# THE SUPPRESSION OF LIFE AND LIBERTY

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ABSTRACT: *During wartime, the legal decisions imposed by the United States government often resulted in negative consequences for its citizens. Japanese internment during World War II serves as an example of the government's suppression of life and liberty during war. Fred Korematsu, an American citizen detained under wartime orders, appealed his detainment up to the Supreme Court of the United States. The Supreme Court determined in the 1944 case Korematsu v. United States that Korematsu's detainment was permissible. This essay argues that the Supreme Court's decision in Korematsu v. United States set a dangerous precedent and resulted in lasting damage to life and liberty.*

Whether intentionally or not, the American governnment has commonly implemented laws during wartime that harmed many citizens and in certain circumstances, such as in the case of Fred Korematsu, damaged specific cultures or people groups. The government often takes expedient action, which causes irreparable damage. One of the most recent and notable cases of impulsive wartime action was the Supreme Court's ruling in the 1944 case *Korematsu v. United States*. The decision justified the removal of Japanese people from the western United States and affirmed the constitutionality of the detainment centers in which the government imprisoned such individuals. The Fifth Amendment's due process clause guarantees a "due process of law" before the government may deprive an individual of his or her substantive rights of life, liberty, and property. Protecting citizens from government overreach, the clause secures the rights of the American people. During World War II, however, United States citizens of Japanese ancestry were deprived of due process when they were detained without hearings, trials, or court proceedings. Believing the internment order served to protect the American people, many Americans at the time expressed support for the government's actions. In later decades, however, the decision faced increased scrutiny. The American public should recognize *Korematsu v. United States* for what it truly was: an unlawful excuse to suppress the life and liberty of American citizens because of their national origins.

The attack on the Pearl Harbor Naval Base in Honolulu, Hawaii destroyed numerous military ships and supplies and left over two thousand people dead.[1] The aftermath galvanized the United States and led to the

1 Mark Loproto, *December 7, 1941: Pearl Harbor Casualties*, Pearl Harbor (Apr. 27, 2017), https://pearlharbor.org/losses-pearl-harbor/.

country declaring war on Japan. For many, though, war was not enough. Some started to believe the real enemy resided within the United States and not across the Pacific Ocean. Anti-Japanese sentiments increased throughout the country and calls arose for the removal of Japanese people from the West Coast. Westbrook Pegler, a renowned American journalist, expressed his views on this proposal by stating "the Japanese in California should be under armed guard to the last man and woman right now and to hell with habeas corpus until the danger is over."[2]

In response to the mounting pressure, President Roosevelt signed Executive Order 9066 on February 19, 1942, just two months after the attacks on Pearl Harbor. The order called for the removal of all persons residing in the West Coast who posed a threat to national security. Even though the order did not directly identify a particular target, the government used it to incarcerate both citizens and non-citizens of Japanese descent.[3] One month after the Executive Order was issued, the military released a new order that required "Japanese Americans along the West Coast to report to control stations and register the names of all family members."[4] The military and local authorities arrested those who obeyed the law and reported to the control stations. Many who did not immediately report to the stations were

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2 *Japanese American Incarceration*, Nat'l World War II Museum, https://www.nationalww2museum.org/war/articles/japanese-american-incarceration (last visited Aug. 4, 2020).

3 *Japanese-American Internment: Three Key Questions*, Franklin D. Roosevelt Presidential Library https://www.fdrlibrary.org/curriculum-guide-internment (follow "Three Key Questions" hyperlink) (last visited Jul. 26, 2020).

4 *Japanese American Internment*, Encyclopedia Britannica, https://www.britannica.com/event/Japanese-American-internment (last modified Oct. 18, 2021).

discovered and moved to detainment camps. Soon the government arrested over 120,000 people without a hearing or a trial. Of all the Japanese people incarcerated, seventy percent were American citizens.[5]

Although most Japanese Americans chose to comply with the internment order, some decided to ignore Executive Order 9066 and continue living on the West Coast. Fred T. Korematsu was one American citizen who risked arrest and prosecution by defying the order. Unwilling to turn himself in, he attempted to hide his identity by altering his appearance: "He underwent minor plastic surgery to alter his eyes in an attempt to look less Japanese. He also changed his name to Clyde Sarah and claimed to be of Spanish and Hawaiian descent."[6] Despite Korematsu's avid determination to continue living as an American citizen, authorities discovered and arrested him in San Leonardo, California on May 30, 1942.

Four months later, a federal court tried and convicted Korematsu for breaking a public law that made it illegal to ignore military orders issued under Executive Order 9066. With the assistance of the American Civil Liberties Union, Korematsu took his case to the U.S. Court of Appeals, which upheld the decision of the lower courts. He then appealed to the Supreme Court of the United States,[7] but

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5 John Lee, *Japanese Incarceration-Executive Order 9066 (1942)*, Dartmouth College, https://www.dartmouth.edu/~hist32/History/History.htm (follow "20th Century" hyperlink; then scroll to the year "1942"; follow "Japanese Incarceration - Executive Order 9066 (1942)" hyperlink), (last visited Jul. 23, 2020).

