

20-6076

No. \_\_\_\_\_

---

In the  
**Supreme Court of the United States**

HUGO PENA

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

---

On Petition for Writ of Certiorari to the United States Court  
of Appeals for the Eleventh Circuit

---

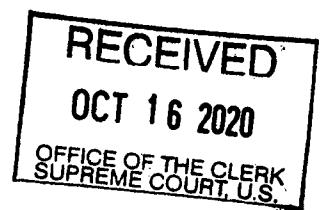
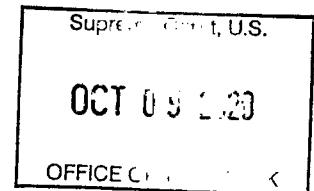
**PETITION FOR WRIT OF CERTIORARI**

---

Hugo Pena  
10241 NW 9<sup>th</sup> St. Cir. # 109  
Miami, Florida 33172  
(TEL) 786-368-9545  
[hpena01@yahoo.com](mailto:hpena01@yahoo.com)

Petitioner Pros Se

---



## QUESTION PRESENTED

1.- What is the appropriate standard of review, when the Eleventh Circuit Court of Appeal improperly and controversy, Grants the Government's Motion for Summary Affirmance recognizing that "Jurisdiction Errors are fundamental errors that warrant coram nobis relief" and is "a genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty may well be proper ground for coram nobis relief as a matter of law" and, "concluding that a defect in the indictment, which alleged specific conduct that was no longer a federal crime, constituted a jurisdictional error warranting coram nobis relief", because the vessel was flagged under St. Kitts & Nevis rather than Panama, in which the constitutionality of an Act of Congress is drawn into question, and the QUESTION IS, Does the Supreme Court Should hold that the prosecution commits a Due Process Violation for willful suppression of fundamental material evidence favorable to the defense but undisclosed, when the prosecution has the ironclad constitutional duty to disclose" and, there is a substantive question, materially evidence pursuant to 19 CFR Part 4, "factual error material", not disclosed, that the prosecution should have to disclose the Party in the personal capacity under Country Party to the MARPOL at the time of MARPOL violation, at the trial or pretrial, and is a Jurisdictional error that warrant coram nobis relief because they render the proceeding itself irregular and invalid, when the primary duty of the justice, is to protect the public, where Pena is the victim and lacks subject matter jurisdiction, nor present in the physical location where a court exercises its power at the time of MARPOL violation, and indeed, "sound reasons exist for failure to seek earlier relief"?<sup>1</sup>

---

<sup>1</sup> MARPOL Art. 2 (5). Administration means the Government of the state under whose authority the ship is operating, see Appendix D (App.8-24).

Homeland Security materially exculpatory evidence, not disclosed, Pursuant to 19 CFR Part 4 CBP Form 1300 (Vessel Entrance or Clearance Statement), see Appendix D (App. 13-15).

See, Rule 3.8 (d) (h)

## **PARTIES TO THE PROCEEDINGS**

Petitioner, Hugo Pena, was the Appellant in the court below.

Respondents, United States of America; were the Appellees in the court below.

United States District Court for the Southern District of Florida, Hugo Pena v. United States; The Petition for a Writ of Error Coram Nobis, Docket No: 0:19-cv-62889-WPD (Secondary Case Number: 0:18-cv-60984-WPD), District Judge, Judgment entered on December 30<sup>th</sup>, 2019.

United States Court of Appeal for the Eleventh Circuit, Hugo Pena v. United States; No: 20-10124-BB, Judgment entered on July 22<sup>nd</sup>, 2020.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	Page i
PARTIES TO THE PROCEEDINGS.....	ii
INDEX OF APPENDICES.....	iii
TABLE OF AUTHORITIES.....	v
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS RULES INVOLVED.....	2
STATEMENT OF THE CASE.....	4
A. Factual and Procedural History.....	6
REASONS FOR GRANTING THE WRIT.....	8
(1) There is and was no other available avenue of relief.....	8
(2) There is a substantive error that involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and which render the proceeding itself irregular and invalid", Jurisdiction error.....	10
CONCLUSION.....	13
<b>APPENDIX</b>	
<b>Appendix A</b> Opinion and Judgement of the United States Court of Appeals for the Eleventh Circuit. (Unpublish, July 22 <sup>nd</sup> , 2020) .....	App. 1
<b>Appendix B</b> Judgement of the United States District Court for the Southern District of Florida. (December 30 <sup>th</sup> , 2019) .....	App. 5
<b>Appendix C</b> Order Denying Rehearing in the United States Court of Appeals for the Eleventh Circuit. (August 25 <sup>th</sup> , 2020) .....	App. 7

<b>Appendix D</b>	Jurisdictional error is Fundamental Error, this Prosecution failed, for not disclose fundamental materially exculpatory evidence in government's possession favorable to defense, that made this proceeding irregular and invalid. Filed on Brief & Panel Rehearing. (July 24 <sup>th</sup> , 2020 & July 31 <sup>st</sup> , 2020) .....	App. 8
	Permanent Certificate of Registry by St Kitts & Nevis Authority. (February 2009 through April 2012) .....	App.9
	Deletion Certificate of Registry by St Kitts & Nevis Authority (May 11 <sup>th</sup> , 2010) .....	App. 11
	CBP Form 1300 (02/02) Homeland Security by 19 CFR Part 4. Vessel Entrance or Clearance Statement. (April 15 <sup>th</sup> , 2010) .....	App. 13
	Full Term International Oil Pollution Prevention Certificate issue by International Register Shipping (IS) on behalf of St Kitts & Nevis. (February 2008 through Sept 2013) .....	App. 16
	“Island Express I” Detail Port State Control Inspection, USCG, Class Society International Register of Shipping, Flag State: St Kitts & Nevis (May 4 <sup>th</sup> , 2010) .....	App. 23
<b>Appendix E</b>	Petition for Rehearing in United States Court of Appeals for the Eleventh Circuit. (July 31 <sup>st</sup> , 2020) .....	App. 25
<b>Appendix F</b>	Criminal Jury Trial Transcript Excerpts.....	App. 30

