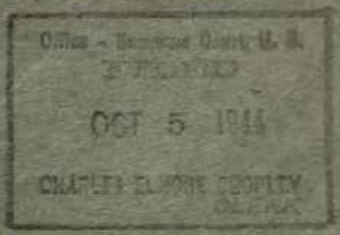

No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1944

FRED TOYOSABURO KOREMATSU, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the court below and the two concurring opinions (R. 33–54) are reported at 140 F. (2d) 289. There was no opinion by the trial court. The opinion of this Court that petitioner's suspended sentence was an appealable judgment is reported at 319 U. S. 432.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 2, 1943 (R. 33). The petition for a writ of certiorari was filed on Feb-

ruary 8, 1944 (R. 66) and was granted March 27, 1944 (R. 65). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Executive Order No. 9066 (7 F. R. 1407) and the Act of March 21, 1942, 56 Stat. 173 (18 U. S. C., Supp. III, Sec. 97a) authorized the provision of Civilian Exclusion Order No. 34 (7 F. R. 3967), which prohibited the presence of persons of Japanese ancestry in a designated area after a specified date.

2. Whether the provision of Civilian Exclusion Order No. 34, which prohibited the presence of persons of Japanese ancestry in a designated area after a specified date, was constitutional.

3. Whether petitioner has standing to raise any question as to the detention to which he would have been subjected if he had reported for evacuation in accordance with the terms of Civilian Exclusion Order No. 34.

4. If petitioner does have standing to raise an issue with regard to such detention, whether the detention would have been lawful.

STATUTES, ORDERS, AND PROCLAMATIONS INVOLVED

Civilian Exclusion Order No. 34, issued by Lieutenant General John L. DeWitt on May 3, 1942, was promulgated in accordance with his Public Proclamation No. 1, issued on March 2,

1942 (7 F. R. 2320); and both the Order and the Proclamation were promulgated under the authority granted by Executive Order No. 9066 and the Act of March 21, 1942. A summary of the content of these documents follows at pp. 6–9; a more detailed statement is given in Appendix I, *infra*, at pp. 60–75, and the documents themselves are set forth in Appendix II at pp. 76–78, 79–97.

STATEMENT

1. PETITIONER'S VIOLATION OF THE EXCLUSION ORDER

An information (R. 1), filed in the District Court for the Northern District of California on June 12, 1942, charged the petitioner, a person of Japanese ancestry, with having knowingly remained, on or about May 30, 1942, in that portion of Military Area No. 1 established by Public Proclamation No. 1 of March 2, 1942, including the City of San Leandro, Alameda County, California, from which all such persons had been ordered excluded after May 9, 1942, by Civilian Exclusion Order No. 34 of May 3, 1942, issued by Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command, pursuant to Executive Order No. 9066 of February 19, 1942, and authority from the Secretary of War.[1]

[1] The information consequently charged violation of the Act of March 21, 1942 (18 U. S. C., Supp. III, Sec. 97a), which was mentioned in the caption but not in the body of the information (R. 1).

A demurrer to the information (R. 2–13) and a supplement to the demurrer (R. 13–14) were overruled on August 31, 1942 (R. 14–16), and an exception was taken. On September 8, 1942, the petitioner appeared in the trial court in the custody of the military authorities and with his attorneys, pleaded not guilty, waived trial by jury, and proceeded to trial (R. 15). It was stipulated on the record that the petitioner is a native-born citizen of the United States, born in Oakland, Alameda County, California, on June 30, 1919, to Japanese nationals resident there (R. 19); and that at the time of his arrest on May 30, 1942, the petitioner was in the City of San Leandro, Alameda County, California, within the area from which he knew that he, as a person of Japanese ancestry, had been ordered excluded by General DeWitt's Public Proclamation No. 1 and Civilian Exclusion Order No. 34 (R. 19).

Petitioner's testimony, which was not controverted, showed that he has never renounced his American citizenship; that he has never departed from the continental limits of the United States; that his birth has not, with either his consent or knowledge, been registered with any consul of the Empire of Japan; and that he does not possess any form of dual allegiance and does not owe allegiance to any country other than the United States (R. 24). He registered for the draft and testified that he is willing to bear arms for this country and to render any service requested of him

in the war against Japan (R. 24). He has been a registered voter in Alameda County since attaining the age of 21 years (R. 24). The remainder of his testimony also tended to show his lack of sympathy with Japan and his assimilation in the American community (R. 24–25). The evidence introduced by the United States showed that the petitioner had continued to work and live in Alameda County after May 9 because of friendly relations with its residents, and particularly with a girl who was not of Japanese ancestry, and because he considered himself an American and did not want to be evacuated (R. 20–22).

The petitioner was convicted (R. 25) and thereafter his motion in arrest of judgment was denied and the court sentenced him to a five-year period of probation (R. 26); the judgment was entered September 8, 1942, the day of the trial (R. 26). On appeal to the Circuit Court of Appeals, that court certified the question whether the judgment was an appealable one. After this Court's decision (319 U. S. 432) in the affirmative, the Circuit Court of Appeals, sitting *en banc,* unanimously affirmed the conviction, two judges delivering concurring opinions (R. 33–64).

2. THE EXCLUSION PROGRAM

The issues raised by petitioner extend to various aspects of the exclusion program of which Civilian Exclusion Order No. 34 (*infra,* pp. 88–89), which petitioner violated, was a part. The details of

that program are set forth in Appendix I, *infra*. They will be summarized here and this summary will be followed by a brief statement with regard to the reasons for the program.

A. CIVILIAN EXCLUSION ORDERS

Civilian Exclusion Order No. 34 of May 3, 1942, was one of a series of 108 such orders issued by Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command, to accomplish the removal of all persons of Japanese ancestry from Military Area No. 1 and a portion of Military Area No. 2, embracing the West Coast area composed of the State of California, the western portions of Oregon and Washington, and the southern portion of Arizona (*infra*, p. 60). These orders, each of which applied to a defined locality or territory of limited size, were issued during a period commencing March 24, 1942 and extending to July 22, 1942 (*infra*, p. 64). They were authorized under a delegation of power to General DeWitt from the Secretary of War (*infra*, p. 60) pursuant to Executive Order No. 9066 of February 19, 1942, which authorized the establishment of military areas from which "any or all persons may be excluded" and with respect to which the right to enter, remain, or leave might be subjected to restrictions. The Executive Order was ratified and violation of the regulations issued pursuant to it was made a misdemeanor by the Act of March 21, 1942 (*infra*, pp. 60–61).

The Exclusion Orders were foreshadowed by General DeWitt's Public Proclamation No. 1, issued on March 2, 1942 (*infra*, pp. 79–82), which stated that "such persons or classes of persons as the situation may require" would by subsequent orders "be excluded" from the coastal area. During the interval between this Proclamation and Public Proclamation No. 4 of March 27, 1942 (*infra*, pp. 86–87) which forbade persons of Japanese ancestry to leave Military Area No. 1, the self-arranged migration of such persons from the area was encouraged and assisted by a War-time Civil Control Administration established by General DeWitt (*infra*, pp. 62–63).

Civilian Exclusion Order No. 1 of March 24, 1942, applicable to a small territory in the State of Washington, permitted self-arranged migration during the five days following its issuance (*infra*, p. 65), before its provision for the group evacuation from the territory of persons of Japanese ancestry and their exclusion thereafter from the territory became effective; but all of the subsequent Orders, including Order No. 34, and the accompanying Instructions, imposed the requirement that all such persons retain their previous residences, unless individually permitted to change, until the dates which were prescribed for their removal. After these dates it became an offense for any such person to remain or be found within the designated territory (*infra*, p. 65).

To accomplish the evacuation of persons of Japanese ancestry from each of the defined territories, the applicable Civilian Exclusion Order and Instructions required a member of each family and each individual living alone in the territory to report to a previously established Civil Control Office or Station and provided that all persons of Japanese ancestry would be "evacuated" upon a specified exclusion date six days after the date of the Order (infra, p. 65). It was stated that the Civil Control Office or Station would assist the persons affected. In fact, assistance was given with respect to the disposition of the property and affairs of these persons (*infra,* p. 63).

The evacuees were transported under military control and with regard to their welfare, on the dates their exclusion became mandatory, to previously prepared Assembly Centers not far removed, located within Military Area No. 1, where they were temporarily detained pending their transfer to Relocation Centers (*infra,* p. 66). The detention of the evacuees in these Centers was required by the provisions of the Exclusion Orders which forbade them to remain within the specified territories following the prescribed removal dates, except in Assembly Centers, and by General DeWitt's Civilian Restrictive Order No. 1 (*infra,* pp. 93–94), issued on May 19, 1942, which required the persons confined in Assembly Centers to stay there unless individually permitted to leave (*infra,*

p. 68). The evacuees under Civilian Exclusion Order No. 34 were taken to the Tanforan Assembly Center in San Mateo County, California. Civilian Exclusion Order No. 35 of May 3, 1942, applied to that county.

B. REMOVAL FROM ASSEMBLY CENTERS

Beginning in May, 1942, provision was made for the temporary release of a limited number of evacuees from Assembly Centers to engage in supervised agricultural work outside the evacuated areas. A few evacuees were released in other ways. (*Infra*, p. 74.) The great bulk of the evacuees in Assembly Centers were, however, removed during the period between May and November, 1942, to Relocation Centers maintained by the War Relocation Authority established by Executive Order No. 9102 of March 18, 1942 (*infra*, p. 74). All together, 108,503 of the 110,219 evacuees originally transported to the Assembly Centers were so removed. All but a few of the evacuees at the Tanforan Assembly Center were removed to the Central Utah Relocation Project in September and October, 1942 (*infra*, p. 74).

Although relocation of the evacuees, which followed petitioner's arrest in point of time and was begun after his initial violation, is, we believe, not in issue in this case, a few facts with regard to it will serve to place the Assembly Center phase of the exclusion program in its relation to subsequent developments.

The Relocation Centers provided more adequate facilities and permitted greater provision for normal modes of living by evacuees than did the temporary Assembly Centers. They were intended to serve as places of residence pending more permanent relocation in communities. Persons removed to the Relocation Centers were required to remain there by Civilian Restrictive Order No. 1 (*supra*, p. 8), except as the War Relocation Authority might issue permits for them to leave (*infra*, p. 94). That Authority has made provision for such permits to issue and has assisted many evacuees to move to communities throughout the country east of the forbidden West Coast area. The development and results of the Authority's leave program and procedures are fully set forth in the Government's brief in *Ex parte Endo*, No. 70 at the present Term of Court, and will not be detailed in the present brief. Reference is made (*infra*, pp. 72–73), however, to the principal regulations under which leave from the Relocation Centers has been granted. The leave procedures were inaugurated July 20, 1942, and had resulted by July 29, 1944, in the relocation in outside communities of 28,911 evacuees, leaving 79,686 still resident in the Centers. Formal authority to issue leave permits was conferred upon the War Relocation Authority by the Military Commander on August 11, 1942 (*infra*, p. 72).

