

Supreme Court of the United States.

MINORU YASUI

v.

UNITED STATES.

No. 871.

Argued May 10, 11, 1943.

Decided June 21, 1943.

On Certificate from the United States Circuit Court of Appeals for the Ninth Circuit.

Minoru Yasui was convicted in the District Court, 48 F.Supp. 40, of violating the Act of Congress which makes it a misdemeanor knowingly to disregard restrictions made applicable by a military commander to persons in a military area prescribed by him as such as authorized by an Executive Order of the President, and on appeal the Court of Appeals for the Ninth Circuit certified questions of law to the Supreme Court.

Conviction sustained but judgment vacated and cause remanded for resentencing.

Messrs. E. F. Bernard, of Portland, Or., and A. L. Wirin, of Los Angeles, Cal., for Yasui in No. 871.

Mr. Charles Fahy, Sol. Gen., of Washington, D.C., for the United States.

Mr. Chief Justice STONE delivered the opinion of the Court.

This is a companion case to *Hirabayashi v. United States*, 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774, decided this day.

The case comes here on certificate of the Court of Appeals for the Ninth Circuit, certifying to us questions of law upon which it desires instructions for the decision of the case. s 239 of the Judicial Code as amended, 28 U.S.C. s 346, 28 U.S.C.A. s 346. Acting under that section we ordered the entire record to be certified to this Court so that we might proceed to a decision, as if the case had been brought here by appeal. 63 S.Ct. 860, 87 L.Ed. ---.

Appellant, an American-born person of Japanese ancestry, was convicted in the district court of an offense defined by the Act of March 21, 1942, 56 Stat. 173, 18 U.S.C.A. s 97a. The indictment charged him with violation, on March 28, 1942, of a curfew order made applicable to Portland, Oregon, by Public Proclamation No. 3, issued by Lt. General J. L. DeWitt on March 24, 1942. 7 Federal Register 2543. The validity of the curfew was considered in the *Hirabayashi* case, and this case presents the same issues as the conviction on Count 2 of the indictment in that case. From the evidence it appeared that appellant was born in Oregon in 1916 of alien parents; that when he was eight years old he spent a summer in Japan; that he attended the public schools in Oregon, and also, for about three years, a Japanese language school; that he later attended the University of Oregon, from which he received A.B. and LL.B degrees; that he was a member of the bar of Oregon, and a second lieutenant in the Army of the United States, Infantry Reserve; that he had been employed by the Japanese Consulate in Chicago, but had resigned on December 8, 1941, and immediately offered his services to the military authorities; that he had discussed with an agent of the Federal Bureau of Investigation the advisability of testing the constitutionality of the curfew; and that when he violated the curfew order he requested that he be arrested so that he could test its constitutionality.

The district court ruled that the Act of March 21, 1942, was unconstitutional as applied to American citizens, but held that appellant, by reason of his course of conduct, must be deemed to have renounced his American citizenship. D.C., 48 F.Supp. 40. The Government does not undertake to support the conviction on that ground, since no such issue was tendered by the Government, although appellant testified at the trial that he had not renounced his citizenship. Since we hold, as in the *Hirabayashi* case, that the curfew order was valid as applied to citizens, it follows that appellant's citizenship was not relevant to the issue tendered by the Government and the conviction must be sustained for the reasons stated in the *Hirabayashi* case.

But as the sentence of one year's imprisonment--the maximum permitted by the statute--was imposed after the finding that appellant was not a citizen, and as the Government

states that it has not and does not now controvert his citizenship, the case is an appropriate one for resentence in the light of these circumstances. See *Husty v. United States*, 282 U.S. 694, 703, 51 S.Ct. 240, 242, 75 L.Ed. 629, 74 A.L.R. 1407. The conviction will be sustained but the judgment will be vacated and the cause remanded to the district court for resentence of appellant, and to afford that court opportunity to strike its findings as to appellant's loss of United States citizenship.

So ordered.

Conviction sustained; cause remanded for resentence.