

Korematsu v. United States Decided December 18, 1944  
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MR. JUSTICE BLACK delivered the opinion of the Court.

MR. JUSTICE FRANKFURTER, concurring.

MR. JUSTICE ROBERTS, MR. JUSTICE MURPHY, and MR. JUSTICE JACKSON, dissenting.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.  
CERTIORARI, 321 U.S. 760, to review the affirmance of a judgment of conviction.

1. Civilian Exclusion Order No. 34 which, during a state of war with Japan and as a protection against espionage and sabotage, was promulgated by the Commanding General of the Western Defense Command under authority of Executive Order No. 9066 and the Act of March 21, 1942, and which directed the exclusion after May 9, 1942 from a described West Coast military area of all persons of Japanese ancestry, held constitutional as of the time it was made and when the petitioner -- an American citizen of Japanese descent whose home was in the described area -- violated it. P. 219.

2. The provisions of other orders requiring persons of Japanese ancestry to report to assembly centers and providing for the detention of such persons in assembly and relocation centers were separate, and their validity is not in issue in this proceeding. P. 222.

3. Even though evacuation and detention in the assembly center were inseparable, the order under which the petitioner was convicted was nevertheless valid. P. 223.

Solicitor General Fahy, with whom Assistant Attorney General Wechsler and Messrs. Edward J. Ennis, Ralph F. Fuchs, and John L. Burling were on the brief, for the United States.

Messrs. Saburo Kido and A. L. Wirin filed a brief on behalf of the Japanese American Citizens League; and Messrs. Edwin Borchard, Charles A. Horsky, George Rublee, Arthur DeHon Hill, Winthrop Wadleigh, Osmond K. Fraenkel, Harold Evans, William Draper Lewis, and Thomas Raeburn White on behalf of the American Civil Liberties Union, as amici curiae, in support of petitioner.

Messrs. Robert W. Kenney, Attorney General of California, George Neuner, Attorney General of Oregon, Smith Troy, Attorney General of Washington, and Fred E. Lewis, Acting Attorney General of Washington, filed a brief on behalf of the States of California, Oregon and Washington, as amici curiae, in support of the United States.

MR. JUSTICE BLACK delivered the opinion of the Court.

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area," contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which directed that after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner's loyalty to the United States. The Circuit Court of Appeals affirmed, 1 and the importance of the constitutional question involved caused us to grant certiorari.

It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

In the instant case prosecution of the petitioner was begun by information charging violation of an Act of Congress, of March 21, 1942, 56 Stat. 173, which provides that

" . . . whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed \$ 5,000 or to imprisonment for not more than one year, or both, for each offense."

Exclusion Order No. 34, which the petitioner knowingly and admittedly violated, was one of a number of military orders and proclamations, all of which were substantially based upon Executive Order No. 9066, 7 Fed. Reg. 1407. That order, issued after we were at war with Japan, declared that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities. . . ."

One of the series of orders and proclamations, a curfew order, which like the exclusion order here was promulgated pursuant to Executive Order 9066, subjected all persons of Japanese ancestry in prescribed West Coast military areas to remain in their residences

