

**AMERICAN CIVIL LIBERTIES UNION**170 FIFTH AVENUE  
NEW YORK CITY

May 22, 1942

To the Active Members of the Corporation

Friends:

The Board of Directors requests your opinion as to whether an issue of civil rights is involved in principle in the exercise of power by the government to remove citizens from areas designated as military zones.

The issuance of the so-called Pacific Coast Order involving the establishment of a military zone and the removal of large numbers of persons, including American citizens, from the designated areas, raised an important question of civil liberties. Subsequently a more moderate East Coast order was issued.

On the underlying issue of legal rights and powers there has been action and reaction among the members of the Board of Directors. There have been prolonged discussions at several meetings.

Two conflicting points of view have finally emerged:

- (1) That in the absence of conditions justifying a declaration of martial law there is no constitutional power in the government, acting either through military or civil authorities, to remove any citizens from any military zone on the purported ground that such persons may endanger national security, and
- (2) That such power does vest in the United States government, but that in exercising such power the civil liberties of citizens must be maintained.

These conflicting views are expressed in the following two resolutions, neither of which has been adopted by the Board. Both are submitted for your opinion.

Resolution No. 1

"The Civil Liberties Union is of the opinion that in the absence of any conditions justifying a declaration of martial law, any order by the government of the United

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States investing either military or civil authorities with power to remove any citizen or group of citizens from any zone established by such authorities, on the purported ground that their presence may endanger national security, constitutes a violation of civil liberties guaranteed by the Constitution of the United States. No system of civilian hearing boards to determine what citizens should be removed can cure the fundamental violation of constitutional rights."

Resolution No. 2

(1) "The government has the right in the present war to establish military zones and to remove persons, either citizens or aliens, from such zones when their presence may endanger national security, even in the absence of a declaration of martial law.

(2) Such removals, however, are justified only if directly necessary to the prosecution of the war or the defense of national security.

(3) Except in cases of immediate emergency, the necessity for such removals should be determined by civilian authorities, and such removals should be carried out by civilian authorities.

(4) Such removals must be carried out in a manner, and based upon a classification, having a reasonable relationship to the danger intended to be met.

(5) Each person affected should have an opportunity of showing that he does not come within the necessities of the situation; and hearing boards should be established to pass upon all such claims.

(6) Persons so removed, unless held for other reasons, should be allowed full liberty in the United States outside of such military zones. Their property rights should be fully protected, and reasonable arrangements should be made for their resettlement in places of their own choosing outside of such zones."

In order to help guide the Board of Directors in resolving the conflicting views, you are asked to vote upon these resolutions. You are further asked to express your opinion freely upon any point involved.

The arguments in favor of resolution No.1 are:

1. American citizens cannot and should not be deprived of their liberty to live and work where they will, without due process of law,--which means a trial in a court of law.

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This is a constitutional right which is a primary obligation of such a defender of civil liberties as the Union.

2. No argument as to military necessity can possibly justify the creation of large zones covering many states from which the Army authorities may exclude any citizens whose presence it regards as undesirable. To give such power to the military authorities is virtually to suspend the Bill of Rights altogether. For courts would either be reluctant to intervene to protect rights against the military in war-time, or the military might refuse to recognize the authority of civil courts, as in the Civil War.

3. As a practical matter, no such sweeping grant of power is needed, since present laws are adequate to deal with national security. Enemy aliens are already under complete control of the Department of Justice. Dangerous and disloyal citizens can be handled by the Department of Justice and the F.B.I. in the enforcement of war-time laws.

4. However reasonable the administration of such powers may be at the start, they can be indefinitely extended under pressure, even to covering the whole country, creating without justification a state of virtual martial law. It is the primary duty of the Civil Liberties Union to help prevent this tendency by protesting the power itself and by protecting the civil rights of any citizens who may be thus threatened with exile from their homes and businesses to live in distant parts of the country.

5. The grant of such drastic powers of removal to the civil authorities would be equally objectionable. Removal of citizens from any zone, without trial in a court of law,--in the absence of martial law,-- is repugnant to concepts of civil liberties and contrary to established constitutional guarantees as interpreted by the Supreme Court.

The arguments in favor of resolution No.2 are:

1. No constitutional issue is involved because in war-time military necessity shifts the weight of the balance that must always be maintained between civil liberties and governmental administration. The judgment of the authorities as to what is necessary in the defense of the country and the conduct of a total war should not be lightly rejected.

2. Fears that the rights of citizens will be generally violated under these orders are exaggerated. On the Pacific Coast the Japanese-American population presents a peculiar problem aggravated by extreme local prejudice. The mass deportation order went far beyond the necessities of the situation, and should be opposed by the A.C.L.U., not on the ground of lack of power but because of abuse of power, just as the A.C.L.U. opposes any oppressive action on the part of the government involving civil

liberties,--even where the general power to act lies in the government.

3. If it is admitted that military necessity justifies the evacuation of all civilians from a given military area, or a declaration of martial law, it is more reasonable to grant to the authorities a lesser power even in larger areas, and to oppose any attempted discrimination in the exercise of the power.

4. There are many instances in which the government has power to act, but where the abuse of such power constitutes an infringement of civil liberties which will be curbed by the courts. Possibly the furthest development of this in recent years has been the establishment of quasi-judicial administrative boards involving substantial personal and property rights. The findings of fact of such boards are usually final, subject to reversal only if there is no substantial evidence to support them. In this new kind of total warfare the government should not be completely blocked in taking necessary defensive measures; but a new technique must be developed to protect the civil liberties of the citizens within the temporary field of power held by the government in war-time. The A.C.L.U. should be active in developing such a protective technique.

5. Individual cases of injustices in exercising such war-time powers should of course be handled by the Civil Liberties Union.

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NOTE

Vote on the attached slip and return promptly in the enclosed prepaid envelope. We would appreciate having your reply by June 1.

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Correspondence-Federal Departments: Japanese-American Internment, Volume 2394. 1942. MS The Roger Baldwin Years, 1912-1950: Sub-Series 11:  
Federal Departments – Correspondence, 1921-1951. Mudd Library, Princeton University. American Civil Liberties Union Papers, 1912-1990, <http://tinyurl.gale.com/tinyurl/CJagt0>. Accessed 21 Nov. 2019.