

January 11, 1994

Mr. James P. Turner
Acting Assistant Attorney General for Civil Rights
Department of Justice
P.O. Box 65808
Washington, D.C. 20035-5808

Subject: "Liberty" and the Civil Liberty Act of 1988

Dear Mr. Turner,

When our representatives and others met with you on August 2, 1993 in Washington, D.C., one topic of discussion was the situation of individuals who lived in Arizona just outside of the wartime exclusion zone. At that time, you indicated that the Office of Redress Administration (ORA) had not settled on a definition of "liberty" with which to determine whether these or other individuals were eligible for redress under the Civil Liberties Act of 1988.

As you know, the relevant sections of both that Act and ORA regulations state that an otherwise qualified individual is eligible for redress if he or she "was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of (i) Executive Order 9066... or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry." [emphasis added] (28 CFR, Section 74.3(a)4)

In the course of that discussion, you agreed to take into consideration our suggestions toward a definition of liberty. Based on consultation with leaders and members of our chapters, this letter represents our organization's draft for discussion on this issue.

We believe that the definition of liberty in Black's Law Dictionary offers a clear and objective starting point. That definition states in part that liberty is:

"Freedom from all restraints except such as are justly imposed by law. Freedom from restraint, under conditions essential to the equal enjoyment of this same right by others; freedom regulated by law. The absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. *Brazo v. Connecticut Real Estate Commission*, 177 Conn. 515, 418 A.2d 883, 890.

"The 'liberty' guaranteed and protected by constitutional provisions denotes not only freedom from unauthorized physical restraint, but embraces also the freedom of an individual to use and enjoy his faculties in all lawful ways, acquire useful knowledge, marry, establish a home, and bring up children, worship God according to the dictates of his own conscience, live and work where he chooses, engage in any of the common and lawful occupations of life, enter into all contracts which may be proper and essential to carrying out successfully the foregoing purposes, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free people...

"The 'personal liberty' guaranteed by Thirteenth Amend., U.S. Const., consists in the power of locomotion without imprisonment or restraint unless by due course of law, except those restraints imposed to prevent commission of threatened crime or in punishment of crime committed..."

Black's Law Dictionary also defines "civil liberty" as:

"The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. 1 Bl.Comm. 125. The power of doing whatever the laws permit. 1 Bl.Comm. 6. The greatest amount of absolute liberty which can, in the nature of things, be equally possessed by every citizen in a state."

The above definitions properly describe the very broad and inclusive scope inherent in the concepts of liberty and civil liberty. In brief, liberty is the freedom to engage in any and all legal activities without unjust interference. Neither the Civil Liberties Act of 1988 nor the ORA regulations qualify or narrow the meaning or usage of liberty.

Based on this general understanding, we would suggest the following as a more specific basis to help determine whether an individual was unjustly deprived of liberty:

An individual shall be considered to have been deprived of liberty within the meaning of the Civil Liberties Act of 1988 if, as a result of Executive Order 9066 or other similar or related actions by the government or its agents, representatives, officers, or employees, the individual, on the basis of his or her Japanese ancestry, faced unjust:

- Abridgement of any right protected by the Constitution; or
- Restrictions including, but not limited to, confinement, incarceration, detention, arrest, relocation, curfews, searches, prohibitions on speech, assembly or travel, prohibitions on the ownership or use of certain items, denial of full access to government services, entitlements, permits, licenses, or government ration books or coupons; or

- Travel, curfew or other restraints that prevented or prohibited the individual from engaging in activities including, but not limited to the following:
 - working or seeking employment, or practicing a profession or vocation;
 - conducting business, such as farming or sales, or attending to personal affairs, including, but not limited to visiting banks, courts, post offices, attorneys, contractors, government offices, etc.;
 - inhabiting, using, renting, leasing, purchasing or attending to his or her domicile, residence, place of business or other personal or real property;
 - voting, registering to vote, seeking election to public office, attending government meetings, hearings or other events, or attending political campaign events;
 - attending school, college, university or other institutions of learning or training;
 - attending religious ceremonies, services, functions, meetings or other gatherings;
 - visiting physicians, dentists or other healthcare personnel or facilities;
 - shopping for food, clothing, fuel or other necessities or goods, supplies or services;
 - attending weddings, funerals or other gatherings of relatives, friends, colleagues or acquaintances;
 - visiting or taking care of the homes, farms, businesses, property or affairs of family, relatives, friends or acquaintances;

We hope that this letter will stimulate further dialogue and contribute to an early resolution of the matter. We look forward to hearing your feedback on the above.

Very truly yours,



John Ota
for the NCRR Steering Committee

cc: Sen. Daniel Inouye
Sen. Dianne Feinstein
Rep. Norman Mineta
Rep. Robert Matsui