

1 **SUPREME COURT CASE: KOREMATSU V. UNITED STATES (1944)**

2 **Excerpt from majority opinion authored by Justice Black**

3 The **petitioner**, an American citizen of Japanese **descent**, was convicted in a
4 federal district court for remaining in San Leandro, California, a "Military Area,"
5 contrary to Civilian Exclusion Order No. 34 of the Commanding General of the
6 Western Command, U.S. Army, which directed that, after May 9, 1942, all persons
7 of Japanese ancestry should be excluded from that area. ...

8
9 It should be noted, to begin with, that all legal **restrictions** which **curtail** the civil
10 rights of a single racial group are immediately suspect. That is not to say that all
11 such restrictions are unconstitutional. It is to say that courts must **subject** them to
12 the most **rigid scrutiny**. Pressing **public necessity** may sometimes justify the
13 existence of such restrictions....

14
15 **Exclusion** of those of Japanese origin was **deemed** necessary because of the
16 presence of an **unascertained** number of disloyal members of the group, most of
17 whom we have no doubt were loyal to this country.

18
19 We uphold the exclusion order.... In doing so we are not unmindful of the
20 hardships **imposed** by it upon a large group of American citizens.... But hardships
21 are a part of war, and war is an **aggregation** of hardships. All citizens alike, both
22 in and out of uniform, feel the impact of war in greater or lesser measure.
23 Citizenship has its responsibilities as well as its privileges, and in time of war the
24 **burden** is always heavier. **Compulsory** exclusion of large groups of citizens from
25 their homes, except under circumstances of direst emergency and **peril**, is
26 inconsistent with our basic governmental institutions. But when under conditions
27 of modern warfare our shores are threatened by **hostile** forces, the power to protect
28 must be commensurate with the threatened danger....

29
30 It is said that we are dealing here with the case of imprisonment of a citizen in a
31 concentration camp solely because of his ancestry, without evidence or inquiry
32 concerning his loyalty and good **disposition** towards the United States.... To cast
33 this case into outlines of racial prejudice, without reference to the real military
34 dangers which were presented, **merely** confuses the issue. Korematsu was not
35 excluded from the Military Area because of hostility to him or his race. He was
36 excluded because we are at war with the Japanese Empire.

37
38 **Excerpt from the dissenting opinion, authored by Justice Jackson**

39 Korematsu was born on our soil, of parents born in Japan. The Constitution makes
40 him a citizen of the United States by **nativity**, and a citizen of California by
41 residence. No claim is made that he is not loyal to this country. There is no
42 suggestion that, apart from the matter involved here, he is not **law-abiding** well
43 disposed. Korematsu, however, has been convicted of an act not commonly a
44 crime. It consists merely of being present in the state whereof he is a citizen, near
45 the place where he was born, and where all his life he has lived.

questionable

investigation

greatest

equal

46 ...

47 A citizen's presence in the **locality**, however, was made a crime only if his parents
48 were of Japanese birth. Had Korematsu been one of four -- the others being, say, a
49 German **alien** enemy, an Italian alien enemy, and a citizen of American-born
50 ancestors, convicted of **treason** but out on parole -- only Korematsu's presence
51 would have violated the order. The difference between their innocence and his
52 crime would result, not from anything he did, said, or thought, different than they,
53 but only in that he was born of different racial stock.

54 Now, if any **fundamental** assumption underlies our system, it is that guilt is
55 personal and not **inheritable**. Even if all of one's antecedents had been convicted
56 of treason, the Constitution **forbids** its penalties to be visited upon him, for it
57 provides that "no **attainder** of treason shall work corruption of blood, or
58 **forfeiture** except during the life of the person attainted." But here is an attempt to
59 make an otherwise innocent act a crime merely because this prisoner is the son of
60 parents as to whom he had no choice, and belongs to a race from which there is no
61 way to resign. If Congress, in peacetime legislation, should enact such a criminal
62 law, I should suppose this Court would refuse to enforce it.

63 ...