## TABLE OF AUTHORITIES

Cases	Page
United States v. Pena, 684 F.3d 1137 (11 <sup>th</sup> Cir. 2012) .....	4, 6
Brady Rule. Brady v. Maryland, 373 U.S. 83 (1963) .....	passim
Peter, 310 F.3d at 711, 715-16.....	passim
Carlisle v United States, 517 U.S. 416, 429, 116 S.Ct. 1460, 1467 (1963) .....	passim
Alikhani v. United States, 200 F.3d 732 (2000) .....	8, 10
Morgan, 346 U.S. at 509 n. 15, 74 S.Ct. 247.....	10
Spencer v. Kemna, 523 U.S. 1, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998) .....	10
Wolfe v. Coleman, 681 F.2d 1302, 1305 (11th Cir. 1982) .....	11
Minor v. Dugger, 864 F.2d 124, 126 (11th Cir. 1989) .....	11
Kyles v. Whitley, 514 U.S. 419 (1995) .....	passim
U.S. v Mills, 221 F.3d 1201, 1203 (11th Cir. 2000) .....	passim
<u>Constitutional and Statutory Provisions</u>	
U.S. Const. Art. II § 2.....	6
U.S. Const. Amend. IV.....	2
U.S. Const. Amend. V.....	2
U.S. Const. Amend. VI.....	2
U.S. Const. Amend. XIV.....	3
Rule 3.8 Special Responsibility of Prosecutor .....	4
Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908: US Code - Section 1908: Penalties for violations by Foreign Country.....	4
33 U.S. Code § 1907. Violations .....	6, 7, 9
18 U.S.C. § 241 .....	2

18 U.S.C. § 242 .....	2
28 U.S.C. § 2255 .....	5
19 CFR Part 4 “Vessel Entrance or Clearance Statement”. (CBP Form 1300 02/02) .....	passim
<b><u>Other Authorities</u></b>	
International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL) Annex I, Regulations for the Prevention of Pollution by Oil.....	passim
Art. 2 (5) .....	i
Art. 4 (2) .....	6
Art. 5 (2) .....	4, 8

**IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARY**

Petitioner, Hugo Pena respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit below.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Eleventh Circuit, Hugo Pena vs. United States of America, case number 20-10124-BB is unpublished appears at Appendix A, (App. 1-4).

The opinion of the Southern District Court of Florida. Docket No. 0:19-cv-62889-WPD (Secondary Case Number: 0:18-cv-60984-WPD), appears at Appendix B, (App. 5-6) to the petition and is published in the Federal Reporter.

**JURISDICTION**

The United States Court of Appeals, Eleventh Circuit entered its judgment on July 22<sup>nd</sup>, 2020.

The Petition for Panel Rehearing appears at Appendix E, (App. 25-29) with materially evidence disclosed, addendum 2 appears at Appendix D, (App. 8-24) for decision of the entire matter in controversy and filed on July 31st, 2020.

A timely petition for rehearing was denied by the United States Court of Appeals Eleventh Circuit, on August 25<sup>th</sup>, 2020 and a copy of the order denying Panel Rehearing is attached as Appendix C, (App. 7).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS RULES INVOLVED.

1.- This case involves the Fourth Amendment to the United States Constitution, which guards against unreasonable searches and seizures, along with requiring any warrant to be judicially sanctioned and supported by probable cause. Pena was kidnapped and imprisoned under Color of Federal Law Violation, Rule 241-242, on June 10th, 2010 without any warrant and non-supported by a probable cause, his house was stormed, his family was threatened included a child four years old, in deprivation of his civil rights, knowingly that Pena is not a crew member, nor a surveyor by the country party to the MARPOL, neither was present in the physical location where a court exercises its power at the time of MARPOL violation.

2. - This case involves the **Fifth Amendment** to the United States Constitution, protects against abuse of government authority in a legal procedure.

Grand Jury operated in a closed deliberation proceeding and the prosecutor in abuse of power, created fraudulent scheme based on Jurisdictional Error, returning the indictment on June 15th, 2010, see Appendix B (App. 8), by altering/forgery the country party to the MARPOL at the time of MARPOL violation, putting Pena in double jeopardy, a flagrant constitutional violation, where required to disclose, "Time & Venue" of MARPOL violation.

