

The Spirit of Our Constitution

By Meena Venkataramanan

The Gordon Hirabayashi Campground lies just an hour north of my home in Tucson, Arizona. A coveted spot among several local campers, very few are aware of the complex history behind its name. However, to those who recognize its significance, the campground represents the enduring legacy of the tragic mass internment of Japanese-Americans that occurred during the Second World War in the interest of wartime national security – and against the spirit of the U.S. Constitution.

Decades later, the United States is faced with a similar situation. As the global threat of terrorism augments, especially with respect to the Islamic State and similar organizations in the Middle East, the federal government has been faced with an increasing pressure to implement measures to curb these perils. One such measure, issued just a week after President Donald Trump took office, was a travel ban by which citizens of seven predominantly Muslim nations were barred from traveling to the United States for ninety days. Although there is no explicit legal statute prohibiting discrimination based on religion with respect to travel, the Hart-Celler Act of 1965 prohibits racial discrimination in such situations, while the Equal Protection Clause and Free Exercise Clause of the Constitution both insinuate that individuals have the right to religious liberty (Hamilton). But perhaps the most decisive precedent in blocking the ban in its entirety was the decision in the 1993 case *Church of Lukumi Babalu Aye v. City of Hialeah*, which affirmed that legal actions that single out a religious group, even indirectly, are unconstitutional. Employing this basic principle, a restraining order against the ban was issued by a federal judge in 2017, while a three-judge panel of the Ninth Circuit Court of Appeals upheld his ruling in a per curiam decision, which effectively halted the ban's implementation

(Frankel). But just six weeks later, the federal government unveiled a new travel ban that excluded Iraq from its list of nations and eliminated language that was purported to favor Christians over Muslims from those countries. Yet again, the revised ban was temporarily halted by a federal judge from Hawaii (Almasy and Simon). In 2018, the Supreme Court upheld the third version of the ban.

But despite the ephemeral nature of these executive orders, their fundamental premise – to harness nationality, race, and religion as foundations for discrimination – is evocative of a similar mandate that was implemented almost exactly 75 years before: Executive Order 9066. Signed by President Franklin Roosevelt, this infamous executive order allowed the federal government to establish military zones throughout the West Coast and Arizona and consequently intern Japanese-Americans in camps in the wake of Japan’s surprise attack on Pearl Harbor just two months prior. As a result, over 100,000 individuals of Japanese descent were forced into internment camps after being subjected to stringent curfew regulations (Taylor). Gordon Hirabayashi was a brave Japanese-American college student who resisted the curfew and was consequently convicted of subverting a relocation order, prompting his case to reach the Supreme Court, where it was known as *Hirabayashi v. United States*. But in a tragic ruling, racial discrimination in the form of the curfew and relocation order was justified, as Justice Stone wrote 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” (“*Hirabayashi v. United States*”) This case was decided alongside *Yasui v. United States*, which also affirmed the constitutionality of such curfews (“*Yasui v. United States*”).

These two decisions paved the way for future discrimination against Japanese-Americans during the war, because just one year later, Fred Korematsu – an American citizen of Japanese descent residing in California – refused to be relocated to an internment camp and was apprehended (Taylor). His case made it to the Supreme Court, and the Court ruled in *Korematsu v. United States* that national security must be prioritized over the individual rights of Japanese-Americans, even if a majority were loyal to the United States. Justice Black specifically acknowledged that while he had “no doubt” that Korematsu and the vast majority of Japanese-Americans “were loyal,” the violation of their civil liberties in the interest of national security was just under “rigid scrutiny” (“Korematsu v. United States”). Thus, the civil liberties of thousands of Japanese-Americans were undermined by a litany of Supreme Court cases that prioritized wartime national security, even when it was posited upon unwarranted racial discrimination. However, that very same day, the Court ruled in *Ex parte Mitsuyi Endo* that the federal government could not detain Japanese-American citizens who affirmed their loyalty to the United States. But it did not explicitly address the constitutionality of the exclusion of Japanese-Americans from military zones, and effectively created a loophole by which Japanese-Americans could still be imprisoned (Takahashi).

Four decades later, the Civil Liberties Act of 1988 issued a formal apology to Japanese-Americans for the federal government’s unwarranted actions against them during World War II (Taylor). Moreover, extensive reparations have been made by federal and state governments ever since, from awarding Fred Korematsu the Presidential Medal of Freedom in the presence of esteemed dignitaries to establishing the Gordon Hirabayashi Campground just miles away from my own Southern Arizona home. However, to many Japanese-Americans, the scars caused by such brutal and unjustified treatment in the name of national security are truly indelible, and the

federal government's recent counterterrorism efforts are painful reminders of such maltreatment. Above all, cases such as *Korematsu v. United States* and *Hirabayashi v. United States* serve as egregious reminders of this past discrimination – akin to infamous rulings in a similar vein such as *Dred Scott v. Sandford* and *Plessy v. Ferguson*, which are now universally scorned by both contemporary liberal and conservative jurists. As such, it is imperative that the United States federal government consider the future implications of unwarranted actions against Muslim-Americans, among other minority groups – specifically, the potential for such actions to later be interpreted as grievous human rights abuses by congressional members and political leaders all along the ideological spectrum. After all, the United States is a nation that prides itself on the strength of its Constitution, and its respect for the civil liberties of its people. And unless our nation – even in times of global tension – can express a continued commitment to this value, and to the spirit of our Constitution, democracy will dwindle.

Works Cited

- Almasy, Steve, and Darran Simon. "A Timeline of President Trump's Travel Bans." *CNN*. Cable News Network, 30 Mar. 2017. Web. 28 Sept. 2019.
- Frankel, Alison. "9th Circuit to Trump: Rhetoric Matters." *Reuters*. Thomson Reuters, 10 Feb. 2017. Web. 28 Sept. 2019.
- Hamilton, Marci A. "What Makes Trump's Travel Ban so Unconstitutional." *The Hill*. Capitol Hill Publishing Corporation, 06 Feb. 2017. Web. 28 Sept. 2019.
- "Hirabayashi v. United States." *LII / Legal Information Institute*. Cornell University, n.d. Web. 28 Sept. 2019.
- "Korematsu v. United States." *LII / Legal Information Institute*. Cornell University, n.d. Web. 15 28 Sept. 2019.
- Takahashi, Joyce Nao. "Lives and Legacy." *Lives and Legacy* (2013): n. pag. *University of California, Berkeley*. University of California, Berkeley, 2013. Web. 28 Sept. 2019.
- Taylor, Alan. "World War II: Internment of Japanese Americans." *The Atlantic*. Atlantic Media Company, 21 Aug. 2011. Web. 28 Sept. 2019.
- "Yasui v. United States." *LII / Legal Information Institute*. Cornell University, n.d. Web. 28 Sept. 2019.