
Ruling of Judge George W. Anderson on the Petition for *Habeus Corpus* of 20 Alien Members of the CP A: Boston, MA — June 23, 1920.

by William J. West

**Excerpt from the weekly report of Special Agent William J. West for the week ending June 26, 1920.
Copy in DoJ/BoI Investigative Files, NARA collection M-1085, reel 922.**

Radical Organizations.

Communist Party of America.

On June 23, 1920, Judge George W. Anderson of the US District Court at Boston, Mass. rendered an opinion in the petition for habeas corpus on behalf of 20 alien members of the Communist Party of America, arrested in the raids of January last. The alien Communists involved in this petition are William T. Colyer, Amy Colyer, Frank Mack, Lew Bondar, Frank Matchian, Tehon Lanovoy, Trofin Yarmoluk, Anton Harbatuk, Anton Gicewicz, Fred Chaika, Koly Honcheroff, Andrew Musky, Sedor Serachuk, Ivan T. Hyrnchuk, Theodore Paschukoff, William Maches, William Chriupko, Joe Sinkus, Vladimir Serachuk, and Sem Drakevich.

At the time of the commencement of the proceedings on this petition the first 13 above named were under orders of deportation, while the last 7 of the above named were being held by the Immigration authorities in default of bail awaiting decision in their cases by the Secretary of Labor.

In the summary of the results reached Judge Anderson finds:

(1) There is no evidence that the Communist Party is an organization advocating the overthrow of the Government of the United States by force or violence. Hence all the petitioners ordered deported are entitled to be discharged from the custody of the Immigration authorities.

(2) If the first conclusion be not sustained by the Court above, and if the final holding be that duly approved or admitted Communists are obnoxious to the statute, then in the cases of William T. Colyer, Amy Colyer, Frank Mack, and Lew Bondar, the petitions should be dismissed, the writs discharged, and the petitioners remanded to the custody of the respondent for deportation — unless in the opinion of the Court above further hearing be requisite to determine whether the “undercover informants” of the Department of Justice were, in any material degree, influential in giving form and color to the documents of the Communist Party on which the Secretary of Labor based his conclusions against said aliens.

(3) Assuming such final decision to be against duly proved or admitted Communists — then the records in the case of all the aliens other than the Colyers, Mack, and Bondar, ordered deported are, on all the evidence, found to be vitiated by lack of due process of law; these aliens are therefore entitled to be discharged from the respondent's custody; but without prejudice to the right of the Department of Labor on new proceedings hereafter to find said aliens Communists and on that ground to deport them.

(4) The cases of aliens admitted to bail pending final decision by the Department of Labor, are after final decision by the Secretary to be disposed of by discharging aliens in whose cases warrants may be ordered cancelled, and remitting the other aliens to their right either to apply for a further hearing to determine whether they are to be classified with the Colyers, Mack, and Bondar, or with those aliens whose records are vitiated by lack of due process.

ORDERED ACCORDINGLY.

Addendum.

Pending decision, the Department of Labor has, in 3 of the bail cases reached conclusions:

In the case of Ivan Hyrnchuk, the conclusion is that he should be deported. A consideration of the evidence

adduced before me and of Hyrnchuk's record, on which the Secretary of Labor has based his conclusion, shows that that record is, like those of the 9 grouped together, *supra*, vitiated by lack of due process. Hyrnchuk's case is, therefore, grouped with the other 9, sufficiently dealt with above.

In 2 other cases — William Chiupko and Samuel Drakevich — the decision of the Department of Labor is that the warrants be cancelled. Orders may accordingly be made, setting these aliens at liberty, and of course cancelling their bail bonds.

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In commenting upon the above decision the *Boston Post* for June 25th [1920] states:

Whether or not one agrees with the reasoning that impels Judge Anderson of the US District Court to order the release of the so-called "Reds" or members of the Communist Party arrested here last January, it must be admitted even by the one sincere apologist of these people that the due process of law against which so many of them rail, protects them in time of trouble. Of course, it is to be remembered that Judge Anderson's is not the last word in the case. It is necessary in the public interest that the decision be carried to the Supreme Court of the US. When that highest of all tribunals determines the matter, it will be time to comment upon it, not before.

The *Boston Traveler* for June 25th [1920] states:

Judge Anderson's decision in the cases of the alien Communists held for deportation is no surprise to anyone who had noted the presiding Justice's comments during the protracted trials. That portion of the public which is inclined to deal dispassionately with the "Reds" and to favor plenty of free speech in the belief that some such safety valve is necessary, will derive much satisfaction from the Federal Judge's verdict. That other portion of the public, equally sincere, and rather more easily alarmed over radical propoganda and activities, will regret that membership in the Communist Party has been found not to warrant deportation....

It is not easy to agree with Judge Anderson in his view that there is "not a scintilla of evidence" that the Communists are committed to the overthrow of the government of the United States by "force" or "violence." His opinion that certain of the detained radicals favored the overthrow of the government, "not in deed but in word," raises the question

how we are to determine the purposes and teachings of the Communists except by their own words. The only "force" which Judge Anderson finds the Communists advocating is the economic force of the general strike. Just how that could become a means of producing the changes in the social order desired by the Communists without a subsequent resort to armed violence has never been explained, and the illustrious example of Russia is far from convincing.

The *Boston Transcript* for June 25th [1920] states:

The question between "force" and "violence" involved in Judge Anderson's decision liberating the Communists detained for deportation, is a highly important one. Undoubtedly it involves the safety and continuity of the Republic. If a general strike is in "force" and also "violence" in the sense implied in the Act of Congress which Judge Anderson was interpreting, the people have no legal weapon against revolution or concerted violence. Judge Anderson may be, of course, sustained by a higher court, but if it be sustained, Congress will be obliged to take the bull by the horns and adopt legislation, and if need be submit a constitutional amendment to establish the right and power of the majority to resist by lawful means, a means which puts the force wielded by a minority above the will and liberty of the majority.

What is the general strike? It is a concerted cessation not necessarily of all the employees in all industries, but of enough employees to prevent the operation of those industries. It is, when employed, deliberately aimed at the general public, the purpose being to inflict such need and distress upon the public that the demand of the employees, whatever it may be, will be granted. The general strike, as applied to a political purpose (and that is the purpose to which the Communist Party is devoted), is the negation of the right of the majority to govern; it is negation because if the employees who have this purpose and intention were the majority they would by that fact be able to obtain their purpose through the government. It is because the majority refuses their demand that the strikers resort to the force, involving hunger, thirst, cold, and inability to travel, through which this general political strike is expected to prevail....

If the general strike, as conceived by the Communist Party as a political engine for destroying the "capitalistic state" is not "violence," the American people who believe in changes only by constitutional means and by the will of the majority certainly want to know this from the highest authority.

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Edited by Tim Davenport.

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