

CASE BRIEFING SHEET

Case Name and Year: _____

Facts of the Case: _____

What is the constitutional question that the Supreme Court must answer?
(This is a yes/no question and spells out the specific part of the Constitution at issue.)

What constitutional principles are indicated in the case? _____

Summary of one side's arguments:

Summary of the other side's arguments:

How would you decide the case and why? _____

How did the Supreme Court majority decide the case and why? _____

What were the main points raised in any dissenting opinions? _____

DIRECTIONS

The following is a list of arguments in the *Korematsu v. United States* court case. Read through each argument and decide whether it supports **Korematsu's side against internment (K)**, **the United States' side in favor of internment (US)**, **both sides (BOTH)**, or **neither side (N)**.

1. The Fifth Amendment of the Constitution states: No person shall...be deprived of life, liberty, or property, without due process of law....
 - By subjecting Japanese and Japanese Americans to internment as a group, the United States has denied them due process of law. Proper due process requires individuals to be proven guilty through individual, established procedures.
2. The Fourteenth Amendment of the Constitution states: No State shall...deny to any person within its jurisdiction the equal protection of the laws.
 - Though the Fourteenth Amendment refers to states, it also applies (through the Fifth Amendment) to the federal government. The government is obliged to provide equal rights; if the rights of a particular racial group are taken away, the reason for doing so must pass the highest scrutiny possible.
3. Article II, Section 2 of the Constitution gives the President the power as commander in chief of the military. Commanding the military includes issuing orders as necessary to help the military carry out its duties to protect the nation. Such orders include Executive Order 9066, which expressly allowed restrictions on the movement and presence of groups of people in certain areas of the country.
4. German Americans and Italian Americans were treated differently from the Japanese during World War II. Though some were interned and suffered discriminatory treatment, they were not gathered up *en masse* without hearing or evidence as the Japanese were.
5. It is impossible for the Supreme Court to confirm or deny the military authorities' claim that it was impossible to quickly separate out disloyal and dangerous Japanese or Japanese Americans.
6. In *Hirabayashi v. United States (1943)*, the Supreme Court supported the conviction of a Japanese American who violated a curfew order imposed through the same presidential Executive Order and Congressional Act at issue in this case.
7. When our shores are threatened by hostile forces, the power to protect should be commensurate with the threatened danger.
8. No Japanese or Japanese American had been accused of or convicted for espionage or sabotage in the months between the attack on Pearl Harbor and the beginning of internment.
9. Approximately 5,000 American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor.
10. In the American legal system, "guilt is personal and not inheritable." There was no evidence that Fred Korematsu engaged in any subversive or conspiratorial activity.
11. The armed services must protect a society, not merely its Constitution.
12. We may not be able to confine military actions to the boundaries of the Constitution, but that does not mean that the Constitution should be distorted to approve of all the military deems expedient.
13. If the Supreme Court issues a ruling supporting racial discrimination in this case, it becomes a principle for supporting racial discrimination in any case where an urgent need is claimed.
14. Under the *Alien Enemy Act of 1798*, which remains in effect today, the U.S. may apprehend, intern and otherwise restrict the freedom of "alien enemies" upon declaration of war or actual, attempted or threatened invasion by a foreign nation.