

# Pre-trial Case Summary

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Fred Korematsu was nisei, a second generation Japanese immigrant, born January 30, 1919 in Oakland, California. He was the third of four children born to his parents and lived in Oakland for the entirety of his life up to the arrest. Korematsu attempted to join two separate military divisions and was turned away both times due to discrimination against his heritage. After this he trained to become a welder but was again a victim of discrimination when he found a notice firing Japanese workers from the company. After Executive Order 9066, where permission was given to designate military zones, and after Civilian Exclusion Order No 34, Korematsu refused to leave his home and continued to live his life as an American citizen, even undergoing eyelid surgery and changing his name in an attempt to appear less Japanese. This is where the case begins.

Korematsu was arrested on May 30, 1942 in San Leandro, California, and was taken to the San Francisco County Jail. While there, he was visited by Ernest Besig, the director of the San Francisco office of the American Civil Liberties Union. Besig asked Korematsu if he was willing to be the first case to test the constitutionality of the government's decisions regarding Japanese American citizens, to which Korematsu replied yes. On September 8, 1942, Korematsu, having attended trials, was convicted of violating the terms of Executive Order 9066 in a federal court. The sentencing for this trial was 5 years of probation at the Tanforan Assembly Center in San Bruno, California. This institute had once been a horse racetrack and was a holding area for Japanese Americans until they could be moved to more permanent camps.

Korematsu continued to appeal his case in hopes of a better verdict, and worked all the way up to the Supreme Court. In the December of 1944 the Supreme Court again ruled against him in a 6:3 decision, claiming that the internment camps were not based on racial biases and were unfortunate military necessities in order to defend the country from Japan including cutting off those who may still retain loyalties to Japan.

A number of arguments were made in this case starting with the 5th and 14th amendments. The 5th amendment states that "no person shall be deprived of life, liberty, or property without due process of the law." It was claimed that the US, in its internment of all Japanese as a group without individuals, had violated due process of the law, therefore violating the amendment. The 14th amendment states that "no state shall deny to any in its jurisdiction the equal protection of the laws." By targeting those of Japanese ancestry, the 14th amendment was violated because Japanese Americans were no longer being treated equally to or protected the same as white American citizens including those of German and Italian descent. Those of German and Italian descent were discriminated against as well but not to the same extent of Japanese Americans. There was absolutely no evidence that Korematsu had engaged in acts of espionage or had otherwise threatened our nation's security. One judge also wrote about the case of *Hirabayashi v. the United States*, saying that allowing more and more actions to be taken against the Japanese would be the top of a slippery slope, and where would we stop once we had started?

Arguments made by the prosecution were strong as well though. The first argument made was that the president is given special powers during wartime that he would not normally have. In the name of national security, he was right to sign Executive Order 9066 so that those who still held ties to Japan wouldn't give away vital information that may turn the tides of the war against America. The fact that the curfews imposed in Japanese-American citizens were ruled constitutional in the cases of *Hirabayashi v. the United States* and *Yasui v. the United States* was an important factor of this argument as well. They argued that in times of war, our entire nation must be protected, not just the citizens and that may mean violating constitutional rights such as with strict scrutiny. Finally, under the *Alien*

*Enemies Act of 1798*, the US may apprehend and restrict the freedoms of “alien enemies” during times of war. This made these actions legal because we didn't want to endanger the nation by letting suspected spies and enemies run loose.

### **Legal:**

5th amendment: “no person shall be deprived of life, liberty, or property without due process of the law.” Essentially, the government can't swoop in and take away our rights without first having a trial and determining our guilt.

14th amendment (equal protection clause): “no state shall deny to any in its jurisdiction the equal protection of the laws.” Everyone who is a citizen of the United States should be considered equal under the law and should be granted the same trials and process as everyone else. No one should be discriminated against under the law.

Presidential powers during wartime: The president is Commander in Chief of the US Army and Navy as well as the Commander in Chief of the Militia of the States when that Militia is called to service. He may require the written opinion of the principle officer in each of these departments upon any subject regarding them and he shall have power to grant reprieves and pardons for offenses against the US except in cases of impeachment.

The president shall have the power to make treaties (with the advice and consent of the senate) provided two thirds of the Senators present concur. He shall nominate and appoint ambassadors, other public ministers and consuls, judges of the supreme court and all other officers of the United States with the advice and consent of the Senate. The Congress, however, may vest the appointment of inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Executive Order 9066: this was an order written by President Roosevelt on Feb 19, 1942. This document gave the military permission to create a curfew, declare certain areas to be military zones, and to transport citizens to and from these zones.

Civilian Exclusion Order No. 34: The civilian exclusion order that Korematsu violated, written by General DeWitt ordering Japanese Americans to report to Assembly Centers at which point they were shipped off to internment camps.

Espionage act of 1917: An act that was amended multiple times, it originally prohibited any attempt to support U.S. enemies during wartime or to interfere with military affairs such as recruitment among other things. In the case *Schenck v. United States* it was ruled unanimously that the act didn't affect freedom as speech which had been a debated issue in the past.

Sedition Act of 1918: An act that expanded upon the Espionage Act in order to cover a broader range of offenses. These included speaking or acting against the government or expressing an opinion that reflected negatively on or interfered with the US government. It forbade things such as disloyal or abusive language against the US including its government and flag, treating the US with contempt. Those actions could be met with 5 to 20 year in jail if convicted and only applied in times of war.

Alien Enemies Act of 1798: The Alien Enemies Act allowed the president to arrest and deport anyone who was living in the United States that was from another country it was at war with.

Alien Registration Act of 1940: This act set criminal penalties for advocating the overthrow of the U.S. government and required all non-citizen adults to register with the government.

Writ of Habeas Corpus: “You have the Body.” This writ keeps the government from holding people indefinitely without giving a cause and is something one may file for when they are arrested. You have the right to know why you are being arrested and what you are being charged for. Basically they can't throw you into a prison and never let you out again without giving a good reason.

### **Pre-trial Reflection:**

This has been a very interesting case to me for a number of reasons, the chief among those being my interest in Japan and the fact that prior to this year I had never heard of the interment camps before. At least, if I did, it was only in passing and brief enough that I didn't retain any recollection of the information. The Civilian Exclusion Order and the way that they executed it anger me greatly, but then so does racism of any sort. This project has been fun to learn about and I'm excited for the trial though I must admit I hold a bit of trepidation too. It will be interesting, I think, and likely it will be amusing as well.

Unfortunately, my gut reaction doesn't mix with the true rulings on the case. Korematsu definitely violated the exclusion order but while Executive Order 9066 was constitutional, the exclusion order was not. I understand the fear and shock that would have been an instant result of Pearl Harbor but while fear is acceptable, internment of a large group of people based on their looks and without due process of the law is very wrong.

## Works Cited:

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