

## Classifying Arguments Activity

### *Korematsu v. United States (1944)*

After reading the **background, facts, issue, constitutional provisions, law, and executive order**, read each of the arguments below. These arguments come from the briefs submitted by the parties in this case. If the argument supports the petitioner, Korematsu, write **K** on the line after the argument. If the argument supports the respondent, the United States, write **US** on the line after the argument. Work in your groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

#### **Arguments**

1. The government has a very strong interest in enforcing this executive order. It was intended to protect national security in wartime. \_\_\_\_\_
2. Korematsu and the other Japanese Americans have not been sentenced and imprisoned, only relocated away from the West Coast for national security reasons. Relocation does not violate due process because it is not imprisonment. \_\_\_\_\_
3. There is no evidence that any Japanese Americans, including Korematsu, intended to harm the U.S. military effort by aiding the Axis Powers. \_\_\_\_\_
4. The Fifth Amendment forbids the government from taking away a citizen's freedom without due process. By forcing Japanese Americans into internment camps as a group without charging them or convicting them of crimes individually, the government violated the Fifth Amendment. \_\_\_\_\_
5. Article II, Section 2 of the Constitution states that the president is the commander in chief of the military. As commander in chief, the president must help the military protect the safety and security of the nation. Executive Order 9066 did that by restricting the movement of people who might pose a threat to the country. \_\_\_\_\_
6. The Equal Protection Clause of the 14<sup>th</sup> Amendment requires the government to provide equal rights to all citizens. President Roosevelt's executive order violates the Equal Protection Clause because it unfairly targets Japanese American citizens. The United States was also at war with Germany and Italy, but German and Italian Americans were not forced into internment camps. \_\_\_\_\_

## **Korematsu v. United States (1944)**

**Argued:** October 11–12, 1944

**Decided:** December 18, 1944

### **Background**

World War II officially began in Europe on September 1, 1939, when Germany invaded Poland. The two sides fighting were the **Allied Powers** and the **Axis Powers**. At the start of the war, the main Allied Powers were the United Kingdom, France, and China, and the main Axis Powers were Germany, Japan, and Italy. Many other countries eventually became involved as the war spread worldwide. The United States government was hesitant to enter the war.

On December 7, 1941, the Japanese military attacked the U.S. naval base at Pearl Harbor in Hawaii, which was a U.S. territory. The next day, the United States formally declared war on Japan and entered World War II as part of the Allied Powers. The war ended in 1945, but the Korematsu case was argued and decided while the conflict continued.

### **Facts**

Two months after the attack on Pearl Harbor, President Franklin D. Roosevelt issued **Executive Order 9066** in response to the fear that Japanese Americans were helping the Axis Powers by spying or sabotaging the U.S. war effort. Executive orders command a part of the executive branch, in this case the Department of War, to perform a task. They are not laws because they have not been passed in Congress, but they carry the same force as a law within the executive branch. The Supreme Court can use judicial review to strike them down if they are found to violate the Constitution. Executive Order 9066 was an **area exclusion order** which forced Japanese immigrants and Japanese Americans out of their communities on the West Coast into **internment camps**. An internment camp imprisons large groups of people who have not been charged with or convicted of a crime.

Fred Korematsu was a Japanese American who refused to move to an internment camp. He was arrested and convicted of violating President Roosevelt's executive order. Korematsu appealed his conviction in District Court, arguing that the executive order was unconstitutional because he was denied **due process**, which is guaranteed by the Fifth Amendment. Due process requires the government to use fair procedures when they act to interfere with a person's liberty. Korematsu also argued that the executive order did not treat Japanese Americans equally to other citizens; therefore, he was also protected by the **Equal Protection Clause** of the 14<sup>th</sup> Amendment.

The U.S. government cited the **Alien Enemies Act of 1798**, which allows the president to imprison citizens of enemy countries during a time of war or in response to threats of invasion or attack. President Roosevelt argued that Japan invaded a territory of the United States and posed a threat to the mainland, especially the West Coast.

Korematsu then appealed his case to the U.S. Court of Appeals for the Ninth Circuit, which agreed with the lower District Court. Korematsu asked the Supreme Court of the United States to hear his case, and the Court agreed.

### **Issue**

Is an executive order requiring Japanese immigrants and Japanese Americans to move to internment camps during World War II constitutional?

### **Constitutional Provisions, Law, and Executive Order**

- **Article II, Section 2 of the U.S. Constitution**

“The President shall be Commander in Chief of the Army and Navy of the United States.”

- **Fifth Amendment to the U.S. Constitution**

“No person shall...be deprived of life, liberty, or property, without **due process** of law.”

- **14<sup>th</sup> Amendment to the U.S. Constitution**

“No State shall...deny to any person within its jurisdiction the **equal protection** of the laws.”

This is known as the **Equal Protection Clause**, and it is commonly used to guarantee that individuals are treated equally regardless of their race, gender, religion, nationality, or other characteristics.

- **Alien Enemies Act of 1798**

This law allows the president to imprison citizens of enemy countries during a time of war or in response to threats of invasion or attack.

- **Executive Order 9066**

Authorizing the Secretary of War to Prescribe Military Areas

“Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities... by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War... to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.”