No. _____

In the
Supreme Court of the United States

KARNAIL SINGH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the denial of corum nobis relief was erroneous given that Petitioner suffered ineffective assistance of counsel.

Whether the facts constitute a clear breach of the plea agreement and violation of due process.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Karnail Singh.

United States of America

LIST OF PROCEEDINGS

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
Case No. 23-1474
UNITED STATES V. KARNAIL SINGH
United States v. Singh, 95 F.4th 1028 (6th Cir. 2024)
Affirming lower court judgment
Dated March 15, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
No. CV-21-00234-TUC-JCH
UNITED STATES V. KARNAIL SINGH
United States v. Singh, No. 13-20551, 2022 U.S. Dist. LEXIS 109179 (E.D. Mich. June 19, 2022)
Order refusing Petition for Writ of Coram Nobis

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES

RULES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Singh respectfully requests that a Writ of Certiorari be issued to review the denial of relief by the United States District Court for the Eastern District of Michigan and United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The March 15, 2024, order from the Court of Appeals for the Sixth Circuit is reproduced in the Appendix. ("Appendix A"). *United States v. Singh*, 95 F.4th 1028 (6th Cir. 2024)

BASIS FOR JURISDICTION IN THIS COURT

The United States Court of Appeals for the Sixth Circuit issued their ruling on March 15, 2024. This Court has jurisdiction under 28 U.S.C. § 1291.

CONSTITUTIONAL PROVISIONS INVOLVED

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

U.S. Const. amend. XI.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. X.

STATUTORY PROVISIONS INVOLVED

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
>
> (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C.S. § 1651 (LexisNexis, Lexis Advance through Public Law 118-62, approved May 13, 2024)

STATEMENT OF THE CASE

To honor this court and preserve its judicial economy, the statement of the case is largely provided through the appellate briefings and the Sixth Circuit's judgment.

Mr. Singh became a naturalized citizen of this country in January 2009[1]. Upon entering the country, undocumented, Mr. Singh filed for asylum. In his asylum application, he required the assistance of his mentor from a local temple, as Mr. Singh could not speak or read English. Despite providing his mentor factually accurate identifying information, his mentor used another's birth certificate.

As noted in Petitioner's opening appellate brief:

Mr. Singh had come to the United States during the great migration of Sikhs out of India and to the United States after the assassination of Indira Gandhi by her Sikh bodyguards. Most were granted asylum if they could prove their identity. At his first interview or hearing (he can't recall which), Mr. Singh's mentor and translator informed him that if he could prove his identity, he would be granted asylum. Several other Sikhs who applied with him were granted asylum.

Once Mr. Singh received the proper documentation from his family in India, he hired counsel[2]. New

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[1] Before January 2009, Mr. Singh became a legal permanent resident of the United States through marriage.

[2] His counsel has since resigned from the practice of law after several formal complaints.

counsel failed to fulfill his promise of preparing a new application that would merge his faulty one. Thereby, stealing $16,000 from Mr. Singh.

After unknowingly missing the first application hearing, after his counsel never amended the pleading, Mr. Singh was deported in absentia. Mr. Singh never received the order and did not know that he was deported until 20 years later when advancement in computer technology for the first time revealed its existence, not only to Mr. Singh but also to the government, who had custody of his alien file.

While the merged asylum application was supposedly pending, Mr. Singh married a U.S. Citizen.

In 2013, after going on a work trip to Canada, Mr. Singh was detailed and recognized that his prior counsel had deceived him.

He was then charged and indicted on one count of violating 18 U.S.C.§ 1546(a) and one count of violating 18 U.S.C. § 1001(a)(2).

The charges stemmed from Mr. Singh's failure to put on his second asylum, and later his permanent residency and citizenship applications, that he had filed a prior application for asylum, and therefore illegally procured the U.S. passport he was using to reenter the United States at the Detroit port of entry. Mr. Singh hired counsel for those criminal proceedings, and eventually a plea agreement was prepared.

Mr. Singh's plea detailed that his plea to the offenses would not necessarily result in immigration consequences, but, in conjunction with possible future

criminal charges, his guilty plea in this case may affect or even foreclose his eligibility to remain in this county.

The plea hearing under Rule 11 ensued.

In this hearing, the court asked Mr. Singh - And you know that this guilty plea has – well, it does have an effect, I guess – can be used if the immigration services bring a petition to cancel your citizenship.

To which Mr. Singh replied 'yes.'

Contrary to the written plea agreement, that stated that Mr. Singh's immigration status would only be disturbed upon a future crime, the Respondent filed a complaint for denaturalization in the Eastern District of Kentucky. *United States v. Karnail Singh,* 2:18-cv-85 (CJS) (E. Dist. Ky 2018). Seemingly, the Respondent based their complaint in a pseudo-relation back technique by alleging the Michigan issues therein – totally undermining the agreed upon plea.

Mr. Singh filed a writ of coram nobis which was denied. The Sixth Circuit, in an opinion recommended for publication, affirmed the lower court.

Now comes this Petition.

REASONS TO GRANT THIS PETITION

I. THE COURT SHOULD GRANT REVIEW TO RESOLVE THE DENIAL OF CORUM NOBIS RELIEF.

A. Petitioner suffered from ineffective assistance of counsel thereby depriving him of his Sixth Amendment right to counsel

This Court decided *Padilla v. Kentucky* on the basis of the first prong of *Strickland's* ineffective assistance of counsel test, holding that criminal defense counsel's representation falls below an objective standard of reasonableness when counsel does not give an immigrant defendant clear, succinct, and explicit advice where the immigration consequences of a guilty plea are also clear. *Padilla v. Kentucky*, 559 U.S. 356, 368, 130 S. Ct. 1473, 1483 (2010); see also *Strickland v. Washington*, 466 U.S. 688 (1984).

The Court did not reach *Strickland's* prejudice prong, thus leaving lower courts to determine whether there is a reasonable probability that counsel's unprofessional errors may have changed the result of the proceeding.

Even where lower courts have found or reasonably could have found that counsel's performance was ineffective, some are finding that the trial court's plea colloquy, advising of a risk of possible deportation[3],

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[3] The Sixth Circuit has held that "among the myriad collateral consequences that criminal defendants face is removal or deportation." *Pola v. United States*, 778 F.3d 525, 530 (6th Cir.

cures any prejudice to the immigrant defendant, thereby rendering *Padilla* obsolete. In some instances, the lower courts are considering a Rule 11 plea colloquy as one factor in the prejudice analysis, whereas other courts are evaluating the specificity of the court's immigration warning, imputing a *Padilla* ineffective assistance of counsel inquiry on the court, in order to determine whether the defendant was prejudiced by counsel's error.

That is precisely what the Sixth Circuit has done in this case.

The Court held specifically that when the risk of removal resulting from a guilty plea is "clear," counsel must advise his or her client that "deportation [is] presumptively mandatory." On the other hand, when that risk is less clear, counsel need only advise the defendant "that pending criminal charges may carry a risk of adverse immigration consequences." *Padilla*, 559 U.S. at 369.

Notably, the Sixth Amendment requires that counsel perform as an active advocate in behalf of his client. *Anders v. California*, 386 U.S. 738, 744 (1967). In this case, quite the opposite happened and the Sixth Circuit recognized such.

2015). Deportation may impose "great hardship" on people deported. *Fiswick v. United States*, 329 U.S. 211, 221-22 & n.8 (1946); accord *Pola*, 778 F.3d at 530. See also *Abreu v. Superintendent Smithfield SCI*, 971 F.3d 403, 407 (3d Cir. 2020) (acknowledging *Pola* decision, while distinguishing facts of that case).

The Sixth Amendment right to the effective assistance of counsel extends to all critical stages of criminal proceedings, including throughout the plea process. *Lafler v. Cooper*, 132 S. Ct. 1376, 1384 (2012); *Missouri v. Frye*, 132 S. Ct. 1399, 1407-08 (2012). Federal courts evaluate claims of ineffective assistance of counsel during the plea process by applying the test from *Strickland v. Washington*, 466 U.S. 668 (1984); *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). That test requires a showing that counsels representation fell below objective standards of reasonableness required by the Sixth Amendment and that the deficiencies in counsels representation were prejudicial to the defense. *Strickland*, 466 U.S. at 690-92.

The first prong of Strickland the performance prong examines whether counsels representation fell below an objective standard of reasonableness. *Id.* at 687-88. The Court examines whether counsels assistance was reasonable considering all the circumstances and indulges a strong presumption that assistance was constitutionally adequate. *Id.* at 688.