64 My duties as a justice, as I see them, do not require me to make a military
65 judgment as to whether General DeWitt's evacuation and **detention** program was a
66 reasonable military necessity. I do not suggest that the courts should have
67 attempted to interfere with the Army in carrying out its task. But I do not think
68 they may be asked to execute a military expedient that has no place in law under
69 the Constitution. I would reverse the judgment and discharge the prisoner.

ancestors

means to an end

Teacher’s Guide

Name of Text: **Korematsu v. United States** (Supreme Court Decision, excerpted)

Question Composer: Angela Orr

CCSS: RHST.11-12.1, RHST.11-12.2, RHST.11-12.4, RHST.11-12.10; WHST.11-12.2, WHST.11-12.4, WHST.11-12.9; SL.11-12.1, L.11-12.3, L.11-12.4

Text Dependent Questions	Teacher Notes And Possible Textual Evidence for Student Answers
<p>What do you learn about this document from lines 1-7 and 38?</p>	<p>This question orients students to the text, helping them to understand that this is a Supreme Court case from 1944. It represents a conflict between the U.S. (federal) government and a person, with two different opinions (one a majority – winning - and one a dissent.) They also learn that these opinions are longer in length and have been excerpted. Regarding the petitioner, Korematsu, the can find evidence: “American citizen,” “Japanese descent,” remained (possibly lived) in “San Leandro, California” which was deemed a “Military Area.” They learn that the government through the Army said that all people of “Japanese ancestry should be excluded from that area.”</p>
<p>What do you learn about the legal restrictions at issue in this case from the second paragraph?</p>	<p>At the heart of this case is the question of what types of restrictions can be made on citizens. The court is beginning its argument that national security can at times trump individual rights. Evidence to answer this question includes:</p> <ul style="list-style-type: none"> • Restrictions “curtail civil rights of a single racial group” • These restrictions are “suspect” • Not necessarily “unconstitutional” • “courts must subject them to the most rigid scrutiny” because they are of in regards to single racial group (Probe students if they don’t automatically point to the reason for rigid scrutiny.) • “public necessity may sometimes justify the existence” of them
<p>How would the meaning of the second paragraph change if the word “suspect” in line 10 was changed to “unacceptable?”</p>	<p>Because this paragraph includes heavy legal jargon, it’s important to determine exactly what is being said and how that might differ from modern notions of fairness towards racial groups. If “suspect” were changed to “unacceptable,” then these types of restrictions would be unconstitutional and even great public necessity might not justify their existence. This also helps students understand the author’s word choice. (Note to the Teacher: Suspect is a term employed by the Court in cases regarding equal protection. Race discrimination is normally viewed with the highest level of scrutiny and government restriction must be based on a high level or compelling interest.)</p>

Text Dependent Questions

Teacher Notes And Possible Textual Evidence
for Student Answers

<p>What can you learn about the people who were excluded by this government order?</p> <p>*What does this text tell us about racial and cultural beliefs of the time period?</p>	<p>This is both an orientation question (Can students understand the people affected by the Exclusion Order and this case?) as well as a syntheses of multiple areas of the document. Students may focus on the general population affected and/or on Korematsu.</p> <ul style="list-style-type: none"> • Japanese origin & U.S. citizens, born in U.S. (lines, 3, 15, 20, 30-31, 39-40, 44) • Some “unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to the country” (16-17), “without evidence or inquiry concerning his loyalty and good dispositions towards the U.S.” (31-32), “no claim is made that he is not loyal...not law abiding” (41-42) • “large groups of citizens” taken from their homes (24) • Not German or Italian (49) • Korematsu had lived his whole life in California (45) • Belongs to a race from which there is “no way to resign” (61) • *This text shows us that citizens of Japanese descent were targets of racism, while other immigrant groups were not. For example, German and Italian immigrants were not racially discriminated against.
<p>To ascertain means to figure out or determine. What does an “unascertained number” mean? Why do you think the number of “disloyal members of the group” was “unascertained”?</p>	<p>This question deals with a difficult vocabulary word and helps to understand the vagueness of the law and its enforcement.</p> <ul style="list-style-type: none"> • They weren’t able to determine a specific amount of citizens who were loyal or not • They weren’t able to determine who the order applied to based “solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.” (31-32)
<p>The word <i>exclusion</i> appears on line 15. What is the meaning of the word in the context of this document? Using context clues from lines 15-16 and 24-28, provide 3 words or phrases from the text that support the definition.</p>	<p>This question deals with a difficult vocabulary word that is at the heart of this document.</p> <ul style="list-style-type: none"> • Exclusion means <i>removal</i> or <i>to be forcibly taken away</i>. • those of Japanese origin was deemed necessary (line 15) • an unascertained number of disloyal members of the group (line 16) • Compulsory exclusion of large groups of citizens from their homes (lines 24-25) • threatened by hostile forces... (line 27)

