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Box 8
Folder 2
Item 13
Page 1
1944

ASW 014.311 WDC Excluse. Orders

Endo, Mitsuye (Miss)

x- Defense Command, WESTERN (C.G.)
Shiramiizu

014.311 WDC Exclusion Orders

4 Oct 44

4 October 1944

Major General G. H. Donastiel
Commanding General, Western Defense Command
Presidio of San Francisco, California

Dear General Donastiel:

Thank you very much for your letter of 28 September concerning the case of Miss Mitsuye Endo.

I have discussed this case at length with Mr. Fortas, the Under Secretary of the Interior, and I am still of the opinion that it would be unwise to grant Miss Endo a certificate of exemption at the present time. Mr. Fortas feels that as long as the War Relocation Authority is applying the regulations in question and has no plan to change them in the immediate future it would be inadvisable to meet the case, particularly when it has gone as far as it has towards a hearing in the Supreme Court. With the Interior Department taking that position, I don't see how the Army could take the position that, as far as Executive Order No. 9066 was concerned, she could leave the center. In view of the War Relocation Authority's claims of an independent right to enforce its leave regulations under Executive Order No. 9102, this would not meet the case, but would only confuse and weaken it.

The next question is whether, in order to be consistent with the position taken in the Shiramiizu case and in order to protect and carry out your responsibilities and authorities with relation to the exclusion of persons of Japanese ancestry from the West Coast, you should issue Miss Endo a certificate which permitted her to return to the West Coast but which did not grant her permission to leave the center. You are certainly right in your analysis that your authority under Executive Order No. 9066 is involved in this case to the extent that this Executive Order is being used as a grounds for keeping Miss Endo in the relocation center.

I think it very unlikely, however, that your authority and responsibilities involved in the exclusion of persons of Japanese ancestry from the West Coast under Executive Order No. 9066 will be passed upon in this case. It is true that Miss Endo's counsel does take the position that the real issue is

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Miss Endo's exclusion from the West Coast and that she is being detained by the War Relocation Authority only as an incident of such exclusion. This matter has been discussed with the Solicitor General and he thinks it very improbable that the court will make a decision on the validity of the continued exclusion from the West Coast in the Endo case. He feels that it is likely that the court will limit its decision to the issue of whether Miss Endo is legally detained, but that if they feel that the issue of the continued exclusion from the West Coast is involved, probably the most we have to fear is a remand to the District Court.

I believe, therefore, that despite the tactics of our opponents in the Endo and Korematsu cases (an example of which is found in Mr. Collins' brief which General Wilbur has supplied us) that it is probably not necessary to supply the certificate of exemption to Miss Endo to protect your authorities and responsibilities with respect to the exclusion of persons of Japanese ancestry from the West Coast under Executive Order No. 9066. I can also see some very real disadvantages if the certificate is issued. It will substantially weaken the position of the Department of Interior in a case with which they have decided to proceed. Furthermore, this action alone, unaccompanied as it unfortunately must be by any announcement of a general program involving the return of persons of Japanese ancestry to the West Coast, may not be of any particular assistance to us and might cause the Court to feel that we are attempting to affect the decision in a test case without changing or intending to change the general application of the Army's policies.

I realize that many of these issues are quite tenuous and involve considerations on which neither of us like to proceed, but I think on the balance of all the interests it would be inadvisable for you to issue a certificate of exemption for Miss Endo.

Sincerely,

(STRICTLY CONFIDENTIAL)

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