JAPANESE AMERICAN CITIZENS LEAGUE
ARGUMENT FOR THE REPEAL OF
TITLE II OF THE INTERNAL SECURITY ACT OF 1950

ALSO KNOWN AS: THE EMERGENCY DETENTION ACT

United States Code, Title 50, Sub-chapter II, Sections 811-826

Public Law 831, 81st Congress, Title II, Sections 100-116

In the spring of 1942, one of the greatest acts against constitutional guarantees was perpetrated when all rights of freedom and justice were denied as the federal government incarcerated 110,000 persons, of which 70,000 were United States citizens, in American style concentration camps.

Today, many Americans believe it is inconceivable that such a great injustice was committed, legalized and approved by a government that prides itself on the rights of individuals guaranteed by the constitution. Too few courageous Americans cried out their concern and indignation in opposition to a tragic mistake in our constitutional history.

Americans of Japanese ancestry are living reminders of this terrible injustice. Their new American heritage makes it incumbent upon them to alert all Americans to the danger of Title II of the Internal Security Act of 1950, and call for its immediate repeal.

Wartime hysteria and racism led to the mass incarceration of American citizens without trial and without proven charges. There was no law in 1942 to justify imprisoning citizens without due process of law, but it was done anyway on orders of an army commander. For those who remember these camps being called innocuous "relocation centers", let there be no doubt - there were barbed wire, guard towers, bayonets and machine guns to keep the inmates in the American concentration camps.

Moreover, when this action was finally reviewed by the Supreme Court in the Korematsu Case, the Court ruled that the "evacuation" was a justifiable exercise of presidential power. Justice Robert M. Jackson, in a dissenting opinion said, "The Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

Today, the gun is cocked. We now have a law that authorizes incarceration of persons without due process of law. This law, known as the "Emergency Detention Act", permits the attorney general to apprehend and place in "detention camps" any person or persons he suspects will "probably" engage in acts of espionage or sabotage. The constitutional rights of due process and trial by jury are ignored. Furthermore, the government is not even required to prove that the suspect is "probably" dangerous.

Specifically, the Emergency Detention Act authorizes the following:

1. The President of the United States may declare an "internal security emergency" in the event of:

   a. Invasion of the territory of the United States or its possessions
   b. Declaration of war by Congress, or
   c. Insurrection within the United States in aid of a foreign enemy.

2. Upon such a declaration of "internal security emergency", the Attorney General may apprehend and detain "each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage."

3. A detainee is brought before a "Preliminary Hearing Officer", who will determine whether there is "reasonable ground to believe...". At this hearing, a detainee may present evidence in his own behalf, and may cross-examine witnesses against him except the Attorney General "shall not be required to furnish information the relevance of which would disclose the identity or evidence of government agents which he believes it would be dangerous to national safety and security to divulge."

4. A detainee may appeal an unfavorable decision by the Preliminary Hearing Officer to the "Detention Review Board". This board will be appointed by the President and will have final authority over emergency detention. The same ground rules of the preliminary hearing apply in an appeal before the Detention Review Board.

The following arguments on the inconsistencies with American justice are to be noted:

1. The Act is aimed at persons who "probably" will engage in espionage or sabotage. There are other laws which apply to actual espionage agents and actual saboteurs, but this Act provides for detention of citizens on mere suspicion. American citizens should be detained only when a crime has been committed, or only when a crime is being overtly planned, but not as a precautionary measure because some government official does not trust him. One needs only to be reminded of an amazing and absurd position taken by Earl Warren in 1942. Warren, then State Attorney General, claimed that the very fact that no Japanese American has ever committed any act of espionage or sabotage is reason enough to suspect that they will in the future. The important point is that people have and will believe statements like that. The rights of an American citizen cannot be violated simply because the Attorney General, or even the majority of Americans, believes that a person or group is dangerous to the United States. The suspects must be proven guilty of specific crimes in a court of law.