Prosecution violate the constitutional duty to disclosed fundamental materially evidence to validate the Country Party and the person in the personal capacity under Country Party to the MARPOL at the time of MARPOL violation, materially evidence pursuant to 19 CFR Part 4, fundamental to avoid misrepresentation, precisely on April 15th, 2010, knowingly that St Kitts & Nevis is the Country Party to the MARPOL rather than Panama and, if it was disclosed, the Prosecution shall be refrained from prosecuting a charge against Pena that the prosecutor had known is not supported by probable cause, because the prosecution has knowingly that Pena is not a crew's member neither St Kitts & Nevis Ship surveyor, and was not present in the physical location where a District Court exercises its power at the time of MARPOL violation, and thus, "sound reasons exist for failure to seek earlier relief" U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000), in other words, the prosecution require to disclose, at trial or pretrial, not disclosed in deprivation of Pena's right to defense. See, Appendix D (App. 13-15).

Grand Jury are given specific instructions regarding the law by the judge. Many constitutional restrictions do not apply during grand jury proceedings. The exclusionary rule states that evidence obtained in violation of the Fourth, Fifth or Sixth amendments cannot be introduced in court because they render the proceeding irregular and invalid.

3. - This case involves the **Sixth Amendment** to the United States Constitution which sets forth rights related to criminal prosecutions.

A forum selection clause seeks to provide a court with "personal jurisdiction" and to establish "Venue."

Personal jurisdiction is the court's power to exercise authority over a party.

Hugo Pena (Pena) is the Party in this case and was not cognizable by actually country party to the MARPOL and did not have any duty to conduct a complete MARPOL inspection under country party to the MARPOL, "St Kitts & Nevis", nor Pena was present in the physical location, where a court exercises its power at the time of MARPOL violation, in February through May 2010, and it "is a genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty" see Peter, 310 F 3d at 711, 715-16, Appendix A (App.2) and thus, Pena lacks subject matter jurisdiction as a matter of law, see Appendix D ( App. 8-24)

Prosecution violated constitutional duty to disclose the actually Party under Country Party to the MARPOL at the time of MARPOL violation, materially evidence pursuant to 19 CFR Part 4, "factual error material" to disclose person & country party to the MARPOL in February through May, 2010, and thus, "sound reasons exist for failure to seek earlier relief" U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000).

VENUE is the physical location of the "Island Express I" the subject matter at Port Lau Dania, Florida, where a court exercises its power and concur with the country party to the MARPOL at the time of MARPOL violation, and St Kitts & Nevis was the country party to the MARPOL, rather than Panama, and Pena is not a St Kitts & Nevis Surveyor, materially evidence pursuant to 19 CFR Part 4, factual error material not disclosed in government possession.

Thus, this clause seeks to provide a court located in a specific location with the power to resolve a dispute, like a Jurisdiction error is a Fundamental error that warrant a Coram Nobis relief and the Prosecution has constitutional duty to disclose.

4. - This case involves the **Fourteenth Amendment** to the United States Constitution, which its Due Process Clause prohibits state and local governments from depriving persons of life, liberty, or property without certain steps being taken to ensure fairness.

The violation is referring to unfair or unequal treatment of Pena, his right recognition and equality before the law. The prosecution has the Constitutional duty to disclose the country party and the Person in the personal capacity under country party to the MARPOL at the time of MARPOL violation, pursuant to Rule 3.8, evidence that could undercut its case and that a prosecutor should not be the architect of a proceeding that does not comport with standards of justice, i.e. jurisdictional materially exculpatory evidence in the government's possession that is favorable to the defendant, not disclosed at trial, nor pretrial, the vessel entrance or clearance statement, materially evidence pursuant to 19 CFR Part 4, "factual error material", to the validity and regularity of the legal proceeding itself", Carlisle v United States 517 U.S. 416, 429, 116 S.Ct. 1460, 1467 (1963), involve the nationality of a country party to the MARPOL (St Kitts & Nevis) at the time of MARPOL violation, and there is a "reasonable probability" that the outcome of the trial would have been different, had the evidence been disclose by the prosecutor and thus, is a Jurisdictional Error, that warrant coram nobis relief and in abuse of power discretion, district court deny his petition and thus, "sound reasons exist for failure to seek earlier relief" U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000).

In *Brady*, the Supreme Court held that “Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution”.

5. - This case involves the **Act to Prevent Pollution from Ships (APPS)**, 33 U.S.C. § 1908: US Code - Section 1908: Penalties for violations by Foreign Country, where St Kitts & Nevis rather than Panama is the Country Party to the MARPOL at the time of MARPOL violation, materially evidence pursuant to 19 CFR Part 4 “factual error material”, not disclose.

(f) Referrals for appropriate action by foreign country Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol or the Antarctic Protocol, or one operated under the authority of a country party to the MARPOL Protocol or the Antarctic Protocol, the Secretary, acting in coordination with the Secretary of State, **may refer the matter to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating for appropriate action, rather than taking the actions required or authorized by this section.**

A Violation of United States Constitution is a high issue that warrant coram nobis relief, when prosecutor intentionally misrepresent the law; (APPS), 33 U.S.C. § 1908, Id. MARPOL Art 5 (2), by willful suppression of actually country party to the MARPOL, involving “the duty to conduct a complete MARPOL inspection under actually country party to the MARPOL”, when in truth and in fact, the Island Express is the subject matter and St Kitts & Nevis is the Country Party to the MARPOL rather than Panama at the time of MARPOL violation, and Pena is not cognizable by this country party to the MARPOL and thus, “sound reasons exist for failure to seek earlier relief” U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000).

