ated.[1640] Against a contention that Congress' war powers had been used to achieve the result, the Court struck down for the second time in history a congressional statute as an infringement of the First Amendment.[1641] It voided a law making it illegal for any member of a "communist-action organization" to work in a defense facility.[1642] The majority reasoned that the law overbroadly required a person to choose between his First Amendment-protected right of association and his right to hold a job, without attempting to distinguish between those persons who constituted a threat and those who did not.[1643]

On the other hand, in *New York Times Co. v. United States*,[1644] a majority of the Court agreed that in appropriate circumstances the First Amendment would not preclude a prior restraint of publication of information that might result in a sufficient degree of harm to the national interest, although a different majority concurred in denying the government's request for an injunction in that case.[1645]

Enemy Aliens.—The Alien Enemy Act of 1798 authorized the President to deport any alien or to license him to reside within the United States at any place to be designated by the President.[1646] Though critical of the measure, many persons conceded its constitutionality on the theory that Congress' power to declare war carried with it the power to treat the citizens of a foreign power against which war has been declared as enemies entitled to summary justice.[1647] A similar statute was enacted during World War I[1648] and was held valid in *Ludecke v. Watkins*.[1649]

During World War II, in *Ex parte Quirin*, the Court unanimously upheld the power of the President to order to trial before a military tribunal German saboteurs captured within the United

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[1640] *E.g.*, Yates v. United States, 354 U.S. 298 (1957); Albertson v. Subversive Activities Control Bd., 382 U.S. 70 (1965); United States v. Brown, 381 U.S. 437 (1965).

[1641] United States v. Robel, 389 U.S. 258 (1967); *cf.* Aptheker v. Secretary of State, 378 U.S. 500 (1964). *See also* Schneider v. Smith, 390 U.S. 17 (1968).

[1642] Section 5(a)(1)(D) of the Subversive Control Act of 1950, 64 Stat 992, 50 U.S.C. § 784(a)(1)(D).

[1643] 389 U.S. at 264–66. Justices Harlan and White dissented, contending that the right of association should have been balanced against the public interest and finding the weight of the latter the greater. Id. at 282.

[1644] 403 U.S. 713 (1971).

[1645] The result in the case was reached by a six-to-three majority. The three dissenters, Chief Justice Burger, 403 U.S. at 748, Justice Harlan, id. at 752, and Justice Blackmun, id. at 759, would have granted an injunction in the case; Justices Stewart and White, id. at 727, 730, would not in that case but could conceive of cases in which they would.

[1646] 1 Stat. 577 (1798).

[1647] 6 WRITINGS OF JAMES MADISON 360–361 (G. Hunt ed., 1904).

[1648] 40 Stat. 531 (1918), 50 U.S.C. § 21.

[1649] 335 U.S. 160 (1948).