

## OCTOBER TERM, 1958.

CLARK, J., dissenting.

360 U. S.

it is deficient. I am sure that it will remember that in other times of emergency—no more grave than the present—it was permitted, without any hearing whatsoever—much less with confrontation and cross-examination—to remove American citizens from their homes on the West Coast and place them in concentration camps. See *Hirabayashi v. United States*, 320 U. S. 81 (1943); *Korematsu v. United States*, 323 U. S. 214 (1944). My examination of the Japanese exclusion orders indicates clearly that the Executive Order was a general authorization just as the two here. Congress at the time only created criminal offenses for violation of exclusion or curfew orders of the military commander. Likewise we have criminal statutes here. And while the Japanese orders were in time of war, those involved here had their inception in war and have been continued during the national emergency declared by the President. No one informed in present world affairs would say that our safety is less in jeopardy today. In fact we are now spending nearly as much money to protect it as during the war period. In this light it is inescapable that the existing authorizations are entirely sufficient. Let us examine them.

## II. THE PRESIDENT AND THE CONGRESS HAVE GRANTED SUFFICIENT AUTHORITY TO THE CABINET OFFICERS.

Since 1941 the industrial security program has been in operation under express directives from the President. Within a week after the attack on Pearl Harbor, President Roosevelt issued Exec. Order No. 8972, 6 Fed. Reg. 6420, Dec. 12, 1941, which authorized both the Secretary of War and the Secretary of the Navy "to establish and maintain military guards and patrols, and to take other appropriate measures, to protect from injury and destruction national-defense material, national-defense premises, and national-defense utilities, . . ." (Emphasis added.)