



Council on American-Islamic Relations

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**STATEMENT OF
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**BEFORE THE
COMMITTEE ON COMMITTEE ON CULTURAL AFFAIRS, LIBRARIES, AND
INTERNATIONAL INTERGROUP RELATIONS
NEW YORK CITY COUNCIL**

**FOR A HEARING CONCERNING,
RESOLUTION 0792-2015 - ESTABLISHING JANUARY 30 ANNUALLY AS FRED T.
KOREMATSU DAY.**

**PRESENTED
October 25, 2017***

* My sincerest thanks to Isabel G Cifarelli (CAIR-NY legal services intern), for her invaluable assistance in preparing these remarks.

Good morning, my name is Albert Fox Cahn, and I serve as the Legal Director for the New York Chapter of the Council on American-Islamic Relations (“CAIR-NY”). CAIR-NY is a leading civil rights advocacy organization for the Muslim community here in New York City and across New York State. I am proud to testify today in support of the resolution honoring Fred Korematsu, and I applaud Council Member Dromm and Chair Bramer for calling today’s hearing.

At one of our country’s darkest moments, as the passions of war gave renewed power to long-held bigotry, Fred Korematsu was brave enough to step forward and oppose a president’s unlawful order and fight for the best version of American Democracy. At a time when dissent is commonplace, I don’t think any of us can fully understand how extraordinary an act this was, civil disobedience committed decades before that phrase would become familiar.

Korematsu’s refusal led to a constitutional challenge that to this day stands as one of the most important tests of presidential powers and the rights of Americans in times of war. In one of its most-reviled decisions of all time, the Supreme Court upheld his conviction,¹ but that was far from the end of the story. Forty years later, in an extraordinary reversal, a district court threw out Korematsu’s conviction, finding that the government had lied about the war-time threat posed by Americans of Japanese descent, and noting that the Supreme Court’s decision shows that our courts “must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.”²

Korematsu Day would stand as an enduring reminder to all New Yorkers of how easily fear and hate can turn into injustice. It will make sure that we never forget the horrific fact that our country imprisoned 120,000 Americans of Japanese descent³--most of whom were citizens.⁴ It was an act cloaked in national security and wartime necessity,⁵ but today we know it was driven by one thing: hate.

Although most Americans of Japanese descent resided in the western U.S., New York was actively complicit in the internment. Immediately following the Pearl Harbor attacks, New York City mayor Fiorello LaGuardia placed all New Yorkers of Japanese Descent under house arrest.⁶ Within hours, hundreds had been detained at Ellis Island.⁷

¹ *Korematsu v. United States* 323 U.S. 214 (1944).

² *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984)

³ Avi Selk, *FDR Issued an Executive Order Sending Japanese Americans to Internment Camps—75 Years Ago*, *Washington Post*, Feb. 17, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/02/12/the-supreme-court-reviewed-an-executive-order-result-one-of-the-worst-decisions-in-history/>.

⁴ Richard Wolf, *Children of Japanese American Legal Pioneers from World War II Fight Travel Ban*, Oct. 10, 2017, <https://www.usatoday.com/story/news/politics/2017/10/10/children-japanese-american-legal-pioneers-world-war-ii-fight-travel-ban/740910001/>.

⁵ See Noah Feldman, *Why Korematsu Is Not Precedent*, *N.Y. Times*, Nov. 18, 2016, <https://www.nytimes.com/2016/11/21/opinion/why-korematsu-is-not-a-precedent.html?mcubz=1>.

⁶ *Remembering Pearl Harbor: Mayor Fiorello La Guardia Orders Confinement Of NYC’s Japanese*, CBS N.Y. (December 7, 2014 2:02 PM), <http://newyork.cbslocal.com/2014/12/07/remembering-pearl-harbor-mayor-fiorello-la-guardia-orders-internment-of-nycs-japanese/>.

⁷ *Encyclopedia of Japanese American Internment* 229 (Gary Y. Okihiro ed., 2013) (As of December 1941, 279 Japanese Americans had been detained at Ellis Island).

Moreover, during the court of World War II, 59 Americans were excluded from the Eastern Defense Command (“EDC”), which encompasses the entire Atlantic Coast.⁸ Notably, this included Naoye Suzuki, a New Yorker of Japanese descent and a United States citizen. After first being detained at Ellis Island, Suzuki was tried before a military hearing and exiled from the EDC to Chicago.⁹ Those New Yorkers of Japanese Descent who were lucky enough to stay in the city had to endure years of house arrest, notifying the FBI if they simply wished to leave their apartment.¹⁰

Anti-Japanese discrimination lasted throughout the war and beyond. In 1944, when the Federal government sought to relocate internees to New York City, then Mayor LaGuardia denounced the proposal, with words that sound all too familiar under our current presidential administration:

“Is there one single solitary United States official who will vouch for each and everyone [sic] of them . . . Yet they are being dumped here. Nobody knows them. No one can vouch for each of them. If it was necessary to evacuate them from their homes originally and put them in a concentration camp, what justification is there for turning them loose in Eastern cities at this time”¹¹

We can never fully atone for our city’s actions against Americans of Japanese descent, but by enacting Korematsu day, we can remind New Yorkers of the scope of this historical injustice, erecting it as a bulwark against anyone who might once again try to turn hatred and fear into unjust law. Since President Trump’s election, the task has never been more urgent.

Although widely renounced, the Supreme Court’s decision in *Korematsu v. U.S.* has never been formally overturned. As Justice Jackson put it, the decision “lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”¹² We have already seen President Trump’s supporters cite *Korematsu v. U.S.* and the internment as legal precedent for programs targeting Muslim Americans.

These chilling incidents include when Roanoke, VA mayor David Bowers, called on local agencies to suspend assistance for Syrian refugees, saying “I’m reminded, [...] that President Franklin D. Roosevelt felt compelled to sequester Japanese foreign nationals after the bombing of Pearl Harbor, and it appears that the threat of harm to America from ISIS now is just as real and serious as that

⁸ Tetsuden Kashima, Judgment Without Trial: Japanese American Imprisonment During World War II 137 (2003).

⁹ Special Report on Exclusion from the Eastern Defense Command Area from Togo Tanaka to Morton Grodzins, Research Assistant at the University of California (Apr. 8, 1943), http://digitalassets.lib.berkeley.edu/jarda/ucb/text/cubanc6714_b284t01_9945.pdf.

¹⁰ See Jessica Prois and Kimberly Yam, *Japanese-Americans Imprisoned for Ethnicity Speak out in Defense of Muslims* (Mar. 22, 2017), http://www.huffingtonpost.com/entry/japanese-internment-survivors-muslims_us_584811b7e4b0b9feb0da5492.

¹¹ Letter from Mayor Fiorello H. LaGuardia to Secretary of the Interior Harold L. Ickes (Apr. 21, 1944), http://www.laguardiawagnerarchive.lagcc.cuny.edu/FileBrowser.aspx?LinkToFile=FILES_DOC/LAGUARDIA_FILE_S/HIGHLIGHTS/Japanese_Relocation.pdf.

¹² See *Korematsu*, 323 U.S. at 246 (J. Jackson, dissenting).

from our enemies then.”¹³ Carl Higbie, a former Navy SEAL and Trump supporter, cited internment and *Korematsu* as justification for the constitutionality of Kansas Secretary of State Kris Kobach’s plan for the creation of a registry for immigrants from predominantly Muslim countries.¹⁴ Glen Casada, head of Tennessee’s House Republican Caucus, advocated that the US round up all Syrian refugees for further review in ICE facilities.¹⁵ In 2015, then-candidate Trump said he “would certainly implement” a database that tracks Muslims living in the United States, noting that Muslims would be legally obligated to self-report.¹⁶

Fred Korematsu’s fight did not end in 1944; he spent much of his life fighting for civil rights, including his denunciation of anti-Muslim profiling in the wake of September 11th. In 2004, Mr. Korematsu said “I know what it is like to be at the other end of such scapegoating and how difficult it is to clear one’s name after unjustified suspicions are endorsed as fact by the government . . . [n]o one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist.”¹⁷ Mr. Korematsu went on to file an *amicus* brief with the Supreme Court, opposing the denial of due process for detainees at Guantanamo Bay, comparing the practice to internment: (“The extreme nature of the Government’s position here is all too familiar”).¹⁸ Recently, Fred Korematsu’s daughter Karen, along with the Korematsu Center for Law and Equality, filed an *amicus* brief opposing the Muslim ban, seeking to “remind . . . the courts of the harm wrought by governmental actions, carried out in the name of national security, that impact men, women, and children belonging to disfavored minority groups—both the human toll and the danger of sacrificing our country’s fundamental values.”¹⁹

Our federal government has consistently capitalized on fear caused by global conflict to discriminate against “disfavored” groups under the guise of “national security.” The language used by FDR and LaGuardia is eerily similar to that of President Trump and his supporters. Fred Korematsu’s legacy stands as a reminder that scapegoating and racism can too easily be given force of law. Today, many Muslim New Yorkers fear that history will repeat itself.

