

APPENDIX

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App.1

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10124
Non-Argument Calendar

D.C. Docket No. 0:19-cv-62889-WPD; 0:18-cv-60984-WPD.

HUGO PENA,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Florida

[Filed July 22nd, 2020]

Before JILL PRYOR, LAGOA, and TJOFLAT, Circuit Judges:

PER CURIAM:

Hugo Pena, proceeding pro se, appeals the District Court's order denying his third petition for a writ of error coram nobis. The Government has responded by filing a motion for summary affirmance and to stay the briefing schedule.

Summary disposition is appropriate where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no

substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).¹ An appeal is frivolous if it is “without arguable merit either in law or fact.” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

We review a district court’s denial of coram nobis relief for abuse of discretion. *United States v. Peter*, 310 F.3d 709, 711 (11th Cir. 2002) “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 is required for post-conviction relief under 28 U.S.C. § 2255.” *Id.* at 712. It “is an extraordinary remedy of last resort available only in compelling circumstances where necessary to achieve justice.” *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2002). We have noted that it is “difficult to conceive of a situation in a federal criminal case today where coram nobis relief would be necessary or appropriate.” *Lowery v. United States*, 956 F.2d 227, 229 (11th Cir. 1992) (alteration adopted) (quoting *United States v. Smith*, 331 U.S. 469, 475 n.4, 67 S. Ct. 1330, 1334 n.4 (1947)).

Accordingly, the bar for granting a petition for a writ of error coram nobis is high. *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000). A petitioner may only obtain coram nobis relief where (1) “there is and was no other available avenue of relief,” and (2) “the error involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and which renders the proceeding itself irregular and invalid.” *Id.* (citations omitted). 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, such as the defendant’s being underage or having died before the verdict.” *Carlisle v. United States*, 517 U.S. 416, 429, 116 S. Ct. 1460, 1467 (1996) (internal quotation omitted). Furthermore, we have held that district courts may consider coram nobis petitions only when the petitioner “presents sound reasons for failing to seek relief earlier.” *Mills*, 221 F.3d at 1204.

Issues that could have been raised earlier do not warrant coram nobis relief, including claims about non-jurisdictional defects in an indictment. See *Alikhani*, 200 F.3d at 734 (concluding that the defendant’s claims were not cognizable on coram nobis review because they could have been raised in a pretrial motion). Jurisdictional errors, however, are fundamental errors that warrant coram nobis relief because they render the proceedings irregular and invalid. 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 warranting coram nobis relief).

Here, there is no substantial question that the District Court did not abuse its discretion in denying Pena’s petition for a writ of error coram nobis. First, Pena failed to present sound reasons for failing to seek relief earlier. Pena was sentenced in 2010 to five years of probation,

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to September 30, 1981.

which expired in 2015, but he still waited roughly four years after that to file the instant petition.² Second, Pena's general allegations of fraud and prosecutorial misconduct failed to demonstrate any fundamental error that made his prosecution irregular and invalid. **He argues that the District Court lacked subject-matter jurisdiction to convict him for violating the MARPOL treaty because the vessel was 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 proceedings irregular or invalid.**³

Because Pena failed to present sound reasons for failing to seek relief earlier and failed to demonstrate any fundamental error that made his prosecution irregular and invalid, there is no substantial question that the District Court did not abuse its discretion in denying Pena's petition for a writ of error coram nobis. We therefore GRANT the Government's motion for summary affirmance and DENY the accompanying motion to stay the briefing schedule as moot.

² The instant petition is the latter of two petitions for a writ of error coram nobis filed by Pena in November and December of 2019. The District Court denied Pena's November 2019 petition, and Pena did not appeal that decision. Pena had also filed a number of other collateral attacks in April 2018, including his first petition for a writ of error coram nobis, all of which the District Court denied.

³ We previously affirmed Pena's conviction in *United States v. Pena*, 684 F.3d 1137 (11th Cir. 2012), rejecting his arguments that the United States lacked jurisdiction to prosecute him under MARPOL, that the indictment was insufficient or defective, that the jury instructions were erroneous, and that the evidence was insufficient to support the jury's verdict that Pena violated MARPOL.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10124

District Court Docket Nos.
No. 0:19-cv-62889-WPD; 0:18-cv-60984-WPD.

HUGO PENA,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: July 22, 2020

For the Court: DAVID J. SMITH, Clerk of Court

By: Jeff R. Patch

APPENDIX B

UNITED STATE DISTRICT COURT
DOUTHERN DISTRICT OF FLORIDA

Case No: 19-62889-CIV-WPD
(18-60984-CIV-WPD)
(10-60158-CR-WPD)

[Filed December 30th, 2019]

Hugo Pena

Petitioner

vs

United States

Respondent

ORDEN DENYING PETITION; WARNING ABOUT SANTIIONS.

