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

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:03-CR-066-Y
	§	
RAFEEK RAMZANALI VIRANI (1)	§	
	§	

RAFEEK RAMZANALI VIRANI,	§	
	§	
Petitioner,	§	
	§	
v.	§	Case No: 4:25-CV-1095-Y
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent	§	

PETITION FOR WRIT OF *CORAM NOBIS*

Richard J. Guiltinan
Texas Bar No. 24074332
VARTABEDIAN HESTER & HAYNES LLP
2200 Ross Avenue, Suite 4600E
Dallas, TX 75201
Phone: 214.247.6886
Fax: 817.214.4988
Email: richard.guiltinan@vhh.law

Stephen P. Fahey
Texas Bar No. 24101249
THE LAW OFFICE OF STEVE FAHEY PLLC
640 Taylor Street, Suite 1200
Fort Worth, Texas 76102
Phone: 682.301.0330
Email: steve@sfaheylaw.com

TABLE OF CONTENTS

PROCEDURAL & FACTUAL BACKGROUND 2
1. Mr. Virani's Plea Agreement and Immigration Proceedings 2
2. Additional Factual Background 4
3. Recent Developments 6
ARGUMENT & AUTHORITIES 7
1. The Court has authority to issue a writ of *coram nobis*. 7
2. Mr. Virani meets the elements for a writ of *coram nobis*. 8
a. Mr. Virani faces drastic collateral consequences because of his conviction—deportation to a third country and separation from his family. 8
b. The cumulative mistakes in the underlying proceeding and the drastic consequences that now face Mr. Virani constitute a "fundamental error." 9
c. Sound reasons justify why Mr. Virani did not seek this relief earlier. 15
d. No other judicial remedy is available. 17
3. The appellate waiver in Mr. Virani's plea agreement does not preclude this petition. 17
a. Mr. Virani's plea agreement allows him to challenge the underlying conviction. 17
b. In the alternative, Mr. Virani's petition alleges ineffective assistance of counsel, which is expressly permitted by the plea agreement. 19
4. The Court should at least hold a hearing on Mr. Virani's petition. 19
CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Padilla v. Kentucky,
559 U.S. 356 (2010) 10, 13
Allen v. United States,
2023 WL 5727311 (N.D. Tex. Aug. 1, 2023) ..... Passim
Chico v. United States,
703 F. App'x 292 (5th Cir. 2017) 7, 15, 16
D.V.D. v. Dep't of Homeland Security,
778 F. Supp. 3d 355 (D. Mass. 2025) 6, 14
Dep't of Homeland Security v. D.V.D.,
145 S.Ct. 2153 (2025) 6, 14
Derden v. McNeel,
938 F.2d 605 (5th Cir. 1991) 11, 15
Hinkson v. United States,
2022 WL 686325 (5th Cir. Mar. 8, 2022) 18
Lavernia v. Lynaugh,
845 F.2d 493 (5th Cir. 1988) 11
Lee v. United States,
2009 WL 3762112 (N.D. Tex. Nov. 10, 2009) 8, 16
Marroquin v. United States,
480 F. App'x 294 (5th Cir. 2012) 10
Ocon v. United States,
2022 WL 980642 (W.D. Tex. Mar. 31, 2022) ..... Passim
Strickland v. Washington,
466 U.S. 668 (1984) 10
United States v. Alvarado-Casas,
715 F.3d 945 (5th Cir. 2013) 12, 18
United States v. Castro,
26 F.3d 557 (5th Cir. 1994) 10
United States v. Dyer,
136 F.3d 417 (5th Cir. 1998) 7, 9, 15
United States v. Escobedo,
757 F.3d 229 (5th Cir. 2014) 18, 19
United States v. Esogbue,
357 F.3d 532 (5th Cir. 2004) 7, 9, 10, 15
United States v. Graves,
720 F.2d 821 (5th Cir. 1983) 12
United States v. Harris,
2005 WL 839448 (N.D. Tex. Apr. 8, 2005) 7, 17
United States v. Marcello,
876 F.2d 1147 (5th Cir. 1989) 8, 10

Federal Statutes

8 U.S.C. § 1227(a)(2)(A)(i), (iii) 12
8 U.S.C. § 1231(b) 6
15 U.S.C. § 645(a) 12
18 U.S.C. § 3742 19
28 U.S.C. § 1291 19
28 U.S.C. § 1651(a) 7
28 U.S.C. § 2241 or 2255 ..... 17, 18, 19
28 U.S.C. § 2255 ..... 15, 18, 19
28 U.S.C. § 2255(b) 20
28 U.S.C. § 2255(f)(4) 16, 18

TO THE HON. TERRY R. MEANS, SENIOR UNITED STATES DISTRICT JUDGE:

The writ of *coram nobis* is an extraordinary remedy that vacates a criminal conviction. And this case presents such unique, extraordinary circumstances. In 2003, petitioner Rafeek Virani pleaded guilty to one count of making a false statement to the Small Business Administration (SBA) in connection with a loan application. He did not default on that loan, and the Court did not order him to pay any restitution. Rather, his offense stemmed from a statement in the supporting documentation about a $20,000 gift. After Mr. Virani served a six-month sentence, he was ordered removed, but India, Pakistan, and Bangladesh refused to accept him. He was released from immigration custody and has been a productive member of society since. He now owns a Fast Track gas station and convenience store located in Palestine, Texas. He and his wife raised two children, who both excelled academically and have now graduated college.

