Japanese Evacuation from The West Coast" was publicly released on January 19, 1944. On page 7 thereof he reveals that his evacuation program was designed and carried into execution simply because he entertained the belief that the "distribution of the Japanese population" on the Pacific Coast "appeared to manifest something more than coincidence" and that it was "ideally situated with reference to points of strategic importance, to

carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so." This statement together with the highly debatable facts collected since the completion of the evacuation and set forth in his report (pages 7-19) in justification of his orders demonstrate his action to have been based upon a generalized suspicion he entertained of these citizens simply because of their racial origin and geographical distribution. This post-evacuation document compiled so belatedly does not appear to contain sufficient reasons to sustain a view that the evacuation was a military necessity or that it was based upon an exercise of sound judgment. The document itself demonstrates that the military necessity he relied on to justify this terrible program was an apparition. The evacuation and imprisonment of these citizens was a military blunder of the first order. General DeWitt ought to have foreseen that the racial discrimination he intended to practice here would give our Japanese enemies fodder for the propaganda machine they long had been operating in Asia to enlist the sympathies of Oriental peoples against Occidentals. He ought also to have foreseen that his intended action would arouse skepticism of our democratic processes among our dark complexioned Allies and among our own peoples. That it was prejudice and not a bona fide military necessity that evoked these drastic orders appears to be fully sustained by the testimony of General DeWitt given before a House Naval Affairs Sub-committee in San Francisco which was widely circulated by press

and radio. The San Francisco News of April 13th, 1943 quotes him as having testified as follows:

"Charges of a movement to bring American-born Japanese back to the Pacific Coast were made today by Lieut. Gen. DeWitt, commanding general of the Western Defense Command and Fourth Army, at a House naval affairs subcommittee hearing here. He said he would oppose this movement 'with every effort and means at my disposal.'

'I don't want any Jap back on the Coast', said General DeWitt, after informing the committee of 'a feeling developing in certain sections and among certain elements' to bring these American-Japanese back to the Coast military area.

'There is no way to determine their loyalty', he declared. 'This West Coast is too vulnerable. I am opposing this movement with every effort and means at my disposal.

I have two problems—defending this Coast against espionage and sabotage by the Japs and driving them off the face of the map in the Aleutians.

It makes no difference whether the Japanese is theoretically a citizen—he is still a Japanese. Giving him a piece of paper won't change him.

I don't care what they do with the Japs as long as they don't send them back here. A Jap is a Jap.' "

It cannot be said that the arresting, evacuation and imprisonment orders conformed to a standard ap-

proved by Congress or that they were made with the support of findings showing such a conformity or that they were actually authorized by the President. Hawaii had been in a theater of war and contains defense installations, facilities and materials on a proportionate scale unmatched on the Pacific Coast. It is and has been a military target of great importance and since the outbreak of war has been under martial rule. The military authorities there, in the exercise of sound judgment, applied a curfew regulation upon the populace without racial discrimination but did not resort to an indiscriminate mass arrest, banishment and imprisonment of citizens or aliens on a racial origin basis. The Japanese aliens and citizens of Japanese extraction comprise approximately 37.3 per cent of the population of Hawaii. (H.R. 2124, 77th Cong., 2nd Sess., May, 1942, pp. 91, 94.) Not one authentic case of espionage, sabotage or other criminal act on the part of any of these people occurred there. (H.R. 2124, pp. 48-59.) General DeWitt must be assumed to have been familiar with these facts. On the Pacific Coast which has neither been in a theater of war nor under martial rule not one case of disloyalty upon the part of Japanese residents, citizen or alien, who were later evacuated, arose. (See statement of Denman, C.J., in *Korematsu v. U. S.*, R. 79.) There has not been one authenticated case of an attack upon any of them by lawless elements in our midst. If his curfew measure, under these circumstances, was an appropriate measure to meet an imminent danger of espionage or sabotage to our military resources, if he suspected any such criminal action as the *Hirabayashi*

opinion speculates he might have, it would seem to follow that in applying his exclusion and internment orders he trespassed beyond the scope of appropriateness and abused his discretion. Thousands of youths of Japanese ancestry had long served in the Territorial Guard of Hawaii and in other armed branches of the military service, and were so serving at the outbreak of war as General DeWitt knew before he issued these orders. The blood these youths have shed in Hawaii, in the South Pacific and in Italy eloquently testifies to their loyalty and that of their families. In view of these facts, can a Court take judicial notice or assume judicial knowledge that General DeWitt exercised sound judgment or that he had a rational basis to support the application of his drastic deportation orders? His long silence before publicly revealing his reasons is to be construed as indicating his action was arbitrary and inspired by prejudice or was based upon mere suspicion or gross hearsay. It is evident it was not an exercise of sound judgment.