THIS CAUSE is before the Court on Petitioner's pro se December 5, 2019 Petition for Writ of Error Coram Nobis ¹ [D.E.-1] and the Court having considered the court file, and having presided over this cause, finds as follows:

1. On June 15, 2010, Pena was charged in a Superseding Indictment with Conspiracy, Failure to Conduct a MARPOL Survey, and Making a False Statement, [CR-DE-31]. The crime occurred in February through May 2010.

2. On September 24, 2010, Pena was found guilty of the last two charges, [CR-DE-117]. The Court had dismissed the conspiracy count at trial.

3. On December 20, 2010, Pena was placed on five (5) years of probation. [CR-DE-142].

4. On June 12, 2012, the Eleventh Circuit of Appeal affirmed. [CR-DE-171]. U.S. v Pena 684 F. 3d 1137 (11th Cir. 2012). Mandate issued on August 14, 2012. The U.S. Supreme Court denied certiorari on January 7, 2013. [CR-DE-173]. Pena v U.S., 568 U.S. 1088 (2013).

¹ The Clerk probably should have opened up a new case number for this successive coram nobis attack. Given the summary disposition of this matter, the court will not ask the clerk to jump through the hoops.

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5. On May 8, 2013, this Court denied a Motion for Early Termination of Probation. [CR-DE-177]. Another Motion for Early Termination of Probation was denied on April 23, 2014. Pena's probation expired on December 20, 2015.

6. On April 17, 2018, Pena filed some collateral attacks, [CR-DE-182, 183, 184]. Those motions were dismissed on April 18, 2018. [CR-DE-187].

7. In that order, the Court indicated that coram nobis would not lie where Pena had not established all the coram nobis requirements. *Rodriguez-Lupo v U.S.*, 450 Fed. Appx. 688 (9th Cir. 2011); *Jackson v U.S.*, 375 Fed. Appx. 958, 959 (11th Cir. 2010).

8. In an April 21, 2018 [DE-1 in 18-60984-CIV] coram nobis petition, Pena sought to set aside his criminal conviction. The Court agreed with the Government's response. Pena had proffered no sound reasons for failing to seek relief; this remedy was reserved for extraordinary cases *U.S. v Mills*, 221 F. 3d 1201, 1204 (11th Cir. 2000) cert. denied, 531 U.S. 1144 (2001). The Court denied the motion on June 5, 2018. [DE-17 in 18-60984-CIV]. No appeal was taken.

9. In a successive November 21, 2019 collateral attack, Pena advanced no additional grounds to grant any extraordinary relief. The Court denied relief on November 22, 2019. [DE-6]. No appeal has been filed.

10. In this latest collateral attack, Pena repeats most of his coram nobis complaints. Pena's relief was to appeal the court's prior denials of his coram nobis complaints, not just keep re-filing them.

Wherefore, Pena's Petition for Writ of Error Coram Nobis [DE-1] is Denied.

The Clerk shall close this case and deny any pending Motions as Moot. In an abundance of caution, the Court denies a Certificate of Appealability. Pena is warned that further abusive litigation may result in sanctions. Court cannot afford to expend limited resources on repetitive, frivolous motions.

DONE AND ORDERED in Chamber at Fort Lauderdale, Broward County, Florida, this 11th, day of December 2019.

/s/ _____
United States District Judge

Copies furnished to:
Hugo Pena
10241 NW 9th, Street, #109-5
Miami, FL 33172

Jaime A. Raich, AUSA

App. 7

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10124

[Filed August 25th, 2020]

HUGO PENA,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Florida

BEFORE: JILL PRYOR, LAGOA, and TJOFLAT, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.

ORD-41

/s/ GBT

APPENDIX D

[Filed July 31st, 2020]

Jurisdictional errors are Fundamental Errors, this Prosecution failed, for not disclose materially exculpatory evidence in government's possession favorable to defense, that made this proceeding irregular and invalid. Appendix Brief, Addendum 2 Panel Rehearing and 0:19-cv-62889-WPD; 0:18-cv-60984-WPD. Error of Coram Nobis Petition.

