AMERICAN CIVIL LIBERTIES UNION

170 FIFTH AVENUE NEW YORK CITY

March 25, 1942

To local committees and state representatives

Friends:

You will be interested in the enclosed letter addressed to the President, together with Mr. Hays personal statement (not endorsed by the Board) on some legal points. We suggest that similar action should be promptly taken by local committees and state representatives who share our view.

Copies of the Tolan Committee report mentioned in the last paragraph can be obtained through your Congressman or by writing the United States Government Printing Office, Washington, for the Preliminary Report and Recommendations on Problems of Evacuation of Citizens and Aliens from Military Areas (March, 1942) submitted by the Select Committee Investigating National Defense Migration, pursuant to H.Res. 113.

Sincerely yours,

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AMERICAN CIVIL LIBERTIES UNION

170 FIFTH AVENUE NEW YORK CITY

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March 20, 1942

Honorable Franklin D. Roosevelt The White House Washington, D.C.

Dear Mr. President:

We are greatly concerned over the execution of your order of February 20, 1942, giving the military authorities power to evacuate from any designated area in the United States all aliens and citizens alike. This unprecedented order, in our judgment, is open to grave question on the constitutional grounds of depriving American citizens of their liberty and use of their property witnout due process of law. It would appear reasonable to assume that the protection of our country in war-time can be assured without such a wholesale invasion of civil rights and without creating a precedent so opposed to democratic principle.

But quite aside from the constitutional aspect; your order is obviously open to great abuses in administration, for it clothes the military authorities with unchecked power to remove vast populations from areas which in their uncontrolled judgment are declared to be defense zones.

Under your order the military commander of the Pacific Coast area has set aside a zone running from the Canadian to the Mexican borders covering portions of eight states from which five designated classes of aliens and citizens are to be excluded. The first class to be evacuated is the entire Japanese population, whether aliens or native-born American citizens of Japanese ancestry.

This wholesale evacuation of citizens as well as aliens will, in our judgment, adversely affect our democratic practices and aims. This action will add substance to the agitation abroad of Axis propagandists who constantly attack racial prejudice and discrimination here as revealing the insincerity of our democratic professions. It will inevitably tend to undermine the loyalty of American citizens of Japanese ancestry, producing precisely the opposite effects to these intended. It already threatens cruel and unnecessary hardships in removing tens of thousands of peoples from their homes, depriving thousands of American-born students of their educations at schools and colleges, and from a practical standpoint offering no comparable opportunities to make a living or get an education elsewhere. It is likely to create a new set of problems possibly involving mob violence in the regions to which they are removed.

3-20/42

In the case of German and Italian aliens, the order makes no distinction between those sympathetic with enemy countries and those refugees from their tyrannies who have sought asylum here.

May we earnestly urge upon you, Mr. President, the following suggestions to minimize injustice:

1. that any American citizens ordered out of the zone, be evacuated only after individual examinations, before or after removal, of their conduct and records so that those whose loyalty and conduct put them above suspicion may be allowed to remain? Considerations both of public policy and of law are persuasive that the rights of citizens of Japanese descent, which are equal with those of other American citizens, should be given every possible protection;

2. that the enemy aliens to be removed -- Japanese; German and Italian -- be examined, before or after removal, on the basis of their conduct and records in similar fashion to the examinations already provided for those enemy aliens interned by the Department of Justice?

It may be objected that from a practical standpoint the examination of so many people before evacuation is impossible. We are confident, however, that the information already in the hands of agencies of the government would permit a reasonable degree of discrimination and that citizens' committees of neighbors analogous to draft boards could, within a reasonable time, examine those whose loyalty is under suspicion. In the case of aliens of enemy' nationality it might be more practicable to make the examinations, at least of a considerable proportion, after removal.

we realize that the situation on the Pacific Coast is difficult from the point of view of public prejudice and possible mob violence, even in the absence as yet of any proved dangers. But we are confident that those who have demanded summary action would come to accept reasonable modifications of the administration of your order to meet every practical requirement.

We are not alone in urging this course. Well-known agencies on the Pacific Coast have already urged modifications in enforcing the order. The recommendations to Congress of the Tolan Committee, which has just completed an exhaustive investigation, urge indi-Vidual examinations by hearing boards of all Italian and German aliens after their removal with a view to the return of all those found loyal. Such a procedure would appear to us certainly equally desirable for American citizens of Japanese ancestry. Considera-

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tions both of public policy and law would appear to bear out the wisdom of making all reasonable distinctions in an effort to reconcile, as far as possible, civil rights with military necessities.

Sincerely yours.

EDWARD ALSWORTH ROSS, National Chairman

JOHN HAYNES HOLMES, Chairman. Board of Directors

EDWARD L. PARSONS Vice Chairman, National Committe

ROGER N. BALDWIN Director

ARTHUR GARFIELD HAYS General Counsel

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CAREY McWILLIAMS, Industrial Commissioner of California

CHARLES R. GARRY, San Francisco Attorney

JOSEPH S. THOMPSON, San Francisco Attorney

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NORMAN THOMAS, New York National Board Member

HARRY ELMER BARNES, New York. Member National Commities

JOHN F. FINERTY, New York Attorney, Mational Board Member

MARVIN C. HARRISON, Cleveland Attorney

PROF. VIDA D. SCUDDER, Massachusetts, Member National Com.. mittee.