2. A person charged under this law will not be given a trial under law. The charged person is judged administratively by a Preliminary Hearing Officer, who is appointed by the Attorney General. Appeal is to the Detention Review Board, appointed by the President. There is no provision for normal court or jury trial. The charged person does not have the right to an impartial judicial proceeding. The whole structure is stacked against the defendant.

3. Furthermore, at these administrative hearings, the government can decline to present any evidence whatsoever. This, in effect, transforms the basic legal tradition of presumed innocence into presumed guilt. In a situation reminiscent of Franz Kafka's The Trial, the defendant must prove his innocence to vague government who refuses to present the case against him?

How did such a dangerous statute come into being? During the Joseph McCarthy era, a great fear of subversion by internal Communists led to the passage of the Internal Security Act of 1950, with its Title II provisions for detention camps. The legislation was introduced by Senator Pat McCarran (thus the law is commonly known as the "McCarran Act"), but the crucial Title II was authored by Congressman Sam Hobbs. Amazingly, Title II had the support of liberal senate leaders like Hubert Humphrey and Wayne Morse. Even more amazingly, Senator Pat McCarran, himself, blasted Title II as a "concentration camp measure, pure and simple." Senator Karl Mundt called it a program for establishing concentration camps into which people might be put without benefit of trial, but merely by executive fiat. Proponents of the legislation cited the Japanese American precedent to justify the detention camp law. President Harry S. Truman vetoed the measure, calling it a "long step toward totalitarianism." But because of strong anti-communist sentiment stirred by the Korean War, coupled with the investigations of Communists in government, panicky liberals joined the conservatives and the President's veto was overridden. The Emergency Detention Act was born.

In keeping with the provisions of Title II, six detention camps were prepared and maintained from 1952 to 1957 at Allenwood, Penn.; Avin Park, Florida; Florence, Arizona; El Reno, Oklahoma; Wichenburg, Arizona; and Tule Lake, California. Eventually the McCarthy era passed, and in 1958 Congress ceased to appropriate maintenance funds for the detention camps. Most of the camps were either abandoned or converted to other uses. The law started gathering dust and most people forgot about it.

The Emergency Detention Act might have become just another obsolete unenforced law, but early in 1967 it started to gain new meaning. Rumors rapidly spread through the Black ghettos that concentration camps were being prepared for Black people. The more militant leaders like Stokely Carmichael and H. Rap Brown claimed that genocide was being planned, so Black people must arm

themselves to fight back. Also, rumors spread through the ranks of Viet-nam war protestors that mass incarceration was being planned. The "underground press" in Berkeley, California ran a number of stories on concentration camps for war protestors. National news magazines carried articles claiming that the concentration camps used for the Japanese Americans were being dusted off and being readied for new inmates. Allan Bosworth's book, America's Concentration Camps, told how it had happened before, and Charles A. Allan's pamphlet, Concentration Camps USA told how it can happen again.

As the rumors and public concern spread, the attorney general's office, as well as individual congressmen and senators denied that the government had any concentration camps prepared. But in locations like Tule Lake, California, the old tar paper barracks were still there. The uneasy questions asked were: "Why haven't these camps been demolished after 24 years? Could it be that the government is holding it for use again?" Migrant farm workers are presently living at Tule Lake, but there are some unanswered questions about whether the government can re-occupy the site on 24 hour notice. This camp is mute testimony to past injustices and the potential threat in the future.

In April 1968, during the tense period following the murder of Dr. Martin Luther King, Jr., Attorney General Ramsey Clark appeared on nationwide television (Meet The Press) and emphatically denied the existence of concentration camps in America -- in the past, present, or planned for the future. Unfortunately, he did not mention anything about "detention camps" or "relocation centers". Clark stated that, despite all the troubles plaguing America, he felt no need for concentration camps. He was then asked if he would favor a repeal of the Emergency Detention Act. He dodged the question by answering "I believe there are more important things for us to work on, for example, passage of a fair housing law..." That was an ambiguous answer. Even more uncertain is the position of the new attorney general in 1969.