6.- This case involves Rule 3.8, “Special Responsibility of Prosecutor” in a criminal trial. The prosecution violated constitutional duty to disclose materially evidence pursuant to 19 CFR Part 4, “factual error material”, not disclosed, validating ship registered in the nationality of a country party to the MARPOL at the time of MARPOL violation, as it should disclosed the party relating to the inspection under this country party to the MARPOL (St Kitts & Nevis) at this time and not disclosed, and thus, is a Jurisdictional error that warrant coram nobis relief, which render the proceeding itself irregular or invalid, a requirement similar to disclosure requirements established by the Supreme Court in *Brady v. Maryland*, and thus, “sound reasons exist for failure to seek earlier relief” U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000). The Supreme Court held that a prosecutor commits a Due Process violation, requiring reversal of a conviction.

## STATEMENT OF THE CASE

The issue presented, involves a genuine substantiate question, leading to a Jurisdiction error, in a decision previously taken on *United States v. Pena*, 684 F.3d 1137 (11th Cir. 2012), this court correctly established that: “the District Court has jurisdiction to adjudicate the offense unless there was a separate limit on subject matter jurisdiction”, and there is a substantial question undisclosed, because the vessel is flagged under St Kitts & Nevis rather than Panama, materially evidence pursuant to 19 CFR Part 4 in government possession in February through May 2010, “a factual

error material to the validity and regularity of the legal proceeding itself" *Carlisle v United States*, 517 U.S. 416, 429, 116 S.Ct. 1460, 1467 (1963), not disclosed at trial nor pretrial neither previously in this court, in government's possession, in violation of the prosecution constitutional duty to disclose and was a materially exculpatory evidence favorable to the defense withheld by the prosecutor from defense and thus, "sound reason exists for failing to seek relief earlier" *Mills*, 221 F. 3d at 1204, i.e. a fundamental error which renders the proceeding itself irregular and invalid.

Jurisdictional Error, as this court recognized in Appendix A (App. 2-3), is "a genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty may well be a proper ground for *coram nobis* relief as a matter of law", see *Peter*, 310 F 3d at 711, 715-16; and that the District Court lacked subject matter jurisdiction to convict Pena for violating the MARPOL treaty, because the vessel was actually "flagged under St Kitts & Nevis rather than Panama", see Appendix A (App. 3) and the error involves materially exculpatory evidence pursuant to 19 CFR Part 4 factual error material not disclosed by the Prosecution in a due process violation, showing that Pena is not a St Kitts & Nevis Ship's Surveyor, as erroneous stated fraudulently in Superseding Indictment, CR-Gov.Ex.:31 Appendix B (App. 5), the prosecution willful altering the country party to the MARPOL, depriving Pena's rights to defense, when in truth and in fact, the "Island Express I", is "flagged under St Kitts & Nevis rather than Panama", and Pena was not cognizable by actually country party to the MARPOL, neither Pena was present in the physical location where a court exercises its power at the time of MARPOL violation. See Appendix D (App 8-24).

However, this court acknowledge that "A writ of error *Coram Nobis* is a remedy available to vacate a conviction when the petitioner has served his sentence and is no longer in custody, as required for post-conviction relief under 28 U.S.C. § 2255"; *United States v Peter* 310 F 3d at 712.

The Jurisdiction error's involving "factual errors material to the validity and regularity of the legal proceeding itself", *Carlisle v. United States*, 517 U.S. 416, 429, 116 S. Ct. 1460, 1567 (1996); factual errors material not disclosed by the prosecution at trial nor pretrial, like the vessel entrance or clearance statement, materially evidence pursuant to 19 CFR Part 4, that validate the country party to the MARPOL, as it was, St Kitts & Nevis rather than Panama, at the time of MARPOL violation in February through May 2010, proving that there is a "reasonable probability" that the outcome of the trial would have been different, had the evidence been disclosed by the prosecutor, see *Kyles v Whitley* 514 U.S. 419, 434 (1955). See Appendix D (App. 8-24).

Since *coram nobis* relief is available in this circumstance as a matter of law, this court abused its power discretion to "Grant the Government's motion for summary affirmance", by willful ignorance, knowingly that, criminal procedure law requires the prosecution disclosing materially exculpatory evidence in government possession not disclosed and favorable to defense, and it's a constitutional duty to disclose because they render the proceeding itself irregular or invalid and "Deny, the accompanying motion to stay the briefing schedule as moot". See Appendix A (App. 3).

### **Factual and Procedural History.**

This court recognized that jurisdiction errors are fundamental errors that warrant Coram Nobis relief because they render the proceedings itself irregular and invalid, and that's is exactly what Pena is alleging in his Petition for WRIT OF ERROR CORAM NOBIS, because the vessel actually flagged under St Kitts & Nevis rather than Panama, *id.* *Peter* at 712, it "is an extraordinary remedy of last resort available only in compelling circumstance where necessary to archive justice." *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2002), and as it is the case under the Supreme Court's 1963 case *Brady v Maryland*, stating that the prosecution has an ironclad duty to disclose, before trial, evidence that could undercut its case, "Brady material", if the prosecution doesn't do that, it violates the constitution, the undisclosed materially exculpatory evidence in government possession, like vessel entrance or clearance statement, materially evidence pursuant to 19 CFR Part 4, a "Brady material" to avoid misrepresentation, asserting that St. Kitts & Nevis rather than Panama is the country party to the MARPOL and there is a substantial question that Pena is not a St Kitts & Nevis surveyor, the actual Flag State in February through May 2010 at the time of MARPOL violation see Appendix B (App. 5). Indeed, Pena lacks subject matter jurisdiction, and thus, is a Jurisdictional Error that warrant Coram Nobis relief, see Appendix D (App.8-24).

