

UNITED STATES DISTRICT COURT

GORDON K. HIRABAYASHI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No.

Crim. No. 45738

PETITION FOR WRIT OF
ERROR CORAM NOBIS FOR
GORDON K. HIRABAYASHI

PETITION FOR WRIT OF ERROR

CORAM NOBIS

From the Judgment of Conviction October 20, 1942
and from the Sentence thereon of October 21, 1942
The Honorable Lloyd L. Black, Judge

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Petition for Writ of
Error Coram Nobis for
Gordon K. Hirabayashi

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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

GORDON K. HIRABAYASHI,)	
)	No.
Petitioner,)	
)	Crim. No. 45738
v.)	
)	PETITION FOR WRIT OF
UNITED STATES OF AMERICA,)	ERROR CORAM NOBIS FOR
)	GORDON K. HIRABAYASHI
Respondent.)	

Gordon K. Hirabayashi ("Petitioner") alleges as follows:

PARTIES

A. Petitioner

Petitioner GORDON K. HIRABAYASHI is a citizen of the United States and a resident of Edmonton, Alberta, Canada.

B. Respondent

Respondent is the UNITED STATES OF AMERICA.

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1 JURISDICTION

2 Jurisdiction is conferred on this Court by 28 U.S.C.
3 §1651. Included in the powers conferred on federal district
4 courts by this section of the United States Code, known as the
5 All-Writs Act, is the authority to issue writs of error coram
6 nobis and thus to vacate the criminal convictions of defendants
7 who have completed the sentences imposed on them after conviction.

8
9 CONVICTION BY THIS COURT OF PETITIONER

10 Petitioner was convicted in this Court on October 20,
11 1942 of two counts of violation of Public Law 503, 56 Stat.
12 173. Petitioner was sentenced by Judge Lloyd Black to a term of
13 ninety days on each count, sentences to run concurrently.
14 Petitioner completed service of his sentence and was subsequent-
15 ly discharged from custody.

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INTRODUCTION

By this petition for writ of error coram nobis, Petitioner seeks to vacate his conviction in 1942 before this court for violation of Public Law 503. His conviction was upheld by the United States Supreme Court in 1943. Petitioner has recently discovered evidence that his prosecution was tainted, both at trial and during the appellate proceedings that followed, by numerous and related acts of governmental misconduct. Both separately and cumulatively, these acts of misconduct constituted fundamental error and resulted in manifest injustice to Petitioner, depriving him of rights guaranteed by the Fifth Amendment to the Constitution of the United States.

A. Relation of This Petition to Those Filed on
Behalf of Minoru Yasui and Fred Korematsu

This is an extraordinary petition in many ways. First, it seeks to vacate a conviction that led to a historic and widely cited and debated opinion of the Supreme Court. Second, the allegations of governmental misconduct made below raise the most fundamental questions of the ethical and legal obligations of government officials. Third, the alleged misconduct was committed not only before this court but also before the United States Supreme Court. Fourth, this petition is identical to separate petitions being filed on behalf of Minoru Yasui and Fred Korematsu in the federal district courts in Portland, Oregon and San Francisco, California, respectively. Yasui and Korematsu were also convicted in 1942 of violation of

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1 Public Law 503 and their convictions were upheld by the Supreme
2 Court in 1943 and 1944, respectively.

3 Although this petition is separate from those filed
4 on behalf of Yasui and Korematsu, the remainder of this
5 petition refers collectively to all three defendants as
6 "Petitioners." This collective appellation and format requires
7 explanation and justification. Three related factors make such
8 a presentation not only reasonable but essential: (1) the
9 virtual identity of the legal and constitutional issues raised
10 in Petitioners' cases and decided by the Supreme Court; (2) the
11 relevance of the evidence presented and discussed below to each
12 of Petitioners' cases; and (3) the interrelated pattern of the
13 acts of misconduct alleged below and their impact on each of
14 Petitioners' cases. Petitioners will discuss in more detail
15 below the operation of these factors in their cases; the point
16 is made here to advise the court of the distinctive form of
17 this petition.

18 B. Background of Petition and Relevance of Appendix

19 Petitioners' arrests and convictions arose from
20 the decision to incarcerate Japanese Americans during World War
21 II. This decision was initiated early in 1942 by military and
22 civilian officials of the U.S. War Department and was sub-
23 sequently ratified by President Roosevelt. The historical
24 record makes clear that these officials acted largely in
25 response to political and economic pressure fueled by wartime
26 hysteria and prejudice against Japanese Americans. As a result
27 of this pressure, some 110,000 Japanese Americans were forced
28 - - - - -

PRAYER FOR RELIEF

Petitioners respectfully submit that it would be impossible to find any other instance in American history of such a longstanding, pervasive and unlawful governmental scheme designed to mislead and defraud the courts and the nation. By the misconduct set forth in detail above, the United States deprived petitioners of their rights to fair judicial proceedings guaranteed by the Fifth Amendment to the United States Constitution. Although successful to date, this fundamental and egregious denial of civil liberties cannot be permitted to stand uncorrected.

WHEREFORE, petitioner GORDON K. HIRABAYASHI respectfully prays:

1. That the judgment of conviction be vacated;
2. That the military orders under which he was convicted be declared unconstitutional;
3. That his indictment be dismissed;
4. For costs of suit and reasonable attorneys' fees;
5. For such other relief as may be just and proper.

Dated: January 24, 1983

Respectfully submitted,

By Arthur G. Barnett

By Peter Irons

By Kathryn Bannai
Kathryn Bannai

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