- (a) Permanent Certificate of Registry, by St Kitts & Nevis Authority
Date: January 28, 2009 through Sep. 27, 2012..... App. 9
- (b) Deletion Certificate of Registry by St Kitts & Nevis Authority
Date: May 11, 2010..... App. 11
- (c) CBP Form 1300 (02/02), Homeland Security Declaration,
19 CFR Part 4, Vessel Clearance Statement,
Date April 15, 2010..... App. 13
- (d) Full Term International Oil Pollution Prevention
Certificate (IOPP) issue by International Register of Shipping, Inc. (IS),
Date: February 26, 2009 through Sep 27, 2013..... App. 16
- (e) Island Express I (EQUASIS)
Detail of Port State Control Inspection (source USCG) (May 4th, 2010) App. 23

App. 9

**ST KITTS & NEVIS
INTERNATIONAL SHIP REGISTRY
PERMANENT CERTIFICATE OF REGISTRY**

The Saint Christopher & Nevis Merchant Shipping Act No 24 of 2002
Department of Maritime Affairs, Ministry of Public Works, Utilities, Transport and Posts.

| | | | |
|--|---|---|--|
| Name of Vessel | | Port of Registry | |
| ISLAND EXPRESS I | | BASSETERRE | |
| IMO Number | Official Number | Call Sign | MMSI Number |
| 9210804 | SKN 1001591 | V4WU | 341 591 000 |
| Name and Address of Owner (s) | | | Owner's IMO Numb. |
| Coastal Shipping Holding, LLC 1300 Eller Dr, Fort Lauderdale, FL 33316, USA | | | 5365744 |
| General Description of Vessel | | | |
| <u>Gross Tonnage</u> 422 | <u>Net Tonnage</u> 127 | <u>Deadweight</u> 622 | <u>Type of Vessel</u> Landing Craft |
| <u>Length (m)</u> 47.29 | <u>Breadth (m)</u> 10.97 | <u>Depth (m)</u> 3.06 | <u>Years of built</u> 1999 |
| <u>Hull Number</u> 129 | <u>Builders Name & Place</u> MARINER SHIPYARS, Houma, Louisiana, USA | | |
| <u>Material of Hull</u> Steel | <u>Number of Deck</u> One (1) | <u>Number of Masts</u> TWO (2) | <u>Number of Funnels</u> TWO (2) |
| <u>Number of Main Engines</u> Two (2) | <u>Type: Steam/Motor</u> Motor | <u>Maker/Model of Eng.</u> Caterpillar 3412 TA | <u>Number of Generator</u> 2 |
| <u>Total Main Engine Power (Kw)</u> 1074 | <u>Speed (Knots)</u> 12.0 | <u>Radio Equipment</u> GMDSS A1 + A2 + A3 | |

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| | |
|--|--|
| <u>Classification Society</u> INTERNATIONAL REGISTER OF SHIPPING | <u>Company Responsible for Radio Accounting, (AAIC)</u> MARSATCO (PG03) |
| <u>Vessel's Previous Name</u> ISLAND EXPRESS I | <u>Vessel's Previous Nationality</u> REPUBLIC OF HONDURAS |

The undersigned hereby confirm that the Owner (s) of the aforementioned with the particulars as stated here in have submitted an application in the prescribed form with supporting documentation to have this ship Permanently Registry as a St Kitts & Nevis Ship, according to the Merchant Shipping Act No 24 of 2002 and have been assigned the distinguished number shown. Therefore, being duly authorized to do so, I hereby issue this Permanent Certificate of Registry for the aforementioned ship.

| Date of First Registration | Day of Issue (for this Cert.) | Place of Issue (for this Cert.) | Date of expiry (for this Cert) |
|----------------------------|-------------------------------|---------------------------------|--------------------------------|
| 22 April, 2008 | 28 Jan. 2009 | London, UK | 21 April, 2012 |

/s/

Nigel E. Smith
International Registrar
of Shipping and seamen

/s/ STAMPED

St Kitts & Nevis International Registry
Tel: +44 (0) 1708 380400.
Fax: +44 (0) 1708 380401
Email: mail@stkittsnevisregistry.net
website: www.stkittsnevisregirty.net

| Form Code | Control Certificate Number |
|-----------|----------------------------|
| CT002 | 29281 |

**ST KITTS & NEVIS
INTERNATIONAL SHIP REGISTRY
DELETION CERTIFICATE**

The Saint Christopher & Nevis Merchant Shipping Act No 24 of 2002
Department of Maritime Affairs, Ministry of Tourism and International Transport

| | | | |
|--|-----------------|------------------|-------------------|
| Name of Vessel | | Port of Registry | |
| ISLAND EXPRESS I | | BASSETERRE | |
| IMO Number | Official Number | Call Sign | MMSI Number |
| 9210804 | SKN 1001591 | V4WU | 341 591 000 |
| Name and Address of Owner (s) | | | Owner's IMO Numb. |
| Coastal Shipping Holding, LLC 1300 Eller Dr, Fort Lauderdale, FL 33316, USA | | | 5365744 |

| | |
|----------------|--|
| Type of vessel | Numbers of shares (indicated if jointly owned) |
| LANDING CRAFT | 64 (100%) |

I hereby certify that the registration of the above – mentioned ship as a St Kitts and Nevis ship was terminated on the date given below and an entry made in the register to this effect.

| | | |
|--------------------------------------|----------------------------|--|
| Official stamp (s) of issuing office | Signature of the Registrar | |
| /S/ STAMPED | /S/ | |
| | Full Name: | Nigel E. Smith |
| | Title: | International Registrar of Shipping and Seamen |
| | Date: | 11 MAY 2010 |

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The abovementioned Owners are obliged to return the St. Kitts & Nevis Certificate of Registry to the office of the International Registrar of Shipping and Seamen. Failure to do so constitutes an offence and is liable, on summary conviction, to a fine- Merchant Shipping Act No 24 of 2002, section 8, (6) (b).

