

FACT SHEET

Petition for Writ of Error Coram Nobis

on behalf of Gordon K. Hirabayashi

Who is Gordon K. Hirabayashi? Gordon K. Hirabayashi was a 23-year old senior at the University of Washington in 1942 when the U.S. Government, through the military, imposed first curfew, then removal, orders on all persons of Japanese ancestry from the West Coast. The military justified these orders by claiming that the presence of persons of Japanese ancestry, including American citizens, posed a security threat to the West Coast. Mr. Hirabayashi believed that the U.S. Constitution prohibited such infringement, based solely on his race and ancestry, upon his individual rights to freedom. He chose to challenge the military orders, and was subsequently convicted on two charges of misdemeanor violations for defying the curfew and removal orders. The U.S. Supreme Court upheld the convictions in 1943, stating that wartime military necessity justified the government's actions.

What is a Writ of Error Coram Nobis? A Writ of Error Coram Nobis is a rarely used legal device by which a court may correct a fundamental injustice which had occurred due to serious irregularities in the prior proceedings before the court.

What does the Hirabayashi Petition allege? During the course of investigation and hearings by the Congressional Commission on Wartime Relocation and Internment of Civilians and through academic research by Dr. Peter Irons, political science professor and attorney, crucial government documents were discovered. These documents were classified during the time of Mr. Hirabayashi's trial and appeal to the Supreme Court in 1942 and 1943. These documents reveal that the military official responsible for promulgation of the military curfew and exclusion orders asserted false allegations in support of the orders. These documents further reveal that military and civilian Government intelligence agencies had concluded that there was no military necessity for removing Japanese Americans from the West Coast and interning them in concentration camps.

The Petition asserts that the Government had an obligation to Mr. Hirabayashi and the Court to reveal the existence and substance of these documents. Not only had the government failed to review these documents, the Government actually suppressed and altered the evidence placed before the Court. As a result of this government misconduct, Mr. Hirabayashi's attorneys in 1943 were unable to establish to the satisfaction of the Supreme Court that the internment program was not justified by military necessity. Not only was Mr. Hirabayashi's constitutional right to equal treatment violated, but his constitutional right to a fair trial was violated as well.

On the basis of these serious irregularities in Mr. Hirabayashi's prior criminal trial and appeals, the Petition requests the Court to review these newly discovered documents, to vacate Mr. Hirabayashi's criminal convictions, to dismiss the indictment against him, and to enter findings of why Mr. Hirabayashi's criminal convictions are being vacated.

Why was the petition filed? Mr. Hirabayashi seeks to affirm the principles which he sought to defend in 1943. He seeks to correct the judicial record which in 1943 stated that the Government had established sufficient military justification for the internment program. He seeks to establish that the factual underpinnings for the Supreme Court's 1943 decision do not and never did exist, thereby limiting any precedential value of the 1943 decision on future Court action.

What is the difference between the Coram Nobis Petition and the redress/reparations movement? The redress/reparations movement seeks to obtain an apology and compensation for the wrong done to Japanese Americans. The apology would come from the Executive and Legislative branches of the Government.

The Coram Nobis Petition is not a request for an apology. It is a presentation of a new body of evidence to the Court so that the Court may correct the record. It is not accompanied by any request for monetary compensation.

How does the Hirabayashi Petition relate to the Korematsu and Yasui Petitions? Fred Korematsu and Minoru Yasui had also been convicted for violating the military orders and filed similar petitions. Each Petition was filed in the District Court which originally tried and convicted the Petitioners: Korematsu in the Northern District of California in San Francisco, Minoru Yasui in the District of Oregon in Portland, and Gordon Hirabayashi in the Western District of Washington in Seattle.

What has been the Government's response to the Petition? The Government's responses to all three Petitions thus far have been similar. The Government has stated that the mass removal and incarceration of Japanese Americans and their immigrant parents was an unfortunate tragedy, but that it is time to put the controversy behind us. The Government insists that it would not be beneficial for the Court to engage in any fact-finding concerning the allegations contained in the Petition of governmental wrongdoing. Rather, the Government requests that the convictions be vacated and the indictment charges be dismissed as a reaffirmation of the inherent right of each person to be treated as an individual. The Government further requests the Court to dismiss the Petition and not hear it on its merits.

What has occurred in the Korematsu Petition? On November 10, 1983, Judge Marilyn Hall Patel of the U.S. District Court in San Francisco conducted a hearing on the Petition on behalf of Mr. Korematsu. Judge Patel viewed the Government's response as a non-opposition to the Petition because the government requested that Mr. Korematsu's conviction be vacated and did not challenge or deny the allegations contained in the petition. Judge Patel further stated that the Court must review the basis for granting a vacation of conviction under the Writ of Error Coram Nobis. The purpose of the review is to protect against prosecutorial impropriety and to ensure that the public interest is served. Judge Patel found that there was sufficient evidence before the Court that relevant evidence pertaining to military necessity (or the lack thereof) was withheld from the courts in prior proceedings.

On November 14, 1983, Judge Patel entered an order granting the Petition on behalf of Mr. Korematsu. Judge Patel issued a written Opinion stating the basis of her decision on April 19, 1984. The Government has chosen not to appeal Judge Patel's decision.

What has occurred in the Yasui decision? On January 16, 1984, Judge Robert C. Bellori of the U.S. District Court in Portland conducted a hearing on the Petition on behalf of Mr. Yasui. Judge Bellori viewed Petitioner's and the Government's requests for vacation of Mr. Yasui's convictions as requests for the same relief. Judge Bellori vacated the conviction, dismissed the indictment, and dismissed the Petition. An order was entered accordingly by Judge Bellori on January 26, 1984.

On March 2, 1984, attorneys for Mr. Yasui filed an appeal of the dismissal of the Petition, asserting that a fact-finding process was required. That appeal is presently pending before the Court of Appeals for the Ninth Circuit.

What has occurred in the Hirabayashi Petition? The Petition for Writ of Error Coram Nobis was filed in the U.S. District Court for the Western District of Washington in Seattle. A hearing was conducted before Judge Donald S. Voorhees on May 18, 1984. At that hearing, Judge Voorhees denied the Government's motion to dismiss the Petition and held that Mr. Hirabayashi was entitled to a consideration of the Petition on its merits by an evidentiary hearing. Judge Voorhees has set June 17, 1985, as the date for that evidentiary hearing, or trial.