3. REASONS FOR THE EXCLUSION PROGRAM

The situation leading to the determination to exclude all persons of Japanese ancestry from Military Area No. 1 and the California portion of Military Area No. 2 was stated in detail in the Government's brief in this Court in *Hirabayashi* v. *United States,* No. 870, October Term, 1942, and was reviewed in the opinion in that case, 320 U. S. 81. That statement need not be repeated here.[2] In brief, facts which were generally known in the early months of 1942 or have since been disclosed indicate that there was ample ground to believe that imminent danger then existed of an attack by Japan upon the West Coast. This area contained a large concentration of war production and war facilities. Of the 126,947 persons of Japanese descent in the United States, 111,938 lived in Military Areas No. 1 and No. 2, of whom approximately two-thirds were United States citizens. Social, economic, and political conditions prevail-

[2] The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944), hereinafter cited as *Final Report*, is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the Court to take judicial notice, and we rely upon the *Fnal Report* only to the extent that it relates to such facts.

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ing since the immigration of the Japanese to the United States were such that the assimilation of many of them by the white community had been prevented. There was evidence indicating the existence of media through which Japan could have attempted, and had attempted, to secure the attachment of many of these persons to the Japanese Government and to arouse their sympathy and enthusiasm for its war aims. There was a basis for concluding that some persons of Japanese ancestry, although American citizens, had formed an attachment to, and sympathy and enthusiasm for, Japan.[3] It was also evident that it would be impossible quickly and accurately to distinguish these persons from other citizens of Japanese ancestry. The presence in Military Areas Nos. 1 and 2 of persons who might aid Japan was peculiarly and particularly dangerous.

Under these circumstances the determination was made to exclude all persons of Japanese ancestry from Military Area No. 1 and the California portion of Military Area No. 2. The persons affected were at first encouraged and assisted to migrate under their own arrangements, but this

[3] In addition to the authorities cited in the *Hirabayashi* brief, see Anonymous (An Intelligence Officer), *The Japanese in America, The Problem and the Solution*, Harper's Magazine for October 1942, p. 489; the article is stated at p. 564 to have been condensed from a series of reports by an Intelligence Officer stationed for many years on the West Coast, whose primary duty was the study of the West Coast residents of Japanese ancestry. See also *Issei, Nisei, Kibei*, Fortune Magazine for April, 1944 (Vol. XXIX, No. 4), p. 8.

method of securing their removal from Military Area No. 1 was terminated by Public Proclamation No. 4 (*infra*, pp. 86–87). The Proclamation recited that it was necessary to restrict and regulate the migration from that Area in order to insure the orderly evacuation and resettlement of the persons affected. Elsewhere the voluntary program was stated to have broken down; and it was brought out that greater control was necessary "to insure an orderly evacuation and protect the Japanese".[4]

The rate of self-arranged migration was inadequate, partly because of growing indications that persons of Japanese ancestry proceeding to new communities were likely to meet with hostility and even violence (*infra*, pp. 41–43). The spokesmen for one organization of persons of Japanese ancestry testified before the House of Representatives Committee Investigating National Defense Migration in February 1942, while the evacuation was under discussion, that even at that time the members of the organization feared to migrate.[5] The Committee during the same month requested the opinions of the Governors of the Rocky Mountain States with regard to the possibility of resettling Japanese evacuees from the West Coast area in those States.

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[4] *Fourth Interim Report of the Select Committee Investigating Defense Migration of the House of Representatives*, H. Rep. No. 2124, 77th Cong., 2d sess. (hereinafter cited as *Fourth Interim Report*), pp. 6, 8.

[5] *Hearings before the House Committee Investigating National Defense Migration*, 77th Cong., 2d sess., Part 29, pp. 11137, 11156.

Twelve governors replied that local sentiment was opposed to any such resettlement except perhaps upon condition that the evacuees be isolated in camps maintained by the Government.[6] After compulsory evacuation had begun, the Governor and Attorney General of New Mexico opposed any colonization in that State;[7] the Governor of Idaho advocated the return of all persons of Japanese ancestry to Japan and opposed their relocation in that State;[8] and the Governor of Montana urged that no land be sold or leased to the Japanese.[9]

The need of greater expedition and of effective means of providing for the maintenance and welfare of the evacuees, together with a policy of keeping local groups together so far as possible, led to the inauguration by Public Proclamation No. 4 of the method of controlled evacuation by communities, followed by relocation, which involved the detention of the evacuees during its effectuation.[10]

The purpose and execution of the relocation phase of the exclusion program are fully set forth in the Government's brief in *Ex parte Endo*, No. 70, this Term. The objectives are to safeguard

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[6] *Preliminary Report of the Select Committee Investigating National Defense Migration of the House of Representatives*, H. Rep. No. 1911, 77th Cong., 2d sess., hereinafter cited as *Preliminary Report*, pp. 27–30. See also *Fourth Interim Report*, p. 17.

[7] *Albuquerque Journal*, May 29, 1942, p. 1.

[8] *Spokane Spokesman Review*, May 24, 1942, p. 7.

[9] *Billings Gazette*, April 30, 1942, p. 14.

[10] See *Final Report*, p. 43.

the war effort and provide for the welfare of the evacuees. To this end, the release of each individual for resettlement is conditioned upon a determination (1) that his release will not be prejudicial to the country's security and (2) that he will have means of support and is likely to be accepted by the particular community to which he proposes to go. The first determination obviously requires time; but its accomplishment in individual cases has far outrun the reabsorption of the evacuees. In relation to the second determination, expressions of hostility towards the evacuees have continued. In the 1943 sessions of the state legislatures, bills directed against persons of Japanese ancestry were introduced in at least 11 States in addition to the three West Coast States. The bills sought to prohibit land ownership by persons of Japanese ancestry;[11] to restrict business transactions with evacuees;[12] to restrict their voting privileges;[13] to revoke the citizenship of dual citizens;[14] to establish segregation in the schools;[15] and to bar student evacuees.[16]

[11] Sen. Bill 251, Alabama; Sen. Bill 250, House Bill 531, Colorado; Sen. Bill 351, Florida; Ark. Sess. L. (1943) Act 47. Land ownership by Japanese aliens was restricted by Utah Sess. L. (1943), c. 85; Wyo. Sess. L. (1943), c. 35.

[12] Ariz. Sess. L. (1943), c. 89.

[13] Wyo. Sess. L. (1943), c. 27.

[14] Mont. Sess. L. (1943), p. 595.

[15] Sen. Bill 103, Arkansas.

[16] Memorial of Arizona legislature; memorial of Idaho legislature; memorial of Iowa legislature. *Cf.* House Bill 1015, Pennsylvania, to terminate appropriations to any State institution participating in the relocation program.

SUMMARY OF ARGUMENT

The primary question presented is whether the provision of Civilian Exclusion Order No. 34 making it an offense for persons of Japanese ancentry to be found in the defined area after the effective date of the order is valid. The determination of this question involves consideration of three subsidiary questions: (1) whether the order was within Executive Order No. 9066 and the Act of March 21, 1942, upon which it rested; (2) whether the evacuation from the local region of persons of Japanese ancestry, including American citizens, and their exclusion from the West Coast (Military Area No. 1), which the several proclamations and orders were primarily designed to accomplish, was a valid exercise of the war power under the circumstances; and (3) if, contrary to the Government's contention, the question is here in issue, whether the detention of petitioner in connection with the method adopted to accomplish evacuation, to which he would have been subjected if he had obeyed Civilian Exclusion Order No. 34, would have been valid.

The authority for the removal of persons of Japanese ancestry from the West Coast in Executive Order No. 9066 and the Act of March 21, 1942, has been determined by this Court in *Hirabayashi* v. *United States,* 320 U. S. 81. The exclusion comes within the specific language of both the Order and the Act and was within the announced

objectives of both at the time the Act was under consideration. The Act unquestionably ratified the Executive Order.

The removal was a valid exercise of the war power because the military situation which this Court noticed in the *Hirabayashi* case, coupled with the danger from a disloyal minority and the difficulty of segregating these from other persons of Japanese ancestry, constituted a substantial basis for the military decision that the exclusion was a necessary protective measure (320 U. S. at p. 95).

Petitioner's conviction of remaining in the forbidden zone raises no further issue. None other was effectively raised in the District Court or decided by the Circuit Court of Appeals. Petitioner was convicted solely of remaining where he had no right to be. If this central feature of the exclusion program was valid, he cannot contend that the whole program should fail because some other part of it was invalid. He might have challenged the detention in an Assembly Center had he submitted to it. But, if he may so challenge it in this case, we submit that the method of group evacuation and the detention which was a concomitant of this method, like the exclusion itself, were reasonable and appropriate means of carrying forward a valid program. They constituted an orderly method of effecting the exclusion, having regard for both the purpose of the program and the

wellbeing of the evacuees. In any event, the detention of the evacuees as a group in Relocation Centers is not involved in this case.

ARGUMENT

I

THE PROVISION OF CIVILIAN EXCLUSION ORDER NO. 34 WHICH PROHIBITED PETITIONER'S PRESENCE IN A DESIGNATED AREA AFTER A SPECIFIED DATE WAS AUTHORIZED BY EXECUTIVE ORDER NO. 9066 AND THE ACT OF MARCH 21, 1942

Petitioner did not contend in the courts below that his exclusion from the area designated in Civilian Exclusion Order No. 34 was outside the authority conferred by Executive Order No. 9066 and the Act of March 21, 1942; but since the point is raised in this Court (Pet. 25), the authority for the Order will be briefly stated.

Executive Order No. 9066 (*infra*, pp. 76–78) provided that "any or all persons may be excluded" from the duly prescribed military areas which it authorized to be established and that with respect to all such areas "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 Civilian Exclusion Order is directly within the terms of these provisions. As this Court noted in the *Hirabayashi* opinion (320 U. S. at pp. 92, 103), the authority conferred by

the Executive Order was expressed in its preamble to be for the purpose of preventing espionage and sabotage. Public Proclamation No. 1 (*infra,* p. 80), to which the Civilian Exclusion Order refers, states that "the entire Pacific Coast * * * is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations." The facts which rendered this finding a reasonable one have already been referred to. (*Supra,* p. 11.) See also the Government's brief and this Court's opinion in the *Hirabayashi* case. The Executive Order followed closely both in time and content the recommendation of General DeWitt to the Secretary of War and the recommendation to the President by members of Congress, that military authority be used to effect the evacuation of persons of Japanese ancestry from the Pacific Coast states.[17] There is accordingly no room for doubt that the evacuation of these persons was specifically contemplated.

Since exclusion was within the authority of Executive Order No. 9066, it was also authorized by Congress. This Court determined in the *Hirabayashi* case "that Congress, by the Act of March 21, 1942, ratified and confirmed Executive Order No. 9066." 320 U. S. at p. 91. It follows that Congress intended to authorize the pro-

[17] *Final Report* of General DeWitt, p. 33; *Preliminary Report*, pp. 3–5.

mulgation of any order that was within the scope of the Executive Order. Furthermore, the legislative history of the Act of March 21, 1942, shows that Congress specifically intended to authorize orders excluding persons of Japanese ancestry, both American citizens and aliens, from the West Coast Military Areas. *Hirabayashi* v. *United States,* at p. 91; S. Rep. 1171, 77th Cong., 2d sess., p. 2; H. Rep. 1906, 77th Cong., 2d sess., p. 2; 88 Cong. Rec. 2722–2726.

II

IT WAS CONSTITUTIONAL FOR CIVILIAN EXCLUSION ORDER NO. 34 TO PROHIBIT THE PRESENCE OF PERSONS OF JAPANESE ANCESTRY IN THE DESIGNATED AREA AFTER A SPECIFIED DATE

1. The Order was a valid exercise of the war power.—This Court ruled in the *Hirabayashi* case that the joint war power of the President and the Congress is sufficiently broad to cover a measure which there is "any substantial basis" to conclude is "a protective measure necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion." 320 U. S. at p. 95. We submit that there was a substantial basis for concluding that the Exclusion Order, equally with the curfew which was sustained in the *Hirabayashi* case, was such a necessary protective measure.

The pertinent circumstances were in large part the same as those which rendered appropriate the imposition of the curfew. The initiation of the exclusion program by the promulgation of the first Civilian Exclusion Order occurred on the same date as the curfew proclamation, and the violation by the petitioner herein occurred during the same month as Hirabayashi's violation. With respect to the conditions then prevailing this Court has said (320 U. S. at pp. 94, 96, 99):

> * * * That reasonably prudent men charged with the responsibility of our national defense had ample ground for concluding that they must face the danger of invasion, take measures against it, and in making the choice of measures consider our internal situation, cannot be doubted
>
> * * * * *
>
> * * * The German invasion of the Western European countries had given ample warning to the world of the menace of the "fifth column." Espionage by persons in sympathy with the Japanese Government had been found to have been particularly effective in the surprise attack on Pearl Harbor. At a time of threatened Japanese attack upon this country, the nature of our inhabitants' attachments to the Japanese enemy was consequently a matter of grave concern.
>
> * * * * *
>
> * * * Whatever views we may entertain regarding the loyalty to this country of

> the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it. [Court's footnote omitted.]

The concurring Justices indicated no difference of view with respect to these justifications for the curfew.

The appropriateness of the exclusion rests on the additional fact that the danger to be apprehended from any disloyal members of the population of Japanese ancestry would remain great if such persons should continue to reside on the West Coast. It is obvious that the opportunity for espionage and sabotage, as well as the aid to be derived therefrom by the enemy, would be greatest in the region most exposed to the striking power of Japan. The curfew was a method which dealt only partially with the danger, while the exclusion removed the danger during all hours and without resort to the impossible task of individual surveillance. A group of over 110,000 persons was in-

volved, in which the number and identity of the possible disloyal members were not known. Prevention of acts of espionage and sabotage through surveillance obviously was fraught with extreme difficulty, if not wholly impossible.

On the basis of pertinent data a judgment to resort to exclusion was made by those responsible for military and protective measures. Differences of opinion as to the correctness of that judgment cannot take from it the substantial basis upon which it rested.

In the court below petitioner argues, as he does here (Pet. 7), that his exclusion was nevertheless a violation of the due process clause of the Fifth Amendment. His argument appears to be based partially upon the proposition that, aside from the racial discrimination involved in the exclusion measure, it is an unreasonable method of preventing espionage or sabotage to exclude from a substantial portion of the country any large group of residents because of apprehension that a minority of them might engage in disloyal acts. It is true that the prohibition of residence of a group of persons in an area in which they have established homes, relationships, employment, and business enterprises, is a more stringent deprivation to the persons affected than the curfew involved in the *Hirabayashi* case, or than the establishment of fire lines during a fire and the confinement of people to their homes

during an air raid alarm, which this Court cited in sustaining the curfew. 320 U. S. at p. 99. Nevertheless, in view of the overwhelming importance of securing the country against invasion and the undoubted assistance which could be rendered to an invading enemy by persons within the community, the exclusion of loyal persons along with the disloyal is not an unreasonable infringement of liberty or a denial of due process where, as here, there were strong grounds to believe that the identity of the disloyal persons could not be readily ascertained and that invasion was threatened. It is to be noted that there is no implication in either the majority or the concurring opinion in the *Hirabayashi* case that the exclusion orders might be a violation of due process.

Measures coming within the war power do not violate the Fifth Amendment, whether or not they could be sustained in normal times, although that Amendment must be considered in determining the validity of a particular exercise of the war power under the circumstances which evoke it. As is true with respect to other governmental powers the limitations imposed by due process upon the war power mark the boundaries of the power itself. *Cf.* Mott, *Due Process of Law* (1926), cc. XVII, XVIII. To call in question the exclusion program under the Fifth Amendment is, therefore, to challenge in another way the sufficiency of the war power to support the action taken by the President and Congress and by the military authorities.

This Court has made clear the great scope of the war power and that the limitations imposed by due process of law permit the exercise of a correspondingly wide discretion.

> * * * the Congress and the President exert the war power of the nation, and they have wide discretion as to the means to be employed successfully to carry on. * * * The measures here challenged are supported by a strong presumption of validity * * * As applied * * *, the statute and executive orders were not so clearly unreasonable and arbitrary as to require them to be held repugnant to the due process clause of the Fifth Amendment. *Highland* v. *Russell Car Co.*, 279 U. S. 253, 262.

In the *Selective Draft Law Cases*, 245 U. S. 366, the Court, although it did not refer specifically to the Fifth Amendment, denied the limiting effect of several other Constitutional provisions with respect to the power of Congress to require military service, with all of its sacrifices on the part of individuals who are drafted. 245 U. S. 389–390.

As was said in the *Hirabayashi* case, if an order "was an appropriate exercise of the war power its validity is not impaired because it has restricted the citizen's liberty." 320 U. S. at p. 99. The Fifth Amendment protects the individual from arbitrary deprivations in war as in peace; but it does not invalidate measures, however extreme, which respond reasonably to the necessities of war.

The fact that the exclusion measure adopted was directed only against persons of one race does not invalidate it under the circumstances surrounding its adoption. Persons of Japanese ancestry were not marked out for separate treatment because of their race but because other considerations made the ethnic factor relevant. As this Court noted in the *Hirabayashi* case (at p. 101):

> The fact alone that attack on our shores was threatened by Japan rather than another enemy power set these citizens apart from others who have no particular associations with Japan.
>
> * * * We cannot close our eyes to the fact, demonstrated by experience, that in time of war residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.

Certainly the proportion of persons who might render aid to the enemy in the event of a Japanese invasion was reasonably thought to be greater in the West Coast population of Japanese ancestry than in the West Coast population as a whole or in groups of other ancestries living in that area at the time the Exclusion Order was issued. The bases for this conclusion have already been fully stated by this Court. *Hirabayashi* v. *United States*, 320 U. S. 81, 96–99.

2. *The Act of March 21, 1942, did not contain an unconstitutional delegation of legislative power to order the exclusion.*—On this point again the *Hirabayashi* case is controlling. This Court there noted that the exclusion Order, like the curfew, was specifically contemplated by Congress. Therefore in imposing the exclusion measure, as with respect to the curfew, the Military Commander exercised discretion only with regard to "whether, under the circumstances, the time and place were appropriate for the promulgation of the * * * order and whether the order itself was an appropriate means of carrying out the Executive Order for the 'protection against espionage and against sabotage' to national defense materials, premises and utilities." *Hirabayashi* v. *United States,* at p. 92. Further criteria of lawful delegation, stated in the *Hirabayashi* opinion, are also satisfied. The Executive Order prescribed the standard of protection against espionage and sabotage, which Congress also contemplated in enacting the statute, to govern the actions of the military authorities. This standard was followed in determining upon the Exclusion Order and Public Proclamation No. 1 upon which it rested. *Supra,* p. 19. The legislative function was performed (*Hirabayashi* v. *United States,* at p. 105) and the legislative will was followed.

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III

THIS COURT SHOULD NOT IN THE PRESENT CASE CONSIDER THE LAWFULNESS OF ANY DETENTION TO WHICH PETITIONER WOULD HAVE BEEN SUBJECTED IF HE HAD OBEYED CIVILIAN EXCLUSION ORDER NO. 34

Those provisions of Civilian Exclusion Order No. 34 of May 3, 1942 (*infra*, pp. 88–89), which petitioner undertook to disregard, prescribed that he be excluded from the local area in which he lived and that it would be an offense for him to be found there after noon of May 9, 1942. The accompanying written Instructions referred to the provision of "temporary residence elsewhere," to "evacuation" by the time stated in the order, and to "departure for" and "transfer to" the Assembly Center. They and the order required that a responsible member of each family and each individual living alone report to a Civil Control Station on either May 4 or May 5. They also forbade changes of residence after noon on May 3. In challenging his allegedly threatened "internment" and "imprisonment" (Pet. 8, 10), petitioner contends in effect that the exclusion feature of the order, even though in itself valid, was so coupled with other measures to accomplish the exclusion as to force him, if he should obey the order, to incur detriments which could not lawfully be imposed upon him.

The Government does not dispute that petitioner, had he obeyed all of the provisions of the

order and the accompanying Instructions, would have found himself for a period of time, the length of which was not then ascertainable, in a place of detention. It does not follow that this detention, which did not become actual, is an issue in the present case. It was solely and specifically petitioner's unlawful presence in the area which was charged in the information (R. 1). His defense at the trial was no broader than this charge and no evidence was introduced by the Government to meet wider issues. The majority at least of the Circuit Court of Appeals (R. 33–35) considered the question to be simply the validity of petitioner's exclusion from the defined area. Petitioner was not accused or convicted of eluding detention or of not reporting for evacuation; he was solely charged with remaining where he had no lawful right to be. His desire was to stay there (R. 21). The only relevant question is whether the provision of the order which forbade his presence is valid. Had he submitted to evacuation, petitioner could have brought other proceedings to challenge his detention.

1. *The narrow scope of the information precludes consideration of prohibitions of the order not alleged to have been violated.*—The prohibition of the order which petitioner was accused of having violated was that which made it an offense for him to be "found in the above area after * * * May 9, 1942," or, as stated in the information, to "remain in that portion of Mil-

itary Area No. 1 covered by Civilian Exclusion Order No. 34 * * * after * * * May 9, 1942" (R. 1). He is not accused in this proceeding of any other omission or conduct or of violating any other phase of the exclusion program. If, as we have already urged in Points I and II, his exclusion from the designated area was valid, he may not urge the Court to withdraw the legal means of enforcing this central military objective of the exclusion program by now contending that if he had left the area independently he might either have been accused in some other proceeding of having violated Public Proclamation No. 4 or other provisions of the order and Instructions, or have found himself in physical detention. If prosecution had resulted from his independent action, he could have defended the disobedience charged against him; if he had been detained instead, habeas corpus would have been available to test the validity of his detention. If, on the other hand, petitioner had obeyed the Civilian Exclusion Order in all respects, he could have brought habeas corpus proceedings upon reaching the Assembly Center. Whatever his course, appropriate remedies were saved to him.

Petitioner's contention in striking at the provisions of the order which would have led to detention, as an incident to his attack on the sufficiency of the information, is in substance that it was impossible to charge a violation of the order

based upon his remaining in the area. He contends in effect that he could not be accused of remaining in the area without also involving other, allegedly invalid parts of the order and Instructions and that, even though the exclusion was valid, yet he and all others in similar circumstances could remain, because as means of accomplishing the exclusion the order laid out a course which would have involved detention in an Assembly Center.

It seems clear that petitioner should not now be permitted to seek indirectly to nullify the vital military measure of exclusion of persons of Japanese ancestry from the West Coast area because of the claimed invalidity of accompanying features of the exclusion program. The exclusion was a measure taken under the urgency of military necessity, based upon a threat of invasion, at a critical point in the war. It would be a misapplication of the doctrine of inseparability, scarcely consistent with the national security or welfare, to hold that this measure may now be attacked, not because of its own invalidity but because of the alleged unconstitutionality of the means adopted to effectuate it, when violation of these means is not charged.

This Court, in determining whether the constitutionality of a legislative provision may be judged separately from that of other provisions which accompany it, has followed the criterion of whether the particular provision, even though its

requirements bear an administrative relationship to the others, has an "essential character and * * * capacity to stand alone." *Electric Bond & Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419, 437. See also *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 234–235; *Blackmer* v. *United States,* 284 U. S. 421, 442. The rule that the validity of the penal provisions of a statute will not be determined in a suit in which they are not involved, even though the suit requires determination of the validity of other provisions which the penal provisions were designed to enforce, is a familiar application of the foregoing principle. *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 177; *Ohio Tax Cases,* 232 U. S. 576, 594.

It is true that in the foregoing instances of application of the doctrine of separability the parties seeking to challenge the separable provisions were not subjected to actual disadvantage by reason of the existence of these provisions, whereas petitioner was confronted with alternative courses of action which involved either a violation of some feature of the exclusion program or submission to evacuation accompanied by detention. It does not follow from this, however, that petitioner became entitled to raise the issues relating to detention in this proceeding, which results from the alternative he adopted. On the contrary, the issue is the one

of exclusion, which responds to the charge in the information and to the conduct in which he engaged.[18]

2. *This criminal case is in any event not an appropriate proceeding in which to attack the validity of phases of the evacuation program not involved in petitioner's violation.*—This Court has recently held in *Yakus* v. *United States*, 321 U. S. 414, that Congress may provide that one aggrieved by a regulation of the Office of Price Administration must promptly pursue an expedited statutory, administrative and civil remedy, and that if he omits to do so, he cannot thereafter question the lawfulness of the administrative order in a prosecution for its violation. In *Falbo* v. *United States*, 320

[18] In consequence of his violation, by arrangement subsequently made, petitioner was actually confined in an Assembly Center. His custody was transferred from the civil to the military authorities pending trial in the instant proceeding; and he was on June 18, 1942, prior to the filing of his demurrer, taken by the military authorities to the Tanforan Assembly Center. He was detained there, except during his attendance at the trial, until he was sentenced on September 8, 1942. When he was placed on probation by the trial court on September 8, a term of the probation was that he should comply with the orders respecting his evacuation and detention. Accordingly, he returned to the Tanforan Assembly Center and was transferred on September 26, 1942, from there to the Central Utah Relocation Project. He was granted seasonal leave on November 21, 1942. This leave was extended several times and finally was, on his application, changed on February 4, 1944, to indefinite leave. Petitioner is now residing in Salt Lake City, Utah.

U. S. 549, it was held that one who was ordered to report for assignment to work of national importance under the Selective Training and Service Act must obey and may not, in a prosecution for his failure to do so, defend on the ground that he was erroneously classified by his Local Board in a proceeding that was not fairly conducted. The *Yakus* case, of course, rests upon an explicit statutory provision and the *Falbo* decision involves, not the alleged invalidity of a statute or general regulation, but the action of the authorities in an individual case. Nevertheless, both cases compel resort to an appropriate alternative course of conduct, precluding the defense of invalidity of administrative action in a prosecution for violation. An important factor in both decisions was the strong need of protecting vital governmental war operations against disregard of regulations and orders, the invalidity of which had not been previously established.

The availability of habeas corpus to the petitioner as an appropriate means of testing the validity of any detention to which he might have been subjected in connection with his evacuation, as well as afterward, cannot be doubted. The courts were open to petitioner to seek a writ of habeas corpus at any time. In this case, however, petitioner was charged in a criminal proceeding,

and we do not urge that he is not entitled in such proceeding to contend that his exclusion was invalid.[19] Since, however, he would have had an obvious means of testing the legality of a separable feature of the evacuation, namely the detention to which he might have been subjected, we believe it is proper to urge that this means should be held to be exclusive.

Weighty considerations frequently enter into judicial judgments with respect to the propriety of interferences by the courts with governmental processes, or of adjudications afterward which would establish the invalidity of such processes. Some official acts, usually denominated "political," are totally immune from judicial scrutiny. *Pacific States Tel. & Tel. Co.* v. *Oregon,* 223 U. S. 118; Dodd, *Judicially Nonenforceable Provisions of Constitutions* (1931), 80 U. Pa. L. Rev. 54, 84, 1 Selected Essays on Constitutional Law 355, 387. With others, including the sale of property seized by the Government during wartime as enemy-owned (*Stoehr* v. *Wallace,* 255

[19] *Supra,* pp. 29–33. Suit to restrain enforcement of the Exclusion Order might well, under all the circumstances, have been met with a discretionary determination by the court that, however great the prospective loss to the petitioner, the court should not undertake to interfere with a military operation. For a summary of the applicable doctrines see 4 Pomeroy, *Equity Jurisprudence* (4th ed., 1919), secs. 1750–1751.

U. S. 239, 245–246), the courts decline to interfere through preventive decrees or writs (*Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Newport News Shipbuilding & Drydock Co.* v. *Schauffler*, 303 U. S. 54; *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134) [20] or through withhholding authorized judicial aid to administrative proceedings during their course. *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501. Closely allied are the cases which refuse judicial review of administrative acts until administrative remedies have been exhausted (*Gorham Mfg. Co.* v. *State Tax Commission*, 266 U. S. 265, 269–270; *Myers* v. *Bethlehem Shipbuilding Corp.*, *supra*, at pp. 50–51) or compel resort to appropriate administrative proceedings in preference to parallel judicial remedies. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; compare *Brown Lumber Co.* v. *L. & N. R. Co.*, 299 U. S. 393.

The consequences for the future of holding in this case that disobedience of the exclusion order was a proper means of testing its validity might be grave. It is quite apparent that evacuation of the Japanese population from the Pacific Coast,

[20] Especially delicate questions are presented when a Federal court is asked to enjoin state action, and judicial self-denial is correspondingly greater, even as against a claim of threatened unconstitutional action. *Matthews* v. *Rodgers*, 284 U. S. 521 (injunction against collection of allegedly unconstitutional state tax *held* improper even though sole state remedy was action to recover taxes paid under protest); *Douglas* v. *Jeannette*, 319 U. S. 157.

deemed vitally necessary by the Military Commander, would have been frustrated if disobedience had been general. We submit that the basic *ratio decidendi* of the *Falbo* and *Yakus* cases is that there are times when it is necessary for the Government to act first and litigate afterward, with respect to emergency matters which can fairly be determined in that manner. The corollary is that the citizen must obey and then seek his remedy; and if he fails to obey he cannot be relieved of the consequences of disobedience. If there are such times, surely the spring of 1942 on the Pacific Coast was one; and the issue of detention in the course of evacuation could well await litigation not precipitated by disobedience to the exclusion itself.

3. *The relocation phase of the exclusion program is not involved in this case.*—It is clear in any event that this proceeding does not involve any detention to which evacuees have been subjected since the time of petitioner's violation as a means of furthering their final relocation rather than as a method of securing their removal from the West Coast area to Relocation Centers. We have contended that none of the detention of evacuees which has been involved in the exclusion program is properly in issue in this case; for the issue framed by the information does not embrace it, no evidence relating to it was introduced at the trial, and more appropriate proceedings have at all times been available whereby petitioner could have challenged the detention, had he wished to do so. Even

if this contention is wrong and petitioner should be held to be entitled to call in question the detention which attended the removal of the evacuees and compelled their residence in Assembly Centers pending more permanent provision for them, he cannot seek to avoid his conviction by attacking a still later phase of the exclusion program which had not developed at the time of his violation and to which he might not have been subjected.

Petitioner could not have known at the time he disregarded Civilian Exclusion Order No. 34 by failing to report for evacuation on May 9, 1942, that detention in a Relocation Center, of indefinite duration, might follow detention in an Assembly Center if he should comply; nor is it certain that in his case it would have. On May 30, 1942, the date of the offense which is charged in the information, Civilian Restrictive Order No. 1 of May 19, 1942, (*infra*, pp. 93–94), which required persons of Japanese ancestry residing in Relocation Centers to remain there, gave notice that detention outside an Assembly Center was possible. Not until May 26, 1942, however, were any evacuees actually transferred from Assembly to Relocation Centers (*infra*, p. 70); and none of those from the Tanforan Center, to which petitioner would almost certainly have been taken, were moved until September of that year (*supra*, p. 9). The War Relocation Authority was created March 18, 1942; but the program of Relocation Centers was not given permanent sanctions until Public Proclamation

No. 8 of June 27, 1942 (*infra*, pp. 94–97). In the meantime Civilian Restrictive Order No. 2 of May 20, 1942 (*infra*, p. 69) inaugurated the agricultural work group program for some of those in the Assembly Centers. Civilian Restrictive Orders Nos. 3 and 7, issued prior to May 30, 1942 (*infra*, p. 70), resulted in the temporary release of a limited number of evacuees, including a few of those at Tanforan, and some of these releases were later made permanent (*infra*, p. 74). The War Relocation Authority's program for the indefinite release of inhabitants of Relocation Centers came into actual operation August 11, 1942, when authority to issue such releases was conferred upon it (*infra*, p. 72).

