

When SCOTUS makes a mistake

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Brown v Board of Education. *Roe v Wade*. [Loving v Virginia](#). Supreme Court decisions are the final word in [constitutional law](#), protecting the rights of individuals with the same weight as constitutional amendments. Except when they don't. The actual history of the Supreme Court is the same messy story of case law seen in lower courts, and just as littered with bad decisions.

The incarceration of Japanese-Americans during World War II is almost universally acknowledged to have been a bad idea, rooted more in racism than national security. But human memory is short, and even mistaken legal precedents hold weight. As the anniversary of [Korematsu v United States](#) – the Supreme Court decision that justified the Japanese incarceration – approaches, some people may be trying to repeat history, this time pointing to Muslims, instead of Japanese, as a threat to America's security.

Kore-who?

Most of us have heard of the [executive order](#) that authorized the relocation and internment of ethnic Japanese from the West Coast during World War II. It resulted in the incarceration for the duration of the war of roughly 120,000 [civilians](#) (nearly two-thirds of whom were citizens born in the U.S.).

Fewer people have heard of Fred Korematsu, the son of Japanese immigrants, who was born and raised in Oakland, California. When all ethnic Japanese were [ordered](#) to report to Assembly Centers on May 9, 1942, Korematsu went into hiding. He was caught and convicted of violating the order.

Korematsu v United States

The ACLU of Northern California [argued](#) for Korematsu that the internment constituted imprisonment without trial, a breach of due process under the [Fifth Amendment](#). However, the Supreme Court's decision relied on an earlier case, [Hirabayashi v United States](#), which had unsuccessfully challenged a curfew placed on ethnic Japanese as an unconstitutional delegation of Congressional power. While recognizing that "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect," the Court upheld Korematsu's conviction and the

Japanese internment “as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage.”

Korematsu Today

Today, legal scholars agree that in upholding Korematsu’s conviction, the Supreme Court erred on both [factual](#) and legal points. In the 1980’s, professors at University of California San Diego uncovered proof the government knew that Japanese-Americans did not pose a threat. A new [ruling](#) in District Court cleared Korematsu’s conviction.

The legal justifications in *Korematsu* have been so widely [disparaged](#) it is unlikely the Supreme Court would cite it as a precedent in a new case. But the Court’s 1944 ruling still stands, and *Korematsu* has been [referenced](#) in justification of a Muslim registry.

Silicon Valley workers [pledged](#) not to build such a registry, but there are those who [argue](#) that the infrastructure is already in place.

And in December 2017, the Supreme Court [allowed](#) President Donald Trump’s [travel ban](#) against mostly Muslim nations to go into effect while legal challenges against it continue. Is the Court willing to support legal restrictions which curtail the [civil rights](#) of a single racial group again?