

**2nd Place Winner of
2017 Essay Contest**

**Elise Kuwaye
(Kaimuki Christian)**

On February 19, 1942, President Franklin Delano Roosevelt of the United States of America signed Executive Order 9066, which, in the name of national security, drove over 100,000 Japanese Americans, retirees, parents, and even infants, from their homes into "relocation centers": horse stables, stockyards, and fairgrounds.¹ Japanese immigrants, citizens, and naturalized persons found themselves robbed of their possessions in the aftermath of the order, as the government failed to protect them from the response to Pearl Harbor. Instead of calling for due process of law, Roosevelt, Congress, and the military chose to cave to racist innuendo by targeting the Japanese in America, even in the absence of evidence that Japanese Americans committed treason. Roosevelt's issuance of Executive Order 9066 set off a "domino effect" of civil liberties violations, while three Japanese Americans stepped forward in an attempt to right those wrongs in *Hirabayashi v. United States*,² *Korematsu v. United States*,³ and *Ex parte Mitsuye Endo*.⁴ Today, threats of terrorism arouse fear and racism directed against those of Middle Eastern descent, thus making the Japanese American internment experience of World War II acutely relevant.

The Japanese American internment experience and its associated Supreme Court cases raise the issue of the constitutionality of curfews and other policies restricting the movement and location of a certain ethnicity of people as an emergency war measure. Specifically, the Japanese American experience calls into question the right to due process under the law versus military necessity. Military leaders determined that Japanese Americans were collectively a danger to national security, and, with the support of the

¹ Takaki, Ronald. *Strangers from a Different Shore*. Back Bay Books, 1998.

² *Hirabayashi v. U.S.*, 320 U.S. 81 (1943).

³ *Korematsu v. U.S.*, 323 U.S. 214 (1944).

⁴ *Ex Parte Mitsuye Endo*, 323 U.S. 283 (1944).

executive and legislative branches, restricted their freedom. Notably, however, Japanese Americans were detained for extended periods without any evidence or legal proceedings establishing that they had, in fact, committed treason. Thus, American citizens were not given the chance to a fair trial before they were deprived of fundamental liberties. The Supreme Court condoned this practice in *Hirabayashi*, finding that Congress had not unlawfully delegated its powers by issuing a curfew order and that it was, in fact, necessary to protect military resources.⁵ Moreover, in *Korematsu*, the Court ruled that an exclusion order was justified as it was based upon military urgency due to real military dangers, even if it meant that a citizen was excluded from his home.⁶ Thus, given the present-day climate of the “war” on terrorism and the distrust of Muslims that follows, our government, justified by the precedents set by *Hirabayashi* and *Korematsu*, arguably has the authority to trample upon the Muslims’ civil rights in the name of national security.

The language of the cases also creates another disconcerting issue, as the cases indicate that the federal government has significant latitude in determining when there is a threat to national safety, and therefore, an abridgment of civil rights. The Supreme Court in *Hirabayashi* did not scrutinize the military commander’s conclusions in finding that Japanese Americans posed a danger.⁷ Similarly, the *Korematsu* Court agreed with the U.S. government in its determination that the Japanese Americans were a “menace to . . . national defense and safety.”⁸ It is little comfort that forty-four years after the Supreme Court’s *Hirabayashi* determination, the Ninth Circuit Court ruled that the fear and racism

⁵ *Hirabayashi*, 320 U.S. at 102, 103.

⁶ *Korematsu*, 323 U.S. at 223.

⁷ *Hirabayashi*, 320 U.S. at 103, 104.

⁸ *Korematsu*, 323 U.S. at 218.

of 1941 resulted in the undeserved suffering and shame of the Japanese.⁹ Just as the Japanese of the 1940s were suspect due to cultural differences, Muslims, as a group, today, are suspect as a result of actions by persons who share a similar, though radicalized, religious background, which differs from that of a Protestant America.

Another constitutional issue raised is whether a classification based upon racial distinctions or discrimination based upon race alone is a denial of equal protection. *Hirabayashi* rejected the principle that race-based classification is a denial of equal protection and instead justified the government's execution of whatever measures it deemed necessary to public safety, even without evidence.¹⁰ Similarly, *Korematsu* affirmed the exclusion of those of Japanese ancestry from a particular area, citing the urgency of the military situation at hand.¹¹ Even though the Court ultimately determined that Mitsuye Endo should be immediately released from the internment camp as it was later determined that she was a law-abiding citizen, the Court still found that the "original evacuation was justified."¹² The "original evacuation" was race-based. It is difficult to reconcile *Korematsu* with *Endo* as both Japanese Americans involved were determined to be loyal U.S. citizens, yet, *Korematsu*'s arrest and conviction were upheld. It may thus be inferred that they stand for the proposition that an American citizen can be imprisoned without due process and released only after his or her loyalty is proven. Query then as to whether such precedent would justify the arrest, refusal of due process, and detainment of those associated with terrorists, although the relationship may be tenuous at best.

⁹ *Hirabayashi v. U.S.*, 828 F.2d 591, 593 (9th Cir. 1987).

¹⁰ *Hirabayashi*, 320 U.S. at 100, 101.

¹¹ *Korematsu*, 323 U.S. at 223.

¹² *Endo*, 323 U.S. at 294.

Cases related to the Japanese American internment continue to powerfully impact our society, today. Since Chief Justice John Marshall set the precedent in *Marbury v. Madison* that the judicial branch dictates the interpretation of the Constitution, these court cases, along with every other one tried, set precedents for our nation in defining our Constitutional rights.¹³ This is especially true of *Hirabayashi* and *Korematsu*, which affirmed the right to overturn individual liberties in the name of national security during wartime, and *Ex parte Mitsuye Endo*. Driven by hysteria, a tyranny of the majority may occur, where minorities may be unjustly oppressed. Given that U.S. citizens, including our own President, advocate banning Middle Easterners from entering our country, it is not inconceivable that our government could potentially detain and relocate thousands of Muslims or other groups it considers to be subversive without evidence or fair trial. Thus, as Muslims step forward to reclaim their rights as the Japanese did, we, the people, must put our faith in the judicial branch to resolve this debate over national security and individual rights by setting legal boundaries, ensuring that justice prevails for all and that all may enjoy the inherent benefits of living within the United States of America.

¹³ Marbury v. Madison, 5 U.S. 137 (1803).