

116TH CONGRESS
1ST SESSION

S. 277

To posthumously award a Congressional Gold Medal to Fred Korematsu,
in recognition of his dedication to justice and equality.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2019

Ms. HIRONO (for herself, Ms. MURKOWSKI, Mr. GARDNER, and Mr. COONS)
introduced the following bill; which was read twice and referred to the
Committee on Banking, Housing, and Urban Affairs

A BILL

To posthumously award a Congressional Gold Medal to Fred
Korematsu, in recognition of his dedication to justice
and equality.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fred Korematsu Con-
5 gressional Gold Medal Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) On January 30, 1919, Fred Toyosaburo
2 Korematsu was born in Oakland, California to Japa-
3 nese immigrants.

4 (2) Fred Korematsu graduated from
5 Castlemont High School in 1937 and attempted to
6 enlist in the military twice but was unable to do so
7 because his selective service classification was
8 changed to enemy alien, even though Fred
9 Korematsu was a United States citizen.

10 (3) Fred Korematsu trained as a welder and
11 worked as a foreman at the docks in Oakland until
12 the date on which he and all Japanese Americans
13 were fired.

14 (4) On December 7, 1941, Japan attacked the
15 military base in Pearl Harbor, Hawaii, causing the
16 United States to declare war against Japan.

17 (5) On February 19, 1942, President Franklin
18 D. Roosevelt signed Executive Order 9066 (7 Fed.
19 Reg. 1407 (February 25, 1942)), which authorized
20 the Secretary of War to prescribe military areas—

21 (A) from which any or all people could be
22 excluded; and

23 (B) with respect to which, the right of any
24 person to enter, remain in, or leave would be

1 subject to any restriction the Military Com-
2 mander imposed in his discretion.

3 (6) On May 3, 1942, the Lieutenant General of
4 the Western Command of the Army issued Civilian
5 Exclusion Order 34 (May 3, 1942) (referred to in
6 this Act as the “Civilian Exclusion Order”) directing
7 that all people of Japanese ancestry be removed
8 from designated areas of the West Coast after May
9 9, 1942, because people of Japanese ancestry in the
10 designated areas were considered to pose a threat to
11 national security.

12 (7) Fred Korematsu refused to comply with the
13 Civilian Exclusion Order and was arrested on May
14 30, 1942.

15 (8) After his arrest, Fred Korematsu—

16 (A) was held for 2½ months in the Pre-
17 sidio stockade in San Francisco, California;

18 (B) was convicted on September 8, 1942,
19 of violating the Civilian Exclusion Order and
20 sentenced to 5 years of probation; and

21 (C) was detained at Tanforan Assembly
22 Center, a former horse racetrack used as a
23 holding facility for Japanese Americans before
24 he was exiled with his family to the Topaz in-
25 carceration camp in the State of Utah.

1 (9) More than 120,000 Japanese Americans
2 were similarly detained, with no charges brought and
3 without due process, in 10 permanent War Reloca-
4 tion Authority camps and other temporary camps lo-
5 cated in the States of Alaska, Arizona, Arkansas,
6 California, Colorado, Idaho, Utah, and Wyoming,
7 many in isolated areas.

8 (10) The people of the United States subject to
9 the Civilian Exclusion Order lost their homes, liveli-
10 hoods, and the freedoms guaranteed to all people of
11 the United States.

12 (11) Fred Korematsu unsuccessfully challenged
13 the Civilian Exclusion Order as it applied to him
14 and appealed the decision of the United States Dis-
15 trict Court to the United States Court of Appeals
16 for the Ninth Circuit, which sustained his conviction.

17 (12) Fred Korematsu was subsequently con-
18 fined with his family in the incarceration camp in
19 Topaz, Utah, for 2 years, and during that time,
20 Fred Korematsu appealed his conviction to the Su-
21 preme Court of the United States.

22 (13) On December 18, 1944, the Supreme
23 Court of the United States issued *Korematsu v.*
24 *United States*, 323 U.S. 214 (1944), which—

1 (A) upheld the conviction of Fred
2 Korematsu by a vote of 6 to 3; and

3 (B) concluded that Fred Korematsu was
4 removed from his home not based on hostility
5 toward him or other Japanese Americans but
6 because the United States was at war with
7 Japan and the military feared a Japanese inva-
8 sion of the West Coast.