Text Dependent Questions

Teacher Notes And Possible Textual Evidence for Student Answers

What is Justice Jackson's purpose in the two sentences starting with "Had Korematsu" in line 48?

This question targets a sentence with difficult syntax. The word "Had" is used to set up a hypothetical example in order to reinforce the claim made in lines 47-48 that Korematsu's only crime was that his parents were of Japanese birth. The example describes the other groups with whom the U.S. is actually at war and demonstrates that these German and Italian alien (foreign born) enemies - even if they had been previously convicted of treason - would not have been susceptible to the Exclusion Order. The purpose of this example is to demonstrate that the law only targets race, rather than criminal intent. In fact, race is shown to be the most important factor, even over parental nationality, as Italian and German aliens are not covered under the exclusion.

<p>How does Justice Jackson argue that Korematsu “has been convicted of an act not commonly a crime”?</p>	<p>In order to negate the majority opinion, Jackson has to assert that the exclusion order was an unconstitutional law, and he does so by describing that the law is not like other laws...it is uncommon and based on illogic. He does this by claiming that all that Korematsu did to commit the crime was to be “present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived” (43-45). Evidence continues to demonstrate that breaking this law was based not upon making a choice but in being born and living as an ordinary citizen “the difference between their innocence and his crime...only in that he was born of different racial stock.” Later he states, “But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents to whom he had no choice, and belongs to a race from which there is no way to resign.” (59-61)</p> <ul style="list-style-type: none"> • “guilt is personal and not inheritable” and “even if all of one’s antecedents had been convicted of treason” they would not be guilty, themselves (54-56) • If this law was enacted in peacetime, “this Court would refuse to enforce it” (61-62) • “has no place in law under the Constitution” (68-69)
<p>Describe in your own words how Justice Jackson responds to Justice Black and the majority’s opinion that this case is not about racial prejudice but rather military necessity?</p>	<p>This question allows students to fully process the main arguments in the majority and dissenting opinions and use their own words to synthesize the evidence provided in the previous answer. Black and the majority understand that exclusion is “inconsistent with our basic governmental institutions,” but believe that the “power to protect” the general public overrides the need to protect individual rights under the Constitution. “Real military dangers” were the reason for the order. Students should also be able to hone in on the idea that Jackson believes a law which would be unconstitutional during peacetime should NOT be upheld in war time. Even war and “military expedients” do not justify the imposition of unconstitutional laws. They should also understand that Jackson believes it wrong to criminalize racial background instead of criminalizing an act.</p>

Vocabulary

These words merit <u>LESS</u> time and attention (They are concrete and easy to explain, or describe events/ processes/ideas/concepts/experiences that are familiar to your students)			These words merit <u>MORE</u> time and attention (They are abstract, have multiple meanings, and/or are a part of a large family of words with related meanings. These words are likely to describe events, ideas, processes or experiences that most of your student will be unfamiliar with)		
Line #	Word	Definition	Line #	Word	Definition
3	Petitioner	one who writes a formal, written request that is made to a person in authority.	5	Exclusion	expulsion; ejection; removal
3	Descent	ancestry	11	Subject	under the power of someone or something
9	Restrictions	something that limits or restricts	12	Public necessity	a reason for doing a normally unacceptable thing, if it was done in the public's interest
9	Curtail	lessen	23	Burden	something that is carried or difficult to bear.
12	Rigid	firmly in place; not changing; strict; inflexible	50	Treason	the betrayal of one's country by going to war against it or giving information to its enemies.
15	Deem	to consider, suppose, or judge	54	Fundamental	basic; central; serving as a foundation
			57	Attainder/ed	in law, the loss of civil rights following conviction for a major crime, esp. treason.
16	Unascertained	undetermined, unknown	58	Forfeiture	that which is forfeited; penalty
20	Imposed	to set as something that needs to be followed, done, or obeyed	65	Detention	to hold someone for a short time; either as punishment or until a trial can be held
21	Aggregation	a collection or mass of individual persons, things, or substances.			
24	Compulsory	required or demanded			
25	Peril	something that puts you in danger.			
27	Hostile	feeling or showing dislike; unfriendly.			
32	Disposition	a person's usual mood or attitude.			
34	Merely	simply			
40	Nativity	circumstances or place of being born;			