Here counsel fell below professional norms by failing to ensure that there were was an adequate plea deal negotiated and that Mr. Singh was knowingly entering into a plea that would enable him to get deported. If Mr. Singh knew he was getting deported, why would he have pleaded guilty. The Sixth Circuit seems to ignore commonsense and basic human instinct. Ultimately, if Mr. Singh would have been aware that he was able to be deported based on the same nucleus of fact he pleaded guilty to, he would not have entered the plea. Counsel has an obligation to

understand what his or her client is pleading to and has a further obligation to assess whether the plea is in the best interests of his or her client.

In order to establish the prejudice prong, Mr. Singh must demonstrate a reasonable probability that, but for his counsel's errors, the result would have been different. *Frye*, 132 S. Ct. at 1409; Hill, 474 U.S. at 59; *Saesee v. McDonald*, 725 F.3d 1045, 1048 (9th Cir. 2013) (citing *Strickland*, 466 U.S. at 694). This Court defines reasonable probability as a probability sufficient to undermine confidence in the outcome. *Saesee*, 725 F.3d at 1048 (quoting *Strickland*, 466 U.S. at 695). Even a single, serious error by otherwise excellent counsel can support a claim of ineffective assistance of counsel. *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986).

Here, prejudice can be presumed as Mr. Singh is facing potential deportation after his counsel failed to render his case to a meaningful adversarial process. The adversarial testing process is next to non-existent and ineffective performance of counsel follows when counsel does not make reasonable investigations and introduce into plea negotiations information that may demonstrate the client's innocence or mitigating evidence that raises sufficient doubts. *See Williams v. Taylor*, 529 U.S. 362, 393 (2000)(when considering trial counsel's performance during trial).

II. THERE IS A CLEAR AND UNEQUIVOCAL BREACH OF THE WRITTEN PLEA AGREEMENT.

To wit – this Court shall review the Petition in the light of the fact the All Writs Act, 28 U.S.C. § 1651 establishes the federal judiciary's power and obligation to issue a Coram Nobis writ comes from. Relevantly, there are circumstances compelling such action to achieve justice; and sound reasons exists for failure to seek earlier relief; and the petitioner continues to suffer collateral consequences of his convictions that can only be remedied by granting the Writ.

Here, the plea agreement is clear – Mr. Singh was not to have his immigration status affected, unless a future crime was committed. There was a breach in that. Whether that be in the plea colloquy or in the Kentucky case. Nonetheless, there was effectively a constructive amendment to his plea.

A constructive amendment, and a prejudicial variance, rising to the level of a constructive amendment, exposes a defendant to the same vice inherent in cryptic indictments, recognized by this Court in *Russell v. United States*, 369 U.S. 749, 766 (1962), as it "enables [a defendant's] conviction to rest on one point and the affirmance of the conviction to rest on another" by "giv[ing] the prosecution free hand on appeal to fill in the gaps of proof by surmise or conjecture." As a result, in addition to exposing a defendant to double jeopardy, a constructive amendment or prejudicial variance creates an ambiguity about what facts served as the basis for the conviction, completely disabling any attempts by the

defendant to appeal or collaterally challenge his conviction.

Even worse, whether a variance substantially prejudices a defendant is currently relegated entirely to judicial discretion.

No Supreme Court decisions, and few, if any, appellate court cases have addressed constructive amendments and fatal variances in the context of guilty pleas. Constructive amendments, as well as variances (whether prejudicial or non-prejudicial), by definition only pertain to variations between charges and evidence or jury instructions which occur in jury trials.

While the language of Rule 7(e) of the Federal Rules of Criminal Procedure appears to prohibit any amendment of an information or complaint "after verdict or finding," regardless of whether such an amendment is prejudicial, no circuit cases have addressed whether Rule 7(e) extends to retroactive amendments in the case of guilty pleas.

Fundamental error standard of review seems inappropriate in these instances. As the Sixth Circuit noted - Since guilty pleas waive several constitutional rights, the Due Process Clause requires that guilty pleas be "knowing." *McCarthy v. United States*, 394 U.S. 459, 466 (1969). The Sixth Circuit misapprehends the due process issue here. Not only is the issue that Mr. Singh's collateral consequences were unknowing – the due process issue as it pertains to the Coram Nobis is that the Government and Court in the plea colloquy

effectively and constructively amended the plea agreement. A fatal flaw this court should review.

Fundamental error is the legal concept that is intended to protect defendants from errors that undermine the judicial process. However, the standard in this scenario is so restrictive that it allows state actors to violate due process through technicalities. Court can hide behind vague questions during plea colloquies to non-English speaking immigrants and allow the state to constructively amend and breach negotiated plea agreements.

Albeit the statute requires a fundamental showing of error in the first instance. So when appellate courts review cases like the one herein, applying a fundamental error standard of appellate review places an unusual burden on defendants. Rather, courts should review de novo to ensure that there was no fundamental error in the first instance.

Likewise, this court should review the implications and relationship between Rule 11 and the Fifth Amendment. As noted in Appellant's Brief – which was wholly ignored by the Sixth Circuit –

> To conform with due process under the Fifth Amendment to the U.S Constitution, "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). Criminal Rule 11 requires a Court to inquire and assure itself that before accepting a plea

> agreement from a criminal defendant, the plea is knowing and voluntary. In felony cases, the Court must inquire whether the Defendant intends to plea guilty "understanding of the nature of the charge and the consequences of the plea." If the plea agreement fails to give notice of the consequences of a plea of guilty, including that such a plea will result in the loss of citizenship, the plea is not knowing and voluntary. *United States v. Ataya*, 884 F.3d 318 (6th Cir. 2018).

The Sixth Circuit and other Circuit courts wholly ignore the well-settled law of a defendant knowing the consequences of their plea. Particularly one that was in this predicament because of a skammy attorney.

Here, there is no question that there is ambiguity between the colloquy and the written agreement. And by not ensuring that Petitioner was fully aware of the direct and collateral consequences of his or her plea.

CONCLUSION

The harm suffered by Mr. Singh without the issuance of corum nobis relief goes against the essence of the Constitution and forces irreparable harm upon Mr. Singh absent the relief requested here.

For the foregoing reasons this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 24a0054p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1474

[Filed March 15, 2024]

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	)
v.	)
KARNAIL SINGH, *Defendant-Appellant*.	)

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:13-cr-20551-1—David M. Lawson, District Judge.

Decided and Filed: March 15, 2024

Before: GRIFFIN, THAPAR, and NALBANDIAN, Circuit Judges.

COUNSEL

ON BRIEF: Firooz T. Namei, MCKINNEY & NAMEI CO., LPA, Cincinnati, Ohio, for Appellant. Jessica Currie, UNITED STATES ATTORNEY'S OFFICE, Detroit, Michigan, for Appellee.

OPINION

THAPAR, Circuit Judge. Karnail Singh seeks to set aside his conviction, claiming he would not have pled guilty had he known the plea would affect his citizenship. But when entering the plea, Singh said he'd plead guilty regardless of the immigration consequences. We affirm.

I.

After illegally entering the United States, Karnail Singh applied for asylum. The government denied Singh's application and ordered him deported.

While deportation proceedings were pending, Singh submitted a second asylum application. This time, he used a different name, birthdate, birthplace, and parents. Singh then married a U.S. citizen and, using the updated biographical information, applied for permanent resident status. In his residency application, Singh claimed he'd never been denied asylum or provided false information on an immigration form.

The government granted Singh's application for residency, and, after a few years, Singh became a citizen. He later acquired a passport, which he used to reenter the United States after traveling abroad. At the border, officials asked Singh if he'd ever used a different name or birthdate. Singh said no.

At some point, the government discovered Singh hadn't been honest. So the government charged him with using a fraudulently procured passport and making false statements to immigration officials. *See* 18 U.S.C. §§ 1001(a)(2), 1546(a).

Singh pled guilty to using a fraudulently procured passport. In exchange for Singh's plea, the government dismissed the false-statement count and agreed to a lower sentencing range. As part of the agreement, Singh acknowledged that, while pleading guilty would "not necessarily result in immigration consequences," it could affect his removability "in conjunction with possible future criminal charges." R. 16, Pg. ID 43. Singh alleges he and his counsel interpreted that provision to mean his citizenship was safe unless he committed another crime. But Singh also confirmed his decision to plead guilty was "wholly independent of the immigration consequences." *Id*. at 44. And when the district court informed Singh that the plea "can be used . . . to cancel your citizenship," Singh twice confirmed that he understood and entered his guilty plea anyway. R. 22, Pg. ID 127.

