

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

" In Re Joan M Williams" _____ pro se PETITIONER

vs.

THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT...RESPONDENT (S)

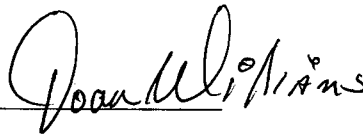
et al

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Joan M Williams

A handwritten signature in black ink, appearing to read "Joan Williams", written over a horizontal line.

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i.

QUESTION (S) PRESENTED

A writ of Coram Nobis is an extraordinary remedy for those seeking to vacate a conviction. There is no time limitations to petition a writ of Coram Nobis...

This case emphasizes vital reasons why this court should resolve the issues of Legal Permanent residents, who are now exiled and affected due to Ineffective Assistance of Counsel. The Supreme Court has acknowledged that “aliens as a class” are prime examples of a “discrete and insular minority for whom heightened judicial solicitude is appropriate”:

- (a) Whether past or present Legal residents of the United States covered by the Sixth Amendment Right, protection, is reduced and do they too have a right to file petition for Writ Coram Nobis having suffered Ineffective Assistance of Counsel, and meet Coram Nobis threshold?
- (b) Whether the 14th Amendment procedural due process based on Principle of fundamental fairness penalizes the assertion of a person’s right?

ii.

LIST OF PARTIES

{ } All parties appear in the caption of the case on cover page.

{X} All parties do not appear in the caption of the case on cover.
A list of all parties to the proceeding in the court whose
Judgment is the subject of this petition is as follows:

United States Fifth Circuit Court Of Appeals (Respondent)

Northern District Court Of Dallas, Texas (Respondent)

Joan M Williams (Petitioner)

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv, v
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED...	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	2
REASON FOR GRANTING THE WRIT.....	7
CONCLUSION.....	7 ⁹

iv.
TABLE OF AUTHORITIES

Page (s)

<i>United States v Jae Lee</i> 825 F, 3d311 (2017) 582-16	18
<i>Padilla v Kentucky</i> 559 US356 (2010).....	passim
<i>United States v Kayode</i> 773F, 3d 719 (5 th Cir. 2014).....	4,5
<i>Strickland v Washington</i> 466 US, 668 (1984).....	passim
<i>United States v Rodriquez-Vega</i> 7797 F, 3d 781 (9 th Cir, 2013).....	5
<i>United States v Kwan</i> 407 F, 3d 1005 (9 th Cir. 2005) 407 F 3d at 1011.....	3
<i>United States v. Ganz</i> 806 F, supp 1567 (S, D. FL. 1992).....	5
<i>United States v. Twigg</i> 588 F 3d 373 (3 rd Cir. 1998).....	6
<i>United States v. Akinsade</i> 668 F, 3d 248 (4 th Cir, 2012).....	7

V.

TABLE OF AUTHORITIES

continued	page (s)
<i>Gonzalez v. United States</i> 725 F, 2d, 116, 722-23 (3 rd Cir.2013)	4
<i>Mckinney v. United States</i> 71 F 3d 779-789 82 (9 th Cir. 1005).....	5
<i>Olmstead v United States</i> Quote 277 US 438,479,48 S. Ct. 504, m573, 721 ED 993 (1920).....	6
<i>United States v DeBartolo</i> 790 F, 3d 775 (7th Cir.2015).....	8

STATUES AND RULES

8 USC 1227 (A)(2)(iii).....	3
28 USC 1254 (1).....	1
18 USC 371.....	2

INDEX TO APPENDICES

- APPENDIX A Decision of United States Fifth Circuit court of Appeals
Circuit Judges REAVELEY, PRADO and GRAVES
USDC NO. 3:15_CV_2775...Decision October 25, 2017
- APPENDIX B Decision of Northern District Court of Dallas
Judge Sydney Fitzwater and Magistrate Renee Tolliver
USDC NO. 3:15 CV 2775D...Decision May 24, 2016
- APPENDIX C Sentencing level 23, Criminal history and
Government sentence departure court document
Petitioner was sentenced to a total of sixty months.
- APPENDIX D United States Department of States refusal worksheet
Consular Officer in Kingston, Jamaica, denied and
barred Petitioner visa application. The decision flowed
from ineffective assistance of Counsel: a waiver is not
available to a Petitioner. On this day October 3, 2014
Petitioner found out even after twenty years there is
no relief. All her family lives in the United States,
and she continues to suffer civil disabilities.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 25, 2017.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

1.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit. The Court determined that the opinion should not be published, and is not precedent except under the limited circumstances set forth in 5TH Cir. 47, 5, 4. The opinion of United States District Court of Dallas, Texas is unpublished.

