October 10, 1969

Japanese American Citizens League
NATIONAL COMMITTEE TO REPEAL THE EMERGENCY DETENTION ACT
c/o Ray Okamura, 1150 Park Hills Road, Berkeley, California, 94708

TO: NATIONAL BOARD & STAFF, CHAPTER PRESIDENTS, NATIONAL COMMITTEE CHAIRMEN, CHAPTER AND DISTRICT CHAIRMEN OF TITLE II REPEAL COMMITTEES

Dr. Robert Suzuki, Chairman of the Southern California Committee to Repeal Title II, has prepared an excellent response to the often asked question: "If Title II is repealed, what laws will protect our internal security in an emergency?" The text of Dr. Suzuki's letter to Joseph J. Woodford, Jr., Administrative Intern for the Gardena City Council, follows. Please study it to better prepare yourself for this very common question. In addition, please read Buffalo Law Review 13 477 (1964). This article argues for the constitutionality of Title II, and as you might guess, the whole argument is based on the Korematsu decision.

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Re: Resolution for the Repeal of Title II of the 1950 Internal Security Act Pending Before the Gardena City Council.

Dear Mr. Woodford:

Your letter of August 5th was forwarded to me by Mr. Ray Okamura who asked me to reply to you as coordinator of the Title II repeal campaign here in Southern California. In your letter you stated that you would be able to make a positive report on a resulution presently before the Gardena City Council, which calls for the repeal of Title II of the 1950 Internal Security Act, if Section 6 of the proposed resolution could be justified in specific terms. In particular, you stated that it would be helpful if we could cite "more meaningful, just and effective laws and procedures to safeguard internal security."

Let me begin by saying that I could give a very succinct answer to your request by simply listing those laws and procedures which fall into the aforementioned category. There is no scarcity of laws and procedures pertaining to internal security and if you are interested in a complete compilation of such statutes, Executive Orders, and regulations, I would refer you to the Internal Security Manual (rev.), Sen. Doc. No. 126, 86th Cong., 2d Sess. (G.P.O.,1961). Moreover, if you want specific citations of the appropriate titles and sections, I will ask one of the attorneys on our Ad Hoc Committee to provide you with this information.

However, I do not think that such a listing would be particularly helpful in answering the question you have raised. The fact is that the President of the United States and other high government officials have vast powers to deal with internal security matters granted to them by the U.S. Constitution, state constitutions, and various statutes. For example, whenever the President proclaims that a state of insurrection exists in the country, or a designated portion thereof, he has the power to declare it to be under martial law. Although the term "martial law" does not explicitly appear in the U.S. Constitution or in the federal statutes, it is a condition which may come into being in pursuance of constitutional or statutory provisions. Among such provisions contained in the U.S. Constitution are those empowering Congress to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions (Art. I, Sec. 8), designating the President as commander-in-chief of the army and navy, and of the militia (Art. II, Sec. 2), and enjoining the President to take care that the laws be faithfully executed (Art. II, Sec. 3). Furthermore, Congress has enacted several statutes which, in brief, empower the President to employ the army and navy and to call forth the the militia to put down insurrections against federal or state authority (see Fairman, The Law of Martial Rule, Callaghan and Co., 1930). The President also has the power to suspend the privilege of the writ of habeas corpus "when in cases of rebellion or invasion the public safety may require it." (U.S. Constitution, Art. I, Sec. 9). Many other constitutional provisions and statutes may be cited which give the President and Congress the power to deal with matters of espionage, sabotage, sedition, etc. Most of these may be found in the Internal Security Manual previously cited.

In case you may have any remaining doubts about how broad the powers of the President are in matters pertaining to national security, I should point out that there was no law such as Title II back in 1942 to incarcerate the Japanese Americans. It simply required an executive order issued by President Roosevelt (Executive Order No. 9066). This was done despite the fact that martial law had not been declared in the Western States, the writ of habeas corpus had not been suspended, and the courts were functioning normally and without restriction. Yet, no criminal or civil charges of any kind were brought against the Japanese Americans and no trial was ever held. Ironically, in Hawaii, which was far more vulnerable to a repeat attack by Japan and which was declared to be under martial law, over 150,000

Japanese Americans residing there were allowed to remain free during the entire duration of the war. I do not have space here to give you a detailed analysis of the social, political, and legal aspects of the Japanese American evacuation, but if you are interested in finding out more about it, I would recommend the book by ten-Broek, Barnhart, and Matson titled, Prejudice, War and the Constitution (Univ. of Calif. Press, 1954), which is probably the most definitive study of the evacuation available.