St Kitts & Nevis International Registry
Tel: +44 (0) 1708 380400.
Fax: +44 (0) 1708 380401
Email: mail@stkittsnevisregistry.net
website: www.stkittsnevisregirty.net

| Form Code | Controller Certificate No. |
|-----------|----------------------------|
| CT022 | 43338 |

U.S. DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection
VESSEL ENTRANCE OR CLEARANCE STATEMENT.

19 CFR Part 4

See Back Instruction

 ENTRANCE CLEARANCE

| | | | | | |
|--|--|--|--|--------------------------|--------------------|
| TRADE CODES (see back). | | | Check One <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 | | |
| 1. Manifest Number. VOYAGE: 242 | 2. Port Arrival / Departure. Port Everglades, FL. | 3. Date & Time of Arrival / Departure. 4/15/2010, 19:00HRS | 4. Vessel Operation Draft (in Feet & Inches). 7 Ft 0 IN | | |
| 5. Nationality, Name and Type of Vessel. ST. KITTS & NEVIS. M/V "ISLAND EXPRESS I" RO/RO (333) | | 6. Vessel Built/Year. MARINER SALE U.S.A 1999 | 7. Name Address & Phone # of Ship's Agent. G&G Marine, Inc. 2416 South Andrews Ave, Fort Lauderdale, FL 33316. (954) 920-9292 | | |
| 8. Name & Country of Owner. Coastal Shipping Holding, LLC 1300 Eller Drive, Fort Lauderdale, FL 33316 | | 9. Name & Country of Operator G&G Marine, Inc. 2415 South Andrews Ave, Fort Lauderdale, FL 33316 | | | |
| 10. Gross Tonnage 420 | 11. Net Tonnage. 127 | 12. Port Arrival from / Departed from. Long Island, Bahamas | 13. IMO Number. 9210804 | Official Number SKN10 | Call Sign. V4WU |
| 14. List All Dock Location (continue on the back if necessary) PORT LAUDANIA, FLORIDA | | | | | |
| 15. Particular of Voyage (previous and subsequent Port of Calls, include date, underline where remaining cargo will be discharged) (continue in back if necessary) DEPARTING FROM: PORT LAUDANIA PEV, FL DEPARTING TO: LONG ISLAND, BAHAMAS CAT ISLAND, BAHAMAS | | | | | |

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| FOR CBP USE ONLY | | |
|---|---|---|
| 32. <input type="checkbox"/> CBP User Fee Paid Up* | 33. <input type="checkbox"/> APHIS User Fee Paid Up* | 34. <input type="checkbox"/> Tonnage Paid Up* |
| 35. Cash Receipt. CF 368 or Transaction No. | 36. Total Fees Collected. | 37. Port Entered / Cleared, Time and Date. Port Everglades, 15:28 HRS APR-15, 2010 |
| 38. CBP Officer Remarks | | |
| 39. Signature & Title of Officer Receiving Entry/Granting Clearance. Stamped and Signed. /S/ CBP OFFICER | | |

*Check boxes only if fees not collected

CBP Form 1300 (02/02)

Back instruction omitted for this appendix.

**INTERNATIONAL OIL POLLUTION
PREVENTION CERTIFICATE**

(Note: This Certificate shall be supplemented by a Record of Construction and Equipment)
Issue under the provisions of the International Convention for the Prevention of Pollution from
Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (hereinafter
referred to as "the Convention") under the authority of the Government of:

ST. KITTS & NEVIS

By INTERNATIONAL REGISTER OF SHIPPING

PARTICULARS OF SHIP

Name of Ship : ISLAND EXPRESS I

Distinctive number of letters : V4WU

Port of Registry : BASSETERRE

Gross Tonnage : 422

Deadweight of Ship (tonnes) ¹ : ---

IMO Number : 9210804

Type of Ship ² : ~~Oil Tanker/ Ship other an~~
~~oil tanker with cargo tanks~~
~~coming under regulation~~
~~2.2 of Annex 1 of~~
~~Convention / Ship other~~
than any of the above.

