

# Handout A: Student Document Packet Part 2

## Document 6: *Korematsu v. United States* (1944) Majority Opinion Excerpt, Justice Hugo Black

### Source:

<https://supreme.justia.com/cases/federal/us/323/214/#tab-opinion-1938225>

### Introduction:

Justice Hugo Black wrote the majority opinion for the 6–3 decision that compulsory exclusion is justified during circumstances of peril to national security, based on the reasoning that the judicial branch must defer to the executive branch regarding military matters.

Text
We are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. . . .
Citizenship has its responsibilities, as well as its privileges, and, in time of war, the burden is always heavier. 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. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger. . . .
Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers—and we deem it unjustifiable to call them concentration camps, with all the ugly connotations that term implies—we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. 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. There was evidence of disloyalty on the part of some, the military authorities considered that the need for action was great, and time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that, at that time, these actions were unjustified.
Affirmed.

**Questions:**

1. According to the majority opinion, why was the exclusion order within the power of Congress?
2. What were the “real military dangers” that justified the exclusion order? (see paragraph 3)
3. Why do you think this justice clarified the point regarding racial prejudice?

## Document 7: *Korematsu v. United States* (1944), Dissenting Opinion Excerpts

### Source:

<https://supreme.justia.com/cases/federal/us/323/214/#tab-opinion-1938225>

### Introduction:

Three justices wrote strongly worded dissents in the case.

### Justice Robert Jackson:

Text
Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. . . .

### Questions:

1. Why does this dissenting justice object to the majority's ruling?
2. Put the following phrase in your own words: "The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

### Justice Frank Murphy:

Text
This exclusion of "all persons of Japanese ancestry, both alien and non-alien," from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over "the very brink of constitutional power" and falls into the ugly abyss of racism. . . .
No reasonable relation to an "immediate, imminent, and impending" public danger is evident to support this racial restriction, which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law. . . .

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.

### Questions:

1. According to Justice Murphy's opinion, what condition would be necessary to justify the deprivation of constitutional rights involved in *Korematsu's* case?
2. What does Murphy write is the real reason for the exclusion and confinement orders?

### Justice Owen Roberts:

Text
This is not a case of keeping people off the streets at night [as the earlier curfew order had been] ... nor a case of temporary exclusion of a citizen from an area for his own safety or that of the community ... On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.

### Questions:

1. Put this excerpt from Justice Owens's opinion in your own words.
2. What do all three of the dissents have in common?

## Document 8: Duty of Absolute Candor: Katyal Blog Post Excerpt May 20, 2011

### Source:

<https://obamawhitehouse.archives.gov/blog/2011/05/20/confession-error-solicitor-generals-mistakes-during-japanese-american-internment-cas>

### Introduction:

In 1980, President Jimmy Carter ordered a special investigation of the facts regarding the relocation and detention of Japanese Americans during World War II. The Commission on Wartime Relocation and Internment of Civilians issued its report in 1983, concluding that the decision to remove Japanese Americans from the west coast had been based on “race prejudice, war hysteria, and a failure of political leadership.” (Report of the Commission on Wartime Relocation and Internment of Civilians)

Text
The Solicitor General is responsible for overseeing appellate litigation on behalf of the United States, and with representing the United States in the Supreme Court. There are several terrific accounts of the roles that Solicitors General have played throughout history in advancing civil rights. But it is also important to remember the mistakes. One episode of particular relevance to AAPI Heritage Month is the Solicitor General’s defense of the forced relocation and internment of Japanese-Americans during World War II. . . .
By the time the cases of Gordon Hirabayashi and Fred Korematsu reached the Supreme Court, the Solicitor General had learned of a key intelligence report that undermined the rationale behind the internment. The Ringle Report, from the Office of Naval Intelligence, found that only a small percentage of Japanese Americans posed a potential security threat, and that the most dangerous were already known or in custody. But the Solicitor General did not inform the Court of the report, despite warnings from Department of Justice attorneys that failing to alert the Court “might approximate the suppression of evidence.” Instead, he argued that it was impossible to segregate loyal Japanese Americans from disloyal ones. Nor did he inform the Court that a key set of allegations used to justify the internment, that Japanese Americans were using radio transmitters to communicate with enemy submarines off the West Coast, had been discredited by the FBI and FCC. And to make matters worse, he relied on gross generalizations about Japanese Americans, such as that they were disloyal and motivated by “racial solidarity.”
The Supreme Court upheld Hirabayashi’s and Korematsu’s convictions. And it took nearly a half century for courts to overturn these decisions. One court decision in the 1980s that did so highlighted the role played by the Solicitor General, emphasizing that the Supreme Court gave “special credence” to the Solicitor General’s representations. The court thought it unlikely that the Supreme Court would have ruled the same way had the Solicitor General exhibited complete candor. Yet those decisions still stand today as a reminder of the mistakes of that era.
Today, our Office takes this history as an important reminder that the “special credence” the Solicitor General enjoys before the Supreme Court requires great responsibility and a duty of absolute candor in our representations to the Court. Only then can we fulfill our responsibility to defend the United States and its Constitution, and to protect the rights of all Americans.

**Questions:**

1. Define “candor.”
2. On the basis of this document, to what extent do you believe the relocation and detention of Japanese Americans were based on “military necessity?”
3. Restate the last paragraph of Acting Solicitor General Katyal’s 2011 blog post in your own words.
4. To what extent do you believe Solicitor General Fahy in 1944 carried out his “great responsibility and duty of absolute candor?” What civic virtues are relevant to his behavior?

---

**Part II: Conclusion and Assessment: Thesis**

Write a thesis statement that answers the prompt for this document-based question:

**DBQ prompt:**

How did wartime experiences lead to challenges to the civil liberties of Japanese Americans?