All of the rumors were culminated on May 6, 1968, when the House Committee on Un-American Activities issued a report titled "Guerilla Warfare advocates in the United States." Committee Chairman Edwin E. Willis said "Mixed Communist and Black nationalist elements are today planning and organizing paramilitary operations and that it is their intent to instigate additional riots, which will pave the way for a general revolutionary uprising." Willis argued that these Black militants have essentially declared war on the United States, therefore, should lose all constitutional rights and be imprisoned in detention camps. He cited Title II of the Internal Security Act of 1950 as the appropriate legislation which authorizes such detention. The decision of incarceration of American citizens cannot be left to the whim of an attorney general or the chairman of the House Committee on Un-American Activities.

Since the Emergency Detention Act has never been used, it has not been tested for its constitutionality. Someone must actually be detained under provisions of Title II for there to be "just cause" for judicial review. Many constitutional lawyers agree that Title II will be declared unconstitutional if it ever comes before the Supreme Court. Others, perhaps more realistic, point out that anything can happen in times of stress. Despite the feeling of constitutional lawyers in 1944, the Supreme Court ruled that the Japanese American incarceration was legal. The Supreme Court cannot always be trusted to be the savior of the oppressed. Considering all the human suffering caused by unjust imprisonment, it is much better to forthrightly repeal the law rather than waiting for "test cases".

"It is not enough to say that this probably would not be done," wrote President Truman in his veto message. "The mere fact that it could be done shows clearly how the bill would open a Pandora's box of opportunities for official condemnation of organizations and individuals for perfectly honest opinion.

The basic error of these sections is that they move in the direction of suppressing opinion and belief..." One of the bad effects of a law like this is that it inhibits American citizens from exercising their rights of free speech. Whether one agrees with the war protestors or not, they do have the right to protest. Threatening them with concentration camps is not the answer. Also, threatening Black Americans with concentration camps is not the answer-- it only adds fuel to the fire. Whether used or not, the law is a definite threat to the constitutional rights of all Americans. It must be repealed to keep this powerful weapon out of the hands of irresponsible people who

would use it to achieve their own personal ends.

The provisions of the Emergency Detention Act are so broad that practically any person or groups who are unlucky enough to become targets of mass hysteria can be arbitrarily denied constitutional rights. There has already been one historic incident of American concentration camps. Today, Black Americans are being threatened with concentration camps. Tomorrow, still another group may fall into disfavor. The concentration camp law can only divide and destroy the United States.

Let us re-affirm our trust in America, and in our fellow Americans, by repealing this frightening concentration camp law. Then, and only then, can we honestly proclaim that no American will "be deprived of life, liberty, or property, without due process of law." (United States Constitution, Amendment V)

JAPANESE AMERICAN CITIZENS LEAGUE RESOLUTION

FOR A REPEAL OR AMENDMENT OF SUB-TITLE II OF THE INTERNAL SECURITY ACT OF 1950

(Adopted by the National Japanese American Citizens League on August 23, 1968 at San Jose, California)

WHERAS (1) We Americans of Japanese ancestry, from previous experience in emergency detention, recognize the danger of Sub-Title of the Internal Security Act of 1950 (Emergency Detention Act), to the civil rights of all Americans, and

WHEREAS (2) The Emergency Detention Act provides that, during periods of "Internal security emergency", any person who "probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage" can be incarcerated in detention camps, and

WHEREAS (3) A person detained under the Emergency Detention Act will not be brought to trial under law, but instead will be judged by a Preliminary Hearing Officer and a Detention Review Board, where the detainee must prove his innocence but the government is not required to furnish evidence or witnesses to justify the detention, THEREFORE, BE IT

RESOLVED (A) That the Japanese American Citizens League (JACL) reaffirms opposition to Sub-Title II of the Internal Security Act of 1950 (Emergency Detention Act), and it be further

RESOLVED (B) That the JACL National Board establish an ad hoc committee to develop and co-ordinate an active program, coupled with consideration of necessary financing, to repeal or amend the Emergency Detention Act.

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3/9/69