Later, the government began proceedings to revoke Singh's citizenship. In response, Singh petitioned for a writ of coram nobis, asking the district court to set

aside his conviction. The district court denied his petition. Singh appeals.

II.

A criminal defendant may seek a writ of coram nobis to set aside an erroneous conviction. *United States v. Morgan*, 346 U.S. 502, 512 (1954). But the writ is an "extraordinary remedy" used only to correct errors "of the most fundamental character." *Id.* at 511–12 (quotation omitted). To get the writ, Singh must show (1) an error occurred during the proceedings that calls the validity of his conviction into doubt; (2) he has no alternative remedy to correct the error; (3) he has good reasons for not seeking to correct the error earlier; and (4) his conviction is causing an ongoing civil disability. *United States v. Castano*, 906 F.3d 458, 464 (6th Cir. 2018).

Singh fails at step one: the district court didn't commit a fundamental error.

A.

Singh first claims his plea violated the Due Process Clause because he incorrectly believed the plea would affect his citizenship only if he committed another crime.

Since guilty pleas waive several constitutional rights, the Due Process Clause requires that guilty pleas be "knowing." *McCarthy v. United States*, 394 U.S. 459, 466 (1969). Thus, before accepting a plea, a district court must ensure the defendant understands the "direct" consequences of pleading guilty. *El-Nobani v. United States*, 287 F.3d 417, 421 (6th Cir. 2002). On

the other hand, a court need not inform the defendant of every "collateral" consequence. *Id*. After all, convictions have many consequences, and a defendant doesn't need to appreciate every one to make an informed (i.e., "knowing") decision to forgo trial. *See id.* We've held that immigration consequences fall within this latter category. *Id*.; *United States v. Ramirez-Figueredo*, 33 F.4th 312, 318 (6th Cir. 2022). That is, Singh's plea qualifies as knowing, and satisfies due process, whether or not he understood it could affect his citizenship. That forecloses Singh's due process claim.

B.

Singh also claims the district court violated Rule 11 of the Federal Rules of Criminal Procedure. *See* Fed. R. Crim. P. 11(b)(1)(O). Under our Rule 11 precedent, district courts must give defendants a "generic warning" that pleading guilty "may" have "immigration-related consequences." *United States v. Ataya*, 884 F.3d 318, 324 (6th Cir. 2018); *Ramirez-Figueredo*, 33 F.4th at 318. Specifically, Rule 11 requires the district court to inform the defendant that, if convicted, he "may be removed from the United States, denied citizenship, and denied admission to the United States in the future." Fed. R. Crim. P. 11(b)(1)(O).

The district court gave the required warning. At the plea hearing, the court told Singh his plea "can be used if the immigration services bring a petition to cancel your citizenship." R. 22, Pg. ID 127. Singh said he understood. To confirm, the district court asked Singh again, "You know that?" *Id*. Singh confirmed that he

understood his plea could lead to his denaturalization. Thus, the court complied with Rule 11.

In response, Singh points to the written plea agreement, which he interprets as allowing the government to denaturalize him if and only if he were to commit another crime.[1] He alleges his counsel and the prosecutor confirmed this interpretation. Because Singh "reasonably believed" the plea would affect his citizenship only if he committed another crime, he argues the district court had to do more to correct his misunderstanding. Appellant Br. 16.

But Rule 11 requires no such thing. As explained, Rule 11 requires only a "generic warning" that pleading guilty "may" have immigration consequences. *Ataya*, 884 F.3d at 324. Thus, the court didn't need to detail how, when, or under what circumstances those consequences could occur. *See id.* Nor did the court need to "anticipate and negate" Singh's misunderstandings about those specifics. *Cf. United States v. Carson*, 32 F.4th 615, 623 (6th Cir. 2022).

Singh also quibbles with the language the district court used in its Rule 11 warning. The court warned Singh that "this guilty plea has—well, it does have an effect, I guess—can be used if the immigration services

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[1] Based on this interpretation, Singh asked the district court to hold that the government breached the plea agreement by seeking his denaturalization. He raised the same claim in the district court where his denaturalization proceedings are pending. Both district courts rejected Singh's interpretation. R. 34, Pg. ID 338–39; *United States v. Singh*, No. 2:18-cv-85 (WOB), 2019 WL 1212880, at *10–13 (E.D. Ky. Mar. 14, 2019). Singh hasn't raised that claim in this appeal, so we don't address it.

bring a petition to cancel your citizenship." R. 22, Pg. ID 127. Because the court used the phrase "I guess," Singh argues the court must not have known whether Singh's plea could affect his citizenship. But even if that were true, it wouldn't pose a problem. The court had to state only that Singh's plea "may" have immigration consequences. *Ataya*, 884 F.3d at 324. It didn't need to know what those consequences were going to be. For good reason: immigration law is "complex" and "a legal specialty of its own." *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010). And whether a defendant will face immigration consequences depends not only on the law, but also on executive policies and the current state of foreign affairs. *See, e.g.*, *Rodriguez-Penton v. United States*, 905 F.3d 481, 491 n.1 (6th Cir. 2018) (Thapar, J., dissenting). Thus, the court didn't need to predict whether Singh's plea would ultimately affect his citizenship.

C.

Next, Singh claims he was deprived the effective assistance of counsel because his attorney erroneously told him the plea wouldn't affect his citizenship unless he committed another crime.[2] *See Strickland v. Washington*, 466 U.S. 668 (1984).

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[2] Singh frames this claim as both a Sixth Amendment issue (he was deprived the effective assistance of counsel) and a due process issue (his plea wasn't knowing because his counsel misinformed him). We analyze both versions under the ineffective-assistance-of-counsel rubric. *United States v. Pola*, 703 F. App'x 414, 417 (6th Cir. 2017) (citing *Hill v. Lockhart*, 474 U.S. 52, 56–57 (1985)).

To succeed on this claim, Singh must point to evidence showing a "reasonable probability" that, but for his counsel's error, he wouldn't have pled guilty and instead would have gone to trial. *Hill*, 474 U.S. at 59. This test has several components. Singh must demonstrate that going to trial "would have been rational" under the circumstances of his case. *Lee v. United States*, 582 U.S. 357, 370 (2017) (quotation omitted); *Pilla v. United States*, 668 F.3d 368, 373 (6th Cir. 2012). That inquiry is objective, not subjective. *Kimbrough v. United States*, 71 F.4th 468, 473 (6th Cir. 2023). Next, Singh must point to evidence contemporaneous with his plea showing it's reasonably likely he would have taken that route. *Lee*, 582 U.S. at 369. Only in "unusual circumstances" will a defendant who conceded guilt at the plea stage be able to meet this "high bar." *Id.* at 368–69 (quotation omitted).

Singh doesn't. To be sure, Singh states he wouldn't have pled guilty had he known denaturalization was possible. "By his own recollection," he continues, he was "greatly concerned" about his citizenship and communicated that concern to his counsel, the government, and the district court. Appellant Br. 27. But Singh's appellate briefing doesn't cite any evidence contemporaneous with his plea to support these assertions. And post hoc assertions that he would've opted for trial aren't enough. *Lee*, 582 U.S. at 369.

In any event, the contemporaneous evidence cuts against Singh. In the written plea agreement, Singh stated his decision to plead guilty was in "no way conditioned upon or affected by the advice he has been given regarding any potential immigration

consequences." R. 16, Pg. ID 43–44. Singh confirmed: his decision to plead was "wholly independent of the immigration consequences of a conviction." *Id.* at 44; *see Ramirez-Figueredo*, 33 F.4th at 317 (relying on similar language in a plea agreement). And when the district court told Singh the plea could affect his citizenship, Singh expressed no reservations, twice confirmed that he understood, and pled guilty anyway. *Cf. Lee*, 582 U.S. at 369. In the face of this evidence, Singh can't demonstrate a reasonable probability that, but for his counsel's advice, he would have proceeded to trial.

