IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RAFEEK RAMZANALI VIRANI	§	
	§	
VS.	§	ACTION NO. 4:25-CV-1095-Y
	§	(4:03-CR-66-Y)
UNITED STATES OF AMERICA	§	

ORDER DENYING PETITION FOR WRIT OF *CORAM NOBIS*

Many years ago, two of this Country's great jurists met for lunch near the Capitol. Upon finishing their meal and beginning to part ways, Judge Learned Hand called out to Justice Oliver Wendell Holmes: "Well, sir, goodbye. Do justice!" To Judge Hand's surprise, Justice Holmes took apparent issue with the former's salutation and replied: "That is not my job. My job is to play the game according to the rules."[1]

Today, Rafeek Virani petitions the Court to issue a writ of *coram nobis* vacating his conviction for making a false statement to the Small Business Administration. (C.V. doc. 1; C.R. doc. 33.)

Today, the Court must "play the game according to the rules" and deny Virani's petition.

[1] Learned Hand, A Personal Confession, *in* The Spirit of Liberty 302, 306-07 (Irving Dilliard ed., 3d ed. 1960).

BACKGROUND[2]

Petitioner Rafeek Virani came to the United States from India in the 1990s. In 2003, he pled guilty to making a false statement in a loan application to the Small Business Administration, a crime under 15 U.S.C. § 645(a) (C.R. doc. 24).[3] Thereafter, this Court sentenced Virani to six months' imprisonment and one year of supervised release. (C.R. doc. 31.) The Court also required the Bureau of Prisons to surrender Virani to immigration authorities for deportation.

Virani served his time and reported to immigration authorities, who ordered his removal to India. However, India, Pakistan, and Bangladesh refused to accept Virani and denied him passports. Lacking a suitable country for deportation, immigration authorities released Virani from custody and instructed him to periodically check in. To date, Virani remains in the United States and lives in Texas. And by all accounts, he has since contributed to the United States by starting several businesses, giving back

[2] The Court draws the following background information from the documents in Virani's criminal case, 4:03-CR-66-Y, and his civil case, 4:25-CV-1095-Y. The Court will denote the separate cases in citations by marking documents as "C.R." or "C.V."

[3] The Court agrees with Virani's argument that his guilty plea does not preclude this petition for writ of *coram nobis*; in Virani's plea agreement, he only waived his right to "pursue any appeal or post-conviction writs from any **sentence** imposed" (C.R. doc. 24, at 3 (emphasis added)). He did not waive his right to pursue a post-conviction writ attacking his conviction.

to his community, and raising two remarkably successful children, both of whom are citizens of the United States.

Last year, Virani petitioned the Court to issue a writ of *coram nobis* vacating his criminal conviction after he learned of new policies at the Department of Homeland Security. In particular, Virani fears the department's newfound willingness to deport removable aliens to third-party countries such as Libya and South Sudan. Although Virani may be deportable for several reasons, his 2003 conviction is an independent ground for removal. Since Virani has served his terms of imprisonment and supervised release, the writ of *coram nobis* appears to be his only option for recourse.

LEGAL STANDARD

"The writ of *coram nobis* is an 'extraordinary remedy' that allows a person no longer in custody to vacate or modify [his] prior criminal conviction." *Chico v. United States*, 703 F. App'x 292, 293 (5th Cir. 2017) (per curiam) (emphasis added) (quoting *United States v. Morgan*, 346 U.S. 502, 511-12 (1954)) (citing *United States v. Dyer*, 136 F.3d 417, 422 (5th Cir. 1998)). The writ is appropriate "in circumstances where the petitioner can demonstrate civil disabilities as a consequence of the conviction, and that the challenged error is of sufficient magnitude to justify the extraordinary relief." *United States v. Esogbue*, 357 F.3d 532,

534 (5th Cir. 2004) (quoting *Jimenez v. Trominski*, 91 F.3d 767, 768 (5th Cir. 1996)). The writ is so extraordinary that the United States Court of Appeals for the Fifth Circuit has likened it to "the 'criminal-law equivalent' of a 'Hail Mary pass.'" *Hinkson v. United States*, No. 21-40174, 2022 WL 686325, at *2 (5th Cir. Mar. 8, 2022) (per curiam) (quoting *United States v. George*, 676 F.3d 249, 251 (1st Cir. 2012)).

"A petitioner seeking the writ must show (1) a continuing civil disability as a consequence of [his] prior conviction; that (2) [he] exercised reasonable diligence in seeking prompt relief; (3) no other remedy is available; and (4) unless relief is granted, there will be a complete miscarriage of justice." *Chico*, 703 F. App'x at 293–94 (internal citations omitted) (internal quotations omitted). As to the fourth element, which will be particularly relevant below, "the writ of *coram nobis* is an extraordinary remedy to correct errors 'of the most fundamental character.'" *Esogbue*, 357 F.3d at 535 (quoting *Morgan*, 346 U.S. at 512).

ANALYSIS

The Court will not address all four elements because Virani cannot establish the fourth element. According to Virani, the Court would miscarry justice by withholding the writ because: (1) Virani received ineffective assistance of counsel, (2) Virani's

conviction is unfair in light of recent legal developments, and (3) Virani's personal circumstances are extraordinary. He further argues that the Court should consider these arguments cumulatively. The Court will discuss each of these arguments in turn.

