

20/201

June 23, 1945

MEMORANDUM FOR THE ATTORNEY GENERAL

On February 10, 1945, Mr. Shoemaker, Acting Commissioner of Immigration and Naturalization, requested your opinion on certain questions with reference to the naturalization of Filipinos. You referred the papers to me. After considering them, I concluded that the only question of substance involved might be stated as follows:

10 Are native Filipinos, who had always been domiciled in the Philippine Islands, entitled to the benefits of section 701 of the Nationality Act, relating to the naturalization of non-citizens in the armed forces of the United States?

4 The answer to this question appeared to me to depend upon whether the Philippine Islands were included in the phrase "United States, including its territories and possessions," used in section 701 of the Nationality Act of 1940, as amended by the act of December 22, 1944.

I wrote Mr. Carusi on April 11, 1945, requesting that he give the matter further consideration. I quote below from my memorandum:

10 "The phrase, 'United States, including its territories and possessions,' has heretofore been understood as including the Philippine Islands. This is set forth in the 'operations instructions' which accompanied Mr. Shoemaker's memorandum. There is nothing in the act of December 22, 1944, that could affect this.

"If the question is reopened now it will be purely a reconsideration of a decision previously made. This could not very well be undertaken without full information regarding the prior decision and the reasons then relied upon to support it, full information regarding petitions (pending and disposed of) for naturalization under sections 701 and 702 by Filipinos or aliens admitted to the Philippine Islands, the reasons for now reopening the question, etc., etc."

4 Mr. Carusi has now replied under date of June 11, transmitting a further memorandum from Mr. Winings dated June 8. You will notice

Mr. Winings, after further consideration, states that he is "unable to reach a conclusion in which I have complete faith" but feels that "perhaps the balances are more heavily weighted upon the side of the construction" previously adopted and promulgated by the Immigration and Naturalization Service—that is, that the phrase "United States, including its territories and possessions," includes the Philippine Islands.

Figures submitted in response to my request indicate that during the period from 1942 to March 31, 1945, inclusive, approximately 7,000 Filipinos were naturalized under secs. 701-702. (See p. 2 of Mr. Winings' memorandum dated June 8, 1945.) Of this number approximately 1,057 were awarded citizenship outside the United States under sec. 702—but no such awards of citizenship have as yet been made within the Philippine Islands. It will be noted that nearly 6,000 have been naturalized by the courts.

Mr. White, of the Immigration and Naturalization Service, states that many of these persons had enlisted in the Navy from the Philippine Islands, that some may thereafter have reenlisted within continental United States or within a territory or possession other than the Philippines, and that in such manner could perhaps qualify as having been "lawfully admitted into the United States, including its territories and possessions" and "at the time of his enlistment or induction a resident thereof," even if the words of the statute do not include the Philippine Islands. He stated that information of this character could not be furnished except after careful examination of the 7,000 cases.

We have not yet conducted naturalizations under the present law within the Philippine Islands, but are about to do so. (See Mr. Winings' memorandum dated June 8, page 2, 1st paragraph.) The alternative possibility regarding qualification, mentioned in the preceding paragraph, may perhaps exist in a smaller percentage of cases involving naturalizations within the Philippine Islands.

It is my opinion that the construction heretofore adopted and promulgated by the Immigration and Naturalization Service is at least permissible, that the contrary view would be no less free from doubt, and that it would be inadvisable to attempt to make a change now without legislation. If you feel otherwise, I recommend that before final action is taken the office of the Commissioner of Immigration and Naturalization be requested to undertake the necessary study and supply detailed information regarding the 7,000 Filipinos heretofore naturalized under secs. 701 and 702.

You will also wish to bear in mind that approximately six-sevenths of the cases have involved naturalizations by the courts and

that the question might therefore be regarded as judicial.

If you approve my recommendation, I shall be glad to advise Mr. Carusi of the conclusion that the construction heretofore adopted should not be disturbed. Please let me know your wishes.

4 / Hugh B. Cox
Assistant Solicitor General