Date on which keel was laid : 1999

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THIS IS TO CERTIFY:

1. That the ship has been surveyed in accordance with regulation 6 of Annex I of the Convention; and
2. That the survey shows that the structure, equipment, systems, fitting, arrangements and material of the ship and the condition thereof are in all respects satisfactory and that the ship complies with the applicable requirements of Annex I of the Convention.

This Certificate is valid until **27TH SEPTEMBER 2013** subject to surveys in accordance with regulation 6 Annex I of the Convention.

COMPLETION DATE OF THE SURVEY ON WHICH THIS CERTIFICATE IS BASED: **28TH SEPTEMBER 2008**

Issued at **MIAMI** on. **26TH FEBRUARY 2009**

STAMPED

/S/ _____

OVID LONDON

AUTHORIZED SIGNATORY

¹ For Oil Tankers, Chemical tankers and Gas carrier only

² Delete as appropriate

Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate)
RECORD OF CONSTRUCTION AND EQUIPMENT FOR SHIPS OTHER THAN OIL
TANKERS

In respect of the provisions of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto (hereinafter referred to as "the Convention")

Notes:

1.- This form is to be used for the third type of ships as categorized in the IOPP Certificate, i.e. "ships other than any of the above". For oil tankers and ships other than oil tankers with cargo tanks coming under Regulation 2 (2) of Annex I of the Convention, FORM B shall be used.

2.- This Record shall be permanently attached to the IOPP Certificate. The IOPP Certificate shall be available on board the ship at all times.

3.- If the language of the original Record shall be at least in English, French or Spanish. If an official language of the issuing country is also used, this shall prevail in case of a dispute or discrepancy.

4.- Entries in boxes shall be made by inserting either a cross (X) for the answer "yes" and "applicable" or a dash (-) for the answer "no" and "not applicable" as appropriate.

5.- Regulation mentioned in this Record refer to regulation of Annex I of the Convention and resolutions refer to those adopted by the International Maritime Organization.

1 PARTICULARS OF SHIP

| | | | |
|-------|---|---|------------------|
| 1.1 | Name of Ship | : | ISLAND EXPRESS I |
| 1.2 | Distinctive Number or letter | : | V4WU |
| 1.3 | Port of Registry | : | BASSETERRE |
| 1.4 | Gross tonnage | : | 422 |
| 1.5 | Date of Build | : | --- |
| 1.5.1 | Date of Building Contract | : | 1997 |
| 1.5.2 | Date on which keel was laid or ship was at a similar stage of construction. | : | 1999 |

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- 1.5.3 Date of delivery : 1999
- 1.6 Major Conversion (if applicable) : _
- 1.6.1 Date of conversion contract, : _
- 1.6.2 Date on which conversion was commenced : _
- 1.6.3 Date of completion of conversion : _
- .1.7 The ship has been accepted by the Administration as a “ship delivered on or before 31 December 1979”
- 2 EQUIPMENT FOR THE CONTROL OF OIL DISCHARGE FROM MACHINERY SPACE BILGES AND OIL FUEL TANK. (regulation 14 and 16)
- 2.1 Carriage of ballast in oil fuel tanks.
- 2.1.1 The ship may under normal conditions carry ballast water in oil fuel tanks.
- 2.2 Type of oil filtering equipment fitted:
- 2.2.1 Oil filtering (15 ppm) equipment (regulation 14 (6))
- 2.2.2 Oil filtering (15 ppm) equipment with alarm and automatic stopping device (regulation 14 (7))
- 2.3 Approval standards ¹
- 2.3.1 The separation / filtering equipment:
- 1.- has been approved in accordance with resolution A.393(X)
 - 2.- has been approved in accordance with MEPC 60(33)
 - 3.- has been approved in accordance with resolution MEPC 107(49)
 - 4.- has been approved in accordance with resolution A.233(VII)

¹ Refer to the Recommendation on International performance and test specifications of oily-water separating equipment and oil content meters adopted by the Organization on 14 November 1977 by resolution A.393(X), which superseded resolution A.233(VII). Further reference is made to the guidelines and specifications for pollution prevention equipment for machinery space bilges adopted by Marine Environment Protection Committee of the Organization by resolution MEPC.60(33), which effective on 6 July 1993, superseded resolution A.393(X) and A.444(XI) and the revised Guidelines and specifications for Organization by resolution MEPC.107(49) which effective from 1 January 2005, superseded resolution MEPC. 60(33), A.393(X) and A.444(XI).

