**KOREMATSU versus United States (1944)**

***(Japanese Internment)***

**Background:**

***Korematsu v. United States***, [323](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases%2C_volume_323) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) 214 (1944),[[1]](https://en.wikipedia.org/wiki/Korematsu_v._United_States#cite_note-1) was a [landmark United States Supreme Court case](https://en.wikipedia.org/wiki/List_of_landmark_court_decisions_in_the_United_States) concerning the constitutionality of [Executive Order 9066](https://en.wikipedia.org/wiki/Executive_Order_9066), which ordered [Japanese Americans](https://en.wikipedia.org/wiki/Japanese_American) into [internment camps](https://en.wikipedia.org/wiki/Japanese_American_internment) during [World War II](https://en.wikipedia.org/wiki/World_War_II) regardless of citizenship.

Shortly after the second wave of the attack on Pearl Harbor, Japanese pilot Shigenori Nishikaichi crashlanded his aircraft on the [Hawaiian](https://en.wikipedia.org/wiki/Hawaii) island of [Niihau](https://en.wikipedia.org/wiki/Niihau). Although island locals did not yet know of the attack, they were aware of the likelihood of war between the United States and Japan and so quickly detained the pilot and seized the documents that he was carrying. Three American citizens of Japanese descent who lived on the island (Ishimatsu Shintani and Yoshio and Irene Harada) were informed of the detained pilot as they were the only island residents who could speak both Japanese and English.

All were US citizens. Shintani was a Japanese-born immigrant, and the Haradas were American-born children of such immigrants. Awaiting the arrival of the island's owner so that they could decide what to do next, the islanders housed Nishikaichi with the Japanese-Americans but provided a detail of four sentries for additional security.

Five days later, the Haradas aided Nishikaichi in an escape attempt and took some islanders hostage as Shintani attempted to retrieve the documents that had been seized. As the captors became fatigued, the hostages attacked, killing Nishikaichi. Realizing that the escape plan had failed, Yoshio Harada then committed suicide. Historian [Gordon Prange](https://en.wikipedia.org/wiki/Gordon_Prange) notes that it was "the rapidity with which the three resident Japanese went over to the pilot's cause" that troubled the Hawaiians. "The more pessimistic among them cited the incident as proof that no one could trust any Japanese, even if an American citizen, not to go over to Japan if it appeared expedient." A U.S. Navy report issued in late January 1942 concluded that the [incident](https://en.wikipedia.org/wiki/Niihau_incident) evidenced the "likelihood that Japanese residents previously believed loyal to the United States may aid Japan."

About three weeks after the publication of the Navy report, on February 19, 1942, Roosevelt issued [Executive Order 9066](https://en.wikipedia.org/wiki/Executive_Order_9066), authorizing the War Department to create military areas from which any or all Americans might be excluded, and to provide for the necessary transport, lodging, and feeding of persons displaced from such areas. On March 2, 1942, the U.S. Army Lieutenant General John L. DeWitt, commander of the [Western Defense Command](https://en.wikipedia.org/wiki/Western_Defense_Command), issued Public Proclamation No. 1, demarcating western military areas and the exclusion zones therein, and directing any "Japanese, German, or Italian aliens" and any person of Japanese descent to inform the U.S. Postal Service of any changes of residence. Further military areas and zones were demarcated in Public Proclamation No. 2.

In the meantime, legislation authorizing the enforcement of Executive Order 9066 was passed and signed into law on March 21.

On March 24, 1942, Western Defense Command began issuing Civilian Exclusion orders, commanding that "all persons of Japanese ancestry, including aliens and non-aliens" report to designated assembly points. With the issuance of Civilian Restrictive Order No. 1 on May 19, 1942, Japanese Americans were forced to move into [relocation camps](https://en.wikipedia.org/wiki/Internment_camp).

[Fred Korematsu](https://en.wikipedia.org/wiki/Fred_Korematsu) was a Japanese-American man who decided to stay in [San Leandro, California](https://en.wikipedia.org/wiki/San_Leandro%2C_California); he knowingly violated Civilian Exclusion Order No. 34 of the U.S. Army even undergoing plastic surgery in an attempt to conceal his identity.He argued that the Executive Order 9066 was unconstitutional and that it violated the [Fifth Amendment to the United States Constitution](https://en.wikipedia.org/wiki/Fifth_Amendment_to_the_United_States_Constitution). The Fifth Amendment was selected over the Fourteenth Amendment due to the lack of federal protections in the Fourteenth Amendment. He was arrested and convicted. No question was raised as to Korematsu's loyalty to the United States. The Circuit Court of Appeals affirmed the conviction, and the Supreme Court granted [*certiorari*](https://en.wikipedia.org/wiki/Certiorari).

**Majority Opinion:**

**The decision of the case**, written by Justice Hugo Black, found the case largely indistinguishable from the previous year's [*Hirabayashi v. United States*](https://en.wikipedia.org/wiki/Hirabayashi_v._United_States) decision, and **rested largely on the same principle: deference to Congress and the military authorities, particularly in light of the uncertainty following Pearl Harbor.** Justice Black further denied that the case had anything to do with racial prejudice:

**"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, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and, finally, because Congress, reposing its confidence in this time of war in our military leaders—as inevitably it must—determined that they should have the power to do just this."**

"The provisions of the Constitution which confer on the Congress and the President powers to enable this country to wage war are as much part of the Constitution as provisions looking to a nation at peace. And we have had recent occasion to quote approvingly the statement of former Chief Justice Hughes that the war power of the Government is "the power to wage war successfully".

**Dissenting Opinion:**

**1. Justice**[**Frank Murphy**](https://en.wikipedia.org/wiki/Frank_Murphy) issued a vehement dissent, saying that the exclusion of Japanese "falls into the ugly abyss of racism", and resembles "the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy”.

"I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must, accordingly, be treated at all times as the heirs of the American experiment, and as entitled to all the rights and freedoms guaranteed by the Constitution”.

 [**2. Justice Roberts's**](https://en.wikipedia.org/wiki/Owen_Roberts) dissent also acknowledges the racism inherent in the case although he does not use the word. He recognized that the defendant was being punished based solely upon his ancestry: