

**1st Place Winner of
2017 Essay Contest**

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Legal Lessons from the Japanese Internment

The Fourteenth Amendment of the United States Constitution has honored the foundational American value of equality since the aftermath of the Civil War. The rights guaranteed in the first section of this influential amendment have guided the Supreme Court during times when the legality of racial segregation (*Brown v. Board of Education*), abortion (*Roe v. Wade*), and same sex marriage (*Obergefell v. Hodges*) were litigated on the national level. Yet, when analyzing the court's decisions in the *Hirabayashi v. United States* (1943) and *Korematsu v. United States* (1944) Japanese internment cases, it becomes apparent that the judicial branch, the nation's most powerful defender of the Constitution, failed to uphold the Fourteenth Amendment's citizenship, due process, and equal protection clauses during a period of public hysteria against Japanese Americans. Both cases upheld President Franklin D. Roosevelt's notorious Executive Order 9066 and have since raised many questions amongst scholars regarding the legality and morality of wartime executive orders fueled by misinformation and fear. Although the judiciary condoned the executive branch's discriminatory treatment of Japanese Americans in *Hirabayashi* and *Korematsu*, by the *Ex Parte Endo* (1944) decision, the collective efforts of individual plaintiffs and their supporting organizations influenced the Supreme Court's decision that "citizens who are concededly loyal" could not be held in internment camps.¹ Today, as the nation combats terrorism, the combined legal efforts of individuals and civil rights groups continue to safeguard against abuses of executive power and protect our constitutional rights.

In the face of overwhelming hysteria and prejudice, legal trailblazers like Hirabayashi, Korematsu, Endo, and the American Civil Liberties Union defended the values of egalitarianism affirmed by the Constitution. In 1942, Gordon Hirabayashi refused to comply with an 8p.m. curfew and register for evacuation.² Supported by the ACLU, a prominent national civil liberties organization that originated in support of free speech during WWI, Hirabayashi's attorneys

¹ Eric K. Yamamoto et al., eds. *Race, Rights and Reparation: Law and the Japanese American Internment* (New York: Aspen Law and Business, 2001), 172.

² Peter Irons, *Justice at War: The Story of the Japanese American Internment Cases* (New York: Oxford University Press, 1983), 88.

relied on the Fourteenth Amendment's due process and equal protection clauses in their challenge to the exclusion order.³ Despite Hirabayashi's unanimous legal defeat, *Korematsu*, which the Supreme Court decided the following year, contained dissenting opinions. Like Hirabayashi, Korematsu agreed to serve as a test case for the ACLU after being arrested in Oakland, California and subsequently admitting his failure to report to the Tanforan Assembly Center with the rest of his family.⁴ While the Supreme Court, in a 6-3 decision, ultimately upheld the government's right to exercise martial law during times of national crisis, *Korematsu* demonstrated the court's increasing awareness of the undeniable linkage between mass evacuation and incarceration. For example, Justice Owen Roberts' dissenting statement argued against the majority opinion that sought to define the *Korematsu* case simply in terms of the evacuation aspect of General John DeWitt's military orders, avoiding the issue of whether or not the Constitution allowed the indefinite incarceration of over 100,000 Japanese Americans.⁵ Significantly, on the same day as the *Korematsu* decision, the Supreme Court ruled unanimously that American-born citizens like Mitsuye Endo, who had already complied with Executive Order 9066 and was "concededly loyal" to the U.S., had been unlawfully detained.⁶ Although nearly three years passed from Hirabayashi's arrest to the *Korematsu* and *Endo* decisions, the persistent efforts of these civil rights plaintiffs influenced the court's decisions over time.

Today, fears based on religion and nationality continue to influence executive decisions, and our country depends more than ever on the collective efforts of determined individuals and civil liberty groups to ensure that widespread hysteria does not delegitimize our essential rights. Following the 9/11 attacks, many Americans have framed the Muslim community as an internal security threat, generating Islamophobia similar to the pervasive assumption of Japanese disloyalty following Pearl Harbor. According to recent FBI hate crime reports,

³ U.S. Const. amend. XIV, § 1, cl. 3-4.

⁴ Peter Irons, *Justice at War: The Story of the Japanese American Internment Cases* (New York: Oxford University Press, 1983), 94.

⁵ Eric K. Yamamoto et al., eds. *Race, Rights and Reparation: Law and the Japanese American Internment* (New York: Aspen Law and Business, 2001), 143-145.

⁶ Eric K. Yamamoto et al., eds. *Race, Rights and Reparation: Law and the Japanese American Internment* (New York: Aspen Law and Business, 2001), 169-172.

instances of arsons at mosques and assaults on Muslims have increased to a range five times greater than the pre-9/11 hate crime rates.⁷ Additionally, anti-Muslim rhetoric on the political stage has shaped one of the greatest recent controversies regarding the government's role in combatting terrorism: President Donald Trump's Muslim immigration and travel bans that were signed as executive orders on January 27 and March 6, 2017, halting travel from a number of Muslim-majority countries. Following Trump's executive orders, the Fred T. Korematsu Center for Law and Equality, along with the children of Hirabayashi and Korematsu, civil rights organizations, and minority bar associations, have supported Hawaii Attorney General Douglas Chin's challenge to the executive orders.⁸ Guided by the painful lessons from the Japanese internment cases, this broad coalition of civil rights advocates reminds us that equal protection and due process under the Fourteenth Amendment must vigilantly protect the marginalized.

As our country continues to face the consequences of the liberty-security dilemma, it becomes crucial for the judicial branch to not only review the constitutionality of executive measures, but also serve as an effective route for courageous individuals and organizations to elucidate the American principle of equal protection. It is through the analysis of the historic Japanese internment cases that citizens today recognize the power of ethnic and religious tolerance that defines America as a nation of equality, diversity, and the protection of individual liberties.

Works Cited

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⁸ *State of Hawaii v. Trump*, No. 17-15589 (9th Cir. Apr. 21, 2017).

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