In view of this history, it cannot be asserted upon any realistic basis that petitioner's violation could have been motivated by a desire to avoid detention other than that in an Assembly Center or that any other detention need in fact have occurred in his case had he obeyed the Exclusion Order. The relocation phase of the exclusion program, including the detention of evacuees in Relocation Centers, is a separate aspect of the whole program, which was not present in a definite sense in the situation that confronted petitioner at the time of his violation. If detention in a Relocation Center had later come to apply to him, he could, of course, have brought habeas corpus to challenge its continuance. *Ex parte Endo*, No. 70, this Term. So hypothetical an issue, as respects petitioner, is not present in this case.

IV

IF THE QUESTION IS PRESENTED, THE DETENTION TO WHICH PETITIONER WOULD HAVE BEEN SUBJECTED IN CONNECTION WITH HIS EVACUATION HAD HE OBEYED THE EXCLUSION ORDER, WOULD HAVE RESULTED FROM REGULATIONS COMING WITHIN THE WAR POWERS OF THE PRESIDENT AND THE CONGRESS

1. *The decision to accompany exclusion with the detention of evacuees pending their relocation was made after other methods had been employed unsuccessfully.*—The basic considerations which led to the substitution of controlled evacuation for self-arranged migration, so far as information is available, are referred to above, at pp. 13–14. One reason was the failure of self-arranged migration to accomplish the removal from the West Coast area of any considerable number of persons of Japanese ancestry. Not until Public Proclamation No. 4 (*infra,* pp. 86–87) had been promulgated on March 27, 1942, and had given notice of the termination of self-arranged migration and of the inauguration of group evacuation was there any considerable movement on the part of persons of Japanese ancestry to the interior. Of the net total of 4,889 such persons who left Military Areas Nos. 1 and 2 pursuant to their own arrangements (*infra,* p. 63), only 2,005 reported their intention to leave Military Area No. 1 before the issuance of Public Proclamation No. 4. *Final Re-*

port, p. 107. The Proclamation precipitated a rush of registrations for self-arranged evacuation, but it is not known how many persons carried out their intention to leave during the two days following the issuance of the Proclamation, before its prohibition of further migration became effective. There was no further opportunity given for the persons affected throughout Military Area No. 1 to leave under their own arrangements or, in the alternative, enter reception centers voluntarily.[22]

As has been stated (*supra,* p. 7), Civilian Exclusion Order No. 1, applicable to a small territory in the State of Washington, permitted self-arranged migration during the five days following its promulgation on March 24, 1942. The order applied to 258 persons, none of whom took advantage of the opportunity to migrate. Instead, these persons were taken to Assembly and later to Relocation Centers. *Final Report,* pp. 49, 363. Thereafter the Civilian Exclusion Orders followed the pattern embodied in Civilian Exclusion Order No. 34, which petitioner violated. *Supra,* p. 7.

The inadequacy of self-arranged migration to accomplish the removal of persons of Japanese ancestry was caused partly by fear on their part of violence which their migration to the interior might have precipitated. This situation demonstrated, according to General DeWitt, that

[22] Previously, on March 21, 1942, a group of 2,100 persons, recruited from the Los Angeles area, went voluntarily to the Manzanar Assembly Center to assist in its completion. *Final Report,* p. 48.

"voluntary migration would be but one phase of the over-all program—never a complete and satisfactory solution." Nevertheless voluntary migration "was encouraged and assisted * * * until such time as it became clearly evident" that it "was creating major social and economic problems in the areas to which the Japanese were moving." *Final Report,* p. 101.[23] Those who responded to the encouragement were mainly those "with some financial independence or with relatives and friends in the area of destination." Only $10,200 in all were expended prior to June 5, 1942, in assisting 125 individuals and families—92 during the period of "voluntary evacuation"—who applied for such aid. *Idem,* p. 104.

[23] "Prior to March 12" when the Wartime Civil Control Administration was established, however, "it was hoped that the evacuation would be characterized primarily by a voluntary exodus." Two reception centers were planned for the temporary accommodation of those who were unable to provide for themselves or who declined to leave until forced to do so. These were intended to have a capacity of 10,000 persons each. *Final Report*, p. 44. It was specifically stated in earlier documents that the provision of shelter by the Army would be for only those evacuees whose resettlement was not arranged through their own efforts or those of private agencies. Memorandum of February 20, 1942, from Assistant Secretary of War John J. McCloy to General DeWitt, printed in the *Final Report*, at p. 29. General DeWitt's own Final Recommendations with respect to the evacuation, dated February 14, envisaged temporary voluntary internment under guard, followed by resettlement, for those Japanese-American citizens who would accept it, with exclusion from the Military Areas and some public assistance for those who would not. Japanese aliens were to be subjected to compulsory internment. *Final Report*, at p. 37.

The reasons for the decision to terminate self-arranged migration from Military Area No. 1 on March 29, 1942 are stated to have been "First, * * * to alleviate tension and prevent incidents involving violence between Japanese migrants and others" and "Second, * * * to insure an orderly, supervised, and thoroughly controlled evacuation with adequate provision for the protection of the persons of evacuees as well as their property." (*Final Report*, p. 105.)

> Essentially, military necessity required only that the Japanese population be removed from the coastal area and dispersed in the interior, where the danger of action in concert during any attempted enemy raids along the coast, or in advance thereof as preparation for a full scale attack, would be eliminated. That the evacuation program necessarily and ultimately developed into one of complete Federal supervision, was due primarily to the fact that the interior states would not accept an uncontrolled Japanese migration. (*Final Report*, pp. 43–44.)

In contrast to the lack of effective provision for the migrants which characterized the self-arranged migration, the evacuation to Assembly Centers provided "shelter and messing facilities and the minimum essentials for the maintenance of health and morale." *Final Report*, p. 78. Further information concerning the Assembly Centers is given *infra*, p. 68.

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2. *The detention to which petitioner might have been subjected came within the authorization of Executive Order No. 9066 and the Act of March 21, 1942.*—The detention in question, viewed as of the time of petitioner's violation, was of uncertain duration in an Assembly Center. It had become apparent by May 30, 1942 that further evacuation would be to Relocation Centers, but the duration of further detention and the methods of securing release were not yet known, except that temporary release for agricultural work was possible. (*Supra,* pp. 38–39).

Executive Order No. 9066 provides that, with respect to the military areas authorized to be prescribed, "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." This Order also authorizes "the Secretary of War and the * * * 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," as well as "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 Secre-

tary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order" (*infra,* p. 77). Criminal penalties for the violation of regulations with respect to the right to "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" were specifically authorized by the Act (*infra,* p. 78).

If the detention of evacuees was within the Executive Order, it was within the Act for reasons already stated and approved by this Court in the *Hirabayashi* case (*supra,* pp. 19–20). Whether detention was within the Order depends (1) upon the terms of the Order, just recited, which support it, and (2) upon the relation of detention to the purpose sought to be accomplished, including the evacuation which, as this Court has stated, was specifically envisaged by Congress at the time the Act was passed. *Hirabayashi* v. *United States,* 320 U. S. 81, at pp. 90–91.

The basic, expressed purpose of Executive Order No. 9066 was to authorize "every possible protection against espionage and against sabotage

to national-defense material, national-defense premises, and national-defense utilities." The finding that the requirements of Civilian Exclusion Order No. 34 were necessary for this purpose was made by references in the Exclusion Order and in Public Proclamation No. 4 to Public Proclamation No. 1 which had established Military Area No. 1 after reciting the danger of espionage and sabotage in connection with a threatened invasion (*infra*, p. 66). The adequacy of such a reference to Public Proclamation No. 1, containing the requisite findings, was determined by this Court in *Hirabayashi* v. *United States*, 320 U. S. 81, at p. 103. In Public Proclamation No. 4 it was found, in addition, that "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."

The detention in Assembly Centers, consequently, was a means of accomplishing the evacuation and of mitigating the harmful consequences of the exclusion which was ordered for the purpose of preventing espionage and sabotage on the West Coast. Hence the detention was a collateral measure closely related to the exclusion and, as such, came within the purpose as well as the literal terms of Executive Order No. 9066. If Congress understood that the Executive Order, which it ratified, authorized measures to deal with the consequences of the evacuation which was en-

visaged, these measures came also within the Act of March 21, 1942. It is not to be doubted that Congress conferred upon the military authorities in exercising their powers, the authority to execute them with reasonable regard to the conditions that might be precipitated by the measures they were directed to take.

3. *Assuming that detention as a concomitant to evacuation was within Executive Order No. 9066 and the Act of March 21, 1942, the authority to decide upon it was not unconstitutionally delegated to the military authorities.*—It is not necessary to consider whether the President, acting alone, could have issued or authorized the detention orders; for his action in promulgating Executive Order 9066 was ratified by Congress. The question is whether Congress and the Executive, acting together, could leave it to the designated Military Commander to appraise the relevant conditions and on the basis of that appraisal to determine upon a method of evacuation involving detention, as an appropriate means of carrying out the Order. *Hirabayashi* v. *United States,* 320 U. S. 81, 92.

The question is somewhat different from that surrounding the delegation of authority to prescribe curfews and the evacuation itself, both of which were specifically contemplated by Congress when it adopted the Act of March 21, 1942 (*Hirabayashi* case, at pp. 91, 102). The discretion con-

ferred with respect to both these measures related solely to whether, when, and where they should be applied. The authority to impose detention, on the other hand, involved a choice of measures not specifically contemplated but falling within the stated general purpose, as well as a judgment of whether, when, and where to act.

The question, of course, is whether the provisions of the Act of March 21, 1942, if understood to afford a basis for the temporary detention of evacuees from a military area, are sufficiently definite to provide a standard which prevents the delegated power from being legislative in the constitutional sense. In determining this question the provisions of Executive Order No. 9066 and Public Proclamations Nos. 1 and 2, as well as those of the Act itself, may be considered, since all were approved by Congress (*Hirabayashi* case, at pp. 91, 102–103). These provisions, as previously noted, establish the prevention of espionage and sabotage as the purpose of the measures which are authorized. Exclusion was specifically authorized and the Order authorized such steps as the Military Commander might deem advisable to enforce compliance with the restrictions that might be imposed and as might be required to provide for persons excluded from an area (*supra*, p. 44).

In the light of the breadth of the delegations of authority, coming under the war power and related

powers, which this Court has recognized as proper (*United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319–322; *Hirabayashi* v. *United States*, 320 U. S. 81, 104), we submit that the delegation of authority to prescribe measures reasonably found to be necessary to guard against consequences, harmful to the war effort, which might result from the exercise of powers undoubtedly conferred by the Act, was not unconstitutional.[24] Under such a delegation there is not "an absence of standards for the guidance" of administrative action, such as would make it "impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed" and alone would justify this Court in overriding the choice by Congress "of means for effecting its declared purpose." *Yakus* v. *United States*, 321 U. S. 414, 426. A court can determine whether given measures are related to the prevention of espionage and sabotage and to a specifically authorized exclusion.

