APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RAMY EID ZAKI HAKIM, Defendant-Appellant.	No. 21-55617 D.C. No. 2:02-cr-00616-DSF-1 MEMORANDUM* (Filed Sep. 8, 2022)

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted August 29, 2022**
Pasadena, California

Before: M. SMITH and R. NELSON, Circuit Judges, and DRAIN,*** District Judge.

Petitioner Ramy Eid Zaki Hakim appeals the district court's order denying his petition for writ of error

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.

coram nobis to withdraw his 2002 guilty plea. The parties are familiar with the facts, so we do not recount them here. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we review the district court's denial of coram nobis de novo. *United States v. Kroytor*, 977 F.3d 957, 961 (9th Cir. 2020). For the reasons that follow, we affirm the district court.

1. Mr. Hakim argues the district court erred by finding his coram nobis petition untimely. We disagree. Coram nobis petitions are not subject to specific limitations periods. *United States v. Morgan*, 346 U.S. 502, 512 (1954). Nonetheless, we still require petitioners to provide a "sound reason" for not seeking post-conviction relief sooner. *Kroytor*, 977 F.3d at 961. Mr. Hakim suggests his unawareness of the writ justifies his thirteen-year delay for filing his petition. Delay "may be justified" where petitioners "did not have a reasonable chance to pursue their claim earlier due to the specific circumstances they faced." *Kroytor*, 977 F.3d at 961. Here, Mr. Hakim learned that the Immigration and Naturalization Service ("INS") intended to deport him while in federal prison. INS proceeded to detain Mr. Hakim for four months after he served his sentence. Mr. Hakim had another thirteen years to seek legal counsel to challenge his guilty plea. His failure to act does not justify the delay. Accordingly, the district court properly determined that Mr. Hakim's petition was untimely.

2. The Government also argues that Mr. Hakim's petition fails on the merits. A successful coram nobis petition identifies an error "of the most fundamental

character." *Estate of McKinney By and Through McKinney v. United States*, 71 F.3d 779, 782 (9th Cir. 1995). Mr. Hakim argues two fundamental errors: (1) the Government breached the plea agreement by not informing INS about his cooperation; and (2) his defense counsel and the district court failed to inform him about the immigration consequences of his guilty plea. Both alleged errors lack sufficient weight to carry Mr. Hakim's petition forward.

First, "a criminal defendant has a due process right to enforce the terms of his plea agreement." *See Buckley v. Terhune*, 441 F.3d 688, 694 (9th Cir. 2006). The Government admits that had the U.S. Attorney's Office failed to notify the INS about Mr. Hakim's cooperation, that would have violated the plea agreement, which would constitute an error of the most fundamental character. *Cf. Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987) (describing an error "of the most fundamental character" as one that "rendered the proceeding itself irregular and invalid.") (quoting *United States v. Mayer*, 235 U.S. 55, 69 (1914)). Yet Mr. Hakim presents no evidence supporting his allegation that the Government failed to notify INS of his cooperation. Without evidence indicating the Government breached the plea agreement, Mr. Hakim cannot establish an error of the most fundamental character.

Second, the record suggests that Mr. Hakim's attorney, Scott Furstman, did not advise Mr. Hakim of his plea agreement's immigration consequences. If Mr. Furstman failed to inform Mr. Hakim of his plea

agreement's immigration consequences, his inaction would not change today's decision.

In 2010, the Supreme Court held that a defense counsel's failure to inform their client about a conviction's potential immigration consequences constitutes ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 374 (2010). Ineffective assistance of counsel can form the basis for coram nobis relief. *See United States v. Kwan*, 407 F.3d 1005, 1014 (9th Cir. 2005). But in 2013, the Supreme Court decided *Chaidez v. United States*, clarifying that *Padilla* did not apply retroactively. 568 U.S. 342, 344 (2013). Therefore, Mr. Furstman's failure to inform Mr. Hakim about his plea agreement's immigration consequences in 2002 cannot form the basis for coram nobis relief. Additionally, when asked whether he understood the immigration consequences of his plea during his colloquy with the district court, Mr. Hakim responded: "Yes." We thus affirm the district court's decision denying Mr. Hakim's petition on the merits.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RAMY EID ZAKI HAKIM, Defendant.	CR 02-616 DSF Order DENYING Petition for Writ of Error Coram Nobis (Dkt. 226) (Filed Jun. 11, 2021)

Defendant was convicted in 2003 of using a communication facility to further a drug felony. He was sentenced to 33 months imprisonment and one year of supervised release. Prior to conviction, Defendant was a lawful permanent resident of the United States. As a result of his conviction, Defendant became eligible for removal from the country. Defendant now petitions for a writ of error coram nobis, claiming that his defense counsel misled him regarding the immigration consequences of his plea.

While the Court finds it very unlikely that Defendant would succeed on the merits of his petition, it is sufficient to deny the petition as untimely. Defendant admits that he was aware that the United States government intended to deport him 15 years ago on release from prison, yet only brought his petition on March 11, 2021. While there is no particular limitations period for bringing a petition for writ of error coram nobis, petitioners who delay must "provide valid

or sound reasons explaining why they did not attack their sentences or convictions earlier." United States v. Kroytor, 977 F.3d 957, 961 (9th Cir. 2020). "[W]here petitioners reasonably could have asserted the basis for their coram nobis petition earlier, they have no valid justification for delaying pursuit of that claim." Id.

Defendant's only justification for the 15-year delay is that he was unaware of the particular procedural device of a petition for writ of error coram nobis. The lack of knowledge about the procedure for challenging error is not a sufficient justification for such an extended delay where the substantive grounds for relief was known.

The petition for a writ of error coram nobis is DENIED.

IT IS SO ORDERED.

Date: June 11, 2021 /s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RAMY EID ZAKI HAKIM, Defendant-Appellant.	No. 21-55617 D.C. No. 2:02-cr-00616-DSF-1 ORDER (Filed Oct. 28, 2022)

Before: M. SMITH and R. NELSON, Circuit Judges, and DRAIN,* District Judge.

The panel has unanimously voted to deny the petition for panel rehearing; Judges M. Smith and R. Nelson have voted to deny the petition for rehearing en banc, and Judge Drain so recommends. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are DENIED.

* The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.