

ANSWER KEY

Document L: *Citizens United v. F.E.C.* (2010), Concurring Opinion

1. This concurring justice argues that corporations existed at the time of the Founding. They not only engaged in speech and petitioned the government, but were understood by the authors of the First Amendment to have speech rights equivalent to individual Americans. Further, the First Amendment does not allow restrictions to be made on the basis of who is speaking.

Document M: “Another Dam Breaks,” Matt Wuerker, 2010

1. The cartoonist believes the Supreme Court’s ruling in *Citizens United* has “broken the dam” holding back union and corporate money from overwhelming American voters with political speech. The resulting wave of “special interest” money threatens to drown the influence and voices of individual voting Americans.
2. Accept reasoned answers.

UNIT 4 – THE PRESIDENCY: CONSTITUTIONAL CONTROVERSIES

Presidents and the Constitution Introductory Essay

1. According to Executive Order 9066, the military had authority to forcibly remove and incarcerate anyone of Japanese descent living within 60 miles of the California, Oregon, and Washington coast—an area deemed critical to national defense and potentially vulnerable to espionage.
2. Executive Order 9102 established the War Relocation Authority to carry out the internment.
3. Korematsu challenged the wartime provisions, believing that the President and Congress had exceeded their war powers by implementing exclusion and restricting the rights of Americans of Japanese descent.
4. The U.S. Supreme Court sided with the government and held that the need to protect against espionage outweighed

Korematsu’s rights. Compulsory exclusion, though constitutionally suspect, is justified during circumstances of emergency and peril. The majority accepted the military’s assertion that it was impossible to determine loyal from disloyal Japanese Americans and that their temporary exclusion was based on military judgment that an invasion of the West Coast by Japan was a real possibility.

5. The dissenters called the government’s actions racist and said the relocation centers were concentration camps. Justice Robert Jackson dissented and was particularly troubled that the Court had accepted the case in the first place and then, by ruling in favor of the government, had created a constitutional precedent for future action.
6. Accept reasoned answers.
7. Accept reasoned answers.

ANSWER KEY

KOREMATSU V. U.S. (1944)

Document A: The United States Constitution (1789)

1. The writ of *habeas corpus* is the guarantee that a person who is arrested may insist on being taken before a judge for a hearing. If the arresting authorities cannot demonstrate to the judge that they have good cause for detaining the prisoner, he or she must be promptly released. The privilege of the writ of *habeas corpus* may be suspended only in cases of rebellion or invasion, when public safety does not allow for prompt individual hearings.

Document B: The Fifth Amendment (1791)

1. This portion of the Fifth Amendment provides that the federal government must not take anyone's life, liberty, or property without following fair and just procedures according to the law. Life, liberty, and property are inalienable rights belonging by nature to every human being.
2. due process of law

Document C: *Ex Parte Milligan* (1866)

1. In *Ex Parte Milligan*, the Supreme Court ruled that, even in wartime or other emergencies, government must follow the rule of law. If government is allowed to ignore its own rules at these times, the result is "anarchy or despotism". Applying this reasoning to the *Korematsu* case leads to the conclusion that the government failed to follow the rule of law by forcing law-abiding Japanese citizens and legal residents into holding camps.

Document D: A Date Which Will Live in Infamy (1941)

1. Students may respond that the images portray a sense of shock and panic, and that Japan is responsible for significant

death and destruction. In such times people are often willing to take shortcuts in the name of security. Previously existing prejudices against Asian Americans were more likely to come to the surface, so that many people might approve of the decision to round up Japanese Americans and send them to detention camps.

Document E: Franklin D. Roosevelt's Infamy Speech (1941)

1. Definition of infamy: shameful, criminal, or outrageous act.
2. Descriptive terms include infamy, suddenly, deliberately, obvious, false, uttermost, certain, treachery, grave danger, unprovoked, dastardly. Accept reasoned responses regarding the overall effect of the speech. Students may suggest that the overall effect was to highlight the urgent situation that the Japanese attack created, while conveying a calm and strong sense of resolve in the nation's response.
3. Beginning from the time that the Japanese attacked, the U.S. was at war, even before Congress could make the official declaration.
4. According to Article 1, Section 8, Clause 11, only Congress has the power to declare war.

Document F: Information Bulletin Number 6 (1942)

1. The memo warns that the Japanese government may be expected to engage in espionage, for example by routing communications through allegedly neutral countries, Japanese aliens, first and second generation Japanese, Axis nationals, and subverted Americans in an underground communication net.
2. The memo was written 2 weeks after the Japanese attack on Pearl Harbor.

ANSWER KEY

Document G: Executive Order 9066, February 19, 1942

1. The executive order authorizes the Secretary of War and his military commanders, whenever necessary or desirable, to designate and take control of certain military areas. This control includes the power to exclude any and all persons, as well as to determine who has the right to enter, remain in, or leave the area. The Secretary of War and military commanders have discretion to determine and impose any restrictions at any time.

Document H: Executive Order 9102, March 18, 1942

1. Executive Order 9102 provides for the creation of a specific agency, the War Relocation Authority, to carry out Executive Order 9066 by developing procedures for “relocation, maintenance, and supervision” of those “persons or classes of persons designated...”