(2)

THE STATUTE UNLAWFULLY DELEGATES UNLIMITED JUDICIAL POWER TO MILITARY COMMANDERS.

The conclusion is inescapable that General DeWitt, in the recesses of his own mind, conducted a mock trial of the petitioner and some 70,000 similarly situated citizens in which his unexpressed accusation was that he either disliked, distrusted or feared them because he harbored prejudice against them by reason of their ancestry or because he suspected or believed, without a rational basis therefor, that a few among

them could possibly commit crime. Apparently his charge against them was possible guilt by possible association with persons of possible criminal tendencies. On the basis of such an absurdity he adjudged them guilty and condemned them to deportation and imprisonment until he or a higher governmental authority might see fit to release them. This treatment violates the due process clause of the 5th Amendment and the provisions of the 6th inasmuch as the areas were not under martial rule. See *Ex parte Milligan,* 4 Wall. (U.S.) 2; *U. S. v. L. Cohen Grocery Co.,* supra, and *Hamilton v. Kentucky Distilleries,* 251 U.S. 146. The orders were the product of judicial power usurped by him in violation of Sec. 1 of Art. III of the Constitution and violate the provisions of the 6th Amendment. It could not have been the intention of Congress to confer judicial power upon the military commander in this statute. Neither Congress nor the Executive are authorized by the Constitution to emasculate the judicial branch of government.

(3)

THE MILITARY ORDERS AND THE STATUTE AS APPLIED HEREIN VIOLATE THE 4TH, 5TH, 6TH, 8TH AND 13TH AMENDMENTS.

The statute as applied to enforce the provisions of the military orders involved herein, and especially Civilian Exclusion Order No. 34 as applied to petitioner, is unconstitutional and void for the following reasons:

(a) It abridges his fundamental *privileges and immunities* of national citizenship guaranteed by Sec. 2, cl. 1 of Art. IV of the Constitution and the due process clause of the 5th Amendment. These rights,

abridged herein, are "vital to the maintenance of democratic institutions", *Schneider v. Irvington,* 308 U.S. 147, 161, and are "immutable principles of justice which inhere in the very idea of free government," *Holden v. Hardy,* 169 U.S. 366, 389. They include "freedom of movement" (*Crandal v. Nevada,* 6 Wall. 35, 48-49, and concurring opinions in *Edwards v. California,* 314 U.S. 160); and the right "to live and work" where one wills. (*Allgeyer v. Louisiana,* 165 U.S. 578, 589.) The petitioner's right to work is a property right of which he was deprived by his imprisonment under military orders in violation of the 5th Amendment. *Truax v. Raich,* 239 U.S. 33, 38. It is significant, too, that no provision was made to compensate the evacuees for the property losses they suffered as required by the 5th Amendment.

(b) It infringes his right to be secure in his person, house, papers and effects against *unreasonable searches and seizures* in violation of the 4th Amendment and in arresting and detaining him in military custody without an accusation of crime being lodged against him and without affording him a hearing and the incidents thereof it violates the 6th Amendment. The due process of law guaranteed by the 5th Amendment requires a hearing in an administrative proceeding before a person can be deprived of his liberty. See *Opp Cotton Mills, Inc. v. Administrator,* 312 U.S. 126, 152-3. Sufficient time elapsed between December 7, 1941, and the time each exclusion order issued in which each of these citizens affected could have been examined as to his loyalty either by the military or the civil authorities.

(c) It is a *bill of attainder* forbidden by Sec. 9, cl. 3 of Art. I of the Constitution and the due process clause of the 5th Amendment, in that it encouraged and enabled the military commander, by the threat of its application to him, without judicial trial, to expatriate and banish him not for the commission of crime but solely by reason of the nationality of his forebears or his complexion derived from them. *In re Yung Sing Hee* (C.C. Ore.), 36 Fed. 437; 16 *Corpus Juris Secundum* 902-3. Banishment constitutes an *infamous punishment* forbidden by the 5th Amendment. See *U. S. v. Moreland,* 258 U.S. 433, and discussion of Mr. Justice Brewer in separate opinion in *U. S. v. Ju Toy,* 198 U.S. 253, 269-270, stating that it is also a *cruel and unusual punishment* prohibited by the 8th Amendment. See also *Ex parte Wilson,* 114 U.S. 417. The internment of the petitioner in a concentration camp which the orders and statute were designed to effectuate and did accomplish was not imposed for the commission of crime upon his part and consequently subjects him to a condition of *slavery and involuntary servitude* prohibited by the 13th Amendment. See *Slaughter-House Cases,* 83 U.S. 36, and *Smith v. U. S.,* 157 Fed. 721, cert. den. 208 U.S. 618, discussing Civil Rights Statutes (18 USCA 51) guaranteeing personal liberty. In the concentration camps the evacuees have been put to work assigned by the government authorities in charge at peon wages. (H.R. 2124, p. 207.) It is also apparent that the orders and statute as applied herein work a corruption of blood or forfeiture, without trial, upon the theory of the constructive treason of petitioner's remote ancestors which is repugnant to the provisions