- 2.3.2 The process unit has been approved in accordance with resolution A.444(XI)
- 2.3.3 The oil content meter:
- 1.-has been approved in accordance with resolution A.393(X)
 - 2.- has been approved in accordance with resolution MEPC.60(33)
 - 3.- has been approved in accordance with resolution MEPC.107(49)
- 2.4 Maximum throughput of the system is 0.57 m3/h
- 2.5 Waiver of regulation 14.
- 2.5.1 The requirements of regulation 14.1 or 14.2 are waived in respect of the ship in accordance with regulation 14.5
- 2.5.1.1 The ship is engaged exclusively on voyages with special area(s)
- 2.5.1.2 The ship is certified under the International Code of Safety for High Speed Craft and engaged on a schedule service with a turn-around time not exceeding 24 hours.
- 2.5.2 The ship is fitted with holding tank(s) for total retention on board of all bilge water as follows

| Tank Identification | Tank Location | | Volume (m3) |
|---------------------|-------------------|------------------|-------------|
| | Frame (From-to) | Lateral Position | |
| - | - | - | - |
| | Total Volume (m3) | | |

3 MEANS FOR RETENTION AND DISPOSAL OF OIL RESIDUES (SLUDGE) (regulation 12) AND BILGE WATER HOLDING TANKS (S)²

3.1 The ship provided with oil residue (sludge) tanks as follows:

| Tank Identification | Tank Location | | Volume (m3) |
|---------------------|-------------------|------------------|-------------|
| | Frame (From-to) | Lateral Position | |
| Sludge Tank | 79-86 | Port-Center | 8.14 |
| | Total Volume (m3) | | 8.14 |

² Bilge water holding tank (s) are not required by the Conventions, entries in the table under paragraph 3.3. is voluntary.

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3.2 Means for the disposal of residues in addition to the provisions of sludge tanks:

3.2.1 Incinerator for oil residues, capacity _____ l/h

3.2.2 Auxiliary boiler suitable for burning oil residues.

3.2.3 Tank for mixing oil residues with fuel capacity, _____ m³

3.2.4 Other acceptable means, _____

3.3 The ship is fitted with holding tanks for the retention on board of oily bilge water, as follows:

| Tank Identification | Tank Location | | Volume (m ³) |
|--------------------------------|-----------------|------------------|--------------------------|
| | Frame (From-to) | Lateral Position | |
| — | — | — | — |
| Total Volume (m ³) | | | — |

4 STANDARD DISCHARGE CONNECTION (Regulation 13)

4.1 This ship is provided with a pipeline for the discharge of residues from machinery bilges and sludges to reception facilities, fitted with standard discharge connection in accordance with regulation 13.

5 SHIPBOARD OIL POLLUTION EMERGENCY PLAN (regulation 37)

5.1 The ship is provided with a shipboard oil pollution emergency plan in compliance with regulation 37.

5.2 The ship is provided with a shipboard marine pollution emergency plan in compliance with regulation 37.3

App. 22

6 EXEMPTION

6.1 Exemption have been granted by the Administration from the requirement of Chapter 3 of Annex I of the Convention in accordance with regulation 3.1 on those items listed under paragraph _____ of this Record

7 EQUIVALENTS (regulation 5)

7.1 Equivalents have been approved by the Administration for certain requirements of Annex I on those items listed under paragraph _____ of this Record.

THIS IS TO CERTIFY that this Record is correct in all respects.

Issued at: Miami Date: 26th FEBRUARY 2009.

STAMPED

/S/ _____

OVID LONDON

Surveyor to International Register of Shipping

App. 23
Equasis- Detail PSC

| Ship Info | Inspection (27) | Ship History |
|-----------|-----------------|--------------|
|-----------|-----------------|--------------|

Port State Control Info.

| | |
|------------------------|--------------------------|
| PSC Organization | US Coast Guard |
| Authority | United States of America |
| Port of Inspection | Miami, FL |
| Type of inspection | Standard Examination |
| Date of Report | 04/05/2010 |
| Detention | Yes |
| Duration (days) | 78 |
| Number of deficiencies | 2 |

Particulars at the time of the inspection

| | |
|---------------|------------------|
| IMO number | 9210804 |
| Name of Ship | ISLAND EXPRESS I |
| Call Sign | V4WU |
| Gross Tonnage | 422 |
| Type of Ship | General Cargo |
| Year of Build | 1999 |

Classification surveys at the time of the inspection

International Register of Shipping (IS)

Grounds for detention

MARPOL annex I

| | |
|--------------------------|-----------------------------|
| Deficiency | Control of discharge of oil |
| Defect | unspecified |
| Number | 1 |
| Class related deficiency | Yes |

MARPOL annex I

| | |
|--------------------------|-------------------------|
| Deficiency | Oil Filtering Equipment |
| Defect | unspecified |
| Number | 1 |
| Class related deficiency | Yes |

<https://www.equasis.org/EquasisWeb/restricted/DetailsPSC?fs=Shipinspection>

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE No. 20-10124-BB

D.C. Docket No. 0:19-cv-62889-WPD;
0:18-cv-60984-WPD.

[Filed July 31st, 2020]

HUGO PENA

Appellant

v.