As relevant to this case, both the United States and St Kitts & Nevis are signatories to MARPOL treaty, *id. U.S. Const. Art. II § 2*, and Pena was not cognizable by them, nor present in the physical location where a court exercises its power at the time of MARPOL violation, in February through May 2010. See Appendix D, (App 8-24).

In *United States v. Pena*, 684 F.3d 1137 (11th Cir. 2012) this court found that Art. 4 (2) of the MARPOL Convention granted the United States, as the port state, concurrent jurisdiction with the Foreign Country Party to the MARPOL at the time of MARPOL violation, similar to 33 U.S. Code § 1907 (2)(A)(B) and also, this court recognized that, *see id* ("A genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty may well be a proper ground for coram nobis relief as a matter of law") *see also Peter*, 310 F.3d at 711, 715-16, (concluding that a defect in the indictment, which alleged specific conduct that was no longer a federal crime, constituted a jurisdictional error that warranting coram nobis relief), *see Appendix A (App. 2)*.

1340 U.N.T.S. at 185, Article 4 (2) of the Convention provides:

"Any violation of the requirements of the present Convention within the jurisdiction of any party to the Convention shall be prohibited, and sanctions shall be established under the law of the Party. Whenever such a violation occurs, that Party shall either: a) Cause proceeding to be taken in accordance with its laws; or b) Furnish to the Administration of the Ship such information and evidence as may be in its possession that a violation has occurred".

The Supreme Court has explained that a writ of error coram nobis is "traditionally available only to bring before the court factual errors material to the validity and regularity of the legal proceeding itself". *Carlisle v. United States*, 517 U.S. 416, 429, 116 S. Ct. 1460, 1567 (1996) and here, the prosecution failed to disclose at trial, nor pretrial and Petitioner has served his sentence and is no longer in custody and a writ of error coram nobis is a remedy available to vacate conviction, because Pena has fully suffered their direct force and there is a genuine materially

exculpatory evidence not disclosed at trial nor pretrial neither in this court and the prosecution never turned over that factual error material, which was clearly a Brady Material issued by Homeland Security, materially evidence pursuant to 19 CFR Part 4, proving that St Kitts & Nevis is the country party to the MARPOL rather than Panama at the time of MARPOL violation and thus, is a Jurisdictional error that warrant coram nobis relief because they render the proceeding itself irregular and invalid as a matter of law and under Act to Prevent Pollution from Ships (APP), 33 U.S.C. § 1907 Violations (2)(A)(B), which granted the United States, as the port state, concurrent jurisdiction with the Foreign Country Party to the MARPOL (St Kitts & Nevis) at the time of MARPOL violation, indeed, Pena lacks subject matter jurisdiction, because Jurisdictional errors are fundamental errors that warrant coram nobis relief.

Of course, the only way to violate MARPOL is been a party of the crew at the time of the MARPOL violation or been the owner or vessel operation/agency company in their personal capacity over subject matter and its undisputed that Pena wasn't one of them and wasn't there in February through May 2010.

There is a substantial question that "Island Express I" was detained on May 4th, 2010 in Florida for 78 days, see Appendix D (8-24), a presumptive MARPOL violation occurred in February through May 2010, Appendix B (App. 5) and the error involves a matter of the most fundamental character where Flag State "St. Kitts & Nevis" issued a "Deletion Certificate" of Registration on May 11th, 2010, seven (7) days after detention, see Appendix D (App. 11-12) not disclosed at trial nor pretrial in government possession proving that she was sailing and operating under St. Kitts & Nevis rather than Panama at the time of MARPOL violation and thus, summary affirmance was not appropriate, cause of action by willful suppression or ignorance of the undisclosed materially exculpatory evidence, because the prosecution violated the constitutional duty to disclose under this rule at trial nor pretrial, "factual error material to the validity and regularity of the legal proceeding itself", *Carlisle v United States*, 517 U.S. 416, 429, 116 S.Ct. 1460, 1467 (1996), the vessel entrance or clearance statement, materially evidence pursuant to 19 CFR Part 4, not disclosed, is the vehicle which validating the country party to the MARPOL, that is, St. Kitts & Nevis rather than Panama at the time of MARPOL violation and thus, Pena lacks subject matter jurisdiction.

Since coram nobis relief is available under this circumstance as a matter of law, the district court abused its power discretion by willful ignorance in summarily denied Pena's petition, see Appendix B (App.5-6), excluding exculpatory materially evidence in government possession pursuant to 19 CFR Part 4 leading to fraud, undermining the prosecution constitutional duty to disclose as it mandate by Rule 3.8 (d), and thus, is a Jurisdiction Error, See *Id.* "A genuine claim that the district court lacked jurisdiction to adjudicated the petitioner guilty", see *Peter*, 310 F 3d at 711, 715-16, (concluding that a defect in the indictment, which alleged specific conduct that was no longer a federal crime, constituted a jurisdictional error warranting coram nobis relief), see Appendix A (App. 3) and there is a "reasonable probability" that the outcome of the trial would have been different, had the evidence been disclosed by the prosecutor that warrant Coram Nobis as a matter of law. See *Kyles v. Whitley*, 514 U.S. 419 (1995) and Appendix D (App. 8-24).