In response, Singh argues his counsel's advice prejudiced him in another way: but for that advice, Singh claims he could've negotiated a better plea deal. *See Rodriguez-Penton*, 905 F.3d at 488. Under our precedent, defendants can show prejudice by establishing that, but for counsel's advice, it's reasonably probable they would've rejected the government's plea offer and successfully negotiated a better one. *Id.* at 488, 490; *Byrd v. Skipper*, 940 F.3d 248, 260 (6th Cir. 2019). But this too is a difficult standard to meet. At a minimum, a defendant must show, based on contemporaneous evidence, that it's reasonably probable he would've rejected the plea offer, the government would've offered a better one, he would've accepted that offer, and the trial court would've approved the deal. *See Byrd*, 940 F.3d at 259. *But see id.* at 262 (Griffin, J., dissenting) (noting a defendant must also show the government in fact made an initial plea offer). Rarely will a defendant make this showing.

For the same reasons Singh fails to show he would have rejected the plea offer and gone to trial, he likewise fails to show that he would have rejected the plea offer and negotiated for a better deal. Again, Singh argues his counsel should have told him that pleading guilty could affect his citizenship. But the court gave Singh that very warning. And Singh pled guilty anyway. Thus, Singh can't show he would've rejected the plea had his counsel told him pleading guilty might affect his citizenship. *Cf. Rodriguez-Penton*, 905 F.3d at 488 (noting the defendant didn't "know[] about the risk of adverse immigration consequences").

In sum, Singh can't show it's reasonably probable that, but for his counsel's immigration advice, the outcome of his proceedings would be different.

III.

Finally, Singh argues the district court should have held a hearing before ruling on his coram nobis petition. But the record makes clear that Singh isn't entitled to coram nobis relief. *See Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996). Thus, the court didn't need to hold a hearing before denying his petition. *See id.*

* * *

We affirm.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case Number 13-20551
Honorable David M. Lawson

[Filed April 28, 2023]

UNITED STATES OF AMERICA,
Plaintiff,

v.

KARNAIL SINGH,
Defendant.

OPINION AND ORDER DENYING PETITION FOR WRIT OF CORAM NOBIS

Defendant Karnail Singh, the subject of a denaturalization proceeding presently pending in the United States District Court for the Eastern District of Kentucky, filed a petition for a writ of error *coram nobis* to challenge his passport fraud conviction in this case. It appears that the statements Singh made in his plea agreement and guilty plea hearing provide the government with the crux of its case against him in the denaturalization lawsuit. Singh argued that he was misled by the government and his own attorney about

the immigration consequences of his guilty plea. However, this Court determined that Singh was unable to demonstrate a factual error that was unknown at the time of the guilty plea proceeding and that was of a fundamentally unjust character which probably would have altered the outcome of the challenged proceeding if it had been known. The Court, therefore, denied Singh's petition.

Now Singh has filed a motion asking the Court to amend or alter its opinion and order denying his petition for writ of error *coram nobis*. He argues that reconsideration is warranted to prevent manifest injustice in the denaturalization action. He wants to prevent the government from offering in support of that action the plea agreement he entered in this case. However, Singh has not shown that the Court's decision was predicated upon any manifest errors of law or fact, or that correcting the order would prevent any manifest injustice. Therefore, the Court will deny the motion to alter or amend its previous opinion and order denying *coram nobis*.

I.

The facts of this case are summarized in detail in the Court's opinion and order denying Singh's petition for writ of error *coram nobis*. *United States v. Singh*, No. 13-20551, 2022 WL 2209369, at *1-3 (E.D. Mich. June 19, 2022). Singh, a native of India, is a naturalized citizen. He pleaded guilty to passport fraud before the Honorable Avern Cohn in January 2014 under the belief, he says, that his conviction would not cause him to be subject to immigration consequences. As outlined in the previous opinion, however, Singh

was warned on the record by the Court and the government that a challenge to his citizenship remained a possibility. For instance, the plea agreement includes the following language:

> Defendant's plea to this offense will not necessarily result in immigration consequences, but, in conjunction with possible future criminal charges, his guilty plea in this case may affect or even foreclose his eligibility to remain in this country. Defendant has discussed these matters with his attorney in this case, but he expressly agrees that his decision to plead guilty is in no way conditioned upon or affected by the advice he has been given regarding any potential immigration consequences of his conviction(s).

Plea Agreement, ECF No. 16, PageID.43-44. The plea agreement also states that, "[u]nless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan." *Id.* at PageID.45.

At the plea hearing, Judge Cohn again warned Singh of the immigration consequences of his plea:

> The Court: And you know that this guilty plea has — well, it does have an effect, I guess — can be used if the immigration services brings a petition to cancel your citizenship?
>
> Singh: Yes, Your Honor.
>
> The Court: You know that?

Singh: Yes, Your Honor.

Plea Transcript, ECF No. 22, PageID.127.

Singh also avers that, before the hearing, the assistant United States attorney informed him that the government did not intend to revoke his citizenship unless he committed another crime. Nonetheless, on May 18, 2018, the government filed an action against Singh in the Eastern District of Kentucky, where he now resides. It seeks to revoke Singh's citizenship based, in part, on the same facts that Singh admitted when he pleaded guilty in 2014 — that is, that Singh filed for asylum a second time, after first being ordered deported, and failed to disclose his previous immigration history under another identity. It mentions the guilty plea proceeding in which Singh admitted those facts and pleaded guilty to knowingly using a fraudulently-obtained passport. However, the complaint does not cite Singh's passport fraud conviction as grounds for revoking citizenship. Instead, it pleads five causes of action for removal under 8 U.S.C. § 1451(a), all based on Singh procuring naturalization by concealing a material fact or making a willful misrepresentation. Four causes of action remain: (1) illegal procurement of naturalization by a person who was not lawfully admitted for permanent residence; (2) illegal procurement of naturalization by a person who committed unlawful acts in the five years before applying for naturalization; (3) illegal procurement of naturalization by a person who made false statements of the purpose of obtaining an immigration benefit; and (4) procurement of citizenship by concealment of a material fact or willful

misrepresentation. Denaturalization Compl., ECF No. 25-1, PageID.157-83.

Because of the factual admissions Singh made in his 2014 plea agreement, as it now stands, the government likely will be able to rest largely on those statements to meet its burden of revoking Singh's citizenship. To avoid that result, Singh petitioned this Court to vacate his conviction.

On June 19, 2022, the Court issued an opinion and order denying Singh's petition for a writ of error *coram nobis*. It reasoned that the government decided to attack Singh's citizenship based on the facts underlying his fraudulent citizenship application, not on Singh's conviction for passport fraud, and that Singh likely would have been convicted of that crime even if he had taken his chances with the jury.

Singh timely filed the instant motion for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure. The government has filed a response in opposition.

II.

Singh's motion to amend or alter the Court's order is governed by Federal Rule of Civil Procedure 59(e). *See Smith v. Hudson*, 600 F.2d 60, 62 (6th Cir. 1979) (holding that "a motion which asks a court to vacate and reconsider, or even to revise its prior holding, may properly be treated under Rule 59(e) as a motion to alter or amend a judgment."). Under that rule, the Court may grant a motion to amend or alter a judgment if there is "(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in

controlling law; or (4) a need to prevent manifest injustice." *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005) (citing *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)). A Rule 59(e) motion is not properly used, however, "to raise new legal arguments that could have been raised before a judgment was issued," or to re-hash old arguments. *Roger Miller Music, Inc. v. Sony/ATV Publishing, LLC*, 477 F.3d 383, 395 (6th Cir. 2007) (citing *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) (stating that "[a] motion under Rule 59(e) is not an opportunity to re-argue a case")); *FDIC v. World Univ., Inc.*, 978 F.2d 10, 16 (1st Cir. 1992) (explaining that a Rule 59(e) motion "may not be used to argue a new legal theory").

Singh primarily argues that relief under Rule 59(e) is necessary to prevent a manifest injustice, which would result, he says, if he is subjected to denaturalization proceedings without being allowed to present a defense. He argues that his plea agreement in fact is categorically at odds with denaturalization and the plea colloquy failed to provide him with clear warning about the possible immigration consequences of his conviction. Singh also asks the Court to reconsider its finding that he received ineffective assistance of counsel. He says that it is manifestly unjust to permit the government to rely on his plea agreement to meet its exceptionally high burden of justifying revocation of his citizenship. Without the benefit of the agreement, Singh argues, the government cannot prove that he willfully mispresented any facts during his naturalization proceedings. He says that any mistakes he did make were due to confusion or

scrivener's errors and were irrelevant to his eligibility for asylum, and that it is not a foregone conclusion that the government would prevail if he were able to mount a defense at his denaturalization hearing. And he contends that he in fact was prejudiced by the deficient performance of his counsel because he was advised to enter into a plea agreement that categorically deprives him of the opportunity to present evidence in his ongoing denaturalization case.

