August 22, 1945

A I R  M A I L

Ernest Besig, Esq.
Director, American Civil Liberties Union
Northern California Branch
216 Pine Street
San Francisco 4, California

Dear Mr. Besig:

I have for reply your two letters of August 7, 1945 and your letter of August 11, 1945 relating to the detention as alien enemies of persons of Japanese ancestry who were formerly United States citizens but who renounced their citizenship pursuant to Section 401(i) of the Nationality Act of 1940 as amended. In replying to these letters I shall also refer to your letter to the Attorney General of July 24, 1945. It is evident from all of these communications that you are not familiar with the considerations of policy which led this Department to recommend the enactment of the amendment to the Nationality Act permitting voluntary renunciation of citizenship nor with the subsequent problems and considerations associated with the administration of the New statute. Because of your interest in this important public question I shall furnish you with a statement concerning the Act and concerning the legal questions which you now raise.

In the fall of 1943, following the disorders at Tule Lake on the first and fourth of November, a great deal of thought was given to the entire problem presented at Tule Lake by persons of Japanese ancestry, both citizens and aliens, who freely asserted their loyalty to Japan. It was found that there was at Tule Lake an inner group numbering well over a thousand young American citizens who were militantly loyal to Japan and who asserted the hope to return to Japan to fight for the Emperor and the desire to make all possible trouble for the United States. As a practical matter, it clearly would not have been possible to expel this group from the camp and to permit its members to be at large on the West Coast. As a legal matter, however, since they were born in the United States, there was no doubt that they were United States citizens, whatever their loyalty might be. It was Attorney General Biddle's opinion that the constitutionality of detaining American citizens not charged with crime on the ground that

they had been administratively determined to be disloyal was, to say the least, extremely doubtful. He thought it not unlikely that, if a writ of habeas corpus were brought and pressed, such detention would be held unconstitutional. If there was ever a case where the practical necessity of the situation was such, however, that the court might be driven to diminish the historic liberties of American citizens by permitting such detention, a habeas corpus case brought on behalf of avowedly disloyal persons of Japanese ancestry during the war most certainly would have been that case.

The answer to the apparent dilemma appeared to lie in the fact that the very degree of disloyalty which prevailed among the fanatical group at Tule Lake would in all probability induce the members of the group to renounce their citizenship if given an opportunity to do so. This it was believed would permit the detention of that group which clearly had to be detained in the real and demonstrable interests of national safety while at the same time avoiding the detention of American citizens. I believe that it was Mr. Biddle's view that such a program would serve the purposes both of national defense and of safeguarding civil liberties.

Accordingly the Attorney General recommended an amendment to the Nationality Law to permit a citizen voluntarily to renounce his citizenship. Because it appeared that during the war some renunciation of citizenship, not necessarily associated with the problems of Japanese-Americans, might be injurious to national defense, it was recommended that the right to renounce citizenship be limited by the power of the Attorney General to reject the renunciation if he found it contrary to the interests of national defense. The legislation was enacted by Congress in the form recommended by the Attorney General, and now every American citizen in time of war has an absolute right to renounce his citizenship limited only by the power of the Attorney General to disapprove it if the Attorney General finds the renunciation contrary to the interests of national defense. Neither the Attorney General nor any one else has any authority or discretion to reject renunciations of citizenship on any other ground.

It is also to be observed that at the time of the Attorney General's recommendation of this legislation to Congress there had been introduced in Congress at least a dozen bills providing for some form of involuntary loss of citizenship such as on the basis of a negative answer to question 28 of the so-called Loyalty Questionnaire of February 1943 or on the basis of any written or spoken statement of disloyalty to the United States. The danger which such legislation presents to civil liberties is apparent and it is believed that the enactment of the voluntary renunciation of citizenship bill was effective in preventing the passage of involuntary expatriation bills.

Precisely because it was foreseen that pressure might be brought to bear on citizens at Tule Lake to renounce and because it was feared that duress in the legal sense might be employed, every practicable measure was taken to make sure that each renunciant was not under immediate duress and understood the legal consequences of his act. Under the statute it would have been possible and easy to have appointed a group of clerks at Tule Lake and to permit those desiring renunciation merely to file past and sign a renunciation form. Instead, the Attorney General promulgated regulations requiring each person desiring renunciation individually to write to the Department asking for an application form. The application form itself then had to be sent to Washington and subsequently an individual hearing was held.