Accordingly, a writ of error coram nobis must issue to correct the judgment that the District Court never had power to enter.

## REASONS FOR GRANTING THE WRIT

A petition for a writ of certiorari will be granted only for compelling reasons, Alikhani v. United States, 200 F.3d 732, 734 (11<sup>th</sup> Cir. 2000). This court recognized that a petitioner may only obtain Coram Nobis relief where:

**(1)“There is and was no other available avenue of relief”.**

On July 22nd, 2020, this court has entered a controversial decision stating that “the District Court lacked subject-matter jurisdiction to convict him for violating the MARPOL treaty because the vessel actually flagged under St Kitts & Nevis rather than Panama, but he offers no support either to prove this assertion or to show that it rendered the proceeding itself irregular or invalid” Appendix A (App 3), a clearly erroneous error, where Pena is the victim, and there is a substantial question that “the Prosecution should have the Constitutional Duty to Disclose” as a matter of law, because they rendered the proceeding itself irregular and invalid, however, the Act to Prevent Pollution from Ship (APPS) best known as “MARPOL” in Article 5 (2) provides:

“A ship required to hold a certificate in accordance with the provisions of the regulations is subject, while in the ports or offshore terminals under the jurisdiction of a Party, to inspection by officers duly authorized by that Party. Any such inspection shall be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate. In that case, or if the ship does not carry a valid certificate, the Party carrying out the inspection shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment. That Party may, however, grant such a ship permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available”.

When District courts doesn't address the Jurisdictional issues in a logical and pragmatic way, it causes confusion for subsequent courts relying on that case as a precedent, leading to alteration or fraud with prejudice to the victim, undermining the prosecution constitutional duty to disclose materially exculpatory evidence in government possession pursuant to 19 CFR Part 4, factual error material, validating the country party to the MARPOL, willful not disclosed, that warrant coram nobis relief, the cause of action of this petition, involving a high, “factual error material not disclosed by the prosecutor to the validity and regularity of the legal proceeding itself” Carlisle v United States, 517 U.S. 416, 429, 116 S.Ct. 1460, 1467 (1996) and thus, “sound reasons exist for failure to seek earlier relief” U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000) and that's a Constitutional violation, when in truth and in fact the subject matter is a St Kitts & Nevis Ship rather than Panama and Pena lacks subject matter jurisdiction. Appendix D (App. 8-24).

Southern District Court of Florida lacked jurisdiction over Pena because he is not a party and was not cognizable by the actually country party to the MARPOL and did not have any duty to conduct a complete MARPOL inspection under country party to the MARPOL, “St Kitts & Nevis”, nor Pena was present in the physical location, where a court exercises its power at the time of MARPOL violation in February through May 2010, and “is a genuine claim that the district

court lacked jurisdiction to adjudicate the petitioner guilty" see Peter, 310 F 3d at 711, 715-16, Appendix A (App.3) and thus, Pena lacks subject matter jurisdiction as a matter of law.

In Brady Rule, The Supreme Court requires prosecutors to disclose materially exculpatory evidence in the government possession favorable to the defense, as it is, materially evidence pursuant to 19 CFR Part 4 to avoid fraud, and to validate the country party to the MARPOL at the time of MARPOL violation, see Appendix D (App 8-24). The defendant bears the burden to prove that the undisclosed evidence was both material and favorable, in other words, the defendant must prove that there is a "reasonable probability" that the outcome of the trial would have been different, had the evidence been disclosed by the prosecutor. See Kyles, 514 U.S. at 433 (1955) because the vessel entrance or clearance statement, pursuant to 19 CFR Part 4 avoiding alteration and showing that the country party to the MARPOL was St Kitts & Nevis and because they rendered the proceeding itself irregular or invalid and thus, "sound reasons exist for failure to seek earlier relief" U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000)

Its undisputed that Pena isn't a Federal Officer, like a CBP or USCG officer nor Island Express's agent or crew's member to get access the exclusive CBP Form for vessel entrance or clearance statement issued by U.S. Homeland Security, as it is, materially pursuant to 19 CFR Part 4, factual error material not disclosed and the prosecution has constitutional duty to disclose at trial or pretrial or at appeal court to validate the country party to the MARPOL at the time of MARPOL violation as required by 33 U.S. Code § 1907, Violations, and thus, is "sound reasons exist for failure to seek earlier relief" U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000).

Pena lacks access to get factual error material pursuant to 19 CFR Part 4 in government possession, in deprivation of his right to defense at trial, or pretrial motion, neither in previously Appeal, and G&G Marine Inc. the vessel operation company destroyed all evidence related to country party to the MARPOL at the time of MARPOL violation to ambush Pena by altering/forgery the country party to the MARPOL, in deprivation of Pena's right to his defense, "where, as here, it is necessary to achieve justice when no other remedy is available and sound reasons exist for failure to seek earlier relief." U.S. v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000) and thus, is a Jurisdictional error warranting Coram nobis because render the proceeding itself irregular or invalid. See Appendix D (App. 8-24).

Pro Se Litigants Should Have Full Constitutional Rights Regarding Jurisdiction's Judgments error and should have the same constitutional protections as litigants who hire large big law firms. Petitioner's rights were trampled on in every court, both state and federal.