4. *The detention of evacuees in an Assembly Center as a concomitant to their removal is within the scope of the war power and is consistent with due process of law.*—The detention here in question, as previously pointed out (*supra*, p. 44), is

[24] "Where the orders under the present Act have some relation to 'protection against espionage and against sabotage', our task is at an end." Concurring opinion of Mr. Justice Douglas in *Hirabayashi* v. *United States*, 320 U. S. at p. 106.

detention in an Assembly Center until such time as further provision for the evacuees might be made, which was determined upon as an essential measure in connection with the exclusion.

It should be stressed that the Assembly Centers provided temporarily for the evacuees and have long since served their purpose. Such centers no longer exist. Evacuees first entered an Assembly Center on March 31, 1942. During the following months these centers received persons of Japanese ancestry, old men and women, family groups, young men and women, and children of various ages. The 14 Assembly Centers provided in all for 92,193 persons (*infra*, p. 74). They were supplied with doctors, dentists, nurses, hospitals and temporary facilities for the care and maintenance of the evacuees during the period required for the construction and equipment of more permanent Relocation Centers which were being made ready with all possible speed. The Relocation Centers were to be places of more extended residence while the program of relocation in normal communities was being worked out by the Government. The Assembly Centers, accordingly, were an intermediate phase of the program between evacuation and transfer to Relocation Centers. All evacuees had been transferred by November, 1942, and no one has since been detained in an Assembly Center.

Petitioner did not seek to show, by evidence or otherwise, that detention in Assembly Centers as a method of accomplishing the evacuation was not reasonably appropriate to the basic purpose of exclusion. The alternative which his position seems to suggest is that the evacuation, although compulsory and to be accomplished quickly, should not have been accompanied by any restraint; that the thousands of families and individuals who were involved should have been required to leave their homes in the restricted areas with such assistance as they might voluntarily accept. The result might have been a great mass movement of the persons affected, by all possible means of transportation, or without transportation, entailing great hardship and confusion, and with continued if not increased danger of espionage and sabotage which it was the purpose of the whole program to avert. The result, further, might have been the arrival of many individuals in communities unreceptive to them and without provision for them. It could not have been known when or where they would arrive and under what conditions.

The Assembly Center was reasonably calculated at least to mitigate these hardships and also to avoid the dangers which lay behind the decision to require evacuation. The constitutional validity of the restraint of liberty entailed by the Assembly Center must be judged in relation to the reason-

ableness of the basic purpose and the means available for its execution. The question involves the validity of a particular method adopted for carrying out an exclusion which was itself justified by factors of common knowledge.

Petitioner, in challenging the method used, labors under a heavy burden, particularly when, in the posture which the case has assumed, a decision in accordance with his contention would strike down not only the method adopted but also, in practical effect, the exclusion itself. For if petitioner was wrongfully convicted because detention in an Assembly Center would have resulted from full obedience to the order, and if he could not validly be convicted, as he was, of violating only that feature of the order which prohibited his remaining in the area, then the exclusion, as ordered, was unenforceable by legal means.

Petitioner has not borne the burden which rested upon him. The indications of hostility to the evacuees, which lay at the basis of the decision to impose detention (*supra*, pp. 41–43), have not been negatived. The belief of the military authorities in the danger of violence has not been shown to have been unreasonable. The existence of that belief is undisputed. The Final Report of General DeWitt states that "widespread hostility" had developed "in almost every state and every community. It was literally unsafe for Japanese migrants" (pp. 104–105). The report refers to "one example among many" of

actual threats against evacuees. These are said to have numbered "several thousand." (P. 106.)[25]

The judgment of the military authorities is confirmed by that of the Tolan Committee. Reporting on May 13, that Committee stated:

> Voluntary settlement outside of prohibited and restricted areas has been complicated, if not made impossible for an indefinite period, by the resentment of communities to, what appeared to them, an influx of people so potentially dangerous to our national security as to require their removal from strategic military areas. The statement was repeated again and again, by communities outside the military areas, "We don't want these people in our State. If they are not good enough for California, they are not good enough for us."[26]

In addition, the need of providing adequately for the evacuees during the difficult period of physical transfer to new locations and of readjustment to

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[25] The National Secretary of the Japanese-American Citizens League testified before the Tolan Committee on February 23, 1942, that "in view of the alarming developments * * * all plans for voluntary evacuations" should be discouraged. *Hearings*, Part 29, p. 11137. On March 21, in advance of compulsory migration, 2,100 persons had been recruited from Los Angeles to proceed in a conducted group to the Manzanar Assembly Center, which was still under construction. *Supra*, p. 41.

[26] *Fourth Interim Report*, p. 17. Early instances of hostility on the West Coast itself are referred to in the testimony of witnesses before the Committee. *Hearings*, Part 29, pp. 11137, 11156.

new conditions argued for a controlled migration. Undoubtedly the Government bore a heavy responsibility to the people whom it was uprooting from their homes and accustomed means of livelihood—a responsibility which it was justified in taking strong measures to meet, even at the cost of temporarily restraining the liberty of the evacuees. The needs of the evacuees confronting the military authorities and the appropriateness of the measures adopted to meet these needs, like the danger of violence, were affirmed by the Tolan Committee in the following language:

> While apparent respect for the rights of citizens prompted an early disposition to permit voluntary relocation outside prohibited areas, the seemingly insurmountable obstacles to such a program has led to an emphasis on Federal responsibility for resettlement. Only under a Federal program, providing for financial assistance, protection to person and property and an opportunity to engage in productive work, did it appear possible to minimize injustice.[27]

It may properly be urged, in addition, that the primary purpose of the evacuation, namely the prevention of espionage and sabotage, would have suffered as a result of confusion, disorder, and resentment flowing from an uncontrolled migration of 100,000 persons. As this Court recognized in *Hirabayashi* v. *United States,* 320 U. S. at p. 99,

[27] *Fourth Interim Report*, p. 17.

there was reason to believe that a disloyal minority existed among the evacuees. Its size and the identity of its members were not known.[28] To force this group suddenly into the interior upon its own resources might well have been to shift the locale of the danger of espionage and sabotage without eliminating it. Although the same danger might have been present to some degree had the self-arranged migration, which preceded the enforced evacuation, been more successful than it was (*supra*, pp. 41–42), the danger would certainly have been at its maximum if an uncontrolled mass evacuation had been ordered.[29]

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[28] As of July 29, 1944, it had been determined by the War Relocation Authority after hearing that 1,200 citizens and 328 aliens among the evacuees were disloyal or of sufficiently doubtful loyalty to warrant the denial of leave to depart from Relocation Centers for the balance of the war with Japan. The cases of 792 individuals remained to be determined. These have been segregated at the Tule Lake Relocation Center, together with approximately 10,000 others, citizen and alien, who have applied for repatriation to Japan and who failed to answer or gave unsatisfactory answers to loyalty questions included in a questionnaire submitted to the entire evacuee population in February and March, 1943, and members of the families of all of these. During 1942 and 1943, 365 evacuees were repatriated to Japan by their own desire, as a result of exchange arrangements with the Japanese Government. *Final Report*, pp. 309–328. For further information concerning the evacuee group and the program of segregation of the disloyal and the release of others see the Government's brief in *Ex parte Endo*, No. 70, this Term.

[29] This danger is not referred to in official reports upon the evacuation as it was actually conducted. That it should have received consideration in the light of other factors relied upon seems evident, however.

The detention of persons, whether citizens or aliens, in the interest of the public safety or their own welfare or both, apart from punishment for the commission of offenses, is a measure not infrequently adopted by government.[30] The arrest and detention of persons suspected of crime but presumed to be innocent, with release dependent upon ability to furnish bail, are of daily occurrence, with resulting hardships to blameless victims perhaps comparable in a year's time in the United States to the mental and spiritual sufferings of the Japanese evacuees. See National Commission on Law Observance and Enforcement, *Report on Penal Institutions, Probation and Parole* (1931): *Report of the Advisory Committee,* at pp. 271–279; Hutcheson, *The Local Jail,* 21 A. B. A. J. 81 (1935). The detention of jurors (*State* v. *Netherton,* 128 Kan. 564, 279 Pac. 19), and of material witnesses whose disappearance is feared (*United States* v. *Von Bonim,* 24 F. Supp. 867 (S. D. N. Y.)) is a related phenomenon. Even apart from the emergency of war, but during a proclaimed state of "insurrection", the detention of individuals by

[30] Those afflicted by mental disorder or communicable disease may of course be restrained (*Ex parte Lewis,* 328 Mo. 843, 42 S. W. (2d) 21), and the classes of persons subject to such restraint may be enlarged to accord with developing medical knowledge or social conditions. *Minnesota* v. *Probate Court,* 309 U. S. 270. Carriers of a disease, even though not themselves suffering from its effects, may be restrained for as long as the public health requires. *People ex rel. Barmore* v. *Robinson,* 302 Ill. 422, 134 N. E. 815.

executive action in the interest of order, the courts being open to afford a remedy to persons seeking to challenge their detention, has been sustained by this Court. *Moyer* v. *Peabody*, 212 U. S. 78. *Cf. Sterling* v. *Constantin*, 287 U. S. 378, 400.

The effect of a war in empowering the Government to impose restraints which might be invalid in normal times has often been noted. *Block* v. *Hirsch*, 256 U. S. 135, 150–156; *Meyer* v. *Nebraska*, 262 U. S. 390, 402; *Hirabayashi* v. *United States*, 320 U. S. 81, 93; *Yakus* v. *United States*, 321 U. S. 414, 443. And the war power extends to measures for dealing with the consequences of war in the social and economic order as well as to measures designed to aid in carrying force to the enemy. *Stewart* v. *Kahn*, 11 Wall. 493; *Raymond* v. *Thomas*, 91 U. S. 712; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146. Both as a means of forestalling possible espionage or sabotage and as a method of meeting conditions precipitated by the exclusion of persons of Japanese ancestry from the West Coast, therefore, the controlled evacuation and the detention which it entailed were a valid exercise of the war power.

In essence, the military judgment that was required in determining upon a program for the evacuation was one with regard to tendencies and probabilities as evidenced by attitudes, opinions, and slight experience, rather than a conclusion based upon objectively ascertainable facts.

"There was neither pattern nor precedent for an undertaking of this magnitude and character",[n] at least in this country. Impairment of personal liberty resulted from the decision that was made. It cannot be said, however, even with the benefit of hindsight, that the decision was clearly unreasonable under the circumstances. That being so, it came within the purview of the war power exercised to accomplish the exclusion and did not violate due process of law. To the extent that the consequential detention in an Assembly Center can be questioned in this case, the conclusion should be that the impairment of liberty which was entailed resulted from the use of measures responsibly and reasonably calculated to further a validly inaugurated program based on military necessity.

It is of some significance that not a single person of the thousands detained in Assembly Centers sought release by habeas corpus although, as previously stated, the courts were at no time closed to them. Petitioner alone has challenged the Assembly Center and does so, not as one actually subjected to its restraint, but in a criminal proceeding in which the only charge against him is that he remained in a military area after he had been forbidden to do so. We accordingly revert to our basic position, that the ground of the decision in this case should be only the validity of

[n] Letter of transmittal, *Final Report* of General DeWitt, p. viii.

the exclusion itself; that the validity of the use of Assembly Centers is not here in issue; and that there is no occasion for a decision with respect to a phase of the exclusion program long since ended.

The validity of continued restraint in Relocation Centers, where many of the evacuees now are, is involved in *Ex parte Endo,* No. 70, this Term, and is, we understand, to be heard and considered with the present case.

CONCLUSION

In view of the foregoing considerations, we respectfully submit that petitioner's conviction and the judgment of the court below should be affirmed.

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HERBERT WECHSLER,
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EDWARD J. ENNIS,
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OCTOBER 1944.

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APPENDIX I

Facts Relating to the Exclusion Program

A. CIVILIAN EXCLUSION ORDERS

Pursuant to authorization by the Secretary of War[1] to exercise throughout the Western Defense Command the power granted by Executive Order No. 9066 (*infra*, pp. 76–78), Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command, issued Public Proclamation No. 1, dated March 2, 1942 (7 F. R. 2320, *infra*, pp. 79–82). This Proclamation, which recited the military necessity for its provisions, established Military Areas No. 1 and No. 2 within that Command as well as zones within these Areas, and provided that "such persons or classes of persons as the situation may require" would by subsequent orders "be excluded from all of Military Area No. 1" and from designated zones in Military Area No. 2.

Military Area No. 1 comprised the western portion of the States of California, Washington, and Oregon, and the southern portion of Arizona.

Subsequent proclamations[2] established Military Areas 3, 4, 5, and 6 in Idaho, Montana, Nevada,

[1] See letter of authorization, dated February 20, 1942, printed in *Final Report, Japanese Evacuation from the West Coast*, 1942, by Lieutenant General John L. DeWitt (Government Printing Office, 1943), hereinafter termed *Final Report*, p. 25.

[2] Public Proclamation No. 2, March 16, 1942, 7 F. R. 2405, *infra*, pp. 83–86; Public Proclamation No. 6, June 2, 1942, 7 F. R. 4436.

and Utah and provided that persons of Japanese ancestry would be excluded from limited zones within these areas and from the California portion of Military Area No. 2, constituting all of that State not included in Military Area No. 1.

Executive Order No. 9066, upon which the foregoing Proclamations and the subsequent Civilian Exclusion Orders were based, was issued by the President on February 19, 1942 (*infra*, pp. 76–78). It recited the necessity for protection against espionage and sabotage and authorized the Secretary of War and Military Commanders designated by him, whenever such action was 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. * * *

The Order further authorized the Secretary of War to provide transportation, food, shelter, and other accommodations for the residents of a military area who were excluded from it. It authorized and directed the Secretary of War and the designated Military Commanders "to take such other steps as he * * * [or they] may deem advisable to enforce compliance with the restrictions applicable" to each designated military area.

The Executive Order, as was held in *Hirabayashi* v. *United States*, 320 U. S. 81, was ratified by the Act of March 21, 1942, 56 Stat. 173, 18

U. S. C., Supp. III, Sec. 97a, *infra*, p. 78. The Act provided in effect that whoever should knowingly violate any restriction applicable to a military area or zone prescribed by the Secretary of War or a Military Commander under the authority of an Executive Order of the President should be guilty of a misdemeanor.

On March 11, 1942, General DeWitt established the Wartime Civil Control Administration, which was headed by an Assistant Chief of Staff and which included representatives of various civilian agencies. The Administration was directed "to provide for the evacuation of all persons of Japanese ancestry from Military Area No. 1 and the California portion of Military Area No. 2 of the Pacific Coast with a minimum of economic and social dislocation, a minimum use of military personnel and maximum speed; and initially to employ all appropriate means to encourage voluntary migration."[3]

To achieve the objective of securing voluntary migration, the Wartime Civil Control Administration established offices throughout the affected areas to encourage migration to the interior. These offices were empowered to pay the cost of transportation of migrants and undertook to secure employment opportunities for them. However, they encouraged migration only to points where the occurrence of acts of violence against

[3] *Final Report*, p. 41. See also *Preliminary Report*, etc., *Report of the Select Committee Investigating National Defense Migration of the House of Representatives*, House Report No. 1911, 77th Cong., 2d Sess. (hereinafter termed *Preliminary Report*), p. 10.

the migrants was unlikely.[4] All together, 4,889 persons migrated under this part of the program. In addition, centers were established in the Military Areas where persons who wished to migrate could be sheltered if they did not find it feasible to leave immediately. Approximately 2,100 persons proceeded to one of these centers as voluntary migrants.[5]

The Wartime Civil Control Administration took measures through the Farm Security Administration and the Federal Reserve Bank of San Francisco to assist those migrants and the evacuees who subsequently left the areas under compulsion to dispose of their property and adjust their affairs with minimum financial detriment.[6] Throughout the whole program an attempt was made to preserve family units intact.[7]

On March 18, 1942, by Executive Order No. 9102 (7 F. R. 2165), the President established the War Relocation Authority to formulate and carry out a program for the removal of evacuees from the areas established pursuant to Executive Order No. 9066, their relocation in appropriate places, their maintenance, their employment at useful work, and the supervision of their activities. The Authority was given power to prescribe regula-

[4] *Final Report*, pp. 43, 104.

[5] *Final Report*, pp. 44, 48.

[6] *Fourth Interim Report of the Select Committee Investigating National Defense Migration of the House of Representatives*, House Report No. 2124, 77th Cong., 2d Sess. (hereinafter termed *Fourth Interim Report*), pp. 4–5; *Final Report*, pp. 53–54.

[7] *Final Report*, p. 77.

tions to execute its program and was directed to consult with the Secretary of War in regard to its measures.

Civilian Exclusion Orders, carrying out the compulsory evacuation of Military Area No. 1 and the California portion of Military Area No. 2, which had been foreshadowed in the previous Public Proclamations,[8] were issued at intervals from March 24, 1942, the date of Order No. 1, to July 22, 1942. Civilian Exclusion Order No. 34, which petitioner was convicted of violating, was one of this series and was issued, as previously stated, on May 3, 1942.

Each order, of which there were 108 in all, covered a designated territory. Prior to its issuance a Civil Control Office or Station was established in the territory covered and was staffed by representatives of civilian agencies, including physicians and social workers to assist the evacuees in various respects.[9] Each order required that all persons of Japanese ancestry "be excluded" from the designated territory after a day six days subsequent to that of the issuance of the Order; that "a responsible member of each family" and each individual living alone in the

[8] No orders were issued with respect to the minute areas in Idaho, Montana, Nevada, and Utah which were designated in Public Proclamation No. 2 as zones from which persons would be excluded. See *Final Report*, Map Insert I, foll. p. 289. Orders Nos. 1 to 99 were ratified by General DeWitt's Public Proclamation No. 7, dated June 8, 1942 (7 F. R. 4498), and Orders Nos. 100 to 108 were ratified by General DeWitt's Public Proclamation No. 11, dated August 18, 1942 (7 F. R. 6703).

[9] *Final Report*, c. X.

territory report to the Civil Control Office or Station at a given address within a specified period prior to the exclusion date; and that any person of Japanese ancestry violating the order or found in the designated territory after the exclusion date would be liable to the criminal penalties of the Act of March 21, 1942.

Each order was accompanied by Instructions stating that all persons of Japanese ancestry "will be evacuated" from the designated territory by the exclusion date; that the Civil Control Office or Station was equipped to assist the persons affected by the Order with respect to the disposition of their property; and that the United States Government would provide for the storage of specified household items at the sole risk of the owner.

The first Civilian Exclusion Order, issued on March 24, 1942, which pertained to a portion of Military Area No. 1 within the State of Washington, provided that the persons ordered excluded "may, with permission, on or prior to March 29, 1942, proceed to any approved place of their choosing beyond the limits of Military Area No. 1 and the prohibited zones established" by the Proclamations, and that such persons who had not left prior to March 30, 1942, should report to the Civil Control Office on that date "for evacuation in such manner and to such place or places as shall then be prescribed." Instructions accompanying the Order stated that evacuees who did "not go to an approved destination of their own choice" would be given "temporary residence in a reception center."

On March 27, 1942, in Public Proclamation No. 4 (7 F. R. 2601), General DeWitt terminated the previous permission to persons of Japanese ancestry to migrate from Military Area No. 1 prior to the issuance of Civilian Exclusion Orders with respect to their places of residence, and the plan of permitting them to proceed to approved destinations of their own choice after the issuance of such orders. This Proclamation prohibited persons of Japanese ancestry within Military Area No. 1 to leave that Area after March 29 except in accordance with future orders by the Commanding General.[10] Thereafter, with a few exceptions,[11] beginning on March 31 when the first group evacuation took place,[12] the evacuees from Military Area No. 1 were transported on the days their exclusion became mandatory, under military control to Assembly Centers, or in a few cases to more permanent Relocation Centers which had become available.[13] The function of the As-

[10] Migration of persons of Japanese ancestry from the California portion of Military Area No. 2 was prohibited by Public Proclamation No. 6 issued June 2, 1942 (7 F. R. 4436).

[11] The exceptions were persons in institutions, members of so-called mixed marriages and mixed-blood individuals, and persons who had previously left the evacuated area and established residences in the interior. *Final Report*, c. XII.

[12] *Fourth Interim Report*, at p. 7, cited *supra*, note 6.

[13] See "Instructions for Activities in Evacuation Projects," printed in *Fourth Interim Report* at p. 40; see *Final Report*, pp. 362–366. The program was somewhat different for Military Area No. 2; evacuees from that Area could volunteer to participate in agricultural work groups and proceed to agricultural areas as members of such groups directly from their homes without passing through Assembly Centers.

sembly Centers was set forth in "Instructions for Activities in Evacuation Projects" issued by command of General DeWitt on April 23, 1942, which stated that "pending the resettlement of such persons [of Japanese ancestry] by the War Relocation Authority, evacuees will be provided temporary shelter and other facilities at assembly centers and reception centers."

Civilian Exclusion Orders Nos. 2 to 108, including Civilian Exclusion Order No. 34 involved in this case (*infra*, pp. 88–89), omitted the provisions of Order No. 1 respecting self-arranged migration and optional shelter in reception centers. Instead they provided that "persons within the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the [exclusion] provisions of this order while those persons are in such Assembly Center." The accompanying instructions provided that all persons of Japanese ancestry living in the specified territories would be furnished transportation to an Assembly Center or would be authorized to travel to it by private automobile in supervised groups. Failure to comply with the accompanying instructions, as well as failure to comply with the orders themselves, was made a crime under the Act of March 21, 1942.