Inasmuch as the only issues which the Hearing Officers could legally consider were (1) whether the applicant understood the nature and consequences of his act and was voluntarily renouncing his citizenship, and (2) whether the renunciation would be detrimental to the interests of national defense, the hearings went far beyond what was legally necessary. They were under the general supervision of my assistant John L. Burling who has been working on problems concerning the Japanese-American group since several months before the evacuation and who is keenly sensitive to the civil liberties aspects of the problem. He conducted the first hearings himself and set up the pattern. All of the Hearing Officers were sent out from the Department in Washington and were either attorneys or other professionals of high standing. They were all given instruction as to the background of the evacuation and as to the group at Tule Lake. The form of the hearings themselves went as far as possible toward minimizing the possibility of duress. Each applicant was heard alone in a closed room with no other person of Japanese ancestry present. This necessitated the use of Caucasian interpreters which was difficult from the standpoint of personnel. A full stenographic transcript was made of each hearing and each hearing continued until the Hearing Officer was satisfied that the applicant understood that the signing of the paper would constitute an abandonment of all rights as an American citizen and until he was satisfied that the applicant desired to sign the renunciation form. In endeavoring to make sure that the renunciation was voluntary the Hearing Officers frequently asked questions such as concerning the applicant's experiences and loyalties before the outbreak of the war, his reasons for not considering himself an American and his attitudes toward Japan and the Japanese Emperor. In almost every case the applicant responded with a determined effort to paint himself as being fanatically loyal to Japan and as believing that the Emperor Hirohito is the living god, for whom he would willingly die. Since the applicant was alone, except for the Government officials, during the course

of these hearings, it would have been possible for him, in the event that he feared injury if he did not renounce his citizenship, to have told the Hearing Officer and for him to have left the hearing without signing the renunciation form and without his failure to renounce being known to any person of Japanese ancestry except himself. On several occasions this was done.

It is true that the number of renunciations was several times larger than the number anticipated. I do not, however, attribute this to the existence of a great number of persons who did not desire to renounce their citizenship but who were forced to do so because of fear of reprisal. I do attribute it to a great wave of pro-Japanese feeling which reached its high point in the late autumn of 1944 and the early months of 1945. At the time the hearings were started there were two organizations at Tule Lake having very large memberships which were openly carrying on pro-Japanese activities. One of these, the Hokoku Seinen Dan, was made up of young men. Nearly two thousand of these men were getting up in the morning, putting on a kind of uniform which included a rising sun embroidered on a sweatshirt and were marching in military formation and taking part in Japanese patriotic observances. These rites were accompanied by a well-trained bugle corps. Members of this organization shaved their heads so that they might more closely resemble Japanese soldiers. The purpose of this organization was to train these men so that they would be ready to fight in the Japanese Army if they should be returned to Japan. Their elders were less noisy but equally fervent. Their organization openly published a Japanese language paper containing Japanese propaganda. A Greater East Asia School was flourishing.

What stimulated this wave of pro-Japanese feeling is a matter for conjecture and need not be gone into here. Its existence, however, is beyond dispute. It appears furthermore that at least to some extent the number of renunciations was also increased by the opinion, which may or may not have been correct, among citizen-residents of the Tule Lake Center that renunciation was necessary to avoid compulsory relocation before the end of the year 1945. In any event, whether the residents of the Tule Lake Center renounced because they felt loyal to Japan and thought that the renunciation of American citizenship would serve as an indication of allegiance to the Emperor upon their return, or whether they renounced because they believed that this would make sure that they would be kept in detention during the war, or whether they renounced because they wanted to be in the same legal status as their parents or brothers, the fact is pretty clearly established that they understood what renunciation meant and that they wanted to go through the process. Whether they were wise or intelligent in making that decision is, of course, another matter entirely. I am satisfied, however, that in substantially every case the renunciation was accomplished as an exercise of the renunciant's free will.

The situation in which the various persons who have written to your organization asking your assistance in helping them restore their citizenship is that of persons who voluntarily made a change in their legal status and who now regret their action. As I have written several of these people, I have sympathy for them; but I am at a loss to understand how the Department's policy can be criticized. It is difficult to see in general why any citizen should not have the right to renounce his citizenship if he wishes to do so and it is also difficult to see what the Government should do in such cases beyond making sure that the act is understood and is not coerced. I do not perceive how any Government official could be asked to go further and to undertake to decide for the particular applicant that, notwithstanding his professed desire to renounce his citizenship, renunciation would not be in accord with his best interests.

