

DOCUMENT A

The United States Constitution (1789), Article I, Section 9

...The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

- 1. What is “the writ of *habeas corpus*”? In what cases can it be suspended?**

DOCUMENT B

The Fifth Amendment (1791)

No person shall ... be deprived of life, liberty, or property, without due process of law...

- 1. What types of rights does this amendment to the Constitution protect? What is the relationship between them?**
- 2. What must the government provide when it tries to deprive someone of these rights?**

DOCUMENT C

***Ex Parte Milligan* (1866)**

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false, for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence...

- 1. This ruling, following the suspension of habeas corpus during the Civil War, held that civilians could not be tried in military tribunals as long as civil courts were operational. How might this reasoning apply to the *Korematsu* case?**

DOCUMENT D

A Date Which Will Live in Infamy (1941)



Images courtesy
Library of Congress
Prints and
Photographs Division
(LC-USZ62-104778;
LC-USZ62-16555;
LC-USZ62-129811).

1. What impression do these images portray? How is that impression related to public reaction to the decision to remove Japanese Americans from their homes along the west coast?

DOCUMENT E

Franklin D. Roosevelt's Infamy Speech (1941)

December 8, 1941

Yesterday, December 7, 1941 - a date which will live in infamy - the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan....

It will be recorded that the distance of Hawaii from Japan makes it obvious that the attack was deliberately planned many days or even weeks ago. During the intervening time the Japanese Government has deliberately sought to deceive the United States by false statements and expressions of hope for continued peace. ...

As Commander-in-Chief of the Army and Navy, I have directed that all measures be taken for our defense. ...

I believe I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make very certain that this form of treachery shall never endanger us again.

Hostilities exist. There is no blinking at the fact that our people, our territory and our interests are in grave danger.

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December seventh, a state of war has existed between the United States and the Japanese Empire

DOCUMENT E

1. What is infamy?
2. Note the descriptive terms that President Roosevelt used in this speech on the day after the Japanese attack on Pearl Harbor. What is the overall effect of this speech?
3. Why did the President maintain that a state of war “has [already] existed”?
4. According to the Constitution, which branch of government has the power to declare war? (See the Constitution, Article 1, Section 8, Clause 11.)

DOCUMENT F

Information Bulletin Number 6 (1942, emphasis original)

CONFIDENTIAL
INFORMATION BULLETIN
NUMBER 6
G-2 SECTION
GENERAL HEADQUARTERS, U.S. ARMY,
Army War College,
Washington, D. C.,
January 21, 1942
JAPANESE ESPIONAGE

6. Conclusions. --

a. It may be expected that Japanese diplomatic and consular communications will be replaced now by using the diplomatic and consular organization of an allegedly neutral power identified with the Axis. They may also use officials of other neutral countries whom they have subverted.

b. Their espionage net containing Japanese aliens, first and second generation Japanese and other nationals is now thoroughly organized and working underground.

c. In addition to their communications net through neutral diplomats, they may be expected to have their own **underground communication net.**

d. Extensive use of Occidentals, such as Axis nationals, neutral nationals, and **subverted Americans**, is to be expected.

(signed)

P. M. ROBINETT,

Lieut. Colonel, G.S.C.,

Ass't Chief of Staff, G-2.

- 1. Of what dangers does this confidential memo warn?**
- 2. How long after the Pearl Harbor attack was this memo written?**

DOCUMENT G

Executive Order 9066, February 19, 1942

...the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such actions necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commanders may determine, from which any or all persons may be excluded, and with such respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion...

- 1. What does this executive order authorize the Secretary of War and his military commanders to do?**

DOCUMENT H

Executive Order 9102, March 18, 1942

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to provide for the removal from designated areas of persons whose removal is necessary in the interests of national security, it is ordered as follows:

1. There is established in the Office for Emergency Management of the Executive Office of the President the War Relocation Authority, at the head of which shall be a Director appointed by and responsible to the President.
2. The Director of the War Relocation Authority is authorized and directed to formulate and effectuate a program for the removal, from the areas designated from time to time by the Secretary of War or appropriate military commander under the authority of Executive Order No. 9066 of February 19, 1942, of the persons or classes of persons designated under such Executive Order, and for their relocation, maintenance, and supervision....