Pro se litigants, need to be reassured that their rights will not be trampled on because they don't have an attorney. In this case, Pena had invested all his capital in his defense for this Jurisdictional Judgement error, years of hard work for the safe of his family. Therefore, Petitioner Pena, had no choice except to proceed pro Se.

The Vessel Entrance or Clearance Statement pursuant to 19 CFR Part 4 is a substantive question as a matter of law, a factual error materially not disclosed, issued by homeland security to validate the ship registered in the nationality of a country party to the MARPOL, as it is, St Kitts & Nevis rather than Panama at the time of MARPOL violation, and Pena is not cognizable by this Country

Party to the MARPOL and there is prosecution constitutional duty that requires disclosing materially exculpatory evidence that is favorable to defense, a requirement similar to the constitutional disclosure requirements established by the Supreme Court in *Brady v. Maryland* and thus, the Supreme Court held that a prosecutor commits a flagrant Due Process violation, and thus, is requiring reversal of a conviction, because Jurisdictional errors are Fundamental errors that warrant coram nobis relief, because they render the proceeding itself irregular and invalid. See Appendix D (App. 8-24).

**(2)“There is a substantive error that involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and which render the proceeding itself irregular and invalid”, Jurisdiction error.**

The Supreme Court has explained that a writ of coram nobis is “traditionally available only to bring before the court factual errors material to the validity and regularity of the legal proceeding itself”. *Carlisle v United States*, 517 U.S. 416, 429, 116 S. Ct. 1460, 1467 (1996), and in *Brady* stated that the prosecution has a constitutional duty to disclose, that is triggered by the potential impact of favorable but undisclosed evidence, See *Kyles v Whitley* 514 U.S. 419,, 434 (1995), if the prosecution does not disclose material evidence under this rule and prejudice has ensued, the evidence will be suppressed and... “the defendant bears the burden to prove that the undisclosed evidence was both material and favorable” See Appendix D (App. 8-24). Here, the prosecution failed to disclose the country Party and the Person in his personal capacity under the country party to the MARPOL at the time of MARPOL violation, as it is, materially evidence pursuant to 19 CFR Part 4, factual error material, not disclosed, occurred in February through May 2010 and is favorable to the validity and regularity of the legal proceeding itself, the willful suppress of exculpatory materially evidence constituted prosecution’s violation constitutional duty to disclose, committing in due process violation, in deprivation of Pena rights to defense, because Pena lacks subject matter jurisdiction.

However, this court recognized “that Jurisdiction Error are fundamental error that warrant coram nobis relief because they render the proceeding itself irregular and invalid”, and there is a substantive error involving genuine matter of fact, materially exculpatory evidence in government possession not disclosed at trial nor pretrial, knowingly withheld by this prosecutor, materially evidence pursuant to 19 CFR Part 4, factual error material and Pena is offering in his Coram nobis petition, validating ship registered in the nationality of a country party to the MARPOL at the time of MARPOL violation, proving that the vessel is operating under St Kitts & Nevis Auth. rather than Panama, and thus, is a Jurisdictional error that warrant Coram Nobis Relief as a matter of law because Pena lacks subject matter jurisdiction. See Appendix A (App.3), Appendix D (App. 8-24)

In *Alikhani v. United States*, 200 F.3d 732 (2000), the court state that a "genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty may well be a proper ground for coram nobis relief as a matter of law." Id. at 734. Indeed, jurisdictional error is by its nature of such a "fundamental character" as to render proceedings "irregular and invalid," *Morgan*, 346 U.S. at 509 n. 15, 74 S.Ct. 247, and Coram nobis relief affords a procedural vehicle through which such error may be corrected, because the vessel is flagged under St Kitts & Nevis rather than Panama and Pena is not a St Kitts & Nevis surveyor and thus, District Court lacked subject-matter jurisdiction to convict Pena for violating MARPOL treaty.

When a court without jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void long after a defendant has fully suffered their direct force. Moreover, as the Supreme Court reiterated in *Spencer v. Kemna*, 523 U.S. 1, 118 S. Ct. 978, 140 L.Ed.2d 43 (1998), "it is an obvious fact of life that most criminal convictions do in fact entail adverse collateral legal consequences." *Id.* at 12, 118 S. Ct. 978 (internal quotation marks omitted). See also *Wolfe v. Coleman*, 681 F.2d 1302, 1305 (11th Cir. 1982); *Minor v. Dugger*, 864 F.2d 124, 126 (11th Cir. 1989).

The Supreme Court ruled that "the prosecutor is responsible for disclosing anything known materially by members of the prosecution team", which included USCG special agent, forensic investigators and other experts. Under *Kyles v. Whitley*, a case interpreting the Brady Doctrine, the government cannot claim ignorance. It must actually find out what information is in the files of the people on whose work and expertise it relies.

Therefore, the Brady material, involving genuine matter of fact and prosecutor misleading judge over withholding evidence, Vessel Entrance or Clearance Statement, materially evidence pursuant to 19 CFR Part 4, the vehicle to disclose person & country party to the MARPOL and qualified as a Brady material to this case, because it validate the ship registered in the nationality of a country party to the MARPOL at the time of MARPOL violation, and is substantially that Pena was not cognizable by actually Flag State "St Kitts & Nevis" that is the party to the MARPOL, neither Pena was present in the physical location where district court exercises its power at the time of MARPOL violation, in February through May 2010, see Appendix B (App 5). In Peter this court held, "a genuine claim that the district court lacks jurisdiction to adjudicate the petitioner guilty may well be a proper ground for coram nobis relief as a matter of law", see Peter, 310 F.3d at 711, 715-16, (concluding that a defect in the indictment, which alleged specific conduct that was no longer a federal crime, constituted a jurisdictional error that warranting coram nobis relief), Appendix A (App. 3) and thus, Pena lacks subject matter jurisdiction.