For twenty-plus years, Mr. Virani has been dutifully attending all check-in appointments with immigration services. Earlier this year, there was a policy change allowing third-country deportation for individuals such as Mr. Virani. This June, the Supreme Court allowed such removals to proceed, which places Mr. Virani at present risk for third-country deportation.

Mr. Virani is now sixty years old with health issues. He pleaded guilty to a technical offense to avoid deportation. He was not adequately advised about potential immigration consequences of his plea, and his plea agreement says nothing on that topic. It would be a miscarriage of justice to separate him from his family and his employees after all this time and place him in a country foreign to him where he has no relatives, no caretakers, no resources, and no familiarity. And Mr. Virani will continue to face the threat of third-country deportation while his conviction remains on his record, so he has no other recourse. In light of these extraordinary circumstances, the Court should grant Mr. Virani's petition for *coram nobis* relief.

PROCEDURAL & FACTUAL BACKGROUND

1. Mr. Virani's Plea Agreement and Immigration Proceedings

This petition arises from a criminal prosecution related to an SBA loan. Mr. Virani did not default on the loan; he paid it back before his sentencing. (*See* App. 032) (Judgment) (no restitution ordered); (App. 034.) Nonetheless, in the aftermath of the September 11 attacks, there was particular scrutiny in this area. On June 16, 2003, Mr. Virani pleaded guilty to a superseding information charging him with making a false statement to the SBA. (App. 021–22.) (Information) (charging that Mr. Virani made a false statement "on a Certificate of Cash Injection Gift Letter that he had received a gift of $20,000 to be applied as equity injection toward the purchase of the property that was the subject of the loan guarantee, when in truth and in fact, as the defendant well knew, such statement was false"). According to the factual resume, Mr. Virani tendered this certificate "reflecting that Saleema Virani had made a gift to him of $20,000 to be applied as equity injection toward the purchase of the property that was the subject of the SBA loan guarantee." (App. 024.) The factual resume states: "At the time of such application the defendant knew that he had not deposit [sic] these funds into an account associated with, and did make use of these funds toward the purchase of the property . . ." *Id*.

After the guilty plea, this Court sentenced Mr. Virani to six months' imprisonment followed by one year of supervised release. (App. 031.) The Court did not order restitution for Mr. Virani's offense "because there is no victim other than society at large." (App. 032.) Mr. Virani completed both his sentence and his supervised release.

Mr. Virani's plea agreement includes a paragraph titled "Waiver of Appeal." (App. 027.) It states that Mr. Virani "waives any right to pursue any appeal or post-conviction writs from any sentence imposed under the Sentencing Guidelines if that sentence is within or below the Guideline

range as determined by the Court." *Id*. It also states that the appellate waiver does not apply to "post-conviction writs alleging ineffective assistance of counsel." *Id*. Relevant here, the appellate waiver in the plea agreement does not mention post-conviction writs challenging the underlying conviction. *See id.* It also does not contain an admonishment that Mr. Virani's plea could affect his immigration status, nor does it state that Mr. Virani wanted to plead guilty regardless of the immigration consequences. (*See* App. 025–29.)

As a condition of supervised release, the criminal judgment states that BOP would surrender Mr. Virani to an authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Naturalization Act. (App. 031.) Mr. Virani recalls that, at his sentencing, the Court instructed him not to miss any meetings with probation. (App. 034.) He followed the Court's instructions; after being released from prison, he was placed in immigration custody, intermittently detained for about a year, and received a removal order to India. *Id.* But due to his unusual background, Mr. Virani was never deported. In 1965, he was born to Indian parents in East Pakistan, which became Bangladesh in 1971 following the Bangladesh Liberation War. *Id.* Though he once held an Indian passport (when he got a B1/B2 visa), that passport was stolen. *Id.* Since then, India, Pakistan, and Bangladesh have all denied him passports. *Id*. After Mr. Virani was ordered removed, India, Pakistan, and Bangladesh refused to accept him. *Id.*

Because no country would accept him, immigration authorities released him from custody and told him not to miss any check-in appointments. *Id.* And he has followed those instructions for the past twenty-plus years, never missing an appointment. *Id.* Even during the Covid pandemic, he checked in with immigration authorities as required. *Id.*

In short, after his conviction, Mr. Virani has remained in Texas for the past twenty-plus years. He received employment authorization allowing him to work in the United States as well as a Texas driver's license. *Id.* Even with a removal order, Mr. Virani was able to work and raise his family in the Dallas-Fort Worth metroplex because he followed the rules. Since his conviction in 2003, Mr. Virani has not been charged or convicted of any crime.

2. Additional Factual Background

Mr. Virani legally entered the United States from India in 1990; his wife, Reshma, and infant daughter, Monisha, arrived the following year. (App. 034.) He obtained a work permit in 1995. (App. 002.) For thirty years, except for his brief incarceration, Mr. Virani has supported his family by working in the convenience store business. In 1996, Mr. and Mrs. Virani had a son, Sumair, who was born with a rare congenital ocular melanoma—eye cancer. (App. 020.) Sumair had his right eye removed when he was a couple months old, and he has always required ongoing medical care for his condition. (App. 035.) The Court may recall that Mr. Virani's young family attended his sentencing.

After his release from prison, Mr. Virani built a life in the Dallas-Fort Worth metroplex. And by all accounts, his past twenty years have been an American success story. Mr. Virani now owns Jannah Enterprises LLC and Rahmat LLC d/b/a Fast Track, a convenience store and gas station located at 3804 West Oak Street in Palestine, Texas. (App. 034.) He also manages Virani Enterprises LLC, a family business owned by his son. These businesses employ approximately fifteen people, and they could not operate without him. *Id.* Mr. Virani pays state and federal taxes. *Id.*

But Mr. Virani is more than just a successful businessman—he is also a valued member of the Palestine community. According to Palestine Mayor Mitchell Jordan, Mr. Virani is a dedicated

entrepreneur whose businesses contribute to Palestine's job creation and economic growth. (App. 033.) Mayor Jordan states that Mr. Virani is a "person of strong moral character and integrity," and that he gives back to the community through generous donations to local schools and charitable initiatives that support education and youth development. *Id.* Mayor Jordan affirms without hesitation that Mr. Virani is an asset to the city of Palestine. *Id.*

Most importantly, Mr. Virani's family is a testament to the life he has built in the past twenty-plus years. His children, who attended his sentencing, are now grown and accomplished:

- Mr. Virani's daughter, Monisha, received multiple trophies in Debate and Latin Translation during high school, earned the Girl Scouts Silver Award, and was honored with the Presidential Service Award—twice. She attended Baylor University, where she received her Bachelor of Science in Biology with minors in Business Administration and Chemistry, and she later earned her MBA from Tulane University. She now works as a Senior Manager at PepsiCo. She is also recently married, and she hopes to have children soon. (App. 034–35.)

- Mr. Virani's son, Sumair, still deals with the lingering effects of being born with eye cancer. But he too has an incredible story. He became an Eagle Scout and attended the University of Texas in Austin on a full-ride scholarship, where he received a bachelor's degree in Economics and graduated Magna Cum Laude. Like his sister, he also received the Presidential Service Award. Sumair now works as an Enterprise Account Executive at Cockroach Labs in New York City. (App. 035.)

In addition to running his businesses, Mr. Virani also serves as the sole provider and primary caretaker for his wife, Reshma. (App. 034.) Reshma suffers from painful rheumatoid arthritis. *Id.* She volunteers at the Ismaili Center in Carrollton, managing food and kitchen duties, and helps organize fundraising events for charities supporting underprivileged communities. *Id.* Reshma relies on Mr. Virani for financial and emotional support. *Id.*

Mr. Virani has his own health issues. He has stents in his heart due to heart attacks and a history of stroke. (App. 035.) He requires ongoing treatment and daily medication for his medical condition and depriving him of proper medical care would place his health and life at significant risk. *Id.*

By every measure, Mr. Virani has been a model citizen since he completed his sentence. Now sixty years old, he had hoped to continue running his businesses and to spend time with his future grandchildren in the coming years.

3. Recent Developments

This year, things changed. Mr. Virani has been allowed to stay in the United States for twenty-plus years because India, Pakistan, and Bangladesh refused to accept him. Now, however, Mr. Virani faces deportation to an unknown country.

"Third country removals" are a new, recent development. Generally, federal law allows the government to deport noncitizens to countries where they have a connection. *See* 8 U.S.C. § 1231(b). However, if a foreign government is unwilling to accept the alien into the country, Congress provided various alternatives. *See id.* § 1231(b)(2)(E). Relevant here, Congress provided that "[i]f impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph," the Attorney General may remove the alien to "another country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E). In February 2025, the Department of Homeland Security issued a directive instructing ICE officers to review aliens with detention orders for potential re-detainment and removal to a third country. *See D.V.D. v. Dep't of Homeland Security*, 778 F. Supp. 3d 355, 367 (D. Mass. 2025) (explaining order). After the Supreme Court vacated a preliminary injunction, this change in policy means that aliens such as Mr. Virani are now subject to deportation to third countries such as Libya and South Sudan. *See Dep't of Homeland Security v. D.V.D.*, 145 S.Ct. 2153, 2153 (2025); *see also id.* (Sotomayor, J., dissenting) (noting third country removals to Guatemala, South Sudan, and Libya).

Mr. Virani raised his family in Texas, established a business in Texas, and became a pillar of the community in Texas. Texas has been his home for over thirty years. But his ancient

conviction now places him at risk of deportation to an unknown country—even to a war zone such as South Sudan. In addition to threatening Mr. Virani's own health and safety, this outcome would separate him from his family and employees and cause them immense hardship.

Mr. Varani meets the elements of *coram nobis* relief. The cumulative mistakes in the underlying proceeding, his ineffective assistance of counsel, and the drastic consequences that now face Mr. Virani constitute a fundamental error. Added to the recent developments, Mr. Virani has no other recourse. To avoid this unthinkable outcome, Mr. Virani seeks *coram nobis* relief to vacate his conviction. The Court should grant his petition for the reasons below.

ARGUMENT & AUTHORITIES

1. The Court has authority to issue a writ of *coram nobis*.

The writ of *coram nobis* "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) (citations omitted). The writ is available in federal courts pursuant to the All Writs Act, 28 U.S.C. § 1651(a). *United States v. Dyer*, 136 F.3d 417, 422 (5th Cir. 1998) (citation omitted); *see United States v. Harris*, No. 4:96-CR-066-Y, 2005 WL 839448, at *1 (N.D. Tex. Apr. 8, 2005) (Means, J.) (citation omitted). The proper venue for petitioners to seek the writ is in the court of their conviction.[1] *See United States v. Esogbue*, 357 F.3d 532, 534 (5th Cir. 2004).

The Fifth Circuit has cautioned that "*coram nobis* should issue to correct only errors which result in a complete miscarriage of justice." *United States v. Marcello*, 876 F.2d 1147, 1154 (5th Cir. 1989) (citations omitted). But district courts can and should issue the writ when justice

[1] To ensure that his petition is heard by the sentencing court, Mr. Virani is filing this petition in the closed criminal case; it should then be opened and docketed as a new civil filing. *See Lee v. United States*, No. 3:08–CV–2044–D, 2009 WL 3762112, at *3 (N.D. Tex. Nov. 10, 2009) (Fitzwater, J.). If the Court prefers that he file a separate civil action to bring this petition, Mr. Virani respectfully asks that the Court permit him the opportunity to do so.

requires. *See, e.g.*, *Ocon v. United States*, No. EP-21-CV-283-DB, 2022 WL 980642, at *9 (W.D. Tex. Mar. 31, 2022) (granting petition for a writ of *coram nobis* to vacate a conviction for firearms offenses). In the *Ocon* case, the petitioner was a military veteran who had been deported to Mexico after his conviction, and whose almost-20-year-old conviction for an aggravated felony prevented him from qualifying for a military naturalization. *See id.* at *2, 8. The *Ocon* court evaluated the petitioner's continuing disability, determined there were sound reasons for not seeking relief earlier, and found that vacatur of the conviction would eliminate the cause of the collateral consequence. *Id.* at *8–9.

Like the petitioner in *Ocon*, Mr. Virani faces present harm from his conviction in 2003. Because he meets the elements for a writ of *coram nobis*, the Court should apply a similar analysis as the *Ocon* court and vacate the conviction.

2. Mr. Virani meets the elements for a writ of *coram nobis*.

"The requisite elements for *coram nobis* relief are: (1) the ground for relief involves a fundamental error; (2) no other judicial remedy is available; (3) valid reasons exist to excuse the petitioner's failure to seek relief on these issues in earlier proceedings; and (4) the petitioner is suffering or is threatened with adverse collateral consequences as a result of his conviction." *Allen v. United States*, No. 3:22-cv-01493-D-BT, 2023 WL 5727311, at *3 (N.D. Tex. Aug. 1, 2023) (Rutherford, J.) (citation omitted). As explained below, Mr. Virani satisfies each one.

a. Mr. Virani faces drastic collateral consequences because of his conviction—deportation to a third country and separation from his family.

Though it is the fourth element listed above, the "demonstration of [lingering civil] disabilities is one of the most significant factors in determining whether sufficiently 'compelling circumstances' exist" for *coram nobis* relief. *Dyer*, 136 F.3d at 422. Mr. Virani meets it because he now faces the threat of deportation to an unknown third country.

In *United States v. Esogbue*, the Fifth Circuit emphasized that "the collateral consequence of possible deportation" was a valid predicate for the writ. 357 F.3d at 534. Because the defendant in *Esogbue* was subject to deportation, the Fifth Circuit held that the district court erred by dismissing his *coram nobis* petition for lack of jurisdiction. *Id.* In Mr. Virani's case, because India, Pakistan, and Bangladesh previously refused to accept him, he was allowed to stay in the United States after receiving a removal order. Thus, before this year, he did not appear to be facing the prospect of deportation that would qualify as an ongoing civil disability for *coram nobis* relief. But the policy change that allows for third-country removals has now placed him at present risk of removal owing to his conviction. *See Ocon*, 2022 WL 980642, at *8 (analyzing collateral consequences based on the present harm faced by the petitioner). For that reason, Mr. Virani satisfies the element to show that his conviction causes him lingering civil disabilities.

Moreover, the collateral consequences facing Mr. Virani are particularly severe. Mr. Virani is sixty years old and has lived in the Dallas-Fort Worth metroplex for roughly thirty years. His health issues require daily medication. In addition to running his businesses, he is Reshma's sole provider and primary caretaker. His employees depend on him for their livelihoods. Even though Mr. Virani served his sentence and has lived as a model citizen for the past twenty-plus years, in addition to separation from his family, he now faces the threat of removal to an unknown country and risk of physical harm should he be removed to a war-torn area such as South Sudan. Thus, there is no question that Mr. Virani "is suffering or is threatened with adverse collateral consequences as a result of his conviction." *Allen*, 2023 WL 5727311, at *3.

b. The cumulative mistakes in the underlying proceeding and the drastic consequences that now face Mr. Virani constitute a "fundamental error."

Developments in the law can serve as a valid predicate for a writ of *coram nobis*. *See Marcello*, 876 F.2d at 1154 (granting writ to vacate conviction after Supreme Court rejected

"intangible rights doctrine" for mail fraud prosecutions). In addition, "ineffective assistance of counsel, if proven, can be grounds for *coram nobis* relief." *Esogbue*, 357 F.3d at 534–35 (citation omitted). "To demonstrate ineffective assistance of counsel, a criminal defendant must demonstrate both that his counsel's representation was deficient and that he was prejudiced by counsel's deficient performance." *United States v. Castro*, 26 F.3d 557, 559 (5th Cir. 1994) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "In a guilty plea scenario, a petitioner must prove not only that his attorney actually erred, but also that he would not have pled guilty but for the error." *Allen*, 2023 WL 5727311, at *7 (citations omitted).

In the seminal case *Padilla v. Kentucky*, the Supreme Court recognized that "changes to [the country's] immigration law have dramatically raised the stakes of a noncitizen's criminal conviction." 559 U.S. 356, 356, 364 (2010). For that reason, the Court held that failure to advise that a conviction made a defendant subject to automatic deportation could support a claim for ineffective assistance of counsel. *See id.* at 360. The Fifth Circuit has stated that *Padilla* does not apply retroactively. *See Marroquin v. United States*, 480 F. App'x 294, 296 (5th Cir. 2012) (citation omitted); *but see id.* at 299–301 (Dennis, J., specially concurring) (recognizing prejudice to the defendant when deprived of the opportunity to plead to a conviction that does not trigger deportation). Plea agreements in this District now regularly include: (1) language warning defendants that their guilty plea can impact their immigration status; and (2) a statement affirming that the defendant wants to plead guilty regardless of any immigration consequences, including automatic removal.

When combined with the legal development allowing third-country removals to proceed, the issues with Mr. Virani's guilty plea, taken together, rise to the level of cumulative, fundamental error in Mr. Virani's underlying criminal case. *See Derden v. McNeel*, 938 F.2d 605, 609 (5th Cir.

1991) (recognizing cumulative error analysis in a habeas case). For this type of analysis, "there is no set formula and each case must be independently examined."[2] *Id.* And the sole question is "whether the trial taken as a whole is fundamentally unfair." *See id.* (citing *Lavernia v. Lynaugh*, 845 F.2d 493, 496 (5th Cir. 1988)). Since this case involved a plea agreement, there was no trial. But the Court should consider the following facts and conclude that, taken as a whole, the circumstances facing Mr. Virani as a result of his plea agreement are fundamentally unfair.

When he faced criminal prosecution in 2003, Mr. Virani's most important consideration was that any plea deal did not affect his immigration status. (App. 035.) Mr. Virani had a young family at the time, and Sumair required ongoing monitoring by Southwestern Medical Center and Children's Medical Center to ensure his eye cancer did not recur. (App. 020.) Mr. Virani's counsel was instructed to make sure any deal would not hurt his immigration status. (App. 035.) Mr. Virani agreed to plead guilty to a fairly minor offense—one with no restitution or victim—to avoid being subject to removal.

The superseding information alleged that Mr. Virani "made the statement on a Certificate of Cash Injection Gift Letter that he had received a gift of $20,000 to be applied as equity injection toward the purchase of the property that was the subject of the loan guarantee, when in truth and in fact, as the defendant well knew, such statement was false." (App. 021–022.) But the factual resume says the opposite, asserting that, while Mr. Virani had not deposited the $20,000 gift into an account associated with" the purchase of the property, he "did make use of these funds toward the purchase of the property." (App. 024.) If those stipulated facts are accurate, his conviction

[2] The Court may be justifiably worried about opening Pandora's box by granting an extraordinary writ. Applying a cumulative-error analysis should alleviate that concern. While the writ of *coram nobis* is an extraordinary remedy, this case presents extraordinary circumstances. *See. e.g.*, *Derden*, 938 F.2d at 610 (finding cumulative error applies to "highly exceptional" cases). And because future cases must be independently examined, a favorable decision should not extend beyond the unusual facts presented here.

lacks an adequate factual basis because it contradicts the charging information.[3] *See United States v. Graves*, 720 F.2d 821, 822, 824 (5th Cir. 1983) (citations omitted) (holding a conviction may be overturned even after a guilty plea if the record does not evidence a sufficient factual basis to support a plea of guilty to the crime charged); *see also United States v. Alvarado-Casas*, 715 F.3d 945, 949–50 (5th Cir. 2013) ("The factual basis requirement 'protect[s] a defendant who may plead with an understanding of the nature of the charge, but without realizing that his conduct does not actually fall within the definition of the crime charged.'" (citations omitted)); 15 U.S.C. § 645(a) (an element of the offense is "mak[ing] a statement knowing it to be false."). If nothing else, it illustrates the confusion and desperation facing a man who wanted to stay in the United States with his family. Mr. Virani pleaded guilty to a technical violation for that purpose—but at the time he did not understand the potential ramifications of his plea.

The Immigration and Naturalization Act states that an alien who is convicted of a crime of moral turpitude or an "aggravated felony" is deportable. 8 U.S.C. § 1227(a)(2)(A)(i), (iii). Aggravated felonies include an offense "involving fraud or deceit in which the loss to the victim or victims exceeds $10,000." *Id.* § 1101(a)(43)(M). Likewise, a person who has an aggravated felony conviction cannot be regarded a person of "good moral character" for the relevant time. *Id.* § 1101(f). As noted above, an aggravated felony can make someone ineligible for naturalization. *Ocon*, 2022 WL 980642, at *7.

The stipulated facts in Mr. Virani's factual resume identify the amount of the gift from his relative as $20,000 and the amount of the SBA loan as $675,000. (App. 024.) The Court's judgment states that there was no restitution and no victim other than society at large. (App. 032.) The factual resume does not include an admission that there was any kind of financial loss to the

[3] The undersigned counsel has not been able to obtain transcripts from Mr. Virani's criminal case, so it is unclear whether this issue was addressed in the underlying proceeding.

government. In fact, it suggests that there was not any loss to the government. But, since the factual resume does include the figure $20,000, a reader might assume that there might be a loss, rendering Mr. Virani's conviction an aggravated felony (loss exceeding $10,000), that would subject him to automatic deportation.[4] It could also qualify as a crime of moral turpitude for purported deceit. But Mr. Virani did not understand these implications at the time he signed his plea agreement. (App. 035.) As such, he was not properly advised about the consequences of his guilty plea. *See Padilla*, 559 U.S. at 360.

Notably, Mr. Virani signed his plea agreement in 2003, seven years before *Padilla* was decided. As such, it does not include a recital warning him that pleading guilty would affect his immigration status. (*See* App. 025–29.) It does not include any statement affirming that Mr. Virani wanted to plead guilty regardless of any immigration consequences. *Id.* To the contrary, he wanted to stay in the United States with his wife and two children—the younger of whom was receiving treatment for congenital eye cancer.

By its terms, Mr. Virani's plea agreement appears to be an attempt to avoid deportation. It resulted in only six months' imprisonment, and Mr. Virani repaid the full amount of that loan before sentencing. But if that was the aim of the plea, it failed its purpose. Mr. Virani now faces deportation to an unknown third country as a result of his conviction. And while Mr. Virani's plea agreement includes a recitation that he was fully satisfied with the representation he received (App. 028), Mr. Virani did not understand at the time that his guilty plea would threaten him, at the age of sixty, with removal to a third country such as Libya or South Sudan. He would not have pleaded

[4] The undersigned counsel has been unable to get a copy of the pre-sentence report in Mr. Virani's case. As such, it is unclear what loss amount—if any—was used to calculate the guideline range for sentencing, and whether Mr. Virani's counsel objected to any statement that the loss amount exceeded $10,000. It is a possibility that the Probation Office concluded that there was an intended loss amount, but even if the Probation Office took that stance, that does not mean that there was any actual loss.

guilty if he had known that it would subject him to this punishment. (App. 035.)

Consider also the recent development in the law on this point. Immigration authorities allowed Mr. Virani to stay in the United States after his conviction, and he had no issues for twenty years. He was authorized to work in the United States, he checked in with authorities as required, and he built a successful, fulfilling life here in Texas. But only now, due to a recent change in policy, does his plea agreement subject him to the threat of third-country removal. This policy, announced in February 2025, was challenged in court, and a district court certified a class and granted a preliminary injunction. *See D.V.D.*, 778 F.Supp.3d at 365; *see also id.* at 376 (noting that the third-country removal process was initiated *after* the conclusion of removal proceedings); *id.* at 387 (finding plaintiffs likely to succeed in showing that the third-country removal policy constitutes a deprivation of due process). Before this year, it was unfathomable that a possible consequence of pleading guilty to a technical offense included deportation to a country such as South Sudan. But the Supreme Court vacated the preliminary injunction on June 23, 2025, which means that such third-country removals can now proceed. *Dep't of Homeland Security*, 145 S.Ct. at 2153. Because of this legal development, Mr. Virani's pre-existing removal order (stemming from his guilty plea) now places him at imminent risk of being sent to a war-torn country.

Taken alone, these errors might not rise to the level warranting *coram nobis* relief. But cumulatively, and given the recent legal development that now threatens Mr. Virani with the punishment of being deported to a country such as Libya or South Sudan for a technical offense, the Court should find that the circumstances have become "fundamentally unfair." *See Derden*, 938 F.2d at 609. This petition has already emphasized how Mr. Virani's deportation would prejudice his ailing wife, his two grown children, and his employees who depend on him for their livelihood. But the Court should also consider the incredible harm that removal would cause Mr.

Virani. How is an elderly man with serious health issues (and no passport) supposed to start anew in an unfamiliar country, let alone a place like South Sudan? Mr. Virani never had an opportunity to challenge this outcome in his original removal proceedings after he was released from prison. Such an outcome would be a "miscarriage of justice." *See Dyer*, 136 F.3d at 430. But Mr. Virani faces such a grim outcome should this writ be denied.

c. Sound reasons justify why Mr. Virani did not seek this relief earlier.

A petitioner for *coram nobis* relief must exercise "reasonable diligence in seeking prompt relief." *Dyer*, 136 F.3d at 427 (internal quotation marks omitted) (citations omitted). Therefore, to establish his entitlement to the writ, Mr. Virani must provide "sound reasons" for not asserting the claims alleged in this petition under 28 U.S.C. § 2255 while he was still in custody. *Esogbue*, 357 F.3d at 535; *see Allen*, 2023 WL 5727311, at *3. "Because there is no applicable statute of limitations for a writ [of *coram nobis*], a district court considering the timeliness of a petition 'must decide the issue in light of the circumstances of the individual case.'" *Ocon*, 2022 WL 980642, at *5 (citing *Chico*, 703 F. App'x at 294). Though there is no statute of limitations, courts have analogized the "reasonable diligence" element to habeas corpus petitions, where the one-year statute of limitations "begins to run from the time the petitioner could have discovered the facts supporting the claim through the 'exercise of due diligence.'" *Lee*, 2009 WL 3762112, at *1 (citing 28 U.S.C. § 2255(f)(4)); *see Chico*, 703 F. App'x at 294.

The individual circumstances of this case confirm that Mr. Virani has sound reasons for not seeking this relief earlier, and that he took action within one year of learning the facts supporting this claim. For twenty-plus years, he has been dutifully following immigration authorities' instructions to attend all check-in appointments since being released from custody. For twenty-

plus years, he never had a problem. Before this year, it was unthinkable that he might be removed to a place like Libya or South Sudan as a result of his conviction.

Moreover, unlike the petitioners in *Chico* and *Lee*, Mr. Virani acted promptly to seek this relief. As noted above, the prospect of third-country removal only became a possibility earlier this year. DHS changed its policies in February 2025 to enable this type of deportation, and in June, the Supreme Court allowed these third-country removals to proceed. Within months of learning that his guilty plea now subjects him to such a harsh punishment, Mr. Virani sought relief with this Court. These facts contrast with those presented in *Chico*, where the petitioner waited nearly two years to file a *coram nobis* petition and did not even attempt to explain the delay. *See* 703 F. App'x at 294. And these facts contrast with the *Lee* case, where the defendant waited five years after he should have discovered the error and, more importantly, only sought relief *three years after he was already deported*. 2009 WL 3762112, at *1. In both cases, the district courts refused the writs because the petitioners waited over a year to seek relief.

Critically, the rationale set forth in *Chico* and *Lee* does not apply here; Mr. Virani has sought a writ of *coram nobis* within a year of learning the drastic collateral consequences that now face him as a result of his guilty plea. Moreover, Mr. Virani could not have sought this relief before this year. Because immigration authorities allowed him to stay and work in the United States, he was not facing a present threat of deportation (i.e. the ongoing civil disability requirement for *coram nobis* relief) until the policy change and Supreme Court decision allowing for third-country removals. Thus, Mr. Virani's individual circumstances are analogous to those found in *Ocon*, where the district court granted the writ and vacated the conviction. *See* 2022 WL 980642, at *7 (finding a sixteen-month delay reasonable in light of the individual circumstances). Since Mr. Virani's claim would not be otherwise time-barred, he has acted with reasonable diligence. And

because he has "valid reasons" for seeking this relief now, he meets this third element for *coram nobis*. *Allen*, 2023 WL 5727311, at *3.

d. No other judicial remedy is available.

As this Court has stated, a "fundamental prerequisite for *coram nobis* relief . . . is that the movant must have completed his sentence and no longer be 'in custody' for purposes of 28 U.S.C. § 2241 or 2255." *Harris*, 2005 WL 839448, at *1 (italics added). The status of "in custody" also applies to supervised release. *Id.*

Here, Mr. Virani has been out of custody for approximately twenty years. He is not eligible to seek relief under 28 U.S.C. § 2241 or 2255. And the threat of third-country removal did not exist during the time when Mr. Virani was in custody and eligible to seek relief pursuant to those sections. For that reason, Mr. Virani satisfies the requirement for *coram nobis* relief that "no other judicial remedy is available." *See Allen*, 2023 WL 5727311, at *3.

Because Mr. Virani meets each of the four elements for *coram nobis* relief, the Court should grant his petition unless it finds that the appellate waiver in his plea agreement precludes this petition. It does not, for the reasons explained below.

3. The appellate waiver in Mr. Virani's plea agreement does not preclude this petition.

a. Mr. Virani's plea agreement allows him to challenge the underlying conviction.

"In the Fifth Circuit, courts consider a petition for a writ of *coram nobis* in light of any appellate waiver contained in the petitioner's plea agreement." *Allen*, 2023 WL 5727311, at *3 (italics added) (citing *Hinkson v. United States*, No. 21-40174, 2022 WL 686325, at *2 (5th Cir. Mar. 8, 2022) (per curiam)). Courts "construe a plea agreement like a contract, seeking to determine the defendant's reasonable understanding of the agreement and construing ambiguity against the Government." *United States v. Escobedo*, 757 F.3d 229, 233 (5th Cir. 2014) (cleaned

up) (citations omitted). An "ambiguous plea agreement must be reasonably construed in favor of the defendant." *Id.* at 230. In addition, a defendant can challenge the factual basis underlying a guilty plea notwithstanding an unconditional appeal waiver. *Alvarado-Casas*, 715 F.3d at 951.