6 *Fred Korematsu's Story,* Fred T. Korematsu Institute, http://www.korematsuinstitute.org/fred-t-korematsu-lifetime (last visited Mar. 29, 2022)

7 David Margolick, *Legal Legend Urges Victims to Speak Out*, N.Y Times, (Nov. 24, 1984), https://www.nytimes.com/1984/11/24/nyregion/legal-legend-urges-victims-to-speak-out.html.

the case was not decided until December 18, 1994. Nearly all the presiding justices viewed the case with reservations. Associate Justice Hugo Black, who authored the opinion of the court, wrote, "it should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional."[8] Even though the Court expressed skepticism concerning the violation of civil liberty, Korematsu lost after the Court issued a 6-3 decision in favor of the government.

The Court concluded that the justification for Executive Order 9066 rested on the "imminent danger" that Japanese Americans posed to the country. Associate Justice Felix Frankfurter concluded that Japanese internment was warranted because of "martial necessity arising from the danger of espionage and sabotage."[9] In addition to supporting preemptive military action, Justice Black stated, "Korematsu was not excluded from the Military Area because of hostility to him or his race."[10]

All three of the dissenting justices, however, agreed that the government targeted Korematsu because of his Japanese ancestry. Justice Frank Murphy found that the Court's decision exceeded "the very brink of constitutional power and fallen into the ugly abyss of racism."[11] Justice Robert Jackson wrote that Korematsu's crime consisted of "merely being present in the state whereof he is a citizen, near the place he was born, and where all his life he has

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8 Korematsu v. United States, 323 U.S. 214, 216 (1944).
9 *Id.* at 225.
10 *Id.* at 223.
11 *Id*. at 233 (Justice Murphy dissenting).

lived."[12] While Justice Jackson argued that the detainment of Japanese Americans was a constitutional violation of the Equal Protection Clause of the Fourteenth Amendment, Justice Owen Roberts addressed the issue of military necessity: "Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance nor support."[13] After losing his last appeal, Korematsu returned to the Central Utah War Relocation Center where he was detained in a horse stall with a single lightbulb. Later he admitted that "jail had been better than this."[14]

Following the end of World War II and the closing of the internment camps, Fred Korematsu sought restitution for the injustices he suffered. He would have to wait for several decades. In 1976, the Executive Branch signed a proclamation that discontinued Executive Order 9066. President Gerald Ford issued a formal apology for the internment of Japanese people and acknowledged the sacrifices of Japanese Americans. He explained that,

> We now know what we should have known then—not only was that evacuation wrong but Japanese Americans were and are loyal Americans. On the battlefield and at home the names of Japanese Americans have been and continue to be written in history for the sacrifices and the contributions they have made to the well-being and to the security of this, our common Nation.[15]

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12 *Id*. at 243.

13 Tony Mauro, The Supreme Court: 20 Cases That Changed America (2016).

14 Steven A. Chin, When Justice Failed: The Fred Korematsu Story (1992).

15 Gerald Ford, *President Gerald R. Ford's Remarks Upon Signing a Proclamation Concerning Japanese-American Internment*

President Jimmy Carter created a committee to investigate the detainment of Japanese Americans in World War II. The committee placed the blame for detainment on "race prejudice, war hysteria, and a failure of political leadership."[16] President Ronald Reagan later signed the Civil Liberties Act of 1988, which granted reparations to surviving prisoners. A decade later, President Bill Clinton awarded Fred Korematsu with the Presidential Medal of Freedom, declaring, "In the long history of our country's constant search for justice, some names of ordinary citizens stand for millions of souls Plessy, Brown, Parks...to that distinguished list, today we add the name of Fred Korematsu."[17]

Judge Marilyn Hall Patel nullified Fred Korematsu's conviction in the fall of 1983. In his hearing before the United States District Court in San Francisco, Korematsu requested that "the government admit that they were wrong and do something about it so this will never happen again to any American citizen of any race, creed, or color."[18] Although the courts had cleared him of criminal action, he still sought the official overturning of his case. Fred Korematsu never living to witness what he believed to be the final restitution for the injustices he and others had endured, though, as he passed away in 2005.[19]

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*During World War II,* Ford Library and Museum https://www.fordlibrarymuseum.gov/library/speeches/760111.htm (last visited Mar. 3, 2022).

16 Timothy P. Maga, *Ronald Reagan and Redress for Japanese-American Internment*, Presidential Studies Quarterly, 1998, at 608.

17 Akil Vohra, *Honoring Fred Korematsu Obama White House*, The White House, (February 1st, 2011) https://obamawhitehouse.archives.gov/blog/2011/02/01/honoring-fred-korematsu.