UNITED STATES OF AMERICA

Appellee

PETITION FOR PANEL REHEARING

Appellant Hugo Pena (Pena) respectfully request to file this Petition for Panel Rehearing pursuant to F.R.A.P. 40.

JURISDICTIONAL ISSUE

As the court acknowledge from the outset, this case presents a jurisdictional issue of first impression, not only in this Circuit, but in the country. Situations where important public policy issues are involved, "All Lives Matter" and "Nobody is above the Law", e.g. Pena's right to recognition and equality before the law, creating wrong precedent to maritime treaty (MARPOL) by abuse of power and unlawful discrimination, refers to unfair or unequal treatment of Hugo Pena, where the position of Pena is clearly right as a matter of law, cause of action by intentional altering Island Express identity by this prosecution, and "there is and was no other available avenue of relief", suffering more than three years battling in the Southern District Court of Florida after acquiring the exculpatory material evidence from Homeland Security by 19 CFR Part 4 knowingly withheld by this prosecutor.

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 is required for post-conviction relief under 28 U.S.C. § 2255."

The issue presented was, whether this Court should direct the district court to rule on Hugo Pena petition for writ of error Coram Nobis based on "fundamental error" or "manifest injustice", a St Kitts & Nevis Ship Cert., a clearly erroneous error as a matter of law, see MARPOL Art 5 (2), that were knowingly withheld by the Prosecutor from judges, jury and defendants and that the other side has not been prejudiced. MARPOL Art 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."

This prosecution by AUSA Jaime Raich was aiding and abetting to perjury, breach of fiduciary duty, rescission, in fraudulent forgery document CR-Gov.Ex:43 & 45, fabricated by G&G Marine, Inc [Vessel Operation Company].

Pena's argument was that under the express provision of MARPOL and Annex 1 to MARPOL, it is the responsibility of the Flag State (in this case St Kitts & Nevis) to conduct surveys and issue certificates, and therefore only flag state has jurisdiction to prosecute a surveyor for failure to conduct a proper survey. In rejecting this argument, the court failed to address and overlooked the current flag flagged the Island Express, (a St Kitts & Nevis Ship) from April 15th, 2010 to May 11th, 2010, by willful suppression of exculpatory material evidence, supported by issue Clearance Statement by the Homeland Security in 19 CFR Part 4, and this court overlooked that Pena was banned and lacks access to Federal Register as U.S. Customs and Border Protection to acquire this exculpatory material facts for his defense, after wrongly conviction and since then, there is and was no other available avenue of relief (Panel decision at 5) and is unfair or unequal treatment of Hugo Pena, thus, every person is equal before the law and is entitled to the equal protection of the law without discrimination, and because the suppressed exculpatory evidence was "material" and thus, is a Jurisdictional Error.

This is crucial because, as the court recognized, “A sovereign state has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction.” (United States v. Pena, 684 F.3d 1137 (11th Cir. 2012), Panel Decision at 13), citing *Wilson v. Girard*, 354 U.S. 525, 529 (1957). The Court also recognized that, “Jurisdiction over foreign vessels in ports is frequently limited by treaty agreement” (Id. Citing Restatement (Third) of foreign Relations Law § 512 cmt. 5 (1987)).

Here, the Court found that Art. 4 (2) of the MARPOL Convention granted the United States, as the port state, concurrent jurisdiction with the Flag Flagged the vessel at the time of MARPOL violation. Art. 4 (2) 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”.

Thus, this Court concluded that, “by signing the MARPOL treaty, the United States consented to surrender its exclusive jurisdiction over violations within its ports, but it still maintained concurrent jurisdiction to sanction violations of the treaty according to U.S. Law”. (United States v. Pena, 684 F.3d 1137 (11th Cir. 2012), Panel Decision at 14) and this court overlooked that Island Express is the subject matter and is a St Kitts & Nevis Ship, and there is a substantial question that Hugo Pena is not a St Kitts & Nevis Surveyor overlooked by this court.

The error involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and which renders the proceeding itself irregular and invalid, Panel Decision at 3. This court overlooked that Deletion Certificate by the flag flagged the vessel (St. Kitts & Nevis), issued on May 11th, 2010, seven days after detention, and this prosecutor is aiding and abetting to perjury, protecting the Island Express Operation Company, responsible in the MARPOL violation.

This court overlooked that Pena did not have any duty to conduct any MARPOL inspection under current flag flagged the vessel, (a St Kitts & Nevis Ship, call sign V4WU) and Pena never had been onboard Island Express on April 15th, 2010 or before to conduct any MARPOL inspection. Id PSC Organization, USCG, Equasis Web / Restricted / Ship inspection/IMO 9210804. Date of Report Inspection May 4th, 2010. (04/05/2010).