In the evacuation to the Assembly Centers pursuant to these orders, attempts were made to insure the well-being of the evacuees. They were given physical examinations before departure, and physicians accompanied them en route. Aside from persons who were allowed to proceed in supervised convoys of private automobiles, the

evacuees were transported in buses or train coaches with four seats assigned to every three persons in order to allow sufficient room for hand baggage. Pullman berths or other special arrangements were secured for the aged or infirm.[14] Fourteen Assembly Centers were provided in all, mainly at fair grounds and race tracks, in addition to two Relocation Centers to which direct evacuation took place. At the Assembly Centers themselves, attempts were made to provide adequate housing facilities, medical services, and community activities, in order to afford as satisfactory places of detention as the hastily constructed shelters permitted. Families and, so far as possible, communities were kept together.[15] The situation was similar in the Relocation Centers to which some of the evacuees were moved without passing through Assembly Centers. Both Assembly and Relocation Centers were guarded by military police.

Provision for the detention of the evacuees in the Assembly and Relocation Centers was formalized by General DeWitt's promulgation on May 19, 1942 of Civilian Restrictive Order No. 1 (8 F. R. 982). This Order provided that all persons of Japanese ancestry who then or thereafter resided within Assembly, Reception or Relocation Centers pursuant to Exclusion Orders[16] were re-

[14] For a description of the transportation of the evacuees to the Assembly Centers, see *Final Report*, c. X, and *Fourth Interim Report*, p. 9.

[15] See *Final Report*, c. XIII to XIX.

[16] All but three of the persons evacuated under Civilian Exclusion Order No. 34 were removed to the Tanforan Assembly Center in San Mateo County. *Final Report*, p. 34. Persons of Japanese ancestry were forbidden to be in that

quired to remain unless permitted to leave in an authorization "setting forth the hour of departure and the hour of return and the terms and conditions upon which said authorization has been granted."

B. REMOVAL FROM ASSEMBLY CENTERS

Commencing on May 20, 1942 with the issuance of Civilian Restrictive Order No. 2 (8 F. R. 982), provision was made through a series of orders for the release of evacuees from Assembly Centers in order to engage in groups in supervised agricultural work outside the evacuated areas.[17] Each order provided for the release of a specified number of evacuees to work in specified counties under arrangements to be made by the Director of the War Relocation Authority; each order also provided that the evacuees were only to proceed to the specified county and were to return to an Assembly or Relocation Center designated by the War Relocation Authority when ordered to do so by that Authority.[18] However, some of these releases were later made permanent. *Final Report,* pp.

County unless within the confines of the Tanforan Assembly Center, by Civilian Exclusion Order No. 35 (7 F. R. 3967). Hence the group evacuated under Civilian Exclusion Order No. 34 to the Tanforan Assembly Center may be considered to have been detained there under Civilian Exclusion Order No. 35, as well as under Civilian Restrictive Order No. 1.

[17] The orders are printed at 8 F. R. 982 to 986. The last of the series, Civilian Restrictive Order No. 17, was issued on September 13, 1942.

[18] These labor groups were only arranged in the event that assurance was given by the United States Employment Service or by public officials of the locality that the prospective employer had given adequate assurance that prevailing wages

364, 243–246. The Civilian Restrictive Orders issued prior to petitioner's arrest on May 30 which were applicable to the Tanforan and the Pinedale Assembly Centers, to which persons evacuated under Civilian Exclusion Order No. 34 were taken, were Civilian Restrictive Order No. 3, issued on May 23, 1942 (8 F. R. 982), which permitted the release of 1,500 persons from the Puyallup, Pinedale, Marysville, Sacramento, and Tanforan Assembly Centers for employment of the type specified above, and Civilian Restrictive Order No. 7, issued on May 28, 1942 (8 F. R. 983), which permitted the removal from any or all Assembly Centers in Military Area No. 1 of "one thousand persons of Japanese ancestry, comprising approximately two hundred and fifty families" for such employment.

Except for a relatively small number of persons, the great bulk of the evacuees who were originally confined in Assembly Centers were transferred to Relocation Centers maintained by the War Relocation Authority as these were constructed and became available. The entire transfer operation was accomplished during the period beginning May 26, 1942, and ending in November of that year.[19]

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would be paid and that the evacuees would receive adequate housing, sanitary facilities, and medical care, and only in the event that the Governor of the State or public officials in the locality gave assurance that law and order would be maintained. A total of 1,740 evacuees were temporarily released under this program. *Final Report*, pp. 243–246.

[19] *Final Report*, p. 282; First Quarterly Report of War Relocation Authority (March 18 to June 30, 1942), pp. 17–18; Second Quarterly Report of War Relocation Authority (July 1 to Sept. 30, 1942), pp. 2–3, 11–14; Third

The Relocation Centers were constructed with the objective of enabling the evacuees to "settle down to a more stable kind of life until plans could be developed for their permanent relocation in communities outside of the evacuated areas."[20] Accordingly, these centers afforded opportunity for more comfortable living than the Assembly Centers; community services were provided; partial self-government was permitted, and continuous attempts have been made to improve the equipment and conduct of these centers. Persons residing in the centers are employed in the operation of the centers and in other productive enterprises; they are paid for their work and they can with their wages purchase clothing and other incidentals which are not provided by the War Relocation Authority.[21]

On June 27, 1942, General DeWitt issued Public Proclamation No. 8, *infra*, pp. 94–97, which, reiterating the prohibition of Civilian Restrictive Order No. 1, stated that all Relocation Centers then or thereafter established within the Western

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Quarterly Report of War Relocation Authority (October 1 to December 31, 1942), pp. 1–3; Senate Document No. 96, 78th Cong., 1st Sess., *Segregation of Loyal and Disloyal Japanese in Relocation Centers*, pp. 7–8.

[20] First Quarterly Report of the War Relocation Authority (March 18 to June 30, 1942), p. 6.

[21] Hearings before the Subcommittee of the Committee on Appropriations of the House of Representatives on National War Agencies Appropriation Bill, 1944, 78th Cong., 1st Sess., Part 2 (Testimony of Dillon S. Meyer, Director of the War Relocation Authority), pp. 737, 746–769; First Quarterly Report of War Relocation Authority, cited *supra*, note 19, and Semi-Annual Report of the War Relocation Authority (January 1 to June 30, 1943), *passim*.

Defense Command were designated War Relocation Project Areas,[22] and that all persons of Japanese ancestry residing in such Areas were required to remain within them unless authorized to leave by "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." By a letter dated August 11, 1942, General DeWitt conferred authority upon the War Relocation Authority to issue permits for evacuees to leave the Relocation Centers within the Western Defense Command.[23]

Beginning with its Administrative Instruction No. 22 of July 20, 1942, the War Relocation Authority has made increased provision for evacuees to leave the Relocation Centers in order to work or reside in communities outside the prohibited areas. As issued in developed form on September 26, 1942,[24] its regulations continue the agricultural work group program by providing for leave to engage in seasonal employment (Sec. 5.1 (b)), pro-

[22] The War Relocation Centers or Project Areas 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, Newell, California.

[23] Public Proclamation No. WD-1 issued by Secretary of War Stimson on August 13, 1942 (7 F. R. 6593), provides for the detention of persons of Japanese ancestry in the Relocation Centers established outside the Western Defense Command and it delegates authority to the War Relocation Authority to provide for their release.

[24] Regulations of the War Relocation Authority, 7 F. R. 7656, continued January 1, 1944, 9 F. R. 154.

vide for permits for "short term" leave of not more than 30 days (Sec. 5.1 (a)), and establish procedures for "indefinite leave" (5.1 (c)). A permit for indefinite leave places no time limit on the permittee's residence outside the Center and may provide for "travel unlimited except as to restrictions imposed by military authorities with reference to military areas or zone . . ." (Sec. 5.8 (b)). An application for "indefinite leave" is to be granted when the Director is satisfied that the applicant is willing to make required reports to the War Relocation Authority following his departure from the Center, is satisfied that the applicant will have employment or other means of support and can successfully maintain residence at his proposed destination, and is satisfied 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)). The only reports which have been required are notifications of arrival at the proposed destination and of subsequent changes of employer or of residence (Sec. 5.5 (b)). 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)).

A leave clearance procedure [25] has also been developed, whereby the individual's personal fitness for leave from the standpoint of internal security may be determined separately from the

[25] Now embodied in the Regulations of January 1, 1944, 9 F. R. 154, Sec. 5.3 (b).

other factors to be weighed in granting a permit—often in advance of an application for the permit itself.[26]

The development and results of the War Relocation Authority's relocation and leave procedures are set forth fully in the Government's brief in *Ex parte Endo,* No. 70 at the present Term of Court. A total of 110,219 persons were evacuated, of whom 92,193 went to the Assembly Centers and 18,026 directly to Relocation Centers,[27] of whom approximately two-thirds were American citizens. In all, 108,503 entered Relocation Centers.[28] The remainder were released without having entered such Centers, under the agricultural work group program or under regulations applicable to parties to mixed marriages and to persons who could join their families in the interior.[29]

Of the 1,214 persons evacuated under Civilian Exclusion Order No. 34, 1,211 were removed to the Tanforan Assembly Center. All told, 7,928 persons were evacuated to that Center.[30] There were 8,033 who left Tanforan, including those originally admitted and those born there or transferred from other centers. Of these, 7,673 were transferred to the Central Utah Relocation Project in September and October 1942; 38 were released under the agricultural work group program; 198 were otherwise transferred to the custody of War

[26] Semi-Annual Report of War Relocation Authority (Jan. 1 to June 30, 1943), pp. 14–15.
[27] *Final Report*, pp. 84, 346.
[28] *Idem*, p. 279.
[29] *Idem*, p. 278.
[30] *Idem*, p. 363.

Relocation Authority; 21 were apprehended as dangerous alien enemies or otherwise by law enforcement agencies; 36 were released as parties to mixed marriages; 22 died; 9 were transferred to other Assembly Centers; and 36 were otherwise released.[31]

[31] *Idem*, Table 52, p. 374.

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APPENDIX II

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.

Act of March 21, 1942, c. 191, 56 Stat. 173 (18 U. S. C., Supp. III, 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.

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 gen-

erally 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 regula-

tion 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 Presidio 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 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 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 Exhibit 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 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. 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.

CIVILIAN EXCLUSION ORDER No. 34, 7 F. R. 3967

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

(Civilian Exclusion Order No. 34)

Persons of Japanese Ancestry Excluded from Restricted Area—Alameda County, California

MAY 3, 1942.

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.

(Instructions Accompanying Civilian Exclusion Order No. 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

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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.

Civilian Restrictive Order No. 1, 8 F. R. 982

War Department.

(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 nonalien 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.

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, maintenance 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:

a. 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.

b. All persons of Japanese ancestry, both alien and nonalien, 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 c hereof.

c. Any person of Japanese ancestry, both alien and nonalien, 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.

d. No persons other than the persons of Japanese ancestry described in Paragraph b 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.

e. 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.

U. S. GOVERNMENT PRINTING OFFICE: 1944