As contemplated by Rule 59(e), manifest injustice "is an amorphous concept with no hard line definition." *In re Cusano*, 431 B.R. 726, 734-35 (B.A.P. 6th Cir. 2010) (quoting *In re Henning*, 420 B.R. 773, 785 (Bankr. W.D. Tenn. 2009)). Nevertheless, "the plain meaning of those words is instructive." *Bradley J. Delp Revocable Tr. v. MSJMR 2008 Irrevocable Tr.*, 665 F. App'x 514, 530 (6th Cir. 2016) (quoting *Volunteer Energy Servs., Inc. v. Option Energy, LLC*, 579 F. App'x 319, 330-31 (6th Cir. 2014)). Black's Law Dictionary defines "manifest injustice" as "[a] direct, obvious, and observerable error in a trial court, such as a defendant's guilty plea that is involuntary or is based on a plea agreement that the prosecution has rescinded." Black's Law Dictionary (11th ed. 2019).

"'[M]anifest injustice' does not occur when a losing party attempts to 'correct what has — in hindsight — turned out to be a poor strategic decision.'" *Michigan Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 432 (6th Cir. 2017) (quoting *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)). Nor does manifest injustice "result merely because a harm may go unremedied." *Slate v. Am. Broad. Companies,*

Inc., 12 F. Supp. 3d 30, 35-36 (D.D.C. 2013) (quoting *Accord Associated Gen. Contractors of Cal., Inc. v. Cal. State. Council of Carpenters*, 459 U.S. 519, 536 (1983) ("[T]he judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing.")). Instead, "a showing of manifest injustice requires that there exist a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy." *In re Bunting Bearings Corp.*, 321 B.R. 420, 423 (Bankr. N.D. Ohio 2004); *see also In re Henning*, 420 B.R. at 785 (same). The movant must also "be able to show that altering or amending the underlying judgment will result in a change in the outcome in their favor." *In re Cusano*, 431 B.R. at 734 (quoting *In re Henning*, 420 B.R. at 785).

In this case, there is no question that the estoppel effect of the 2014 plea agreement imposes a hardship on Singh. The parties agree that, by virtue of the plea agreement he entered in this case, Singh likely will be precluded from arguing during his denaturalization proceedings that he acted out of mere confusion when he concealed the fact of his first asylum application and deportation order in applying for permanent residence status. The plea agreement therefore may deprive Singh of his best defense and make the government's denaturalization case easier to prove.

However, the existence of this hardship "neither constitutes a fundamental flaw in this Court's reasoning, nor is it contrary with applicable policy." *See In re Bunting*, 321 B.R. at 423. "It is well established that a prior criminal conviction may work an estoppel

in favor of the government in a subsequent civil proceeding." *United States v. Beaty*, 245 F.3d 617, 624 (6th Cir. 2001) (quoting *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558, 568 (1951)). "[W]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Dowling v. United States*, 493 U.S. 342, 347 (1990) (quoting *Ashe v. Swenson*, 397 U.S. 436, 443 (1970)). Thus, in the immigration context, a naturalized citizen may be collaterally estopped from challenging the factual basis of a prior conviction in a subsequent denaturalization proceeding. *See, e.g.*, *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005); *United States v. Teng Jiao Zhou*, 815 F.3d 639, 644 (9th Cir. 2016); *United States v. Hamed*, 976 F.3d 825, 830 (8th Cir. 2020). Far from being contrary to public policy, however, that outcome plainly is envisioned by federal law. "[R]es judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *see also Hammer v. I.N.S.*, 195 F.3d 836, 840 (6th Cir. 1999) ("The doctrine [of collateral estoppel] reflects the longstanding policy that one full opportunity to litigate an issue is sufficient." (citing *Hickman v. Commissioner*, 183 F.3d 535, 537 (6th Cir. 1999)). In leaving open the door to the government asserting collateral estoppel at Singh's denaturalization hearing, no manifest injustice or error has been created.

Singh also contends that the Court reached the wrong decisions on the merits of his petition. However, although he asks the Court to reverse its determination that his 2014 plea was knowing and voluntary, he does not offer any legal basis for doing so; he cites no relevant caselaw and offers no new arguments. Instead, Singh merely reiterates that he believed that the plea agreement immunized him from the immigration consequences of his criminal conviction. But that understanding was not reasonable, for the reasons the Court explained in its prior order. Nothing in the plea agreement is misleading, and both the district court and the plea agreement gave Singh clear warning about the possible immigration consequences of his conviction, which Singh acknowledged. *See, e.g.*, *Baker v. United States*, 781 F.2d 85, 90 (6th Cir. 1986) (holding that, where a district court has scrupulously followed required procedure for taking guilty plea, a defendant is bound by his statements in response to the court's inquiry and by the terms of his plea agreement as revealed in open court).

As for his claim that he received ineffective assistance of counsel, Singh contends that the Court was mistaken when it concluded that he did not establish the prejudice element. As evidence, he points again to the potentially preclusive effect of his plea agreement in his denaturalization proceeding. Whether his plea potentially limits his defenses in a subsequent civil proceeding, however, is irrelevant to determining whether Singh received ineffective assistance of counsel *during* the plea process itself. The prejudice inquiry focuses on whether Singh rationally would have proceeded to trial in 2014 but for his counsel's

errors. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Lee v. United States*, 582 U.S. 357, 364-65 (2017). To establish that he was prejudiced by his counsel's deficiencies, Singh must present evidence contemporaneous to his guilty plea to substantiate that he would have preferred then to proceed to trial. *Lee*, 582 U.S. 367-68. The government's legal strategy in its denaturalization case today could not have impacted Singh's decision to forgo a jury trial in this criminal case almost nine years ago.

Singh has not offered any other valid grounds for reconsideration. Although he suggests that the Court confused essential facts, he provides no evidence. He says that the Court stated he was ordered removed by an immigration judge in September 1993, even though the Court correctly noted that he was ordered deported on January 25, 1995. *See Singh*, 2022 WL 2209369, at *2. He also argues that his petition was too complicated for the Court to decide it without first holding an evidentiary hearing. Nothing about the "byzantine" nature of immigration law, however, actually precludes the Court from properly considering the merits of his petition for writ of *coram nobis* without taking evidence. And Singh ultimately acknowledges in his reply brief that his motion does not focus on any clear error of fact or law in any case.

III.

Singh has not established that the Court's order denying his petition for writ of error *coram nobis* was predicated upon any manifest errors of law or fact, or that correcting the order would prevent any manifest injustice. There are no grounds under Federal Rule of

Civil Procedure 59(e) for amending or altering the Court's order.

Accordingly, it is **ORDERED** that the defendant's motion to alter or amend the order and judgment denying petition for writ of *coram nobis* (ECF No. 36) is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: April 28, 2023

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case Number 13-20551
Honorable David M. Lawson

[Filed June 19, 2022]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
KARNAIL SINGH, Defendant.	)

OPINION AND ORDER DENYING PETITION FOR WRIT OF CORAM NOBIS

Defendant Karnail Singh, a naturalized citizen, pleaded guilty to passport fraud in 2014 and was sentenced to probation for a year. As part of a plea agreement, the government assured him that the conviction resulting from this guilty plea would not result in "immigration consequences" unless there were "possible future criminal charges" brought against him. However, in 2018, the government filed an action against Singh in another district to revoke his citizenship. Singh now has filed a petition for a writ of

error *coram nobis* to challenge his passport fraud conviction, contending that he was misled by the government and his own attorney about the immigration consequences of his guilty plea.

It is true that the government's decision to attack Singh's citizenship appears to be at odds with the representations in the plea agreement. However, the government does not base its citizenship challenge on Singh's conviction; rather, it premises its case on the facts underlying the fraudulent application for citizenship. And although some of those facts were admitted by Singh at the guilty plea colloquy, and the plea itself is referenced in the government's complaint filed in the other district, it is not the conviction that forms the basis of the challenge. Moreover, despite Singh's assertion that he would not have pleaded guilty had he known what was coming as to his citizenship, the likelihood of conviction was high, even if Singh would have taken his chances with a jury. Because the outcome of the criminal case probably would have been no different, any error that was made cannot support the issuance of a writ of error *coram nobis*. The motion, therefore, will be denied.

I.

