

# KOREMATSU INSTITUTE

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FOR CIVIL RIGHTS AND EDUCATION

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## **U.S. Dept. of Justice releases unprecedented admission of error in Japanese American incarceration cases; Korematsu and Hirabayashi families, legal teams react**

**San Francisco** – The families and legal teams of Fred Korematsu and Gordon Hirabayashi, two civil rights icons, are reacting to the news that the U.S. Department of Justice has finally admitted its mistakes in the cases challenging the government's World War II incarceration of Japanese Americans. The "confession of error," posted by acting Solicitor General Neal Katyal on the Department's web site Friday, is the first such admission of wrongdoing since the 1940s, when the Supreme Court ruled against Korematsu and Hirabayashi, two young men who challenged the incarceration and related curfew orders that compromised the civil rights of Japanese Americans.

The statement only provides one explanation behind its timing: that it comes during Asian American and Pacific Islander Heritage Month in May. On Tuesday, May 24, Katyal and Attorney General Eric Holder Jr. are expected to speak at an AAPI Heritage Month event at the Department's Great Hall. It is unknown whether or not Katyal will elaborate on his May 20 statement during the event Tuesday.

In 1942, after Japan attacked Pearl Harbor, Korematsu was arrested for defying U.S. military orders that forced Japanese Americans into incarceration camps. That same year, Hirabayashi turned himself into the FBI after being convicted for violating the government's curfew order imposed on Japanese Americans. Both plaintiffs eventually appealed their cases to the U.S. Supreme Court, which upheld their convictions on the grounds that the forced removal of Japanese Americans was justified due to "military necessity."

In 1983 and 1987, after the discovery of new evidence proving the government had known there was no grounds for the mass incarceration, both Korematsu and Hirabayashi re-opened their cases, leading their convictions to be overturned in the U.S. District Court N.D. Cal. and the U.S. Court of Appeals 9<sup>th</sup> Cir., respectively. Their cases never reached the U.S. Supreme Court again, and the high court's decisions in *Korematsu v. United States* and *Hirabayashi v. United States* are widely condemned as one of the darkest chapters in American legal history.

In the statement, Katyal cites evidence that the Solicitor General at the time, Charles Fahy (who is not mentioned by name), suppressed evidence in the Korematsu and Hirabayashi cases that clearly stated the minimal threat posed to the nation by Japanese Americans. "Those decisions still stand today as a reminder of the mistakes of that era," Katyal writes. Katyal's statement did not mention a third similar case, that of attorney Min Yasui, which was also re-opened in the 1980s. Yasui passed away in 1986 before his second case was decided.

“My father always believed the incarceration of Japanese Americans was unconstitutional. He encouraged all Americans to stand up for what is right,” said Karen Korematsu, daughter of Fred Korematsu and co-founder of the Korematsu Institute. “We are appreciative of acting Solicitor General Katyal’s remarkable stand to correct the record. Let this be a constant reminder of how justice for all can only be achieved if the people responsible for upholding our rights act with integrity, responsibility and honesty.”

“Solicitor General Katyal’s May 20<sup>th</sup> posting, ‘Confession of Error,’ is indeed momentous,” said Lane Hirabayashi, who spoke on behalf of his uncle, Gordon Hirabayashi. “If Gordon didn’t know at the time that government prosecutors distorted evidence, however, he knew in his heart that mass incarceration was unconstitutional. It remains a shame that the Supreme Court never confronted the constitutional issues at hand in Korematsu, Yasui and Hirabayashi.”

“What Katyal has done is to acknowledge out loud that the nation, at the top-most echelon, failed to uphold justice. It doesn’t heal the wounds, but it’s the right thing to do,” says Lorraine Bannai, a member of Korematsu’s 1983 legal team. “What a vindication for Fred, Gordon and Min, and the 110,000 other Japanese Americans who suffered the consequences of the deceit.”

Korematsu, from Oakland, CA, received the Presidential Medal of Freedom in 1998. He passed away in 2005 at the age of 86. In 2010, California passed a bill to mark every January 30 as "Fred Korematsu Day of Civil Liberties and the Constitution," the first day in U.S. history named after an Asian American.

Seattle-born Hirabayashi, 93, is a retired sociologist who taught for many years at the University of Alberta in Canada. Since 2007, the East West Players, an Asian American theater company, has produced stage productions based on Hirabayashi's life.

Originally from Hood River, OR, Min Yasui spent his later years in Denver. A foundation in Denver administers an annual awards ceremony in Min Yasui's name to honor his spirit of community volunteerism. A statue of Mr. Yasui also stands in Denver's Sakura square.

Available for comment:

**Karen Korematsu**, daughter of Fred and Kathryn Korematsu and co-founder of the Korematsu Institute

**Lane Hirabayashi**, nephew of Gordon Hirabayashi and professor of Asian American studies at UCLA

**Peter Irons**, member of Korematsu’s 1983 legal team and legal historian who discovered key evidence in 1981, enabling Korematsu, Hirabayashi and Yasui to re-open their cases

**Dale Minami, Don Tamaki, Lorraine Bannai, Robert Rusky and Karen Kai**, members of Korematsu’s 1983 legal team

*Founded in 2009, the Fred T. Korematsu Institute for Civil Rights and Education, a program of the Asian Law Caucus, is dedicated to advancing pan-ethnic civil rights and human rights through education, activism and leadership development.*

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