

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN

DISTRICT OF WASHINGTON. NORTHERN DIVISION

1 UNITED STATES OF AMERICA,)

2 Plaintiff)

NO. 45738

3 -vs-

AMENDED DEMURRER

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION
JUL 23 1947

4 GORDON KIYOSHI HIRABAYASHI,)

5 Defendant.)

JUDSON W. SHORETT, Clerk
Deputy
Embossed

6 Comes now Gordon Kiyoshi Hirabayashi, defendant above named and demurs
7 to the Indictment herein upon the following grounds as to Count I:

8 1.

9 That said Count I of the Indictment fails to state facts sufficient to
10 constitute a crime;

11 2.

12 That Public Law No. 503, 77th Congress, approved March 21, 1942 under
13 and pursuant to which this action is brought is too indefinite and too uncer-
14 tain to be a valid criminal statute, and said Public Law No. 503 is unconstitu-
15 tional and void in that it fails to define any crime or course of conduct the
16 violation of which will constitute a crime, and said Public Law fails to define
17 with reasonable precision what act or acts it intends to prohibit.

18 3.

19 That Civilian Exclusion Order No. 57, dated May 10, 1942, in unconsti-
20 tutional and void for the reason that J. L. De Witt, Lieutenant General of the
21 United States Army, the Military Commander who issued said Order was without any
22 power or authority to add or create any class of persons subject to the provisions
23 thereof and designated as "persons of Japanese ancestry".

24 4.

25 That said Order of the Military Commander above referred to is further
26 unconstitutional and void for the reason that, if carried into effect, said
27 order would deprive this defendant of his liberty and property without due pro-
28 cess of law in violation of the Fifth Amendment to the Constitution of the
29 United States of America.

1 5.

2 That said Order of the Military Commander above referred to is uncon-
3 stitutional and void for the reason that, if carried into effect, it would de-
4 prive this defendant, an American citizen, of the privileges and immunities
5 to which the citizens in the several states are entitled, in violation of and
6 contray to the provisions of Article IV, Section 2, Clause 1 of the Constitu-
7 tion of the United States of America.

8 6.

9 That said Order of the Military Commander hereinabove referred to was
10 and is unauthorized and void for the reason that it was not authorized by the
11 Executive Order No 9066 referred to in Count I of the indictment, nor by any
12 other order of the President of the United States.

13 7.

14 That said Order of the Military Commander hereinabove referred to is
15 and was unauthorized and void for the reason that said Executive Order No.
16 9066 referred to in Count I is unconstitutional and void insofar as it attempts
17 to include in the class of persons who may be excluded any other persons than
18 the alien enemies defined in section 21, title 50 of the United States Code
19 pursuant to which said Executive Order was issued.

20 8.

21 That said Public Law No. 503 and said Executive Order and the Public
22 Proclamations and Military Orders hereinabove and in Count I referred to, are
23 unconstitutional and void for the reason that they violate the rights of this
24 defendant to be free from unreasonable seizure of his person under the Fourth
25 Amendment to the Constitution of the United States of America.

26 9.

27 That said Public Law No. 503 above referred to is unconstitutional and
28 void for the reason that it fails to set up any standards for the regulations
29 which the Military Commanders were permitted to promulgate and is therefor an
30 unconstitutional delegation of the powers of the legislature.

10.

That said Public Law No. 503 and the proclamations and military orders issued pursuant thereto are unconstitutional and void for the reason that they are arbitrary and capricious and fail to show or set up any sufficient or reasonable basis for the classification of persons subject thereto.

That the defendant further demurs and to Count II of the Indictment herein upon the following grounds:

1.

That said Count II fails to state facts sufficient to constitute a crime;

2.

That Public Proclamation No. 3, issued March 24, 1942 by the Military Commander referred to in said Count II, and particularly that portion thereof quoted in said Count II is unconstitutional and void for the reason that, if carried into effect, said order will deprive this defendant of his liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States of America.

3.

That said order of the Military Commander, or Proclamation No. 3, above referred to is unconstitutional and void for the reason that, if it is carried into effect, it will deprive this defendant, an American citizen, of the privileges and immunities to which the citizens of the several states are entitled, contrary to Article IV, Section 2, Clause 1 of the Constitution of the United States of America.

4.

That said Public Proclamation No. 3 above referred to is unconstitutional and void for the reason that it is not authorized by said Executive Order No. 9066 referred to in Count II, nor by any other order of the President of the United States of America.

(3).

That said Public Proclamation No. 3 referred to in Count II is and was unauthorized and void for the reason that it is not authorized by any valid legislative act or law of the Congress of the United States of America.

Frank L. Walters
FRANK L. WALTERS.

Attorney for the Defendant.

Received a copy of the within

Amended Return this

29 day of June 1947

J. Charles Morris

Attorney for SEY