Document I: Instructions to Japanese, April 1, 1942

1. The instructions are directed to all persons of Japanese ancestry within the area indicated in the first paragraph. It was posted April 1.
2. The head of each family is to report to the Civil Control Station on April 2 or 3 for further instructions for the evacuation.
3. Assistance is promised with respect to the following: advice, disposition of property, temporary residence, transportation of people and limited amounts of their belongings to temporary housing.
4. Accept reasoned responses.

Document J: *Hirabayashi v. United States* (1943)

1. Hirabayashi was convicted of violating the curfew order that required all persons of Japanese ancestry to be in their residences between 8 p.m. and 6 a.m.
2. The Court held that the curfew was reasonable because the curfew was a reasonable war measure—“necessary to meet the threat of sabotage and espionage.” The reasoning was 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.” Also, the Court noted that “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.”
3. Accept reasoned responses. Students may reply based on Executive Orders 9066 and 9102, that people had very little notice of the various restrictions on their activities.

Document K: Memorandum, Biddle to FDR, December 30 (1943)

1. According to Biddle, the 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.”
2. Accept reasoned responses. The principles to which Biddle seems to be referring may include rule of law, due process, inalienable rights, limited government.
3. Biddle wrote that it was important to act immediately to “to secure the reabsorption [of loyal Japanese people] into normal American life... so that agitation against them would not continue after the war.”

ANSWER KEY

Document L: *Korematsu v. United States* (1944), Majority Opinion

1. According to the majority opinion, the exclusion order was within the power of Congress due to the “conditions of modern warfare,...” Even though “compulsory exclusion...is inconsistent with our basic governmental institutions, ...the power to protect must be commensurate with the threatened danger. “
2. The real military dangers included the following: We were at war with the Japanese empire and the properly constituted military feared an invasion of our West Coast. ...There was evidence of disloyalty on the part of some...we cannot determine that the actions were unjustified based on hindsight.
3. The majority disputed the dissenters’ claim that the exclusion and detention of Japanese Americans was based on racial prejudice. “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.” Military leaders determined that it was necessary for the nation’s safety to remove the Japanese from the area, and Congress was correct to trust the military leaders.

Document M: *Korematsu v. U.S.* (1944), Dissenting Opinion

1. The dissenting justice charges that the military order was unconstitutional because it was based on racial prejudice.
2. Once the Court decides that the exclusion and detention of the Japanese was consistent with due process under wartime circumstances, it becomes easier in the future to use emergency conditions to justify a flawed interpretation of the Constitution and infringe on inalienable rights.

Document N: *Ex parte Mitsuye Endo*, December 18, 1944

1. The “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.”
2. Accept reasoned responses In Korematsu’s case, the court ruled that the removal of Americans of Japanese descent did not exceed the war powers of the President and the Congress.

In Endo’s case, the government ruled that, even though the removal and detention process was within the government’s power as a wartime measure, once the government conceded an individual’s loyalty, she must be released. “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....”

ANSWER KEY

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

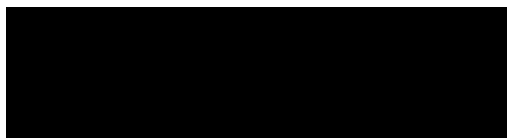
1. The constitutional ideals mentioned by President Bush were freedom, equality, and justice.
2. The ideals come from our constitutional principles of limited government, equal protection, and due process.
3. Accept reasoned responses with respect to the remaining question.

Document P: Duty of Absolute Candor: Katyal Blog Post (2011)

1. Based on this document, it appears clear that the relocation policy was not in any way based on military necessity.
2. Accept reasoned responses.

The Issue Endures

1. Covered persons includes anyone who was involved in planning or carrying out the Sept. 11, 2001 attacks on the U.S., as well as anyone connected with al-Qaeda, the Taliban, or others engaged in hostilities against the U.S.
2. Actions authorized against covered persons include indefinite detention without trial until the end of hostilities.
3. Access by covered persons to legal representation “will be balanced with national security considerations.”



Handout A: Eisenhower and the Little Rock Crisis Background Essay

1. The *Plessy* case upheld mandated segregation in public rail cars. The *Brown* decision invalidated segregation, holding that separate facilities were inherently unequal.

2. The Little Rock Crisis took place when the Governor of Arkansas refused to intervene when a mob prevented nine African American students from attending their school. A federal court had approved their desegregation plan as consistent with the *Brown* ruling and ordered integration to begin.
3. Eisenhower ordered the mob to disperse and when it did not, sent the 101st Airborne Division to keep the peace. He also federalized the Arkansas National Guard, removing those men from the Arkansas governor’s command.
4. Eisenhower described his constitutional duty to take care that the laws were faithfully executed as “inescapable.”
5. Students may say that the Constitution says the states and the people keep all the powers not given to the federal government and that therefore states are rightfully in charge of matters such as public education. They may also say that Article II says the President is Commander in Chief of the militia of the several states when called into actual service of the states, but that it does not say who can call them into service. Since Congress can declare war and provide for calling forth the militia, perhaps it is also Congress’s power to call the militia into service.

EISENHOWER AND THE LITTLE ROCK CRISIS DBQ

Document A: The United States Constitution (1789)

1. The President has the power to carry out the laws. He is in charge of the armed forces, and he is responsible for making sure the laws are enforced.
2. The militia could refer to the National Guard.