

Primary Sources: Korematsu v. United States (1944)

By U.S. Supreme Court, adapted by Newsela staff on 01.02.20

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Fred Korematsu (second from right) is pictured with his family. Photo: Wikimedia Commons. Licensed under CC-BY-2.0

Editor's Note: In February 1942, President Franklin D. Roosevelt issued Executive Order 9066. It was in response to Japan's bombing of the U.S. Navy base in Pearl Harbor, Hawaii. The order forced Japanese Americans on the West Coast to leave their homes. They were sent to internment camps. Fred Korematsu was a young Japanese American living in California. He refused to leave his home. He sued the U.S. government for violating his constitutional rights. The case went to the U.S. Supreme Court. It ruled 6-3 against him.

Korematsu V. United States (No. 22)

Argued: October 11, 12, 1944; Decided: December 18, 1944

JUSTICE H. BLACK delivered the opinion of the Court.

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area." His action was contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which

directed that, after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to the petitioner's loyalty to the United States. The importance of the constitutional question involved brought the case before the Supreme Court.

It should be noted, to begin with, that all legal restrictions which limit the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. Pressing public necessity may sometimes justify the existence of such restrictions. Racial hostility never can.

The 1942 act was previously attacked in the *Hirabayashi* case as an unconstitutional delegation of power. That case argued that to apply the curfew order against none but citizens of Japanese ancestry amounted to discrimination solely on account of race. We upheld the curfew order as an exercise of the power of the government. The decision was viewed as necessary to prevent spying and sabotage in an area threatened by a Japanese attack. Military authorities then concluded that curfew alone provided inadequate protection and ordered exclusion.

Investigations confirmed there were members of the group who retained loyalties to Japan. Approximately 5,000 American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States. When our shores are threatened by hostile forces, the power to protect must be equal to the danger.

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire. The military authorities considered that the need for action was great, and time was short. With the calm perspective of hindsight, we cannot now say that, at that time, these actions were unjustified.

Dissent

JUSTICE J. ROBERTS.

This is not a case of keeping people off the streets at night, as was *Hirabayashi v. United States*, 320 U.S. 81. Nor is it a case of temporary exclusion of a citizen from an area for his own safety or that of the community. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp. The decision is based on his ancestry, and solely because of his ancestry. I need hardly labor the conclusion that constitutional rights have been violated.

JUSTICE F. MURPHY.

This exclusion of "all persons of Japanese ancestry, both alien and non-alien," from the Pacific Coast area on a plea of military necessity ought not to be approved. It falls into the ugly abyss of racism.

In dealing with matters relating to the prosecution and progress of a war, we must give great respect and consideration to the judgments of the military authorities. At the same time, it is essential that there be limits to military authority. Individuals must not be stripped of their constitutional rights on a plea of military necessity that has neither substance nor support.

JUSTICE R. JACKSON.

Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity, and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that he is not law-abiding and well-disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived.

Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese ancestry. But a judicial construction of the due process clause is a far more subtle blow to liberty than the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. But a judicial opinion that rationalizes such an order has wider implications. It suggests that the Court supports the policy of racial discrimination and of transplanting American citizens. The policy then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a claim of an urgent need.