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## Relatives of Interned Japanese-Americans Side With Muslims

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Dorothea Lange/Corbis

In April 1942, thousands of evacuees lined up outside a mess hall at an "assembly center" in San Bruno, Calif.

By [NINA BERNSTEIN](#)  
Published: April 3, 2007

Holly Yasui was far away when a federal judge in Brooklyn ruled last June that the government had wide latitude to detain noncitizens indefinitely on the basis of race, religion or national origin. The ruling came in a class-action lawsuit by Muslim immigrants held after 9/11. But Ms. Yasui, an American citizen of Japanese ancestry, had reason to take it personally.

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Yoray Liberman/Getty Images for The New York Times

Ibrahim Turkmen, arrested after Sept. 11 because of an expired tourist visa, spent four months in the Passaic County Jail, where, he said, dogs were used to scare prisoners.

Her grandparents were among thousands of Japanese immigrants in the United States who were wrongfully detained as enemy aliens during World War II. And her father was one of three Japanese-Americans who challenged the government's racial detention and curfew programs in litigation that reached the Supreme Court in the 1940s.

Now, Ms. Yasui, along with Jay Hirabayashi and Karen Korematsu-Haigh, a son and a daughter of the two other Japanese-American litigants, is urging an appeals court in Manhattan to overturn the sweeping language of the judge's ruling last year.

The ruling "painfully resurrects the long-discredited legal theory" that was used to put their grandparents behind barbed wire, along with the rest of the West Coast's Japanese alien population, the three contend in an unusual friends-of-the-court brief filed today in the United States Court of Appeals for the Second Circuit.

"Their interest is in avoiding the repetition of a tragic episode in American history that is

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also, for them, painful family history,” the brief states.

In recent years, many scholars have drawn parallels and contrasts between the internment of Japanese-Americans after the attack on Pearl Harbor, and the treatment of hundreds of Muslim noncitizens who were swept up in the weeks after the 2001 terror attacks, then held for months before they were cleared of links to terrorism and deported.

But the brief filed today is a rare case of members of a third generation stepping up to defend legal protections that were lost to their grandparents, and that their parents devoted their lives to reclaiming.

“I feel that racial profiling is absolutely wrong and unjustifiable,” Ms. Yasui, 53, wrote in an e-mail message from San Miguel de Allende, Mexico, where she works as a writer and graphic designer. “That my grandmother was treated by the U.S. government as a ‘dangerous enemy alien’ was a travesty. And it killed my grandfather.”

Prof. Eric L. Muller, a legal historian at the [University of North Carolina](#) School of Law, said he contacted Ms. Yasui and the others after reading about the decision by the federal judge, John Gleeson. Both sides in the case, known as *Turkmen v. Ashcroft*— a lead plaintiff is Ibrahim Turkmen — appealed parts of the decision by Judge Gleeson. He let the Muslims’ lawsuit continue, mainly on their claims of unlawful detention conditions, but dismissed key elements of their discrimination claims.

Asked to comment, the Justice Department would not discuss the Turkmen case, but its appeal argues in part that government officials “were confronted with unprecedented law enforcement and security challenges in the wake of the Sept. 11 attacks,” and that “there were no clear judicial precedents in this extraordinary context.”

Professor Muller said he drafted the brief on behalf of the three grandchildren to try to persuade the Second Circuit to reject what he considers the needless breadth of Judge Gleeson’s opinion. “Judge Gleeson’s decision paints with such a broad brush, there isn’t really any stopping point,” he said.

The judge held that under [immigration](#) law, “the executive is free to single out ‘nationals of a particular country.’” And because so little was known about the 9/11 hijackers, he ruled, singling out Arab Muslims for detention to investigate possible ties to terrorism, though “crude,” was not “so irrational or outrageous as to warrant judicial intrusion into an area in which courts have little experience and less expertise.”

The brief counters that the ruling “overlooks the nearly 20-year-old declaration by the United States Congress and the president of the United States that the racially selective detention of Japanese aliens during World War II was a ‘fundamental injustice’ warranting an apology and the payment of reparations.”

And, it adds, the district court’s deference to the government “ignores the tragic consequences of such deference” for 120,000 people of Japanese ancestry during World War II.

Among those people was Ms. Yasui’s grandfather Masuo Yasui, who immigrated to the United States in 1903 and became a successful businessman and apple grower in Hood River, Ore., where his nine children were born and raised.

By 1940, he was one of 47,000 Japanese immigrants who lived in the 48 states, nearly 90 percent on the West Coast. They had remained aliens because federal law forbade naturalization of any person of Asian ancestry. Since the law also forbade Japanese immigration after 1924, the United States had been home to all of them for at least 17 years on Dec. 7, 1941, when Japan attacked Pearl Harbor.

Two months later, President [Franklin D. Roosevelt](#) signed Executive Order 9066, decreeing that West Coast residents of Japanese ancestry — whether American citizens or not — were “enemy aliens.” An 8 p.m. curfew was imposed on them; roundups sent them to desolate internment camps.

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Challenged by Fred Korematsu, Gordon Hirabayashi and Ms. Yasui's father, Minoru — all of them American citizens, like most of those interned — the measures were upheld, on a 6-to-3 decision, by the Supreme Court in 1944. The decision was not repudiated by the courts until 1983.

“In the case of my grandfather, the tragedy was multiplied by the fact that he was a hero in the eyes of his children, a leader in the Japanese-American community of Hood River, and had always counseled his compatriots to be ‘200 percent American,’ ” Ms. Yasui said. “And look what it got him: arrested and dragged out of his house a few days after the attack on Pearl Harbor, transferred from one military prison to another for years, and not released until several months after the war was over.”

She was only 5 when he died in the 1950s, she said, but she later learned that he committed suicide, after days of hallucinations in which he imagined that the [F.B.I.](#) was after him again.

The Hirabayashi and Korematsu grandparents, too, died before Congress enacted a law apologizing for the internment and offering compensation of \$20,000 each for the survivors. Signed into law in 1988, the law was intended partly “to discourage the occurrence of similar injustice and violations of civil liberties in the future.”

By then, courts re-examining the cases of the three Japanese-American litigants found that the government had suppressed evidence that security fears were overblown. For example, what the Army had suspected were signals sent to Japanese submarines from California hillsides had actually come from “farms where people used flashlights to go to outside toilets,” a former Justice Department lawyer testified.

Since 9/11, Professor Muller said, “post-Pearl Harbor fear is no longer a historical fossil,” making the new brief all the more significant.

If it was a grave injustice to subject “enemy aliens” to prolonged detention on account of race and national origin in World War II, the brief says, it was at least as unjust to single out the Turkmen plaintiffs, who were accused only of overstaying their visas.

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