of Sec. 3 of Art. III of the Constitution. See *Shortridge v. Macon,* 22 Fed. Cas. No. 12,812; 63 *Corpus Juris* 814; and *Ex parte Bollman,* 4 Cranch 75.

(4)

TESTS OF LIMITS OF MILITARY AUTHORITY WERE IGNORED BY COURTS BELOW.

Even under the war power there are limits to the authority a military commander may exercise. His action is reviewable by our Courts. In *Sterling v. Constantin,* 287 U.S. 378, 398, this was declared to be a judicial function in the following language:

> "What are the allowable limits of military discretion and whether or not they have been overstepped in a particular case are judicial questions."

This Court there declared that the action of a military commander is not to be "taken as conclusive proof of its own necessity" and that it is not to be "accepted as in itself due process of law." It decided that a military commander "is permitted range of honest judgment as to the measures to be taken in meeting force with force, in suppressing violence and restoring order." It laid down the test that such measures must be "conceived in good faith, in the face of an emergency, and directly related to the quelling of the disorder or the preventing of its continuance." It also declared that the test is not conclusively met by "mere executive fiats." See also: *Moyer v. Peabody,* 212 U.S. 78 and *Mitchell v. Harmony,* 13 How. 115, 134. Neither the District nor the Circuit Court applied these tests to the facts in this case. It is significant that the petitioner was not engaged in any

unlawful action, but on the contrary, has ever been a loyal citizen, ready, willing and able to serve this country in any capacity in which the government would permit him. It is also significant that the appellee herein at the trial below, despite the duty incumbent upon it, made no effort to support its burden of proof that the military action taken against him pursuant to these orders was taken in good faith or that it was directed to the suppression of any criminal act in which the petitioner was engaged. Its failure to produce any evidence tending to support this burden is conclusive that it was unable so to do. Its failure in this respect necessarily raises the conclusive presumption that there was neither necessity for the issuance of the military orders involved nor for their application to the petitioner or to any of the 70,000 citizens injured thereby. The District Court and the Circuit Court erred in failing to give due weight to this contention of the petitioner.

CONCLUSION.

This petition presents constitutional issues of a novel nature and great gravity. The final determination of these questions is a matter of national concern and, to a degree, is a matter of international concern. The rights of national citizenship of the petitioner and 70,000 American citizens and native-born children who have been unfortunate enough through no fault of their own but solely by the accident of birth, to have had ancestors who, for a period of time, were nationals of Japan directly depend upon the final determination of the issues involved herein. Indirectly

the rights and liberties of all native-born and naturalized citizens likewise depend on the final settlement of these issues. Whether the Constitution any longer possesses efficacy is at stake herein. Whether this nation may, with truth, be identified as a republican democracy or whether, because of public apathy and indifference, it has surrendered all governmental power to the executive division without a struggle are the fundamental questions this Court must decide. If the question finally were to be resolved against the petitioner the conclusion would necessarily follow that our Courts had ceased to function as the judicial department and had been distorted into an appendage to the executive branch. In such circumstances this Court would no longer be interested in judicial questions but merely in writing the epitaph of a lifeless Constitution. We cannot believe that such is the mission of this Court and the destiny of this Republic.

The petition for a writ of certiorari to the Ninth Circuit Court of Appeals should be granted and, upon a full hearing, the judgment should be reversed.

Dated, San Francisco, California,
February 2, 1944.

Respectfully submitted,
JACKSON H. RALSTON,
Attorney for Petitioner.

WAYNE M. COLLINS,
Of Counsel.

(Appendix Follows.)

Appendix

STATUTE, EXECUTIVE ORDER AND MILITARY ORDERS, THE APPLICATION AND VALIDITY OF WHICH ARE INVOLVED.

