

TOYOSABURO KOREMATSU V. UNITED STATES (1944)

In early 1942, America was at war with Japan following the surprise attack on Pearl Harbor. Many Americans feared that Japan might invade the West coast. At this time 112,000 people of Japanese descent lived on the West coast. People feared that some Japanese-Americans would become enemy agents.

Reacting to public pressure, President Roosevelt, with the approval of Congress, issued Executive Order No. 9066 (see page 2). This order authorized the military to declare regions of the West coast as military zones. The military could thus relocate inland all people of Japanese descent--both U.S. citizens and aliens alike. These people were to be taken to mass relocation camps.

Fred Korematsu was a U.S. citizen of Japanese descent who had lived all his life in California. When he received an order to report to a center in preparation for relocation, he refused to go.

Korematsu was arrested by U.S. military police and was convicted of refusing to obey the evacuation order. He was given five years' probation and sent to a relocation camp in Utah.

Korematsu appealed his case to the U.S. Supreme Court. He argued that Executive Order No. 9066 was unconstitutional because it discriminated against Japanese-Americans solely on the basis of ancestry and without any evidence of disloyalty. He also said that he had been deprived of his Fifth Amendment rights of liberty and property "without due process of law."

Questions for Discussion

1. Was there any evidence that Korematsu was disloyal or a threat to U.S. security? Should the loyalty of Japanese-Americans have been a consideration in this case?
2. America was also at war with Italy and Germany. Why do you think German-Americans and Italian-Americans were not treated in the same manner as Japanese-Americans?
3. Should the government be able to exercise greater power or suspend the Bill of Rights during a time of war? Should it have greater power even when not at war if acting in the interest of national security?

EXECUTIVE ORDER NO. 9066

(Issued by the President on February 9, 1942;
passed by Congress on March 21, 1942)

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. Military commanders may at their discretion prescribe military areas and define their extent. From these areas any and all persons may be excluded, and with respect to which, the right of any person to enter, remain, or leave shall be subject to whatever restrictions the military commander may impose at his discretion.

CIVILIAN EXCLUSION ORDER NO. 34

(Issued March 24, 1942)

Those of Japanese ancestry shall:

1. depart from Military Zone One
2. report to and temporarily remain at an assembly center
3. go under military control to a relocation center there to remain for an indeterminate period until conditionally or unconditionally released.

Violation of Exclusion Order No. 34 shall be a misdemeanor punishable by \$5,000 fine or one year in jail, or both.

CHRONOLOGY OF EVENTS

December 8, 1941	U.S. declares war on Japan.
February 19, 1942	President issues Executive Order No. 9066.
February 20, 1942	Lt. General De Witt is appointed Military Commander of the Western Defense Command.
March 2, 1942	De Witt creates Military Zones One and Two on the West coast. Persons or classes of persons as the situation may require will be excluded from Military Zone One.
March 2, 1942	Mr. Korematsu is put on notice that his residence is in Zone One.
March 21, 1942	Congress enacts Executive Order No. 9066.
March 24, 1942	De Witt institutes in Zone One an 8 p.m. to 6 a.m. curfew for all persons of Japanese ancestry.
March 24, 1942	De Witt issues Exclusion Order No. 34.
March 27, 1942	De Witt orders that after March 29 no person of Japanese ancestry will be permitted to leave Military Zone One.
May 3, 1942	Exclusion Order No. 34 is put into effect. Persons of Japanese ancestry are ordered to report on May 8 to a designated assembly center for relocation.

ARGUMENTS FOR PETITIONER, TOYOSABURO KOREMATSU

1. The orders violated the due process rights guaranteed to U.S. citizens by the Fifth and Fourteenth Amendments. Japanese-Americans had lost their liberty and their property without any kind of hearing or trial as required by the Constitution.
2. The order violated the Sixth Amendment procedural due process rights of citizens. There had been no charges against the Japanese-Americans; they were unable to call witnesses on their behalf; they had no attorneys and no juries to hear the facts and determine their guilt or innocence.
3. The orders violated the Fourteenth Amendment "equal protection" clause. Japanese-Americans had been treated as a class of citizens rather than as individuals. This action was an act of racial discrimination, which the Fourteenth Amendment was designed to prevent. All citizens of the United States enjoy the equal protection of the law. The order affected thousands of Japanese-Americans who were not involved in sabotage. The government should have gone after those citizens it suspected of spying and not the entire group of Japanese-American citizens. Further, no similar action was taken against the German-Americans or Italian-Americans although the United States was at war with those countries too.
4. The emergency could not be as extreme as Executive Order No. 9066 would lead one to believe. In times of grave national emergency, the President may request a declaration of martial law and citizens' rights may be temporarily curtailed. The President did not do this.
5. It took the government six months to take action to prevent sabotage by Japanese-Americans. The national emergency could not have been as extreme as the government said if it took that long to respond to the "threat."
6. The government failed to prove in any tribunal the disloyalty of Korematsu; therefore, the order is strictly discriminatory. The proper action of the government would have been to conduct loyalty hearings to screen individual Japanese-Americans.

ARGUMENT FOR RESPONDENT, U.S. GOVERNMENT

1. People of Japanese descent living in the Western United States posed the gravest danger to public safety because the nation was at war with Japan. The government has the power to protect itself and that power must be equal to the danger it faces. The government must protect itself from espionage and sabotage.

2. The removal orders issued by the President were issued with the authority of Congress. Congress had enacted Executive Order No. 9066 into law. When Congress declared war on Japan, it gave the U.S. president power to wage war. When the U.S. wages war, it expects to wage war successfully.

3. The government could not easily or quickly determine who among the Japanese-American population was disloyal to the United States. To hold a hearing for each individual would have been impossible; therefore, it was necessary to relocate the entire group.

4. The orders did not violate the Fourteenth Amendment. Precedent for this type of action had been set in a previous case, the Hirabayashi case. In Hirabayashi, the U.S. Supreme Court said imposing an evening curfew exclusively on Japanese-Americans was not a violation of the equal protection clause.

5. The action of the government must be judged solely in the context of war. At any other time, such an action might well be illegal.

DECISION SHEET

All legal restrictions that curtail the civil rights of a single racial group are immediately suspect and must be rigidly scrutinized, though not all of them are necessarily unconstitutional. Pressing public necessity may sometimes justify restrictions on civil rights of a single racial group, but racial antagonism never can. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. When, under conditions of modern warfare, our shores are threatened by hostile forces, power to protect must be commensurate with the threatened danger. Exclusion of persons of Japanese ancestry, including citizens whose loyalty was not questioned, from the West coast war area was within the war power of Congress and the executive as it related to the prevention of espionage and sabotage. The validity of this action under the war power must be judged wholly in the context of war. Like action in times of peace would be lawless.