Thus, in the final analysis, I do not think the answer to the question you raised hinges on whether our duly-elected public officials have adequate legal powers to protect the internal security of this country, but rather on whether they will exercise these powers justly and without trampling on the constitutional rights of individuals or groups. As we saw in the wartime experience of Japanese Americans, they cannot always be counted on to do so. Consequently, I believe the responsibility for the protection of these rights ultimately lies with each and every American citizen, for no American is secure in his constitutional freedoms unless all are secure in those fundamental rights.

In this regard, the Japanese American Citizens League (JACL) is especially conscious of its unique responsibility in seeking the repeal of Title II, the "concentration camp" provision, of the 1950 Internal Security Act. The JACL is opposed to Title II for the following reasons:

1. The law legalizes and facilitates the same kind of "emergency detention" that was imposed on Japanese Americans during World War II. Specifically, under certain emergency conditions, it provides for the establishment of concentration camps into which persons may be mass-incarcerated not for committing an overt criminal act, but upon the mere suspicion that they may "probably" engage in acts of espionage or sabotage sometime in the future. Japanese Americans are well aware of the dangers inherent in allowing persons to be arrested based on mere suspicion for they recall that their evacuation in 1942 was advocated by prominent and supposedly responsible men who used the amazing and absurd argument that the very fact that no Japanese American had committed any acts of espionage or sabotage was all the more reason to suspect they would do so in the future. The fact is that not a single act of espionage or sabotage was ever committed by any Japanese American either in the continental United States or in Hawaii. 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 happen to trust a certain individual or group. There are others laws which apply to overt subversive acts such as rebellion or insurrection (18 U.S.C.,Art. 2383), seditious conspiracy (18 U.S.C.,Art 2384), or treason (18 U.S.C.,Arts. 2381-2382).

2. A person charged under this law is denied his right to trial under law, the right to confront his accusers, the right to cross-examine witnesses against him, and the right to bail. In other words, all the elementary safeguards of due process of law guaranteed by our Constitution to the most hardened of criminals and the most dangerous of traitors are denied by Title II to the most innocent of our citizens if they happen to be unlucky enough to become victims of mass hysteria.

3. Proponents of Title II at the time of its enactment in 1950 justified it by citing the precedent set by the Japanese American evacuation. In other words, they were implicitly justifying the necessity of the evacuation. Thus, the very existence of Title II indirectly represents a slap in the face to those Japanese Americans who had to suffer through the traumatic experience of internment, or gave their lives fighting for this country.

The repeal of Title II will not, in itself, prevent a repetition of a tragic episode comparable to the wartime incarceration of the Japanese Americans. That can be prevented by an alert, informed and enlightened American public. However, as long as Title II remains on the books, it makes detention even easier and the person or group using it could not be held solely responsible for its action. Furthermore, not only is Title II unnecessary for safeguarding our country's internal security, but its continued existence only adds to the distrust and hostility which is threatening to completely undermine confidence in our political system. The least we can do is to convey to our elective representatives in Congress the urgency and importance of repealing Title II.

At this point, I should mention that our nationwide campaign to repeal Title II is gaining more supporters all the time. Most recently the National Urban League,

the Executive Board of the Los Angeles Council of Churches, and the Richmond City Council went on record in support of the repeal of Title II. Furthermore, over 50 additional congressmen have added their names as co-sponsors of the Matsunaga/Holifield bills to repeal Title II, bringing the total number of congressmen who have co-sponsored repeal bills to at least 100. Also, you undoubtedly know that Congressman Glenn Anderson, representing your district, is one of the initial co-sponsors of the Matsunaga/Holifield bills. In fact, if the city council should adopt a resolution, I might suggest that it be sent to Congressman Anderson asking him to read it into the Congressional Record. For your further information, I am enclosing some of our most recent material on the repeal campaign.

I sincerely hope that this letter has answered your question satisfactorily and that you will be able to report favorably on the resolution. If you have any other questions or need more information, please do not hesitate to contact me. In fact, our Ad Hoc Committee would be pleased to have the opportunity to make a presentation to the Gardena City Council on the Title II repeal campaign if that can be arranged. We greatly appreciate your cooperation in this matter.

Sincerely yours,

Signed/ Robert H. Suzuki, Ph.D.
Chairman, So. Calif. Ad Hoc Comm.
to Repeal the Emergency Detention Act

Letter dated 8/15/69