9 (14) In his dissenting opinion, Justice Frank
10 Murphy called the Civilian Exclusion Order the “le-
11 galization of racism”.

12 (15) Two other Supreme Court Justices dis-
13 sented from the majority decision in *Korematsu v.*
14 *United States*, including Justice Jackson, who de-
15 scribed the validation of the principle of racial dis-
16 crimination as a “loaded weapon, ready for the hand
17 of any authority that can bring forward a plausible
18 claim of an urgent need”.

19 (16) Fred Korematsu continued to maintain his
20 innocence for decades following World War II, and
21 his conviction hampered his ability to gain employ-
22 ment.

23 (17) In 1982, legal historian Peter Irons and
24 researcher Aiko Yoshinaga-Herzig gained access to
25 Government documents under section 552 of title 5,

1 United States Code (commonly known as the “Free-
2 dom of Information Act”), that indicate that while
3 the case of Fred Korematsu was before the Supreme
4 Court of the United States, the Government misled
5 the Supreme Court of the United States and sup-
6 pressed findings that Japanese Americans on the
7 West Coast were not security threats.

8 (18) In light of the newly discovered informa-
9 tion, Fred Korematsu filed a writ of error coram
10 nobis with the United States District Court for the
11 Northern District of California, and on November
12 10, 1983, United States District Judge Marilyn Hall
13 Patel issued her decision in *Korematsu v. United*
14 *States*, 584 F. Supp. 1406 (N.D. Cal. 1984), that—

15 (A) overturned the conviction of Fred
16 Korematsu;

17 (B) concluded that, at the time that senior
18 Government officials presented their case before
19 the Supreme Court of the United States in
20 1944, the senior Government officials knew
21 there was no factual basis for the claim of mili-
22 tary necessity for the Civil Exclusion Order;

23 (C) acknowledged that “the government
24 knowingly withheld information from the courts

1 when they were considering the critical question
2 of military necessity” in the original case;

3 (D) recognized that “there is substantial
4 support in the record that the government de-
5 liberately omitted relevant information and pro-
6 vided misleading information in papers before
7 the court. The information was critical to the
8 court’s determination”; and

9 (E) stated that although the decision of
10 the Supreme Court of the United States in
11 Korematsu v. United States, 323 U.S. 214
12 (1944), remains on the pages of United States
13 legal and political history, “[a]s historical
14 precedent it stands as a constant caution that
15 in times of war or declared military necessity
16 our institutions must be vigilant in protecting
17 constitutional guarantees”.

18 (19) The Commission on Wartime Relocation
19 and Internment of Civilians, authorized by Congress
20 in 1980 to review the facts and circumstances sur-
21 rounding the relocation and incarceration of Japa-
22 nese Americans under Executive Order 9066 (7 Fed.
23 Reg. 1407 (February 25, 1942)), concluded that—

24 (A) the decision of the Supreme Court of
25 the United States in *Korematsu v. United*

1 States, 323 U.S. 214 (1944), is overruled by
2 the court of history;

3 (B) a grave personal injustice was done to
4 the United States citizens and resident aliens of
5 Japanese ancestry who, without individual re-
6 view or any probative evidence against them,
7 were excluded, removed, and detained by the
8 United States during World War II; and

9 (C) the exclusion, removal, and detention
10 of United States citizens and resident aliens of
11 Japanese ancestry were motivated largely by
12 “racial prejudice, wartime hysteria, and a fail-
13 ure of political leadership”.

14 (20) The overturning of the conviction of Fred
15 Korematsu and the findings of the Commission on
16 Wartime Relocation and Internment of Civilians in-
17 fluenced the decision by Congress to pass the Civil
18 Liberties Act of 1988 (50 U.S.C. 4211 et seq.) to
19 request a Presidential apology and the symbolic pay-
20 ment of compensation to people of Japanese ances-
21 try who lost liberty or property due to discriminatory
22 actions of the Federal Government.