Singh, a native of India, came to the United States in 1991 seeking asylum. He filed two applications three years apart, which contained inconsistent representations. He was approved for permanent residency in 2002 once his status was adjusted on the basis of his marriage to a United States citizen in 1996. He became a United States citizen himself in 2008 and was issued a passport in 2009. The criminal charges in

this case arose from misrepresentations that the government believed he made along his path toward citizenship.

A. First Asylum Application and Deportation Order

On December 20, 1991, after arriving to the United States, Singh submitted a Form I-589 asylum application to the Immigration and Naturalization Service (INS). He listed his name as "Karnail Singh Dhillon" and stated that he was born in India in January 1963. As part of the application process, Singh was fingerprinted and then signed the application, certifying that the application and accompanying documents were true and correct. With his first asylum application, Singh submitted biographical information on a Form G-325 dated November 20, 1991. In the form, Singh represented that (i) his name was Karnail Singh Dhillon; (ii) he was born in January 1963 in India; (iii) he had used no other names; and (iv) Gurmail Singh and Jeet Kaur are his parents. Singh reaffirmed the truth of these representations during an interview with the INS Asylum Office on January 5, 1993.

On September 29, 1993, the INS denied Singh's first asylum application and initiated deportation proceedings against him. He ultimately was ordered deported on January 25, 1995 for failing to appear in immigration court. There is no record that Singh actually departed the United States as required.

Singh states in his petition that he arrived in the United States without a birth certificate or passport and relied on his mentor at the Sikh Temple where he

had received shelter to help him purchase a birth certificate and fill out his asylum application. Because he was not able to read or write English at the time, Singh explains that he did not inspect the birth certificate or application and did not discover that they included the wrong name and birth date until he received his work card several months later. Singh says that in order to correct the error, he consulted an attorney, who told him to file a second application, and that it would merge into his first one. Singh says that he discovered later that the attorney had lied to him.

B. Second Asylum Application and Naturalization

On July 12, 1994, Singh submitted a second application for asylum on a Form I-589. This time, he filed under the name "Karnail Singh" and listed a birth date of December 1968. Again, Singh was fingerprinted, and he signed his second application, certifying that the application and all accompanying documents were true and correct. With his second asylum application, Singh submitted biographical information on a Form G-325, dated July 11, 1994, in which he represented that (i) his name was Karnail Singh (ii) he was born in December 1968, in India; and (iii) Tarsem Singh and Tara Kaur are his parents. He left blank the question requesting that he provide "All Other Names Used."

While his second application was pending, Singh married a United States citizen. On May 5, 1996, Singh filed an adjustment to his second application indicating the marriage had taken place and asking for permanent residence status. On the adjustment, Singh

did not disclose that he had applied previously for and been denied immigration benefits in the United States.

On May 9, 2002, Singh was granted lawful permanent residence status under the biographical information that he used in his second application and adjustment. He then filed an application for naturalization when he became eligible on June 30, 2008. Singh became a naturalized United States citizen a few months later. In 2009, he was issued a United States passport with the biographic information from his second application and adjustment.

C. Federal Criminal Charges and Guilty Plea

On June 16, 2013, during a routine stop at the United States and Canada border, Singh, a truck driver, was asked to show his passport. He presented his passport card to United States Customs and Border Protection officers in order to enter the United States. The name on the passport card was Karnail Singh and his date of birth was listed as December 1968. In speaking with the Border Protection officers, Singh stated that he had never used any other names or spelling variations of his name; nor had he ever used any other dates of birth. The customs officer questioned him. Although the record does not specify what sparked suspicion, something about this interaction led the INS to uncover the two applications Singh had filed using different names, and that he had not properly disclosed the first application in the second. Based on these events, Singh was charged in a two-count indictment with (1) knowingly using a passport unlawfully obtained or otherwise procured by fraud or means of a false claim or statement, in violation of 18 U.S.C.

§ 1546(a); and (2) knowingly and willfully making false, fictitious, and fraudulent material statements in a matter within the jurisdiction of the executive branch of the United States, in violation of 18 U.S.C. § 1001(a)(2).

On January 23, 2014, Singh entered into a plea agreement with the government. According to the agreement, the government agreed to dismiss Count Two (making a false material statement), and Singh agreed to plead guilty to Count One (use of a fraudulently obtained passport). The plea agreement includes the following language:

> Defendant's plea to this offense will not necessarily result in immigration consequences, but, in conjunction with possible future criminal charges, his guilty plea in this case may affect or even foreclose his eligibility to remain in this country. Defendant has discussed these matters with his attorney in this case, but he expressly agrees that his decision to plead guilty is in no way conditioned upon or affected by the advice he has been given regarding any potential immigration consequences of his conviction(s).

Plea Agreement, ECF No. 16, PageID.43-44. The plea agreement also states that, "[u]nless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan." *Id.* at PageID.45.

At the plea hearing, Judge Cohn again warned Singh of the immigration consequences of his plea:

> The Court: And you know that this guilty plea has — well, it does have an effect, I guess — can be used if the immigration services brings a petition to cancel your citizenship?
>
> Singh: Yes, Your Honor.
>
> The Court: You know that?
>
> Singh: Yes, Your Honor.

Plea Transcript, ECF No. 22, PageID.127. Singh avers that, before the hearing, the assistant United States attorney also informed him that the government did not intend to revoke his citizenship unless he committed another crime. Judge Cohn took the plea and the plea agreement under advisement pending his review of the presentence report. He later accepted both and sentenced Singh to 12 months of probation. Singh completed his probation without incident.

D. Citizenship Revocation Action

Four years later, on May 18, 2018, the government filed an action against Singh in the Eastern District of Kentucky, where he now resides. It seeks to revoke Singh's citizenship based, in part, on the same facts that Singh admitted when he pleaded guilty in 2014. The complaint does not cite Singh's passport fraud conviction as grounds for revoking citizenship. Instead, it rests its complaint on the same fraudulent conduct that formed the basis of the criminal charge. And the complaint mentions the guilty plea proceeding in which Singh admitted those facts.

Because of those admissions, as it now stands, the government will be able to rest largely on the plea Singh entered in 2014 to meet its burden in revoking Singh's citizenship. To avoid that result, Singh petitions this Court to vacate his conviction.

II.

Singh cannot move to vacate his sentence under 28 U.S.C. § 2255 because he is not "in custody" and he has completed his sentence. 28 U.S.C. § 2255(a) (limiting the remedy under that statute to "[a] prisoner *in custody* under sentence of a court established by Act of Congress") (emphasis added). However, under the All Writs Act, 28 U.S.C. § 1651, a district court may issue a writ of error *coram nobis*, which "is used to vacate a federal sentence or conviction when a § 2255 motion is unavailable — generally, when the petitioner has served his sentence completely." *Blanton v. United States*, 94 F.3d 227, 231 (6th Cir. 1996) (citing *United States v. Morgan*, 346 U.S. 502, 510-11 (1954)). But the writ is only available where a petitioner demonstrates a factual error that was "unknown at the time of trial" and that is "of a fundamentally unjust character which probably would have altered the outcome of the challenged proceeding if it had been known." *Pilla v. United States*, 668 F.3d 368, 372 (6th Cir. 2012) (quotations and citations omitted). "*Coram nobis* is an extraordinary writ, used only to review errors of the most fundamental character — e.g., errors rendering the proceedings themselves invalid." *United States v. Johnson*, 237 F.3d 751, 755 (6th Cir. 1996).

Singh contends that he meets these criteria because both the government and his own lawyer told him that

his guilty plea would not result in any immigration consequences unless other criminal charges were brought against him. He says that the government did not live up to its end of the plea agreement and is barred by its terms from bringing the action to revoke his citizenship. He also contends that his lawyer did not deliver effective assistance of counsel. Singh maintains that if he had known immigration consequences might result, he would have taken his chances with a jury and would not have entered into the plea agreement. In addition, Singh says the Court did not fully understand the nature of charges against Singh, so it could not have properly admonished him in the plea hearing, and therefore his plea was not knowing and voluntary.