Even though the Eleventh Circuit has stated that they review district court's denial of coram nobis relief de novo, recognized that, Jurisdictional error are fundamental error that warrant Coram nobis relief because they render the process itself irregular and invalid, but, this court's stated inconsistent statement "that Pena offers no support" and Pena is the victim, mislead due to the prosecution effort over withholding factual error materially not disclosed at trial nor pretrial, undermining the prosecution constitutional duty to disclose because the prosecution had the factual error material in their possession that should disclose the actually country party to the MARPOL "St Kitts & Nevis" rather than Panama, at the time of MARPOL violation, and thus, "sound reasons exist for failure to seek earlier relief" *U.S. v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000), and the material error came from CBP Form 1300 (02/02) issued by homeland security, materially evidence pursuant to 19 CFR Part 4 the vehicle to disclose the country party to the MARPOL and signed by the captain of the vessel and CBP officer and thus, it's the Rule of Law, and the prosecution willful suppress materially evidence, not disclose to punish the defense, i.e. a flagrant constitutional violation, and there is a substantial question that the district court did abuse it's power discretion in denying Pena's Petition for a writ of coram nobis as a matter of law, the prosecution never turned over that information.

Courts camouflage the issues of Jurisdictional judgments error by skipping them, making a gesturing remark rather than going by their own purported mandatory rule, Rule 3.8 (d) or BRADY Rule in a flagrant abuse of power discretion. See Appendix A (App. 3), Appendix B (App. 5-6). If courts were mandated to address Jurisdictional judgments error, it would help cut down on court time on Jurisdictional judgment error cases, see Appendix A (App 1).

The reason the case has continues to go on is prosecutor have tried to put lipstick on the Jurisdiction judgment error by using red-herring arguments, in violation of prosecution constitutional duty to disclose materially exculpatory evidence in government possession not disclose at trial nor pretrial, Appendix D (App 8-24). If the court addressed jurisdiction judgments error in contrast with voidable judgments, it would help lower courts address the jurisdiction judgment error issue, that warrant Coram nobis relief, and thus, "sound reasons exist for failure to seek earlier relief" U.S. v. Mills, 221 F.3d 1201, 1203, (11th Cir. 2000). See also in Appendix F (App.30), Criminal Jury Trial, Transcript Excerpts.

In Brady the Supreme Court recognized that "society wins not only when the guilty are convicted but when criminal trials are fair," and that a prosecutor should not be the "architect of proceeding that does not comport with standards of justice"; where the primary duty of state bar organization, which license and govern conduct by attorneys in their Jurisdiction, "IS TO PROTECT THE PUBLIC", and the bottom-line, Pena wasn't protected, nor present in the physical location where a court exercises its power at the time of MARPOL violation, neither Pena was cognizable by the country party to the MARPOL in February through May 2010, materially evidence pursuant to 19 CFR Part 4 not disclosed, withheld by the prosecution, knowingly that the country party to the MARPOL in the subject matter was "St. Kitts & Nevis" rather than Panama, asserted in Appendix D (App. 8-24), where the USCG special agent who wrote the defect's indictment recognized St Kitts & Nevis the country party to the MARPOL. Appendix F (App. 30).

There is a "reasonable probability" that the outcome of the trial would have been different, had the evidence been disclosed by the prosecutor that warrant Coram nobis relief as a matter of law sees Kyles v Whitley 514 U.S. 419, 434 (1955), Appendix D (App. 8-24), materially evidence pursuant to 19 CFR Part 4, willful not disclosed at trial nor pretrial, e.g. materially exculpatory evidence favorable to defense and constitute a flagrant Constitutional Due Process violation by this prosecution in its face that requiring reversal of conviction.

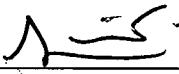
Wherefore, Petitioner Pena, had no choice except to proceed pro Se and thus, is calling for an exercise of this Court's supervisory power, pursuant to Rule 10 (a) (c).

Accordingly, a writ of error coram nobis must issue to correct the judgment that the court never had power to enter.

## CONCLUSION

For the forgoing reasons, this court should be granted the Petition for Writ of Certiorari. This court may also wish to consider summary reversal the conviction and sentence for count 27 & 28 as a matter of law.

Respectfully submitted,



---

HUGO PENA  
**10241 NW 9<sup>th</sup>, St. Cir # 109**  
Miami, FL 33172  
Telephone: 786-368-9545  
Email: hpena01@yahoo.com  
Petitioner Pro Se  
Date: Oct. 7<sup>th</sup>, 2020.

CERTIFICATE OF COMPLIANCE

HUGO PENA

PETITIONER

v.

UNITED STATES OF AMERICA

RESPONDENT

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 6615 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on, October 7<sup>nd</sup>, 2020.

Respectfully submitted,

  
HUGO PENA  
10241 NW 9<sup>th</sup>, St. Cir # 109  
Miami, FL 33172  
Telephone: 786-368-9545  
Email: hpena01@yahoo.com  
Petitioner Pro Se  
Date: Oct 7 2020