Mr. Virani's plea agreement does not preclude this petition for post-conviction relief. The magistrate judge's reasoning in *Allen* is instructive on this point. *See* 2023 WL 5727311, at *3. In *Allen*, the plea agreement contained language that the defendant waived his rights "to appeal from his *conviction and* sentence." *Id.* (emphasis added). Likewise, the defendant "waive[d] his right to contest his *conviction and* sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255." *Id.* (emphasis added). Reviewing this language, the magistrate found the appellate waiver barred the defendant's petition for *coram nobis* relief. *Id.*

Here, by contrast, the appellate-rights waiver in Mr. Virani's plea agreement is narrower than the one in *Allen*. *See id.* Mr. Virani's agreement waived only his right to challenge his sentence, not the underlying conviction. (App. 027) (precluding challenge to "any sentence imposed under the Sentencing Guidelines if that sentence is within or below the Guideline range as determined by the Court."). Thus, the express language of Mr. Virani's plea agreement allows him to bring this petition. Should there be any argument on that point, it only proves that the appellate-rights waiver is ambiguous, and it should therefore be construed in Mr. Virani's favor. *See Escobedo*, 757 F.3d at 233. If the government had intended to bar Mr. Virani from seeking a post-conviction writ to vacate his conviction, then it should have included that provision in the agreement.[5]

[5] For example, the current form of the Northern District of Texas plea agreement typically includes:

> Waiver of right to appeal or otherwise challenge sentence: The defendant waives the defendant's rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal the conviction, sentence, fine and order of restitution or forfeiture and to contest the conviction, sentence, fine and order of restitution or forfeiture in any collateral proceeding, including

Consistent with the terms of his plea agreement, Mr. Virani did not appeal the sentence ordered by the Court. And now, consistent with those same terms, he seeks a post-conviction writ to vacate the underlying conviction. Because his plea agreement allows him to do so, his petition for *coram nobis* is properly before the Court.

b. In the alternative, Mr. Virani's petition alleges ineffective assistance of counsel, which is expressly permitted by the plea agreement.

Even if the Court were to construe the appellate-rights waiver in Mr. Virani's plea agreement more broadly (and it should not), Mr. Virani is still allowed to bring this petition for post-conviction relief. Mr. Virani's plea agreement permits him to seek "post-conviction writs alleging ineffective assistance of counsel." (App. 027.) Mr. Virani includes that allegation above to explain why there is a cumulative, fundamental error that allows for *coram nobis* relief. *See supra* at 9–15. That separate provision provides the Court with another basis to conclude that Mr. Virani's plea agreement does not bar this petition for post-conviction relief.

4. The Court should at least hold a hearing on Mr. Virani's petition.

Because Mr. Virani satisfies the elements for *coram nobis* relief, the Court should grant his motion and vacate the underlying conviction. Should the Court require further evidence, it should hold an evidentiary hearing and allow Mr. Virani to present it.

As the magistrate judge noted in another *coram nobis* case, a "district court is not required to conduct an evidentiary hearing where the petitioner's allegations are contradicted by the record, or his claims are frivolous." *Allen*, 2023 WL 5727311, at *10 (citing 28 U.S.C. § 2255(b)). Mr. Virani's claims are not frivolous, however. He faces grave consequences owing to his conviction

---

proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. The defendant, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at sentencing, (b) to challenge the voluntariness of the defendant's plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.

in this court, and he has made a threshold showing for the writ. Because this case impacts an elderly man's life, health, and livelihood, the Court should hold an evidentiary hearing if it is not inclined to grant relief based on the pleadings.

CONCLUSION

For these reasons, the Court should grant Mr. Virani's petition for a writ of *coram nobis* and vacate his conviction as set forth in the Judgment in Criminal Case No. 4:03-CR-066-Y. In the alternative, the Court should hold a hearing on Mr. Virani's petition. Mr. Virani also respectfully asks that the Court grant any other relief as is just and proper.

Respectfully submitted,

/s/ Richard J. Guiltinan
Richard J. Guiltinan
Texas Bar No. 24074332
VARTABEDIAN HESTER & HAYNES LLP
2200 Ross Avenue, Suite 4600E
Dallas, TX 75201
Phone: 214.247.6886
Fax: 817.214.4988
Email: richard.guiltinan@vhh.law

/s/ Stephen P. Fahey
Stephen P. Fahey
Texas Bar No. 24101249
THE LAW OFFICE OF STEVE FAHEY PLLC
640 Taylor Street, Suite 1200
Fort Worth, Texas 76102
Phone: 682-301-0330
Email: steve@sfaheylaw.com

CERTIFICATE OF SERVICE

I certify that I have filed this document using the Court's ECF system, and that a true and correct copy of the foregoing document has been served on the United States Attorney's Office for the Northern District of Texas.

/s/ Richard J. Guiltinan
Richard J. Guiltinan

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

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:03-CR-066-Y
	§	
RAFEEK RAMZANALI VIRANI (1)	§	
	§	

RAFEEK RAMZANALI VIRANI,	§	
	§	
Petitioner,	§	
	§	
v.	§	Case No: 4:25-CV-_____
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent	§	

[PROPOSED] ORDER

Before the Court is the Petition for a Writ of *Coram Nobis* filed by petitioner Rafeek Virani. This petition relates to the criminal case *United States of America v. Rafeek Ramzanali Virani*, No. 4:03-CR-066-Y, in this Court. Petitioner seeks post-conviction relief pursuant to the All Writs Act, 28 U.S.C. § 1651(a).

Having considered the Petition, any responses and replies, the record, and applicable law, the Court finds that Mr. Virani's petition should be **GRANTED**. It is hereby **ORDERED** that Mr. Virani's conviction for a False Statement to the Small Business Administration, in violation of 15 U.S.C. § 645(a), in cause number 4:03-CR-066-Y (Count 1) is **VACATED**.

SO ORDERED this _____ day of October, 2025.

TERRY R. MEANS
SENIOR UNITED STATES DISTRICT JUDGE