¹³ Daniel Victor, *Roanoke Mayor Apologizes for Japanese Internment Remarks*, Nov. 20, 2015, <https://www.nytimes.com/2015/11/21/us/roanoke-mayor-apologizes-for-japanese-internment-remarks.html?mcubz=1>.

¹⁴ See Tal Kopan and Jason Kurtz, *Trump Backer Further Explains Internment Comments*, Nov. 17, 2016, <http://edition.cnn.com/2016/11/17/politics/trump-supporter-internment-muslim-registry/index.html>.

¹⁵ Theodore Schleifer, *Tennessee Pol: Round up Syrian Refugees for Review*, Nov. 18, 2015, <http://www.cnn.com/2015/11/18/politics/tennessee-casada-syrian-refugees/index.html>.

¹⁶ *Donald Trump Says He Would Certainly Implement Muslim Database*, NBC N.Y. (Nov. 19, 2015, 10:26 PM), <http://www.nbcnewyork.com/news/national-international/Donald-Trump-Says-He-Would-Certainly-Implement-Muslim-Database-351996151.html>.

¹⁷ Fred Korematsu, *Do We Really Need to Relearn the Lessons of Japanese American Internment?*, SFGate (Sep. 16, 2004, 4:00 AM), <http://www.sfgate.com/opinion/openforum/article/Do-we-really-need-to-relearn-the-lessons-of-2724896.php>.

¹⁸ See *Amicus Curiae* Brief of Fred Korematsu in Support of Petitioners at 2, *Rasul v. Bush*, 542 U.S. 466 (2004) (No. 03—334 and 03—343), <https://www.law.northwestern.edu/legalclinic/macarthur/projects/guantanamo/documents/RasulAmicusBrief.pdf>.

¹⁹ See Brief of Karen Korematsu, Jay Hirabayashi, Holly Yasui, The Fred T. Korematsu Center for Law and Equality, Civil Rights Organizations, and National Bar Associations of Color as Amici Curiae In Support of Defendants at 3, *Donald J. Trump v. International Refugee Assistance Project*, U.S. Supreme Court (2017) (Nos. 16-1436 and 16-1540), http://www.scotusblog.com/wp-content/uploads/2017/09/16_1436_16_1540_bsac_Karen_Korematsu.pdf.

Korematsu day is not only important to Japanese New Yorkers, but to New Yorkers of every race and ethnicity. Fred Korematsu's legacy has taken on particular importance to Muslim New Yorkers over the course of the past year. Last November, I gave a training at NYU, speaking to a room of Muslim students still in shock from the election. One student told me that she spoke to Representative Mike Honda, who was interned as a child. She asked Representative Honda if a Muslim internment was possible, and he said "yes." Tears in her eyes, she asked me the same question. I said no, not because of our laws or constitution, but because Americans would never again stand by when our neighbors were targeted. By remembering Fred Korematsu, we help fulfill that promise, showing Muslim New Yorkers that this city will never again be complicit in interning its own.

By remembering Fred Korematsu, we also pass on his lesson to the future generations of New Yorkers, inoculating ourselves against those who might seek to exploit fear or tragedy for their own perverse ends. In the words of the Federal court that reversed Fred Korematsu's conviction, his case stands as a constant caution that "our institutions must be vigilant in protecting constitutional guarantees" and that "the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability."²⁰

Today, we are recommitting ourselves to the protection of those ideals that Fred Korematsu fought for, helping to pass on to our children the best vision of our constitution. With passage of this resolution, this Council will transform January 30th into an enduring reminder of this city's commitment to civil rights, and a caution against those who try to exploit moments of danger and grief into calls for discrimination. I thank the council for its support and for helping to defend any New Yorkers who face discrimination.

²⁰ *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984)