

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** that 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 14th 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.”

- **14th 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.”

Arguments for Korematsu (petitioner)

- 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.
- The Equal Protection Clause of the 14th 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.
- There is no evidence that any Japanese Americans, including Korematsu, intended to harm the U.S. military effort by aiding the Axis Powers.

Arguments for the United States (respondent)

- 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.
- The government has a very strong interest in enforcing this executive order. It was intended to protect national security in wartime.
- 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.

Decision

In a 6–3 decision, the Supreme Court held that President Roosevelt’s executive order requiring the internment of Japanese Americans was constitutional. The majority opinion was written by Justice Black. Justice Frankfurter wrote a concurring opinion, while Justices Roberts, Murphy and Jackson wrote separate dissents.

Majority

Writing for the majority of the Court, Justice Black found that the government’s war powers allowed it to force Japanese Americans and Japanese immigrants into internment camps. Although the 14th Amendment requires the government to treat all people equally, a law that does treat a certain racial group differently can still be constitutional if it passes the **strict scrutiny** standard. This means that

a “pressing public necessity” might make it constitutional under compelling circumstances, such as in wartime.

The Court found that the executive order passed strict scrutiny. The government was worried that individuals of Japanese descent might be spies or be trying to harm the U.S. war effort. During wartime, the government does not have the ability to determine if every single person is loyal to the U.S. or Japan. Therefore, it was appropriate to make a general decision regarding all Japanese Americans because of the significant government interest in national security.

Concurring Opinion

In his concurring opinion, Justice Frankfurter wrote that both the president and Congress have the power to pass laws that are necessary to “wage war successfully.” He believed that the Court should decide whether the executive order at issue was necessary to “wage war successfully.” Here, the situation surrounding Pearl Harbor and World War II justified the internment of Japanese Americans.

Dissent

Justice Roberts believed the majority was intellectually dishonest in focusing on a narrow wartime area exclusion order rather than the total internment of all Japanese Americans on the West Coast. He thought that forcing Korematsu to report for internment in a “concentration camp” was an extreme measure that violated the Constitution. Justice Murphy believed the majority legalized racism and dissented accordingly. Justice Jackson saw the majority’s justification of military necessity as validating racial discrimination in criminal procedure and warned against creating this kind of precedent for the future.

Impact

After release from the Central Utah War Relocation Center, Fred Korematsu relocated to Salt Lake City, Utah, where he later became a civil rights activist. In 1976, President Gerald Ford signed a proclamation that officially ended Executive Order 9066 and apologized to all who had been held in the camps. In 1983, Korematsu appealed based upon new evidence. A federal judge vacated (threw out) his conviction, finding that in 1942 the government covered up evidence disproving the threat that Japanese Americans posed to the war effort. President Ronald Reagan signed the Civil Liberties Act of 1988, which gave \$20,000 to each surviving detainee of the camps. In 1998 President Bill Clinton awarded Fred Korematsu the Presidential Medal of Freedom, the nation’s highest civilian honor, for his civil rights advocacy.

Most people today believe that *Korematsu* was wrongly decided. In *Trump v. Hawaii* (2018), Chief Justice Roberts’ majority opinion for the Court stated, “*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the

Constitution (quoting Justice Jackson’s *Korematsu* dissent).” Justice Sotomayor in her dissent in *Trump v. Hawaii* (2018) noted, “the Court takes the important step of finally overruling *Korematsu*.”

Additional information about *Korematsu v. United States*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.