

Supreme Court of the United States  
Washington, D. C.

June 4, 1943

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

Dear Chief:

I hate to add to your troubles - I really do - for I have some knowledge of how difficult it is to manage affairs when those who ought to act like collaborators behave as though they were engaged in a rival grocery business. I know also the concerns naturally aroused in you by Douglas' concurrence. But I profoundly believe that the way to deal with it is not to yield to it.

Boskey will tell you the circumstances of a two-hour talk I had with Brother Black who put my anxiety about this business vividly when he told me that he had been arguing against Douglas' invitation to bring "a thousand habeas corpus suits in the district courts". He went on to say that so far as he was concerned, if he were the Commanding General he would not allow these men to go back even if the Court should establish their loyalty!

I quote this attitude of Black's because it confirms what I understood to be your conviction that it is unwise to indicate by direct language that there may be modes of relief for those now in the internment camps. Of course all those questions are reserved in your recirculated opinion, and even a second year man at law school would know that they were all so reserved. An explicit reservation of opportunities for raising in judicial proceedings questions of individual loyalty or other issues of that sort, inevitably will encourage the institution of many such suits. We are dealing here with interests that are represented by able and eager counsel, and they will have a right to assume that when this Court goes out of its way explicitly to make such reservations that the legal issues are promisingly open here. I certainly do not want to foreclose them, but neither do I want to give any encouragement to them other than

that which inevitably arises from deciding no more than we have to decide. From the point of view of judicial administration as well as from that of civil liberties, it would be for me deplorable beyond words to hold out hopes by any language that we use, that as a matter of forecast - based even on the views of such extremists in these matters as Jackson and Black - would, I know, be blasted.

I hope, therefore, that you will overcome your natural hesitation and send for Brother Douglas and talk him out of his opinion by making him see the dangers that he is inviting. I verily believe Black will be working toward the same end. But if ~~he~~ <sup>Douglas</sup> is obdurate, largely because he will want to make the spread-eagle speech of the first part of his opinion, then I think you should let him make his own explicit reservations, and you should stand on your own original implied reservation. For this does not foreclose any questions which ought to be kept open, but it also does not, by language which lawyers and others will read with a meaning which you do not intend, encourage hopes, which to put it very mildly, are not likely to be fulfilled.

Faithfully yours,

          
J.F.

The Chief Justice