

BACKGROUND AND ARGUMENTS FOR THE REPEAL OF THE EMERGENCY DETENTION ACTThe Japanese Experience in World War II

In World War II, 115,000 Japanese Americans were incarcerated in detention camps unjustly and without trial under an executive order issued by the President of the United States. It is a fact that not a single act of espionage or sabotage was committed by any Japanese American either in the continental United States, or in Hawaii where some 150,000 Japanese Americans remained free during the entire duration of the war.¹ Two-thirds of those imprisoned were American citizens by birth, and yet, all their rights as citizens were abrogated.

Internal Security Act of 1950 -- Title II

In 1950 during the Communist hysteria of the McCarthy era, a law was passed making such detention legal. It is called the Emergency Detention Act of 1950 or Title II of the Internal Security Act of 1950. The Act authorizes the following:²

- a. The President of the United States may declare an "internal security emergency" in the event of:
 1. Invasion of the territory of the United States or its possessions, or,
 2. Declaration of war by Congress, or
 3. Insurrection within the United States in aid of a foreign enemy.
- b. 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."
- c. 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 he believes it would be dangerous to national safety and security to divulge."
- d. 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 detentions. Here again, the same exception not to be required to reveal information considered too dangerous to reveal applies.

The Act on its face violates the Constitution of the United States of America in at least the following respects:

- a. Due process of law, as guaranteed by the Fifth Amendment, is circumvented by the vague and indefinite provisions of the Act which authorizes deprivation of liberty not for commission of a crime, but only upon mere suspicion that one "probably will engage" in criminal conduct.
- b. The Act denies a detainee the right to trial by jury and the right to confront his accusers and to cross-examine the witnesses against him as guaranteed by the Sixth Amendment.

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- c. The Act imposes cruel and unusual punishment as it provides for indefinite detention without the right to bail in violation of the Eighth Amendment.

The law has not been used, and therefore, has not been tested in court for its constitutionality. The only way the act can be tested is for someone to be actually detained under its provisions. Considering all the human suffering and injustice caused by the detention of the Japanese Americans already, it would be unkind and inhumane to wait for such an event. The existence of the Act makes detention even easier and the person or group using it could not be held accountable for its action. In time of crisis there is usually hysteria and a tendency to take the most expedient course. Those who say mass detention can not happen again should remember that in times of hysteria and national emergency anything can happen. Furthermore, there are adequate laws³ under which persons committing espionage, sabotage, and other criminal acts against the United States can be brought to justice under due process of law, which is a right due every American citizen under the Constitution of the United States of America. Therefore, there is no good reason why the Act should not be repealed immediately.

Danger to All Americans

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 is reason to believe that certain government agencies or authorities are considering implementing the Emergency Detention Act as a means of quelling the forces of dissent in the country. On May 6, 1968, the House Committee on Un-American Activities issued a report⁴ recommending the use of the Act to imprison black militants by linking them with Communists, and therefore, with insurrectionists "in aid of a foreign enemy." In the event of war with Communist China, Americans of Chinese ancestry are clearly covered by this law. There have been attempts to label Vietnam war protestors as "disloyal" and "aiding the Enemy." In fact, this law can be applied to any group that is unlucky enough to be the target of hysteria. Today Black Americans are being threatened with concentration camps. Tomorrow, still another group may fall into disfavor. The Emergency Detention Act can only divide and destroy the United States.

¹ J. tenBorek, et al, Prejudice, War and the Constitution, University of California Press (1954), pp. 99, 288-89.

² Public Law 831 -- 81st Congress; Title II; Sec. 102, 103, and 104.

³ T. Emerson, et al, Political and Civil Rights in the United States, Little, Brown (1967), Vol. I, pp. 68-71.

⁴ House Report N. 1351, "Guerrilla Warfare Advocates in the United States," 90th Congress, 2nd Session.