I. Ineffective Assistance of Counsel

Virani first argues that he received ineffective assistance of counsel because his attorney failed to discuss the immigration consequences of his guilty plea. The Fifth Circuit "has held that ineffective assistance of counsel, if proven, can be grounds for *coram nobis* relief." *Id.* (citing *Jiminez*, 91 F.3d at 559–60). "A claim of ineffective assistance of counsel requires proof 'that counsel's performance was deficient' and that 'the deficient performance prejudiced the defense.'" *Hinkson*, 2022 WL 686325, at *3 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

In the immigration context, a defendant can show deficient performance by alleging that his counsel failed to warn him about the adverse immigration consequences of pleading guilty. *See Padilla v. Kentucky*, 559 U.S. 356, 336-39 (2010). However, this rule does not apply retroactively. *See Chaidez v. United States*, 568 U.S. 342, 344 (2013). Thus, a defendant convicted before 2010 cannot establish deficient performance——or ineffective assistance

of counsel—by merely pointing to his counsel's failure to advise him on the immigration consequences of his plea. *See Adeleke v. United States* 550 F. App'x 237, 239 (5th Cir. 2013) (affirming denial of *coram nobis* relief because *Padilla* has no retroactive effect).

Here, the Court convicted Virani on September 22, 2003 (C.R. doc. 31), and the Court's judgment became final on October 2, 2003. *See* FED. R. APP. P. 4(b)(1)(A)(i); *United States v. Plascencia*, 537 F.3d 385, 388 (5th Cir. 2008). Thus, as Virani admits (C.R. doc. 33, at 14), his lawyer's failure to discuss the immigration consequences of his guilty plea cannot establish an ineffective-assistance-of-counsel claim. Thus, Virani's first argument fails to establish a fundamental error for *coram-nobis* purposes.[4]

II. Recent Legal Developments

Virani next argues that recent legal developments make his conviction fundamentally unfair. Developments in the law can satisfy the fundamental error element for a writ of *coram nobis*. *See United States v. Marcello*, 876 F.2d 1147, 1154 (5th Cir. 1989) (granting writ when conviction based on statute that Fifth Cicuit later narrowed). However, the defendant must point to a later decision holding "that the conduct for which he was indicted could

[4] For a collection of cases denying *coram-nobis* relief in similar circumstances, see doc. 6, at 11.

not constitute a violation of the relevant statute or which could have allowed impermissible evidence to infect a conviction on another, otherwise proper, charge." *United States v. Maiss*, No. C.R. A. 94-391, 2001 WL 515238, at * 3 (5th Cir. May 15, 2001). In other words, the recent development must be "a determination that the defendant's conduct was not criminal under the statute forming the basis for the prosecution." *United States v. Hill*, 393 F. App'x 162, 165–64 (5th Cir. 2010) (per curiam) (citing first *Marcello*, 876 F.2d at 1154; then *United States v. Travers*, 514 F.2d 1171, 1175 (2d Cir. 1974); and then *United States v. Sawyer*, 74 F. Supp. 2d 88, 105–06 (D. Mass. 1999)).

Here, Virani points to recent developments in the law that do not strike at his conviction. Instead, he points to DHS's newfound willingness to deport aliens to third-party countries and the United States Supreme Court's tacit approval of such decisions. While these are important developments in immigration law, they are not changes in the law relating to Virani's conviction under 18 U.S.C. § 645(a). As such, they do not establish that his conviction suffers from a fundamental error.

III. Virani's Personal Circumstances

Virani also points to his personal circumstances to show fundamental error. While the Court recognizes that these

circumstances are challenging, serious, and deeply personal, the Court cannot find that they constitute a fundamental error in Virani's conviction.[5]

IV. Cumulative Analysis

Finally, Virani asks the Court to consider the aforementioned arguments cumulatively. More specifically, he argues that the Court should apply a cumulative-error analysis to his petition as if it were a petition for a writ of habeas corpus. While the Court sees some benefit in applying cumulative-error analysis, Virani has not pointed to any precedent extending such an analysis to *coram-nobis* petitions. Lacking precedent, the Court cannot make the jump that Virani requests.

Since Virani cannot point to a fundamental error in his conviction, he has failed to establish one of the elements for a writ of *coram nobis*, and the Court need not consider his remaining arguments.

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[5] Virani also highlights purported factual inconsistencies in some of the sentencing documents in his criminal case. Although Virani does not challenge the factual sufficiency of his conviction, he does contend that they illustrate his desperation in pleading guilty.

The Court believes that the referenced ambiguities are typographical—not factual—errors. *See Dyer*, 136 F.3d at 422 (stating that "a petition bears the considerable burden of overcoming the presumption that previous judicial proceedings were correct" (citing *Morgan*, 346 U.S. 512)). In any event, they do not constitute fundamental error.

CONCLUSION

Although Virani garners the Court's sympathy, the Court must follow the law. Accordingly, the Court **DENIES** Virani's petition for a writ of *coram nobis*.

SIGNED November 9, 2026.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE