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Orders

Hirabayashi v. United States

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5-24-1984

**Order: Motion of Government to Vacate Conviction Denied.  
Petition for Writ of Error Coram Nobis Set for Evidentiary Hearing**

United States District Court - Western District of Washington

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MAY 24 1984  
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WESTERN DISTRICT OF WASHINGTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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

Having considered the petition of Gordon K. Hirabayashi for a writ of error coram nobis and respondent's motion to vacate petitioner's conviction and dismiss the underlying indictment, the Court now finds and rules as follows:

1. Petitioner contends that this Court is without authority, after petitioner's trial and conviction, to grant the government's motion to vacate his conviction and dismiss the indictment pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure. In any event Rule 48(a) provides that the government may dismiss an indictment only by leave of court. In the present case, where petitioner seeks to have his petition considered on its merits,

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1 the Court is of the opinion that it is not in the public interest,  
2 over the objection of petitioner, to grant the government's motion  
3 to vacate the conviction and dismiss the indictment. The  
4 government's motion must in consequence be denied.

5 2. Petitioner requests the Court to take judicial notice of  
6 the many exhibits filed by him and, upon the basis of that  
7 judicial notice, to grant his petition and set aside his 1942  
8 conviction. The Court is unable to take judicial notice of the  
9 information contained in the exhibits filed by petitioner because  
10 that information is neither (1) generally known within the  
11 territorial jurisdiction of this court or (2) capable of accurate  
12 and ready determination by resort to sources whose accuracy cannot  
13 reasonably be questioned. Federal Rules of Evidence 201.

14 3. Petitioner has, however, in the opinion of the Court,  
15 made a prima facie showing that evidence essential to his defense  
16 at his trial or upon his appeal may have been knowingly suppressed  
17 by the government and that that suppression may have deprived the  
18 petitioner of due process at his trial or upon his appeal. The  
19 Court is of the opinion that it must hold an evidentiary hearing  
20 in order to permit petitioner to attempt to demonstrate by  
21 competent evidence that he was in fact denied due process at his  
22 trial or upon his appeal. At that evidentiary hearing the  
23 government may, of course, introduce evidence that no material  
24 information was in fact suppressed. It may introduce, too,

25  
26 ORDER - 2

1 evidence to the effect that the information upon which petitioner  
2 grounds his petition has been public knowledge for so long that  
3 the doctrine of laches bars petitioner from being accorded the  
4 remedy which he now seeks.

5 4. The Court wishes to make clear that at the evidentiary  
6 hearing, it does not intend to reexamine nor to rule upon the  
7 wisdom of the exclusion or curfew orders of Lieutenant General  
8 John L. DeWitt. The evidentiary hearing will be confined to the  
9 presentation of evidence bearing upon the issues as to whether  
10 representatives of the government knowingly withheld material  
11 evidence from defendant and from the courts and as to whether  
12 petitioner was in consequence, denied due process at his trial or  
13 upon his appeal.

14 Accordingly, the motion of the government to vacate  
15 petitioner's conviction and to set-aside his conviction is DENIED.  
16 The petition of petitioner for a writ of error coram nobis is set  
17 down for an evidentiary hearing to commence upon June 17, 1985.

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

20 DATED this 24 day of May, 1984.

21  
22   
23 United States District Judge

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