The government disputes these arguments and contends that Singh waived his right to bring them because he never challenged his guilty plea on direct appeal. The waiver argument is specious. Until the government sued him in the Eastern District of Kentucky, Singh had no reason to believe that he had not accepted the terms of the agreement as he understood them. *Coram nobis* relief is not barred because "valid reasons" exist for why the petitioner did not attack the conviction earlier. *United States v. Akinsade*, 686 F.3d 248, 252 (4th Cir. 2012); *see also United States v. Abou-Khodr*, No. 99-81073, 2013 WL 4670856, at *4 (E.D. Mich. Aug. 30, 2013) (holding that where the petitioner filed his petition for a writ of error *coram nobis* shortly after the government's initiation of removal proceedings, despite challenging a plea made 10 years earlier, he was not barred from seeking a remedy under the writ). Here, Singh's understanding

of the terms of the plea agreement and his attorney's advice appeared correct to Singh until the government filed an action to revoke his citizenship.

A. Knowing and Voluntary Plea

Singh posits that there were fundamental defects in the guilty plea process that were "unknown at the time of trial," and therefore support this issuance of a *coram nobis* writ. For one, he argues that his guilty plea was not made knowingly and voluntarily because he was misled about the potential immigration consequences of his conviction. To be valid, a guilty plea must be "voluntary," "knowing," and intelligent — that is, voluntarily made while "the defendant possesses an understanding of the law in relation to the facts." *McCarthy v. United States*, 394 U.S. 459, 466 (1962) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). A guilty plea is voluntary if the accused understands the nature of the charges against him and the constitutional protections that he is waiving. *Henderson v. Morgan*, 426 U.S. 637, 645 n.13 (1976). A plea is knowing and intelligent if it is done "with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970).

Some courts distinguish between direct (e.g., a prison sentence) and collateral (e.g., certain civil disabilities that might flow from a conviction) consequences of a criminal conviction, suggesting that a guilty-pleading defendant must be told of the former but not the latter. *See El-Nobani v. United States*, 287 F.3d 417, 420-21 (6th Cir. 2002). The Supreme Court, however, has acknowledged that the immigration

consequences of a criminal conviction are "intimately related to the criminal process" and that "it [is] 'most difficult' to divorce the penalty from the conviction in the deportation context." *Padilla v. Kentucky*, 559 U.S. 356, 365-66 (2010). Federal courts, therefore, must advise guilty-pleading defendants that deportation and denial of citizenship could result from the conviction, Fed. R. Crim. P. 11(b)(1)(O), and defense counsel must include that advice in pre-plea discussions as a feature of constitutionally proper performance, *Padilla*, 559 U.S. at 374.

Singh contends that the Court did not satisfy its obligation under Rule 11(b)(1)(O), and therefore his guilty plea was not knowing and voluntary. However, at Singh's plea hearing, Judge Cohn told Singh that his guilty plea could have immigration consequences if immigration services brought a petition to revoke Singh's citizenship, and Singh stated he was aware of that fact. Hr'g Tr., ECF No. 22, PageID.127. The plea colloquy transcript makes it clear that the court satisfied the requirements of Rule 11(b)(1)(O).

Likewise, the terms of the plea agreement put Singh on notice of potential immigration consequences. The agreement explicitly states that Singh's plea "will *not necessarily* result in immigration consequences, but, in conjunction with possible future criminal charges . . . may affect or *even foreclose* his eligibility to remain in this country." Plea, ECF No. 16, PageID.43-44 (emphasis added). Certainly, that language reasonably could induce in Singh the expectation that the government would not take action against his citizenship except "in conjunction with

possible future criminal charges." But it is not reasonable to construe that statement as immunizing him from the consequences of his fraudulent conduct apart from the conviction itself. Nor does the government's later-filed lawsuit in Kentucky affect the knowing and voluntary aspects of the guilty plea. After all, the plea agreement itself states that Singh "expressly agrees that his decision to plead guilty is in no way conditioned upon or affected by the advice he has been given regarding any potential immigration consequences of his conviction(s)." *Ibid.*

Singh resists the conclusion that his plea was knowing and voluntary by asserting that the Court was "struggling to understand the basis of the plea," evidenced by a back-and-forth between Judge Cohn and the attorneys surrounding the facts behind the indictment. Mot., ECF No. 25, PageID.149. That argument fails. A plea is rendered involuntary only if the plea colloquy is so misleading as to impair the defendant's substantial rights, i.e., that the defendant would not have made the plea at all if the colloquy would have been different. *See United States v. Patrick*, 524 F. App'x 222, 225 (6th Cir. 2013). There is nothing in this record to suggest that. Instead, the record shows that Judge Cohn correctly specified Singh's charges at the end of the plea hearing, albeit with some assistance from Singh's attorney in straightening out the facts. Hr'g Tr., ECF No. 22, PageID.129. Moreover, the Court took the plea under advisement to ensure its own understanding before accepting the plea. *Id.* at PageID.130.

Singh relies on *United States v. Ataya*, 884 F.3d 318, 324 (6th Cir. 2018), for the general proposition that defects in the plea colloquy's discussion about the immigration consequences of a conviction can undermine the validity of a guilty plea. In *Ataya*, the Sixth Circuit vacated the defendant's guilty plea upon finding that the district court did not warn the defendant about the immigration consequences of his plea as required by Rule 11(b)(1)(O). But in that case, the district court did not even mention immigration consequences, and the government confessed error on that point. *Id.* at 321 (observing that "neither the plea agreement nor the district court seem[ed] to have mentioned that Ataya, who became a naturalized citizen after the alleged frauds, might face denaturalization as a result of his conviction"). The plea colloquy here is remarkably different: both the district court and the plea agreement gave Singh clear warning about possible immigration consequences of his conviction. *Ataya* does not help Singh.

The record does not support Singh's argument that his guilty plea was not voluntary or knowingly made.

B. Ineffective Assistance of Counsel

Singh also alleges that he received ineffective assistance of counsel at the time he entered his guilty plea, and that this constitutional violation was "unknown at the time of trial." "A petition for a writ of error *coram nobis* is an appropriate vehicle for a claim based on ineffective assistance of counsel." *United States v. Abou-Khodr*, No. 99-81073, 2013 WL 4670856, at *5 (E.D. Mich. Aug. 30, 2013) (citing *Chaidez v. United States*, 568 U.S. 342 (2013)).

To obtain relief on this claim, Singh must show that his attorney's performance was deficient, and that deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009). An attorney's performance meets the first element when "counsel's representation [falls] below an objective standard of reasonableness." *Id.* at 688. The petitioner must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. "Judicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689. The Supreme Court has "declined to articulate specific guidelines for appropriate attorney conduct and instead [has] emphasized that the proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 688) (quotation marks omitted).

Singh insists that his attorney's performance was deficient because he gave him wrong advice about the possible immigration consequences of his conviction, as demonstrated by the government's four-year-post-conviction lawsuit to revoke his citizenship. Singh believed — reasonably — that his citizenship would not be challenged unless he committee another crime. He says that he asked his attorney to confirm that understanding with the AUSA on the case. The AUSA allegedly told Singh the United States did not intend to revoke his citizenship unless he committed another crime.

That representation is close to, but not identical with, the terms of the written plea agreement. The agreement reads: "Defendant's plea to this offense will not *necessarily* result in immigration consequences, but, in conjunction *with possible future criminal charges*, his guilty plea in this case may affect or even foreclose his eligibility to remain in this country." Plea, ECF No. 16, PageID.43-44 (emphasis added). The language does not amount to a guarantee that "immigration consequences" will not ensue. Rather, the equivocal language can be read to foreclose automatic deportation or revocation of citizenship, as might otherwise result from a conviction of other crimes. *See* 8 U.S.C. § 1227(a); *see also* 8 U.S.C. § 1451(e) (making denaturalization automatic for a conviction under 18 U.S.C. § 1425). But it leaves open the possibility of future action, including a denaturalization proceeding.

Singh responds that the warning about immigration consequences was contingent on the government bringing "possible future criminal charges." That understanding is reasonable. That is what the written plea agreement implies. Should his attorney have warned him that denaturalization proceedings could result even without other criminal charges being brought? Probably, since that legal possibility remained. However, the guilty-plea-based conviction was not necessarily the trigger for the denaturalization lawsuit, which could have been brought even if Singh were never charged in this case to begin with. Nonetheless, Singh's admissions at the plea hearing certainly make the government's denaturalization case easier for it, and "prevailing professional norms" after

Padilla was decided suggest that counsel should have imparted that advice.

But even if counsel performed deficiently, Singh must show prejudice. The prejudice component of the *Strickland* test is modified somewhat in the guilty plea context. Satisfying that requirement requires Singh to show that "but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985). Singh says that he satisfies this requirement "because his guilty plea caused the Government to file a Complaint to Revoke Naturalization, and now subjects him to removal from the United States . . . . There is therefore a reasonable probability that, but for counsel's ineffective advice, Mr. Singh would have rejected the plea agreement and insisted on going to trial." Mot., ECF No. 25, PageID.152.

