

## **War on Terrorism Stirs Memory of Internment**

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### **Body**

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The Bush administration's proposals for increased law enforcement powers to fight **terrorism** are provoking a debate about whether American courts would repeat the kinds of rulings that restricted the civil rights of Japanese-Americans during World **War** II.

The debate, some legal experts say, may help define how far courts are willing to go now in giving the government latitude in its treatment of Arabs in this country. Officials have held at least 75 immigrants in the investigation of the attacks on the World Trade Center and the Pentagon.

Among the most controversial of the administration's proposals are several that would give immigrants who are detained in the terror investigation limited opportunities to get their cases heard in court.

The Justice Department has insisted that the proposals uphold constitutional rights while giving law enforcement the tools it needs to conduct its investigation. But critics say immigrants in particular face new dangers from the proposals that they say parallel the treatment of Japanese in this country during the 1940's.

"Under these provisions," said Jeanne A. Butterfield, executive director of the American Immigration Lawyers Association, "there is a much bigger danger than we have ever seen in our history of innocent people being rounded up and held on suspicion that they did something and never having their day in court."

For many years, the most expansive of the World **War** II rulings, a 1944 Supreme Court decision that approved the **internment** of Japanese-Americans, has been widely discredited.

But in recent days legal experts of varying political views have said that the principles of the decision may not have been as widely repudiated as had been previously assumed. The 1944 case involved a Japanese-American, Fred T. Korematsu, who was convicted of disobeying an order requiring people of Japanese ancestry to report to assembly centers. The Supreme Court approved his conviction.

"Some people say we've learned the lesson from Korematsu and we would never do that again," said Jerry Kang, a law professor at the University of California at Los Angeles and an expert on the World **War** II rulings. "I'm much more skeptical; I think there is a chance we would do that again."

In the 1944 case, a divided court approved the **internments**, saying that "hardships are part of **war**." The United States government formally apologized for the **internments** in 1988. But the Supreme Court has never overruled its decision.

Though a blanket detention of Arab-Americans now appears politically implausible, some legal experts say the reasoning of the 1944 ruling could permit limits on the civil liberties of Arab immigrants and even some Americans of Arab descent.

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Among limits that might be approved by the courts are detentions of immigrants who give officials cause for concern. For instance, the government might detain individuals who had spent time in countries associated with terrorist activities, said Douglas W. Kmiec, a constitutional law expert at the Catholic University of America in Washington.

The heart of the 1944 decision was that the courts should give deference to government decisions about what was required for national security. "In wartime more latitude is given to the military's judgments," Mr. Kmiec said.

The Supreme Court has said immigrants have some constitutional rights, like the Fifth Amendment's guarantee that "no person" will be "deprived of life, liberty or property without due process of law." The language of the amendment, courts have said, means that its protections extend to all people in the country, not just citizens.

In a case decided this June, the Supreme Court held that it was a violation of the Constitution for authorities to hold immigrants indefinitely while awaiting permission to deport them to another country.

The decision said indefinite detention by immigration officials was not constitutional even if there was evidence that the immigrants were dangerous. Long-term detentions are permissible under American law generally after criminal trials where a defendant has extensive right to contest the evidence with many legal protections. Immigration proceedings are considered civil.

But the opinion in June, written by Justice Stephen G. Breyer, seemed to anticipate the current questions about when added powers might be given to immigration officials. In the case before it, Justice Breyer wrote, the court did not have to consider broader questions that were not presented by the case.

But then he suggested that the law might be flexible in times of emergency. "Neither do we consider terrorism or other special circumstances," he wrote, "where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security."

Several legal experts said there had been many indications that the Supreme Court justices might well consider parts of the World War II internment case as a precedent to restrict civil rights during wartime.

But some defenders of the administration's proposals say civil libertarians' alarm is overstated.

Jan C. Ting, a Temple University law professor who is a former assistant commissioner of the Immigration and Naturalization Service, said that when the nation was in peril, people ought to assume that the authorities were acting in good faith.

"No one is trying to squash anyone's constitutional rights," Mr. Ting said. "They're looking to protect the American people."

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## Graphic

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Photo: The Supreme Court decision upholding the imprisonment of Japanese-Americans in World War II has been discredited, but not overruled. Left, three citizens held at Jerome, Ark. (Japanese American National Museum)

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