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6
7 IN THE DISTRICT COURT OF THE UNITED STATES
8 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
9 CENTRAL DIVISION

10
11 ELMER S. YAMAMOTO, et al

12 Plaintiffs,

13 vs.

14 CHARLES HARTWELL BONESTEEL,
15 et al,

16 Defendants.

No. _____

POINTS AND AUTHORITIES
IN SUPPORT OF APPLICATION
FOR PRELIMINARY INJUNCTION

Yamamoto

014 311

17 I

18 Physical removal of a citizen of the United States from
19 the State of California, no matter his ancestry, by military officers,
20 is beyond their authority.

21 Alexander v. DeWitt, (9th Cir.) 141 Fed. (2d)

22 573, 577 (March 10, 1944).

23 "The order was not . . . a self-enforcing order, nor
24 did it constitute a threat of enforcement by any of the
25 defendants" (Gen. DeWitt and his subordinate officers).

26 Cf. Hirabayashi v. United States, 320 U.S. 81, 91; 87 L.ed.
27 1774, 1781, in which military curfew orders were upheld only because
28 they had express Congressional sanction, the enforcement of the
29 military order being by way of a criminal prosecution for viola-
30 tion of an Act of Congress, 18 U.S. Code Sec. 97a.

31 II

32 Military authority, abridging the liberty of the citizen,

June 23

1 may be exercised only when justified by clear military necessity.

2 Sterling v. Constantin, 287 U.S. 378; 77 L.ed. 375.

3 Cf. Hirabayashi v. United States, supra

4 Ex Parte Milligan, 4 Wall., 2; 18 L.ed. 281.

5 Mitchell v. Harmony, 13 How. 115; 14 L.ed. 75

6 Ebel v. Drum, (D. Mass.) 52 F. Supp. 189.

7 Schueler v. Drum, (E. D. Pa.) 51 F. Supp. 383.

8 In the matter of Lloyd Duncan, habeas corpus. Opinion of
9 United States District Judge D. E. Metzger (unreported), dated April
10 13, 1944; military orders in the Hawaiian Islands annuled; and martial
11 law held non-existent.

12 In the matter of Harry E. White, habeas corpus. Opinion of
13 United States District Judge J. Frank McLaughlin, dated May 2, 1944
14 (unreported), annulling martial law in the Hawaiian Islands.

15 (Both above cases have been appealed by the government to
16 the Ninth Circuit Court of Appeals, where the appeals are pending)

17 III

18 Absent clear justification because of serious military
19 emergency, discrimination because of race abridges due process of law.

20 Hirabayashi v. United States, 320 U.S. 81, 111;

21 87 L.ed. 1774, 1792.

22 Yu Con Eng v. Trinidad, 271 U.S. 500; 70 L.ed. 1059.

23 Cf. Yick Wo v. Hopkins, 118 U.S. 356; 30 L.ed. 220.

24 IV

25 Even war and military danger do not suspend the constitu-
26 tion nor the need for the protection of constitutional rights.

27 Home Building & Loan Ass'n. v. Blaisdell, 290 U.S.

28 398, 426; 78 L.ed. 413, 422:

29 " . . . war power is the power to wage war successfully,
30 and thus it permits the harnessing of the entire energies of
31 the people in a supreme cooperative effort to preserve the
32 Nation. But even the war power does not remove constitutional

1 limitations safeguarding essential liberties." (Italics ours).

2 Similarly, Justice Brandies recognized the paramount author-
3 ity of the Constitution, in war times equally as in peace, in
4 Hamilton v. Kentucky Distilleries, 251 U.S. 146:

5 "The war power of the United States, like its other
6 powers and like the police power of the States, is subject to
7 applicable constitutional limitation."

8 And in Sterling v. Constantin, 287 U.S. 378, a unanimous
9 Supreme Court pointed out that even as to the military authorities
10 both in war and in peace there is "no avenue of escape from the para-
11 mount authority of the Federal Constitution."

12 Respectfully submitted,

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