Statement by Arthur Garfield Hays, General Counsel of the American Civil Liberties Union on the Pacific Coast Evacuation Order.

The order providing for wholesale evacuation of Pacific Coast areas is bound to result in grave injustice. The clearly constitutional way to accomplish the objective of protecting defense areas is to declare martial law at strategic points as has been done in Hawaii. This would apply generally and would not discriminate against particular groups of residents. A dangerous and new precedent is established when, without martial law, military authorities are given such vast power over large sections of the civilian population.

The present order will result in injustice and hardship to American citizens of Japanese ancestry who are loyally serving by the thousands in our armed forces but whose citizen relatives are not permitted to occupy their homes. It will work injustice even to American citizens with a single Japanese grandparent. This ominous precedent, once established, might be extended to other parts of the country where wholesale evacuations without inquiry into individual cases would affect refugees from Fascism, who though technically enemy aliens, are actually ardent supporters of the democratic cause.

The Civil Liberties Union, of course, does not oppose any necessary military measures, but we believe that our democratic structure is sufficiently elastic to reconcile military necessity with the fundamental civil rights of the citizen. We are hopeful that these rights will be recognized without resort to the courts, but if necessary, we are prepared to appeal to the courts to protect the rights of citizens under general orders which, even in areas where martial law is not justified, giver military authorities supreme jurisdiction.

ARTHUR GARFIELD HAYS

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AMERICAN CIVIL LIBERTIES UNION
170 FIFTH AVENUE
NEW YORK CITY

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April 3, 1942

To local committees and state representatives

Friends:

We call to your attention the enclosed communications addressed to the Attorney-General concerning (1) the revocation of citizenship of naturalized Americans whose conduct or utterances indicates a loyalty to a foreign government, and (2) the first prosecutions for sedition.

May we suggest that you address a similar communication to the Attorney-General in your own language and that you take action to assist in the defense of any persons in your community proceeded against? We would appreciate your forwarding to the national office any information regarding such proceedings as soon as you learn of them.

Sincerely yours,

RNB: SH

March 20, 1942

AMERICAN CIVIL LIBERTIES UNION 170 FIFTH AVENUE NEW YORK CITY

April 2, 1942

Hon. Francis Biddle Department of Justice Washington, D. C.

Deur Mr. Attorney-General:

We note with profound misgivings your announcement under date of March 26 that you are authorizing proceedings to cancel the naturalization of several hundred American citizens "whose course of conduct, activities and statements show their true allegiance and fidelity to be to a foreign country rather than to the United States." Your statement further makes clear that the Department intends to proceed on the basis of evidence subsequent to naturalization, elthough under the law the only ground on which you can proceed is fraud at the time of naturalization.

If in any case it can be shown that such fraud was committed and that the state of mind of an alien at the time was such that he could not in good conscience take the oath of allegiance to the United States, it would rest on sound ground. But you are proposing to go much further by showing the subsequent acts and state of mind of a naturalized citizen in relation to his right to retain his citizenship. Obviously the further the evidence gets from the time of naturalization the less reliable it is as an indication of a state of mind at that time, and the greater the departure from established law.

Since all naturalized citizens enjoy exactly the same rights as native-born citizens, their citizenship has never been revoked for conduct subsequent to naturalization, except under a special statute relating to protracted residence in their countries of origin. To do so under the pressure of war-time conditions would establish a precedent under which no naturalized citizen would feel secure in his citizenship. Since the evidence to be used deals with opinions as well as conduct, these proceedings would inevitably create fear on the part of all naturalized citizens to express themselves on public issues.

We are constrained to make the further objection that the Department's proceedings constitute an indirect means of getting at what cannot be accomplished directly. If naturalized citizens are guilty of disloyed acts they should be prosecuted. It is reasonable to assume that the government is capable of investigating

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Hon. Francis Biddle

April 2, 1942

and bringing to justice any persons who engage in unlawful activities in behalf of a foreign government. Existing law is obviously adequate, particularly in war-time, to meet all such exigencies.

The Department is apparently planning to do what Congress has not yet authorized in pending legislation, specifically directed to permitting the revocation of citizenship. A bill to this effect, which had the Department's approval in its original form, has been evidently held up in the Senate because of constitutional objections which the Department is seeking to circumvent by these proceedings.

The Civil Liberties Union is opposed to the bill and is equally opposed to these proceedings insofar as they rest on the same principle. We shall offer our support to any naturalized citizen proceeded against where we are convinced that the government is relying chiefly on evidence of matters which occurred after naturalization and where no real basis exists for inferring that naturalization was fraudulently obtained.

Sincerely yours,

for the AMERICAL CIVIL LIBERTIES UNION

ARTHUR GARFIELD HAYS

JOHN F. FINERTY

OSMOND K. FRAENKEL

Correspondence-Organizational Matters, Volume 2354. May 11, 1940-1942. MS The Roger Baldwin Years, 1912-1950: Sub-Series 18: Organizational Matters – Correspondence, 1917-1951. Mudd Library, Princeton University. American Civil Liberties Union Papers, 1912-1990, http://tinyurl.gale.com/tinyurl/CJYaB9. Accessed 21 Nov. 2019.