- 1. How is Executive Order 9102 different from Executive Order 9066?**

DOCUMENT I

Instructions to Japanese, April 1, 1942

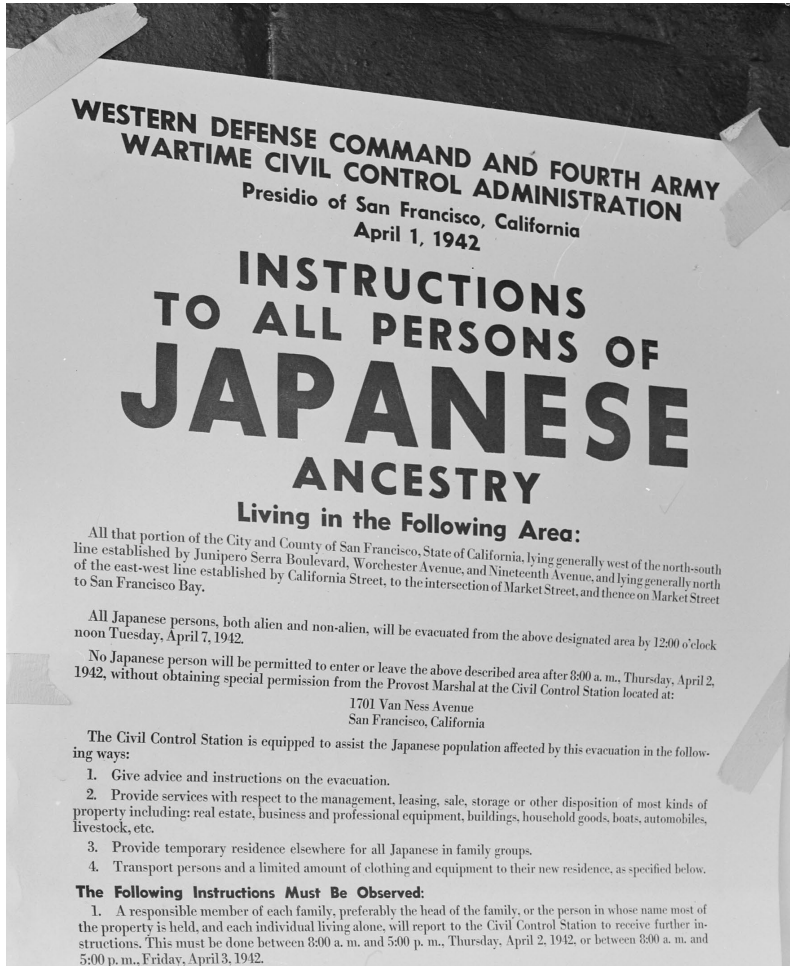


Image courtesy the National Archives and Records Administration (Records of the War Relocation Authority, 1941 - 1989, ARC identifier: 537).

DOCUMENT I

1. **To whom are these instructions directed? On what date was the announcement posted?**
2. **What are they instructed to do?**
3. **What assistance is promised to them?**
4. **What part(s) of these instructions would be most frightening/unpleasant to you? Why? To what extent would you trust the Wartime Civil Control Administration to safeguard any property left behind in their care?**

DOCUMENT J

Hirabayashi v. United States (1943)

Pursuant to Executive Order No. 9066 ... the military commander of the Western Defense Command promulgated an order requiring ... that all persons of Japanese ancestry within a designated military area “be within their place of residence between the hours of 8 p.m. and 6 a.m.” Appellant, a United States citizen of Japanese ancestry, was convicted in the federal District Court for violation of this curfew order.

Held:

It was within the constitutional authority of Congress and the Executive, acting together, to prescribe this curfew order as an emergency war measure.

In the light of all the facts and circumstances, there was substantial basis for the conclusion, in which Congress and the military commander united, that the curfew as applied was a protective measure necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion.

The Fifth Amendment contains no equal protection clause, and it restrains only such discriminatory legislation by Congress as amounts to a denial of due process.

The fact ... that attack on our shores was threatened by Japan, rather than another enemy power, set [Japanese] citizens apart from others who have no particular associations with Japan. ...We cannot close our eyes to the fact, demonstrated by experience, that, in time of war, residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.

- 1. Of what act was Hirabayashi convicted?**
- 2. Why did the Court hold that the curfew was reasonable?**
- 3. In your opinion, to what extent did persons of Japanese ancestry receive due process?**

DOCUMENT K

Memorandum, Biddle to FDR, December 30, 1943

Attorney General Francis Biddle, Letter to President Roosevelt:

...The important thing is to secure the reabsorption of about 95,000 Japanese, of whom two-thirds are citizens and who give every indication of being loyal to the United States, into normal American life. The present practice of keeping loyal American citizens in concentration camps on the basis of race for longer than is absolutely necessary is dangerous and repugnant to the principles of our Government. It is also necessary to act now so that the agitation against these citizens does not continue after the war.

- 1. What practice did Biddle describe as “dangerous and repugnant to the principles of our Government”?**
- 2. To what principles do you think he was referring in this warning?**
- 3. Why did he write that it was important to act immediately “to secure the reabsorption [of loyal Japanese people] into normal American life”?**

DOCUMENT L

MAJORITY OPINION



Korematsu v. United States (1944)

In the light of the principles we announced in the *Hirabayashi* case, 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....

It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. 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.

DOCUMENT L

MAJORITY OPINION



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 M

Korematsu v. U.S. (1944), Dissenting Opinion

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....

