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Possible Removal of Japanese From Alien Enemy Classification.

By memorandum dated November 8, 1951, Philleo Nash, Special Assistant in the White House Office, transmitted a letter dated October 31, 1951, to the President from Mike Masaoka, National Legislative Director, Japanese American Citizens League, urging that the President issue a proclamation removing alien Japanese residing in the Continental United States and in the Territory of Hawaii from "enemy alien" classification.

The Commission, by memorandum dated November 29, 1951, transmitted Mr. Masoka's letter and Mr. Nash's memorandum to you, together with an expression of his views of the impact of the proposed action under laws administered by the Immigration and Naturalization Service. The Commissioner was of the opinion that the Department has responsibilities in other fields which might be affected by such action and that the reply to the White House should be made for the Department of Justice as a whole. Thereafter, on December 6, 1951, you transmitted the memoranda and letters to me. I concur in the Commissioner's views that a reply should be made for the Department as a whole, and therefore solicited the views of the Criminal and Claims Divisions and of the Office of Alien Property. These views are expressed in memoranda to me dated December 20, December 21, and December 29, 1951.

The Immigration and Naturalization Service has indicated the proposed action would have small effect on the laws which it administers, and the Criminal Division has stated that it has no interest in the subject matter at all.

The Office of Alien Property expresses the view that any Presidential action would be objectionable if it altered the definition of "national of a foreign country (Japan)", as defined pursuant to the Trading with the Enemy Act (50 U.S.C. App. sec. 5(b)), by Executive Order 8389, as amended, or the related definition of "national of a designated enemy country (Japan)", specified by Executive Order 9095, as amended, or the term "national" of Japan as it appears in section 39 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 39).

In his memorandum to me of December 26, 1951, Mr. Baldridge explains that the interest of the Claim Division arises as a result of its responsibilities with respect to the Alien Enemy Act of 1978 (50 U.S.C. 2124), which among other things permits the apprehension, removal, etc., of "natives, citizens, denizens, or subjects" of a nation between the United States and which a declared war exists. Japan and Japanese are not mentioned by name in the statute nor in any proclamation issued under it. However, the President did delegate to the Attorney General power to remove alien enemies, and until the war is formally terminated Japanese aliens remain enemies. In spite of the termination of hostilities, this power may theoretically still be exercised.

Ludecke v. Watkins, 335 U.S. 160. However, Mr. Baldridge points out that there is not likelihood whatsoever of any further removal orders being issued against Japanese. Since Japanese are not expressly designated as alien enemies by this statute or proclamations issued pursuant to it, the Claims Divisions speculates that the possibility of removal of Japanese may be the matter that is troubling Mr. Masaoka. Mr. Baldridge has considered the possibility of revoking the proclamations authorizing removal but feels that such action would have an adverse effect upon the Department's position in the case of United States ex rel Jaegeler v. Carusi, now pending before the Supreme Court. This case involves the present authority of the Attorney General to carry out a removal order issued against a German alien enemy in 1946 although the state of war with Germany was thereafter terminated by public Law 101, 82d Cong., 1st sess., and the contemporaneous Presidential Proclamation No. 2950 (19 F.R. 10915). Mr. Baldridge, therefore, suggests as an alternative to revoking the proclamations issued under the Alien Enemy Act that the Attorney General make a statement that no further removal orders will be issued against Japanese under that act. He also points out that there are some 302 removal orders now outstanding against persons of Japanese ancestry who renounced their United States citizenship during the period of conflict with Japan, and suggests that it might also be appropriate for the President or the Attorney General to require review of the renunciant cases and to so inform the Japanese American Citizens League.

Although I believe the Department may wish to give serious consideration to Mr. Baldridge's proposals, there is some question in my mind whether they touch on the real objective behind Mr. Masaoka's request, which is that the President formally terminate the state of war with Japan without awaiting confirmation of the Peace Treaty by the Senate. Such action appears to me to be objectionable for the reasons set forth in the letter to Mr. Nash prepared for your consideration and transmitted herewith.

I suggest that you notify Mr. Baldridge directly if you propose to give further consideration to his proposals.

Attachments