There is a substantial question that Island Express was detained on May 4th, 2010 when vessel was sailing and operating under St Kitts & Nevis Authority and St Kitts Nevis Deletion Certificate was issued on May 11th, 2010, seven days after detention and thus, summary affirmance is not appropriate, cause of action by willful suppression of exculpatory material evidence, 19 CFR Part 4.

FRAUD UPON THE COURT & PROSECUTORIAL MISCONDUCTED

This court acknowledge by Judge Anderson; in his research wrote in United States v. Pena, 684 F.3d 1137 (11th Cir. 2012). "Thorough research reveals no case law, in this Circuit or any other federal court, in which 33 U.S.C. § 1908(a) has been applied to prosecute a surveyor. Instead, § 1908(a) has been used to prosecute owners, operators, and/or engineers of foreign-flagged vessels for violating MARPOL by failing to maintain an accurate oil record book"

This court overlooked Prosecutorial Misconduct, (Panel Decision at 4) invoking Brady Doctrine in the opposition to appellee's motion for summary affirmation, where Pena's unmasking the fraudulent scheme based on Jurisdictional Error and Prosecutorial Misconduct, knowing use of perjured testimony and inflammatory argument before a jury, protecting the owner and vessel operation company and this is shocking and it's discriminatory, is unfair or unequal treatment of Hugo Pena, in summary:

- a) Pena's fictitious name, was defrauded to Incorporated company by this prosecutor as a company responsible on Island Express's certification to protect Vessel Operation Company, and thus, is a Prosecutorial Misconduct, putting Pena in double jeopardy because of rendering invalid to judgement and,
- b) aggravated by intentional defrauded Flag State Authority on April 15th, 2010 in this court by willful suppression of exculpatory material evidence, federal Register, Foreign clearance 19 CFR Part 4 on regard of subject matter aiming to ambush Pena, and Pena lacks access to this material evidence in deprivation of his right to defense and thus, is a Jurisdictional Error and thus, is a Prosecutorial Misconduct.

This court overlooked that Pena offers merit-worthy supporting either to prove this assertion or to show that it renders the proceedings irregular or invalid, e.g. Willful Suppression of Exculpatory Material Evidence, (a) Clearance Statement by Homeland Security of United States 19 CFR Part 4, (b) Full Term International Oil Pollution Prevention Certificate issued by International Register of Shipping, Inc. on behalf of St Kitts & Nevis and (c) Deletion Certificate issued by St Kitts & Nevis Registrar on May 11th, 2010 after seven days of detention Island Express, (Panel Decision at 5), and there is a substantial question that Hugo Pena is not a St Kitts & Nevis surveyor, neither is the owner or operator of this vessel, (the subject matter).

However, the government and this court properly acknowledge that jurisdictional errors and prosecutorial misconduct are fundamental errors that warrant Coram Nobis relief because they render the proceeding irregular and invalid. May well be a proper ground for Coram Nobis relief as a matter of law, (Panel decision at 5).

Therefore, there is not a MARPOL violation and count 27 and 28 should be dismissed.

CONCLUSION

Based upon the foregoing reasons, Pena respectfully prays that this Honorable Court grant rehearing and that it reverse his convictions and sentences, because the intentional suppressed exculpatory evidence was "material" and thus, is a Jurisdictional Error and Prosecutorial Misconduct, i.e. a fundamental error that warrant Coram Nobis relief and there was a separate limit in subject matter, a St Kitts & Nevis Ship and thus, is merit-worthy to Appeal as a matter of law and fact (Panel Decision at 2).

Respectfully submitted,

/S/



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Petitioner Pro Se

[Certificate of Service omitted for this appendix]

Addendum 1 omitted and is offering in Appendix A (App 1-5)

Addendum 2 & 3 omitted and is offering in Appendix D (App 10-28)

APPENDIX F

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case Number: 0:10-60158-CR-WPD-004

USM Number: 91473-004

Criminal Jury Trial

TRANSCRIPT EXCERPTS

CROSS EXAMINATION by Mr. Horowitz (Pena's counsel) to Mr. Greg Bishop (U.S. Coast Guard Special Agent Investigator) (CR-DE.162: 62-63).

Mr. Horowitz: And "reflagging the vessel" means that the home port would be changed, and the country of origin would be changed, correct?

Mr. Greg Bishop: That's true.

Mr. Horowitz: And in this case, it was from St. Kitts and Nevis to Panama, correct?

Mr. Greg Bishop: (Pause.)

Mr. Horowitz: And in this case, he was changing the flag nation of the vessel to G&G Marine from St. Kitts and Nevis to Panama, correct?

Mr. Greg Bishop: That's correct.

Mr. Horowitz: As a matter of fact, that process had not even been completed by May 4th, correct?