18 Chin, *supra* note 14.

19 *Fred Korematsu's Story,* Fred T. Korematsu Institute, http://www.korematsuinstitute.org/fred-t-korematsu-lifetime (last visited Mar. 29, 2022).

Even after World War II, the United States Supreme Court had not paused to rethink or revisit the constitutionality of Japanese internment camps. The Fifth Amendment guarantees due process for citizens before detainment, yet the Supreme Court not only ignored this, but they also cited Korematsu for support in other rulings. Dean M. Hashimoto, professor of law at Harvard University, commented on the Supreme Court's response, stating "Korematsu's continued vibrancy should not be blamed on the Court's lack of opportunity to diminish or overrule it. The Court has had repeated opportunities to do so, but has instead cited Korematsu for support."[20]

In *Bolling v. Sharpe*, a 1954 decision that banned segregated public schools in the District of Columbia, Chief Justice Earl Warren rephrased the Court's opinion on racial classification in *Korematsu v. United States*, writing that "classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect."[21] Though laws that disproportionately affect racial minorities were declared "constitutionally suspect," the Court dismissed an opportunity to review and overturn *Korematsu v. United States*. The justice system bypassed another chance to reverse the decision in the 1995 case *Adarand Constructors, Inc. v. Pena* when the Court imposed a strict scrutiny standard on all cases pertaining to racial classification.[22] Such cases in the past were decided by using a standard of intermediate scrutiny; the Court justified the sudden switch from intermediate scrutiny to strict scrutiny by citing *Korematsu*

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20 Dean H. Hashimoto, *The Legacy of Korematsu v. United States: A Dangerous Narrative Retold*, B.C. Law School, (January 1996).

21 Bolling v. Sharpe, 347, U.S. 497 (1954).

22 Girardeau Spann, A Race Against the Court: The Supreme Court and Minorities in Contemporary America, 1994.

*v. United States* as support.

Two decades later, in 2018, the Supreme Court decided to overturn *Korematsu v. United States*. Justice Sonia Sotomayor mentioned the case in her dissent in the 2018 case *Trump v. Hawaii*, claiming that the older case possessed "stark parallels" to the current case. Arguing that in *Korematsu*, the Court gave 'a pass [to] an odious, gravely injurious racial classification'" authorized by an executive order, Sotomayor concluded that "as here, the Government invoked an ill-defined national security threat to justify an exclusionary policy of sweeping proportion."[23]

Chief Justice John Roberts, who wrote the majority opinion, disagreed with Sotomayor's assessment, stating:

> Finally, the dissent invokes *Korematsu v. United States*…Whatever rhetorical advantage the dissent may see in doing so, Korematsu has nothing to do with this case. The forcible relocation of U. S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority. But it is wholly inapt to liken that morally repugnant order to a facially neutral policy denying certain foreign nationals the privilege of admission.[24]

He decided, however, that the reversal of *Korematsu v. United States* was long overdue. He wrote, "The dissent's reference to Korematsu…affords this Court the opportunity to make express what is already obvious: 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.'"[25]

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23 *Trump v. Hawaii*, 585 U.S. (2018).

24 *Id.*

25 Charlie Savage, *Korematsu, Notorious Supreme Court Ruling on Japanese Internment, Is Finally Tossed Out*, N.Y. Times, 26 June 2018

While the present government appears to view the ruling in *Korematsu v. United States* as unjust, a chance may exist for such wrongdoing to occur once again. In response to a question posed by a student at the University of Hawaii School of Law, Justice Antonin Scalia addressed the 1944 case, "Well, of course, Korematsu was wrong…but you are kidding yourself if you think the same thing will not happen again…. It was wrong, but I would not be surprised to see it happen again, in time of war. It's no justification, but it is the reality."[26] The government and the courts are correct in their censure of *Korematsu v. United States*. The recognition of wrongdoing, however, may not be enough to prevent the future incarceration of a people group during times of conflict. Only if America learns the civil dangers of placing innocent American citizens in prison will it prevent the same mistake when facing similar circumstances.

The legacy of *Korematsu v. United States* highlights the individual freedom all American citizens possess, not because the government permits it, but because all people are created equal. Professor Hashimoto advises that "Korematsu's persistence, as legal precedent and as a memory of the internment itself, must serve to remind us to be vigilant in protecting our civil liberties."[27] The American government and the American people must remember to preserve the freedom of all citizens. *Korematsu v. United States* must stand as a warning against encroaching wartime government so that life and liberty will not be suppressed during times of conflict.

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(last visited Mar. 29, 2022), https://www.nytimes.com/2018/06/26/us/korematsu-supreme-court-ruling.html

26 Audrey McAvoy, *Internments Can Happen Again, Scalia Warns*, Star Advisor, (last visited Mar. 29, 2022) https://www.staradvertiser.com/2014/02/04/hawaii-news/Internments-can-happen-again-Scalia-warns/.

27 Hashimoto, *supra* note 20.