But Singh's insistence on this outcome is not enough by itself to establish prejudice. Rather, the test is an objective one and Singh must show that "a decision to reject the plea bargain would have been rational under the circumstances." *Padilla*, 559 U.S. at 372. That is "never an easy task," *id.* at 371, mainly because the criminal justice system's interest in finality has "special force with respect to convictions based on guilty pleas," *United States v. Timmreck*, 441 U.S. 780, 784 (1979). The Supreme Court has warned that a guilty plea should not be "upset . . . solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee v. United States*, --- U.S. ---, 137 S. Ct. 1958, 1967 (2017). Instead, courts must "look to

contemporaneous evidence to substantiate a defendant's expressed preferences." *Ibid.*

The evidence against Singh, including any defenses he may have mounted at trial, shows that the government's case against him was strong. It is fair to say that it is unlikely Singh would have prevailed at trial. In Count One, to which Singh pleaded guilty, Singh was charged with using a passport that he had "knowingly procured by means of any false claim or statement, or otherwise procured by fraud or unlawfully obtained" under 18 U.S.C. § 1546(a). The documentary evidence against Singh included two G-325 forms Singh submitted in connection with his first and second applications, respectively, which show conflicting information. In addition to using two different names and dates of birth, Singh lists different names for his parents (compare Gurmail Singh and Jeet Kaur with Tarsem Singh and Tara Kaur), different birth cities (compare Maloya with Beas Pind — two locations which are, notably, a three-hour drive from one another according to Google Maps), and different previously-inhabited cities (compare Fremont, California to San Carlos, California). Further, he failed to note in his second application that he previously had applied for and been denied immigration benefits. It was the second application and adjustment that ultimately led to Singh's citizenship and United States passport.

Singh attempts to provide an explanation for these fatal inconsistencies, but it is unpersuasive. Singh says he realized the first application contained incorrect biographical information a few months after he

submitted it in 1991. He says that upon realizing the mistakes, he hired an attorney who told him he could simply submit a new, second application to correct the errors. Singh's attorney allegedly informed him that his second application was not a wholly separate application, but rather it was merely a correction to the first application. Singh insists that he submitted his second application, with different biographical information, only out of a "sincere desire" to correct the record after realizing his name and birth date on the first application were incorrect.

The timeline, however, does not substantiate Singh's contention. Singh submitted his second application in 1994, nearly *three years* after he says he realized the errors. More importantly, his application had already been denied, and INS had instituted deportation proceedings against him. Singh would have had no reason to correct an application that had been denied one year earlier. The argument challenges logic, and it would not have helped Singh's credibility at a trial.

Next, Singh uses a similar justification for failing to report that he previously had applied for and been denied immigration benefits. He argues that because his attorney advised him that the second application was a correction of the first, he believed the two applications had "merged." He did not believe he had to report the first application because they were one.

But that excuse fails for similar reasons. Singh filed his second application in July 1994 — almost one year after his first application was denied in September 1993. There was nothing for the second application to

"merge" into. The first application had been rejected and deportation had been ordered. Moreover, Singh reaffirmed the truth of the information on his first asylum application during an interview with INS.

Even if the Court were to accept Singh's logic, it would not yield him a favorable conclusion. If Singh believed the first and second application had somehow merged and became one application, he likely would have believed that the 1995 order deporting him applied to both the first and second application. In other words, the single application unquestionably would have terminated with the deportation order. Instead of heeding the deportation order, however, Singh married a United States citizen and filed an application in 1996 to adjust his status to permanent resident. Even if Singh's proffered defense is believable, it does not absolve him of wrongdoing. Singh's justifications for the discrepancies are not persuasive. There is no indication of a "likelihood of a favorable outcome at trial." *Dando v. Yukins*, 461 F.3d 791, 802 (6th Cir. 2006) (holding that when deciding whether a petitioner would have insisted on going to trial, the court must consider a "prediction of the likely outcome at trial").

But even when there is no likelihood of success at trial, the Court must weigh other considerations when immigration consequences possibly are in play when deciding if prejudice has been shown in the guilty-plea context. The Supreme Court explained:

> [C]ommon sense (not to mention our precedent) recognizes that there is more to consider than simply the likelihood of success at trial. The

> decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. When those consequences are, from the defendant's perspective, similarly dire, even the smallest chance of success at trial may look attractive. For example, a defendant with no realistic defense to a charge carrying a 20-year sentence may nevertheless choose trial, if the prosecution's plea offer is 18 years. Here Lee alleges that avoiding deportation was *the* determinative factor for him; deportation after some time in prison was not meaningfully different from deportation after somewhat less time. He says he accordingly would have rejected any plea leading to deportation — even if it shaved off prison time — in favor of throwing a "Hail Mary" at trial.

Lee, 137 S. Ct. at 1966-67 (citations omitted).

The calculus here, however, is not quite the same for Singh as it was for Lee. In this case, deportation was not the inevitable result of a conviction of the crimes with which Singh was charged, as discussed above. He says that his guilty plea triggered the denaturalization proceedings in the Kentucky federal court, but that is not necessarily true. The government's complaint in that case, although mentioning the guilty plea to passport fraud, does not style its case on the premise that of the conviction. Instead, it alleges the underlying conduct as the basis for its effort to revoke citizenship, which it could rely upon even if Singh's guilty-plea-based conviction were

set aside, and even if no criminal charges were brought in the first instance.

Looking back to the facts alleged by the government in the criminal case, as supported by the evidence, it is rather easy to conclude that there is *no* "likelihood of a favorable outcome at trial." *Dando*, 462 F.3d at 802. Singh, therefore, has not established the prejudice element of his ineffective-assistance-of-counsel claim.

C. The Action to Revoke Singh's Citizenship

Finally, Singh argues that his guilty plea should be set aside because the government has breached the plea agreement by instituting denaturalization proceedings against him in Kentucky. He argues that the plea agreement, by its terms, provides an assurance that the resolution of his 2014 case would not result in denaturalization. This issue has been reviewed and decided in a non-final order by the Eastern District of Kentucky after Singh filed a motion to dismiss in that case. *See United States v. Singh*, 2019 WL 1212880, at *1 (E.D. Ky. Mar. 14, 2019). The court rejected Singh's arguments.

As the district court in Kentucky found, the plea agreement does not "guarantee" that an adverse immigration proceeding will *never* be brought against Singh "absent new criminal charges," as he suggests. First, the phrase "absent new criminal charges" appears nowhere in the plea agreement. The plea only states that Singh's guilty plea as to the offense charged at the time "will *not necessarily* result in immigration consequences." (Emphasis added). And the 2014 plea did not result in "immigration consequences." It was

not until the government in the Eastern District of Kentucky instituted a separate, five-count action against Singh that immigration consequences might now result. That does not "necessarily" conflict with the language in the plea agreement ("in conjunction with possible future criminal charges, his guilty plea in this case may affect or even foreclose his eligibility to remain in this country."). The term "possible future criminal charges" does not equate to a requirement that Singh commit a "new crime" for immigration consequences to result.

Moreover, Singh's understanding of what the agreement meant does not control, because "the parties' actual understanding of the terms of the agreement" has no bearing on its interpretation, and "instead, an agreement must be construed *as a reasonable* person would interpret its words." *United States v. Moncivais*, 492 F.3d 652, 663 (6th Cir. 2007).

Finally, paragraph 8 of the plea agreement states that it "does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan." Plea, ECF No. 16, PageID.45. Therefore, nothing bars the U.S. Attorney's Office in the Eastern District of Kentucky from bringing the action.

III.

Singh has not shown that his guilty plea proceedings were infected with any factual error that was unknown at the time, which was of a fundamentally unjust character, or that any error in

the case probably would have altered the outcome of the challenged proceeding if it had been known.

Accordingly, it is **ORDERED** that the defendant's motion for a writ of error *coram nobis* (ECF No. 25) is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: June 19, 2022

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case Number 13-20551
Honorable David M. Lawson

[Filed June 19, 2022]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
KARNAIL SINGH, Defendant.	)

JUDGMENT

In accordance with the order entered on this date, it is **ORDERED AND ADJUDGED** that the petition for writ of error *coram nobis* is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: June 19, 2022