It must be admitted that it is unfortunate that as a result of their own folly some 5,000 American citizens have thrown their citizenship away. on the other hand, it must be admitted that important public benefits have also been achieved as a result of the renunciation program. Following the decision of the Supreme Court in Ex parte Endo, the constitutionality of the detention of American citizens on the ground of disloyalty became even more dubious and at the same time it would have been, as a practical matter, impossible to release the 2,000 young men in the Hokoku Seinen Dan who asserted their desire to die fighting for the Emperor of Japan and who were already organized in semi-military formations. Due to the renunciation program, however, the problem was never posed and, in fact, shortly before he left office Attorney General Biddle informed the War Department that he did not believe that the detention of American citizens on the ground of disloyalty was then constitutional and the War Department and the Western Defense Command accepted his opinion and removed all citizens from the detention lists. Military officials have made it clear that the renunciation program was an important factor in leading them to accept this view. Had the Japanese war gone on longer the importance of this victory for civil liberties would, of course, have been greater, but even as it is every American citizen of Japanese ancestry (except those involved in criminal proceedings) was free of detention for some time prior to the cessation of hostilities.

Coming to the specific criticisms raised by your letters, I have already dealt to some extent with the question of pressure and renunciation. I have no doubt that there were many cases in which pressure was put on citizen children by alien parents. In every case, however, the child was given full opportunity to make a statement in the absence of his parents and, if he decided to do as his parents wished, it was his own choice and

there was no means by which the law could step in and forbid him to do so. The hearings were in no sense perfunctory and were far more careful than was necessary as a technical legal matter to determine whether the subject was acting voluntarily. In no case was duress a factor since that term refers to an act committed in immediate fear of bodily injury and since the renunciant in every case was alone at the time of the hearing and could not have been in immediate danger of any sort of physical injury from another person of Japanese ancestry.

As I have indicated, the Attorney General is without authority to disapprove renunciations unless he finds that such disapproval would be contrary to the interests of national defense. There is no case arising at Tule Lake in which the interests of national defense would be injured by approval of the renunciation. It follows, therefore, that the Attorney General is, as a matter of law, required to approve the renunciations (I am not now discussing the somewhat difficult question of whether a renunciant may withdraw his renunciation prior to the Attorney General's approval) unless he should find it to have been involuntary.

It is the present intention of this Department to keep in detention all renunciants and, therefore, Shigeru Kawano, to whom you refer in your letter of August 7, will not be permitted to leave the Tule Lake Center. The authority under which this detention is ordered is to be found in Section 21 of Title 50 of the United States Code and the Presidential Proclamation of December 7, 1941 delegating to the Attorney General the power to detain aliens of enemy nationality. You are correct in believing that no Presidential Warrant has been served upon Kawano. This, however, in no wise affects the legality of his detention.

Legally speaking, no warrant whatever is necessary to apprehend an alien enemy and the term "Presidential Warrant" is merely one which we in the Department of Justice have come to use for an order from the Attorney General to the Director of the Federal Bureau of Investigation instructing him to apprehend a particular alien enemy. It came to be called a Presidential Warrant, for no legal reason, in the early days of the Alien Enemy Control Program because it was analogous to a warrant and was based upon authority delegated by the President. It is, however, entirely intra-departmental. Since the Tule Lake Center is maintained by another department of the Government, the Attorney General has not sent an order to the Department of the Interior but has accomplished the same purpose by authorizing a letter to be written to the Department of the Interior requesting that that Department detain renunciants whose names appear on lists supplied to it. The name of every renunciant at Tule Lake appears on such lists.

Individual renunciants have not been informed that they are to be detained because the War Relocation Authority, I believe correctly, feared that if it became generally known in War Relocation Authority Centers that every renunciant would be detained that might lead to a fresh wave of renunciation in other Centers by persons who were loyal to the United States but who, because of economic fears, were unwilling to leave the Centers and who might renounce their citizenship as a means of insuring their continued detention in a camp. For this reason only such renunciants at Tule Lake as have indicated a desire to leave have been told that they are in detention. For the reason just given I feel that you would be performing a grave disservice and would be inviting thousands of additional renunciants if you were to inform your clients that the order is a general one.

