

1 STEPHEN S. TROTT
Assistant Attorney General
Criminal Division

2 JOSEPH P. RUSSONIELLO
3 United States Attorney

4 WILLIAM T. MCGIVERN
Assistant U.S. Attorney
5 Northern District of California
450 Golden Gate Avenue
6 Box 36055
San Francisco, California 94102
7 FTS 556-8477

8 VICTOR STONE
Counsel for Special and
9 Appellate Matters
General Litigation and
10 Legal Advice Section
U.S. Department of Justice
11 P.O. Box 887
Washington, D.C. 20044-0887
12 FTS 724-7144

13 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

14 FRED TOYOSABURO KOREMATSU,)
15 Petitioner,)

16 v.)

NO. CR-27635W-MHP

17 UNITED STATES OF AMERICA,)
18 Respondent.)

19 GOVERNMENT'S RESPONSE AND MOTION UNDER L.R. 220.6

20 In 1942, petitioner was one of a very few standard bearers
21 who chose to challenge the propriety of World War II military
22 orders which resulted in the mass evacuation of over one-hundred
23 thousand persons of Japanese ancestry from the west coast.

24 Although the judiciary questioned the wisdom of those
25 military orders, Korematsu v. United States, 323 U.S. 214, 225
26 (Frankfurter J. concurring), it affirmed petitioner's misdemeanor
27 conviction because it upheld the very broad discretionary
28

1 authority of the Legislative and Executive Branches of government
2 acting together in wartime. Korematsu v. United States, 323 U.S.
3 214, 217-218 (1944).

4 Both of those branches of government have long since
5 concluded that the mass evacuation was part of an unfortunate
6 episode in our nation's history. In the 1976 presidential
7 proclamation formally rescinding Executive Order 9066, President
8 Ford praised the sacrifices and contributions of
9 Japanese-Americans and called upon the American people to affirm
10 with him the lesson "learned from the tragedy of that long-ago
11 experience forever to treasure liberty and justice for each
12 individual American, and resolve that this kind of action shall
13 never again be repeated." Proclamation No. 4417. 41 Fed. Reg.
14 No. 35 p. 7741 (Feb. 20, 1976).

15 The Legislative Branch has acted likewise. Even before the
16 creation in 1980 of the Commission on Wartime Relocation and
17 Internment of Civilians, Congress enacted 18 U.S.C. 4001(a) in
18 1971 which provides that "no citizen shall be . . . detained by
19 the United States except pursuant to an Act of Congress." The
20 only Act of Congress which had allowed such action, Public Law
21 77-503, then codified at 18 U.S.C. 1383 (which petitioner was
22 convicted of violating in 1942) has been explicitly repealed.
23 P.L. 94-412, Title V, § 501(e), 90 Stat. 1258 (1976).

24 In this specific context, the government has concluded --
25 without any intention to disparage those persons who made the
26 decisions in question -- that it would not be appropriate to
27 defend this forty year old misdemeanor conviction. Because we
28 believe that it is time to put behind us the controversy which

1 led to the mass evacuation in 1942 and instead to reaffirm the
2 inherent right of each person to be treated as an individual, it
3 is singularly appropriate to vacate this conviction for
4 non-violent civil disobedience. It is also the intention of the
5 government to extend the same relief to other similarly situated
6 individuals who request it.

7
8 There is, therefore, no continuing reason in this setting
9 for this court to convene hearings or make findings about
10 petitioner's allegations of governmental wrongdoing in the
11 1940's. Moreover, as the Commission found after spending three
12 years and more than \$1 million dollars, no completely
13 satisfactory answer can be reached about these emotion laden
14 issues from this vantage point in history. See, Addendum and
15 Additional Views to Commission's Report.

16 Having recited above the current valid national interests to
17 be served by vacating this misdemeanor conviction and dismissing
18 the indictment at this time, the government hereby moves to
19 vacate petitioner's conviction and dismiss the underlying
20 indictment. See Rinaldi v. United States, 434 U.S. 22 (1978),
21 and United States v. Hamm, 659 F.2d 624, 631 (5th Cir. 1981) (en
22 banc).

23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Thereupon, petitioner having received all the relief which this Court can render, the petition should be dismissed.

Respectfully submitted,

STEPHEN S. TROTT
Assistant Attorney General
Criminal Division

FRED TOYOSABURO KOREMATSU,
Petitioner,

JOSEPH P. RUSSONIELLO
United States Attorney

UNITED STATES OF AMERICA,
Respondent.

WILLIAM T. MCGIVERN
Assistant U.S. Attorney
Northern District of California
450 Golden Gate Avenue
Box 36055
San Francisco, California 94102
FTS 556-8477

ORDER

The government's motion to vacate the conviction and dismiss the indictment and coram nobis is granted.

VICTOR STONE
Counsel for Special and
Appellate Matters
General Litigation and
Legal Advice Section
U.S. Department of Justice
P.O. Box 887
Washington, D.C. 20044-0887
FTS 724-7144

DATE _____ HON. MARI _____ U.S. District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRED TOYOSABURO KOREMATSU,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

NO. CR-27635W-MHP

ORDER

The government's motion to vacate the conviction and dismiss the indictment and coram nobis petition is hereby granted.

DATE HON. MARILYN HALL PATEL, U.S. District Judge

GOVERNMENT'S RESPONSE AND MOTION UNDER L.R. 220.6

In 1942, petitioner was one of a very few standard bearers who chose to challenge the propriety of World War II military orders which resulted in the mass evacuation of over one-hundred thousand persons of Japanese ancestry from the west coast. Although the judiciary questioned the wisdom of those military orders, Korematsu v. United States, 323 U.S. 214, 225 (Frankfurter J. concurring), it affirmed petitioner's misdemeanor conviction because it upheld the very broad discretionary