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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

GORDON K. HIRABAYASHI,	)	
	)	
Petitioner,	)	No. C83-122V
	)	
vs.	)	ORDER
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

Having considered the renewed motion of respondent to dismiss the coram nobis petition of petitioner, or, in the alternative, for a stay pending final disposition of the appellate proceedings in Yasui v. United States, together with the memoranda, affidavits and exhibits submitted by counsel, the Court now finds and rules as follows:

—1. Respondent challenges the coram nobis petition of petitioner on three grounds: (1) the petition fails to present

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1 an Article III case or controversy, (2) laches bars relief, and
2 (3) the petition does not raise issues of the most fundamental
3 character. Each of these arguments was raised by the respondent
4 in its previous motion to dismiss. Indeed, respondent has
5 referred the Court to the memorandum submitted by it in support
6 of its earlier motion.

7 2. Respondent argues that there is no case or controversy
8 because the petitioner has failed to demonstrate that he suffers
9 from present adverse legal consequences as a result of his
10 conviction. Respondent contends that moral stigma and injury to
11 reputation are not enough. Nonetheless, a criminal conviction is
12 moot "only if it is shown that there is no possibility that any
13 collateral legal consequences will be imposed on the basis of the
14 challenged conviction." Sibron v. New York, 392 U.S. 40, 57
15 (1968). This Court must acknowledge "the obvious fact of life
16 that most criminal convictions do in fact entail adverse
17 collateral legal consequences." Id. at 55. The possibility that
18 this will be the case is enough to preserve a criminal case from
19 ending in the limbo of mootness. Id.

20 3. Petitioner has demonstrated the possibility of adverse
21 legal consequences. These include the possibility that the
22 conviction will be used for impeachment purposes in some future
23 legal proceeding or that the conviction will become a
24 consideration in some future sentencing. Even though the adverse
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1 use of petitioner's conviction appears remote, a coram nobis
2 petition must be available to prevent manifest injustice.
3 Holloway v. United States, 393 F.2d 731, 732 (9th Cir. 1968).

4 4. Respondent next argues that the petition is barred
5 because of laches. There are material issues of fact as to what
6 information was available to petitioner and when that information
7 became available to him. The Court is unable to resolve those
8 issues of fact at this time.

9 5. Respondent contends that the Court must rule on the
10 laches issue at this time. In support of its contention, the
11 respondent has cited case law that provides that habeas corpus
12 petitioners are barred from asserting their claim in the first
13 instance if they have not satisfied the cause and prejudice
14 standard. See e.g., Engle v. Isaac, 456 U.S. 107, 135 (1982).
15 The Court finds this case law to be inapposite, however, because
16 this Circuit has declined "to extend the cause and prejudice test
17 to coram nobis actions." United States v. Darnell, 716 F.2d 481
18 n.5 (9th Cir. 1983).

19 6. In its previous order the Court stated that respondent
20 may introduce evidence on the doctrine of laches at the
21 evidentiary hearing. The Court adheres to that ruling.

22 7. Lastly, respondent asserts that petitioner has failed to
23 allege errors of such fundamental character that they could have
24 affected the outcome of the 1942 trial or of the 1943 appeal to
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1 the Supreme Court. Petitioner cites alleged misconduct by
2 officials in many government agencies, including the Justice
3 Department. The Court is unable to rule, without the benefit of
4 an evidentiary hearing, that the alleged misconduct was not of
5 such a fundamental character that it could not have affected the
6 outcome of the 1942 trial or of the 1943 appeal. This
7 determination can best be made after an evidentiary hearing.

8 8. The Court finds that good cause has not been shown as to
9 why it should stay the contemplated hearing. While it is true
10 that related issues are before the Ninth Circuit in Yasui, it is
11 not clear when that appeal will be resolved or that a resolution
12 of that appeal will dispose of the issues raised by the petition
13 before the Court. The parties have known for almost a year that
14 an evidentiary hearing was scheduled to take place in June, 1985.
15 Neither party will be prejudiced by permitting that scheduled
16 hearing to proceed.

17 9. The parties are reminded that they are to lodge a pre-
18 hearing order patterned after the pre-trial orders required by
19 Local Rule 16.

20 Accordingly, the motion of respondent to dismiss the coram
21 nobis petition is DENIED. The respondent's motion for a stay
22 pending final disposition of the appellate proceedings in Yasui
23 is also DENIED.

24 The Clerk of this Court is instructed to send uncertified
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1 copies of this order to all counsel of record.

2 DATED this 29 day of April, 1985.

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4 *Donald S. Bauman*
5 United States District Judge
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