23 (21) On August 10, 1988, President Reagan
24 signed the Civil Liberties Act of 1988 (50 U.S.C.
25 4211 et seq.), stating, “[H]ere we admit a wrong;

1 here we reaffirm our commitment as a nation to
2 equal justice under the law.”.

3 (22) On January 15, 1998, President Clinton
4 awarded the Presidential Medal of Freedom, the
5 highest civilian award of the United States, to Fred
6 Korematsu, stating, “[i]n the long history of our
7 country’s constant search for justice, some names of
8 ordinary citizens stand for millions of souls: Plessy,
9 Brown, Parks. To that distinguished list, today we
10 add the name of Fred Korematsu.”.

11 (23) Fred Korematsu remained a tireless advo-
12 cate for civil liberties and justice throughout his life
13 by—

14 (A) speaking out against racial discrimina-
15 tion and violence; and

16 (B) cautioning the Government against re-
17 peating mistakes of the past that singled out in-
18 dividuals for heightened scrutiny on the basis of
19 race, ethnicity, nationality, or religion.

20 (24) On March 30, 2005, Fred Korematsu died
21 at the age of 86 in Marin County, California.

22 (25) Fred Korematsu is a role model for all
23 people of the United States who love the United
24 States and the promises contained in the Constitu-
25 tion of the United States, and the strength and per-

1 severance of Fred Korematsu serve as an inspiration
2 for all people who strive for equality and justice.

3 **SEC. 3. CONGRESSIONAL GOLD MEDAL.**

4 (a) AWARD AUTHORIZED.—The President pro tem-
5 pore of the Senate and the Speaker of the House of Rep-
6 resentatives shall make appropriate arrangements for the
7 posthumous award, on behalf of Congress, of a gold medal
8 of appropriate design to Fred Korematsu, in recognition
9 of his contributions to civil rights, his loyalty and patriot-
10 ism to the United States, and his dedication to justice and
11 equality.

12 (b) DESIGN AND STRIKING.—For the purposes of the
13 award referred to in subsection (a), the Secretary of the
14 Treasury (referred to in this Act as the “Secretary”) shall
15 strike a gold medal with suitable emblems, devices, and
16 inscriptions to be determined by the Secretary.

17 (c) SMITHSONIAN INSTITUTION.—

18 (1) IN GENERAL.—Following the award of the
19 gold medal in honor of Fred Korematsu under sub-
20 section (a), the gold medal shall be given to the
21 Smithsonian Institution, where it will be available
22 for display as appropriate and made available for re-
23 search.

24 (2) SENSE OF CONGRESS.—It is the sense of
25 Congress that the Smithsonian Institution should

1 make the gold medal received under subparagraph
2 (1) available for—

3 (A) display, particularly at the National
4 Portrait Gallery; or

5 (B) loan, as appropriate, so that the medal
6 may be displayed elsewhere.

7 **SEC. 4. DUPLICATE MEDALS.**

8 Under regulations that the Secretary may promul-
9 gate, the Secretary may strike and sell duplicates in
10 bronze of the gold medals struck under this Act, at a price
11 sufficient to cover the cost of the medals, including labor,
12 materials, dies, use of machinery, and overhead expenses.

13 **SEC. 5. STATUS OF MEDALS.**

14 (a) NATIONAL MEDALS.—Medals struck under this
15 Act are national medals for purposes of chapter 51 of title
16 31, United States Code.

17 (b) NUMISMATIC ITEMS.—For purposes of section
18 5134 of title 31, United States Code, all medals struck
19 under this Act shall be considered to be numismatic items.

20 **SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF**
21 **SALE.**

22 (a) AUTHORITY TO USE FUND AMOUNTS.—There is
23 authorized to be charged against the United States Mint
24 Public Enterprise Fund, such amounts as may be nec-

1 essary to pay for the costs of the medals struck pursuant
2 to this Act.

3 (b) PROCEEDS OF SALE.—Amounts received from the
4 sale of duplicate bronze medals authorized under section
5 4 shall be deposited into the United States Mint Public
6 Enterprise Fund.

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