- 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."**

DOCUMENT N

***Ex parte Mitsuye Endo*, December 18, 1944**

Mitsuye Endo... is an American citizen of Japanese ancestry. She was evacuated from Sacramento, California, in 1942, pursuant to certain military orders ... and was removed to the Tule Lake War Relocation Center located at Newell, Modoc County, California.

Her petition for a writ of *habeas corpus* alleges that she is a loyal and law-abiding citizen of the United States, that no charge has been made against her, that she is being unlawfully detained, and that she is confined in the Relocation Center under armed guard and held there against her will.

It is conceded by the Department of Justice and by the War Relocation Authority that appellant is a loyal and law-abiding citizen. They make no claim that she is detained on any charge or that she is even suspected of disloyalty.

The authority to detain a citizen or to grant him a conditional release as protection against espionage or sabotage is exhausted at least when his loyalty is conceded. If we held that the authority to detain continued thereafter, we would transform an espionage or sabotage measure into something else. That was not done by Executive Order No. 9066 or by the Act of March 21, 1942, which ratified it. ... To read them that broadly would be to assume that the Congress and the President intended that this discriminatory action should be taken against these people wholly on account of their ancestry even though the government conceded their loyalty to this country. We cannot make such an assumption. ...

Mitsuye Endo is entitled to an unconditional release by the War Relocation Authority.

The court is squarely faced with a serious constitutional question,-whether [her] detention violated the guarantees of the Bill of Rights of the federal Constitution and especially the guarantee of due process of law. There can be but one answer to that question. An admittedly loyal citizen has been deprived of her liberty for a period of years. Under the Constitution she should be free to come and go as she pleases. Instead, her liberty of motion and other innocent activities have been prohibited and conditioned. She should be discharged.

DOCUMENT N

1. What is the “serious constitutional question” in Endo’s case, according to this Justice’s reasoning? What did he say was the clear answer to that question?
2. This decision was announced on the same day as *Korematsu v. U.S.*, December 18, 1944. Compare and contrast the two cases. Why do you think the Court’s majority came to such different conclusions in these two related cases?

DOCUMENT O

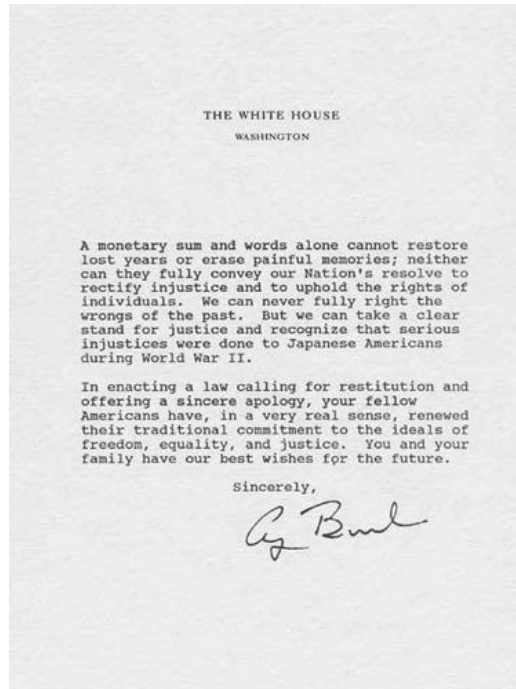
George H. W. Bush, Letter from President Bush to Internees (1991)

THE WHITE HOUSE
WASHINGTON

A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation's resolve to rectify injustice and to uphold the rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II.

In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice. You and your family have our best wishes for the future.

Sincerely,
George Bush



George H. W. Bush, LETTER FROM PRESIDENT BUSH TO INTERNEES (1991). Courtesy of California State University—Sacramento, the Department of Special Collections and University Archives.

- 1. Living survivors of internment camps received these letters along with \$20,000 as partial restitution for lost property. What constitutional ideals did President Bush mention in his letter?**
- 2. Where did those ideals come from?**
- 3. To what extent do you think the United States lived up to those ideals with respect to the events and aftermath of *Korematsu v. U.S.*?**

DOCUMENT P

Duty of Absolute Candor: Katyal Blog Post (2011)

Background: 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)

Confession of Error: The Solicitor General’s Mistakes During the Japanese-American Internment Cases, by the Department of Justice, May 20, 2011

Neal Katyal, Acting Solicitor General of the United States.

...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.

Source: <http://blogs.justice.gov/main/archives/1346>

- 1. Based on this document, to what extent do you believe the relocation and detention of Japanese Americans was based on “military necessity?”**
- 2. Restate the last paragraph of Acting Solicitor General Katyal’s 2011 blog post in your own words. To what extent do you believe that Solicitor General Fahy in 1944 carried out his “great responsibility and duty of absolute candor?”**

DIRECTIONS

Read the Case Background and Key Question. Then analyze the Documents provided. Finally, answer the Key Question in a well-organized essay that incorporates your interpretations of the Documents as well as your own knowledge of history.

CONSTITUTIONAL PRINCIPLES

*Equal protection
Due process
Inalienable rights*