Coming to the question of whether some of these renunciants are stateless, as you suggest, or are nationals of Japan, you are correct in believing that this Department is of the opinion that every renunciant may be presumed to be a Japanese national. The basis of this presumption is that under Japanese law a child born in the United States of Japanese citizen parents may himself acquire Japanese citizenship. Prior to a date in 1924 citizenship automatically attached to the child unless the parents went to the Japanese Consulate and filled out a form rejecting it on behalf of the child. After that date Japanese citizenship attached to the child if the parents registered his birth with the Japanese Consulate. The question of which American-born have Japanese citizenship, therefore, is a question of fact depending upon formalities before the Japanese Consuls. The records of the Consulates, however, have been destroyed and no evidence as to this question of fact would appear to be available except perhaps in some cases the testimony of the parents. The authorities are clear, however, that if an alien is detained as an alien enemy under Section 21, Title 50, U.S.C. the burden of persuasion is upon him to prove that he is not of enemy nationality. In this situation, however, the Department is not relying upon the legal circumstance that the renunciant is unable to sustain the burden of persuasion but relies upon the additional evidence of the subject's adherence to Japan in time of war. In almost every case the subjects told Hearing Officers that they were dual nationals or that they considered themselves as being Japanese. For example, George Fumio Tsuetaki, who you state advised you that he has never held dual citizenship, made these responses in the course of the hearing:

"Q Why don't you hold your citizenship?
A Well, I can't have both at one time.

Q. Why not?

A No, I think I have to make up my mind one way or the other.

Q Don't you think it would be better if you held on to your citizenship and then went to Japan and if you didn't like it, come back?

A I don't think they will stand for that either, because I am pretty sure they want me to be definite and I don't think this country would want a person like me if I weren't definite.

.....

Q Why don't you retain your citizenship?
A If I go back, it is the only way I have to be definite you know. I appreciate all the help you people are giving me.

Q Do you understand if you give up your citizenship and go to Japan, you can never come back here again and if you hold on to your citizenship, you can go to Japan and if you don't like it you can come back here?

A I don't think that's right though."

In addition, in an overwhelming majority of the cases the renunciants assured the Hearing Officers that they keenly felt allegiance to Japan and rejected any allegiance to the United States. In the light of these circumstances it appears to me that it is reasonable to presume that a person born in the United States of Japanese parents who during a war between the United States and Japan voluntarily renounces his United States citizenship and declares his allegiance to Japan is, in fact, a national of Japan.

It may be, of course, that there are some cases in which the renunciant can obtain evidence sufficient to carry the burden of persuading the court that, notwithstanding his rejection of United States citizenship and his assertions of loyalty to Japan, he is nevertheless not a Japanese national but is merely stateless. If you find such particular cases, it would be appropriate either to bring the facts to the attention of this Department or to institute habeas corpus proceedings since it will be conceded that persons born in the United States who become stateless are not subject to internment under the existing statute. In view of the persuasiveness of the reasoning that the children of enemy aliens who renounce their citizenship in time of war are in fact nationals of the enemy country, I do not believe, however, that evidence of bare assertions by the renunciant and his parents that Japanese nationality was rejected or that the birth was not registered at the Japanese Consulate will be sufficient.

You next ask how it is possible for persons born in the United States to be interned. As I have already indicated, the internment is under the authority of the alien enemy act which authorizes the internment of any citizen of an enemy state. The significance of birth within the United States is that such birth confers citizenship. Once the citizenship is

renounced the protection acquired by birth here disappears and the enemy national may be interned like any other alien enemy. In passing, I may say there is nothing peculiar to persons of Japanese origin about this. There are probably several million citizens of German or Italian origin who could be interned if they renounced their citizenship since both Germany and Italy recognize jus sanguinis.

You indicate that your branch of the American Civil Liberties Union contemplates litigation to compel the restoration of citizenship in some cases and to test the validity of detention in others. I certainly do not wish to prevent you from seeking to safeguard what you deem to be essential rights of American citizens or of stateless aliens residing in this country. On the other hand, I feel that I should point out to you that it would be necessary for the Government in defending such suits to make the arguments which I have just advanced here. I feel that you should consider carefully whether the prospects of success in the litigation are such as to make it in the public interest at this time to litigate issues such as these and to force the production of evidence such as this in open court. In the event, however, that you do feel prepared to assume this heavy responsibility, I trust that you will find this statement of the Department's position to be of value. Because of his interest in the problem discussed, I am sending a copy of this letter to Mr. Roger Baldwin.

Sincerely,

Edward J. Ennis
Director

cc: Mr. Roger Baldwin