		birth.			
42	Law-abiding	rule following			
47	Locality	a particular neighborhood, place, or region			
49	Alien	someone who lives in a country but is not a citizen of that country			
55	Inheritable	able to be passed down from parent to child			
56	Forbids	does not allow			

Writing Prompt:

In three well-developed and highly organized paragraphs, contrast the majority and dissenting opinions in *Korematsu v. United States* (1944). Include an introductory paragraph that sets up the background to the case, stating a claim, which provides your understanding of the major issue confronting the Supreme Court in this case. In each of the body paragraphs, provide at least two pieces of textual evidence and reasoning to support your analysis.

In their writing students should:

- Introduce a topic clearly, previewing what is to follow; organize ideas, concepts, and information into broader categories
- Develop the topic with relevant, well-chosen facts, definitions, concrete details, and quotations
- Use appropriate and varied transitions to create cohesion and clarify the relationships among ideas and concepts
- Establish and maintain a formal style and objective tone
- Provide a concluding statement that follows from and supports the information or explanation presented
- Quotations are cited correctly using line numbers from the text (Lines 8-9) at the end of the quote.

Sample writing response:

Korematsu v. United States (1944)

In California there was mass fear and hysteria regarding the Japanese-Americans. Civilian Exclusion Order No. 34 was created to remove American citizens of Japanese descent from certain “Military Areas.” In the Supreme Court case: *Korematsu v. United States* (1944), the justices’ job was to determine if Mr. Korematsu was unjustly imprisoned in a concentration camp. Despite Mr. Korematsu’s American citizenship his Japanese ancestry became an issue of contention while America was at war with the Japanese Empire during World War II.

Majority opinion given by Justice Black established that while Mr. Korematsu was an American citizen he was a member of a large group of Japanese Americans justly affected by the Civilian Exclusion Order No. 34 because the United States was at war with the Japanese empire. “Mr. Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we were at war with the Japanese Empire,” (Lines 34-36), one piece of evidence that exclusion of Japanese Americans was a result of the war. The Japanese Americans affected by war on U.S. soil was a necessary evil, “Exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group...” (Lines 15-16). Even though Mr. Korematsu may have suffered hardships due to his exclusion, “...hardships are a part of war...All citizens alike, both in and out of uniform, feel the impact of war...” (Lines 20-22). Everyone is affected by war which had nothing to do with Mr. Korematsu’s race specifically.

However, the dissenting opinion offered from Justice Jackson describes a different point of view. Mr. Korematsu should have been freed from his imprisonment. Mr. Korematsu was a U.S. citizen born on American soil, “No claim is made that he is not loyal to this country. There is no suggestion that...he is not law-abiding...” (Lines 41-42). He should not be treated as a criminal or traitor to his country without proof. Mr. Korematsu was imprisoned based on racial profiling, his ancestry is inherited, “Even if all of one’s antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him...” (Lines 55-56). Justice Jackson argues, “A citizen’s presence in the locality, however, was made a crime only if his parents were of Japanese birth,” (Lines 47-48). He goes on to state that people from other countries such as German alien enemies and Italian alien enemies were not detained and excluded. If the argument is that people are being detained because

we are at war with that country, shouldn't people of other nationalities also be detained? Based on the Constitution, Korematsu was unconstitutionally penalized and imprisoned.

The Supreme Court upheld the evacuation order during this time of war which asks U.S. citizens to give up certain freedoms and liberties.