

# Government Decision to Stop (December 17, 1944)

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The background history is well known:

- On December 7, 1941, Japanese attackers inflicted grave damage on the United States Navy at Pearl Harbor, Hawaii.
- The next day, President Franklin D. Roosevelt sought and obtained a congressional resolution declaring that the U.S. was at war with Japan.
- In February 1942, President Roosevelt signed Executive Order 9066, authorizing the Secretary of War and U.S. military commanders to prevent possible espionage and sabotage by declaring parts of the U.S. to be military areas, excluding persons there from, and taking other steps that commanders deemed appropriate.
- Pursuant to that authority, the U.S. Army soon declared the west coast of the U.S. to be an area under military command.
- The Army then issued a series of security orders directed at persons there who were of Japanese descent (both immigrants and U.S. citizens). These orders included curfews, then exclusions from coastal areas, and then directives to report to internment camps in the interior of the country.

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- The U.S. Congress and President Roosevelt then enacted criminal laws penalizing violations of those orders.
- During the war years, over 100,000 Japanese-Americans, obeying these orders, were interned by the U.S. government.
- Some—relatively few—Japanese-Americans refused to obey those government orders. Some were prosecuted and convicted, and some of their appeals reached the Supreme Court of the United States.
- In 1943 and 1944, U.S. and allied forces, fighting island to island and at horrific cost, began to prevail – the war moved ever farther west, away from the U.S. and its people, toward Japan, and toward Allied victory.
- In June 1943, the Supreme Court affirmed unanimously a curfew violator’s conviction, holding that the Constitution empowers Congress and the President to enact and enforce such a restriction in what they regarded as the interest of national security (*Hirabayashi v. United States*).
- Two other Japanese-American cases – one challenging the constitutionality of a military exclusion order (*Korematsu v. United States*), the other challenging the legality of the government’s internment of a concededly loyal U.S. citizen of Japanese ancestry (*Ex parte Endo*) – were argued before the Supreme Court in October 1944.

As decisions in those cases were impending (and probably a Supreme Court leak tipped off the executive branch that decisions, perhaps adverse, were coming very soon), the United States government decided ... to stop.

On Sunday, December 17, 1944, General H. Conger Pratt, the U.S. Army’s western commander, located in San Francisco, issued Public

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Proclamation No. 21. It revoked, effective January 2, 1945, the military orders that had resulted in the internment of Japanese-Americans.<sup>1</sup>

The Supreme Court acted the very next day.

In *Ex parte Endo*, which the Justices, the executive branch and the press regarded as the big case/the frontal assault on the internment system, the Court held unanimously that the government had no legal authority to intern a loyal citizen.<sup>2</sup>

In *United States v. Korematsu*, a lagging case regarding a citizen's conviction for violating back in 1942 an order that excluded him, based only on his Japanese-American ethnicity, from the coastal area in which he lived, a divided Court—three, including Justice Jackson, dissented—upheld the constitutionality of the executive branch's actions in what it claimed to have been national security interests.<sup>3</sup>

United States government treatment of Japanese-Americans during World War II is and should be a topic of constant study and reflection. Those executive (presidential and military) actions and congressional actions show how injury, knowledge, power, fear, ignorance and prejudice can combine to produce oppression. The judicial decisions show deference, rationalizations and perhaps institutional abdications.

General Pratt's announcement of December 17<sup>th</sup> also shows, however, something that is hopeful. It was possible, and thus it is possible, for officials to wake up, to rethink, to change course, to improve behavior, to turn pages. Even when officials act late, and even when they act in response to forces and developments that largely have forced their moves, such actions are the promise of self-government.

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<sup>1</sup> See Lawrence E. Davies, *Ban on Japanese Lifted on Coast*, N.Y. TIMES, Dec. 18, 1944, at 1, 10.

<sup>2</sup> See *Ex parte Endo*, 323 U.S. 283 (1944), available at [www.law.cornell.edu/supremecourt/text/323/283](http://www.law.cornell.edu/supremecourt/text/323/283); see also Patrick O. Gudridge, *Remember Endo*, 116 HARVARD LAW REV. 1933 (2003).

<sup>3</sup> See *Korematsu v. United States*, 323 U.S. 214 (1944), available at [www.law.cornell.edu/supremecourt/text/323/214](http://www.law.cornell.edu/supremecourt/text/323/214); see also John Q. Barrett, *A Commander's Power, A Civilian's Reason: Justice Jackson's Korematsu Dissent*, 68 LAW & CONTEMPORARY PROBLEMS 57 (2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=882100](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=882100).