Public Law No. 503, 77th Congress, 2nd Session, Chap. 191, H. R. 6758, approved March 21, 1942 (see Title 18, U. S. Code, sec. 97a), the application and validity of which is involved herein, reads as follows:

> "Whoever shall enter, remain in, leave, or commit any act in any military area or military zone which has been 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.

Executive Order No. 9066, the construction of which is involved herein, was promulgated by the President under date of February 19, 1942. It appears in the *Federal Register* of February 25, 1942, in Vol. 7, No. 38, page 1407. It reads as follows:

> "Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense ma-

terial, national defense premises, and national defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104):

Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders who he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other 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 restrictive 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."

The continental United States is divided for military purposes into seven military districts or commands. One of these is designated the "Western Defense Command" which was, until recently, under the command of J. L. DeWitt, Lieutenant-General, U. S. Army. It embraces the entire States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona and the Territory of Alaska. The following public proclamations and civilian exclusion orders hereinafter discussed were issued by said General DeWitt and appear in Volume 7 of the Federal Register.

Public Proclamation No. 1, promulgated March 2, 1942, establishes two military areas. These are "Military Area No. 1", which embraces the western halves of Washington, Oregon and California and the southern half of Arizona, and "Military Area No. 2", which embraces the eastern halves of Washington, Oregon and California and the northern half of Arizona. (See 7 F. R. 2320.)

Public Proclamation No. 2 was promulgated March 16, 1942, and establishes four additional military areas which are designated *"Military Areas Nos. 3, 4, 5 and 6",* respectively, and embrace the entire States of Idaho, Montana, Nevada and Utah. (See 7 F. R. 2405.)

These foregoing two zoning proclamations required alien enemies and persons of Japanese ancestry residing in the said Military Areas to report any change in their places of residence.

Public Proclamation No. 3, promulgated March 24, 1942, imposed "curfew" regulations upon these people, prohibited them from traveling beyond a distance of five miles from their residences and compelled the confiscation of certain articles of personal property they possessed, including weapons, radios, cameras and signal devices. (See F. R. 2543.)

Public Proclamation No. 4, promulgated March 27, 1942, prohibited all alien and non-alien Japanese within the limits of Military Area No. 1 from leaving the said military area. (See 7 F. R. 2601.)

Headquarters
Western Defense Command
and Fourth Army
Presidio of San Francisco, California
May 3, 1942

CIVILIAN EXCLUSION ORDER No. 34

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 9, 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 that portion of the County of Alameda, State of California, within the boundary beginning at the point where the southerly limits of the City of Oakland meet San Francisco Bay; thence easterly and following the southerly limits of said city to U. S. Highway No. 50; thence southerly and easterly on said Highway No. 50 to its intersection with California State Highway No. 21; thence southerly on said Highway No. 21 to its intersection, at or near Warm Springs, with California State Highway No. 17; thence southerly on said Highway No. 17 to the Alameda-Santa Clara County line; thence westerly and following said county line to San Francisco Bay; thence northerly, and following the shoreline of San Francisco Bay to the point of beginning.

2. A responsible member of each family, and each individual living alone, in the above described area

will report between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 4, 1942, or during the same hours on Tuesday, May 5, 1942, to the Civil Control Station located at:

920 - "C" Street,
Hayward, California.

3. Any person subject to this order who fails to comply with any of its provisions or published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P.W.T., of Saturday, May 9, 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 34

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 that portion of the County of Alameda, State of California, within the boundary beginning at the point where the southerly limits of the City of Oakland meet San Francisco Bay; thence easterly and following the southerly limits of said city to U. S. Highway No. 50; thence southerly and easterly on said highway No. 50 to its intersection with California State Highway No. 21; thence southerly on said Highway No. 21 to its intersection, at or near Warm Springs, with California State Highway No. 17; thence southerly on said Highway No. 17 to the Alameda-Santa Clara County line; thence westerly and following said county line to San Francisco Bay; thence northerly, and following the shoreline of San Francisco Bay to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 34, this Headquarters, dated May 3, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P.W.T., Saturday, May 9, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P.W.T., Sunday, May 3, 1942, without obtaining special permission from the representative of the Commanding General, Northern California Sector, at the Civil Control Station located at:

920 - "C" Street,
Hayward, 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 Monday, May 4, 1942, or between 8:00 A. M. and 5:00 P. M. on Tuesday, May 5, 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., Monday, May 4, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Tuesday, May 5, 1942, to receive further instructions.

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

May 3, 1942
See Civilian Exclusion Order No. 34.