JURISDICTION

The Judgment of the Court of Appeal was entered on October 25, 2017. This petition for writ of Certiorari was filed on January 18, 2018. The Jurisdiction of this Court is pursuant to 28 USC 1254 (1).

1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment of The United States Constitution states the Constitution provide in relevant part:
In all criminal prosecution the accused shall enjoy the Right to have the assistance of Counsel for his defense.

Texas Constitution Article I Bill of Rights
Sec 3A... Added November 7, 1972,
equality under the law shall not be denied under the law,
shall not be abridged because of race, color, creed, or national origin.

Texas Constitution article I Bill of Rights:
All prisoners shall be bailable by sufficient sureties unless for Capital offences when the proof is evident, but this Provision shall not be so construed as to prevent bail after an indictment found upon examination of the evidence, in such manner as may be prescribe by law.

INTRODUCTION

Joan Williams moved to the United States from Jamaica in 1979. She subsequently became a Legal Permanent resident in 1985.

Williams eventually moved to Florida and then to Dallas TX. There the Petitioner became employed, in two weeks she was active in her son's school activities. Williams attended Richland College in Dallas, was involved in volunteering, and had strong community ties with family and friends. Although her relationship ended, she had found a home and contentment, she loved Dallas.

In January 1993, she was arrested in her North Dallas home for wiring under three thousand dollars (\$3000.00) for her then ex-boyfriend. Some time in 1989, she was charged under 18 USC 371 for money laundering and restructuring financial transaction.

STATEMENT OF THE CASE

In Joan Williams first meeting with her court appointed counsel, his advice was that she should cooperate and plea guilty since this would lessen her sentence under Federal Sentencing Guidelines. The Petitioner told her counsel she wanted to go to trial since she was not friends with her ex associates, (codefendants), or knew them. Williams was convinced if she went to trial she would be acquitted because she had never been in trouble with the law, would be able to explain her side of what occurred, and it was an unintended crime.

3.

Williams argued her preference for a jury trial to Counsel, but his next advise to her was that Texas juries will give a Black Jamaican the maximum sentence with certainty. Adding as an after thought “these jurors are usually pulled from East Texas”, showing Petitioner was invidiously discriminated against based on a justifiable standard such as Race or National Origin.

Petitioner felt coerced in pleading guilty along with inducements and fear of the system because of Counsel subtle discriminatory warning. *Quoting, Texas Const. Article I Bill of Right, Sec. 3A;* Equality under the law shall not be denied under the law, shall not be abridged because of sex, race, **color**, creed or **national origin**.

This appeal is not an Immigration Appeal, but for an appeal petitioning a Writ Of Coram Nobis Ineffective assistance of Counsel that led to Petitioner's dire circumstances.

Petitioner was never advised during any meetings with counsel, or the government of the immigration consequence if she plead guilty to a crime, although she was a Legal resident. Under 8 USC 1227 (A)(2)(iii) Permanent residents convicted of an Aggravated felony are subject to deportation.

Weeks after signing her plea deal, Williams was informed by an inmate of the immigration consequences that flows from a guilty plea, then the Petitioner contacted and met with Counsel who spoke to the Prosecutor. The Counsel advised her District Attorney Mark McBride had sent a letter to INS on her behalf asking that Petitioner not be deported..

In further questioning Counsel, a worried Williams asked was Counsel sure that this letter was sent, and requested a copy. Counsel went on to state that he thought only if a person received five years deportation is initiated. Counsel failed to conduct reasonable investigation or at least ask an immigration attorney in his firm. Given a copy of this letter and told by Counsel the situation was handled reassured Williams. Counsel at this critical time failed to renegotiate a better plea deal, while still ignoring Petitioner's requests for new bail hearing.

The Padilla rule do not apply retroactively, however in *Padilla v. Kentucky*. 559 US 359 (2010), the court considered the claim of the defendant whose guilty plea subjected him to deportation. The court concluded that .Id at 389. Mr. Padilla satisfied *Stricklands* Ineffective Assistance of Counsel prong.

See *Joan Marie Williams v INS* 114 F, 3d 82 (5th Cir. 1997) INS picked up Petitioner three days after supervised release and deported her.

On November 3, 1993 Petitioner plead guilty and was sentenced to sixty months, the maximum. Failing to understand the Judge's colloquy, she asked Counsel "what happened"?, Counsel responded "Joan seven months (we) only have seven months to be home". In September 1994, Petitioner was picked up by INS in Lexington, Kentucky, receiving an immigration bond a month later. Upon her release, the Petitioner contacted Counsel to ask how would the letter to INS be beneficial to her now having an Order to Show Cause for removal? Counsel advice was that he was no longer her Attorney, he is a criminal attorney and knew nothing about immigration laws, but she could call District Attorney Mark McBride. The District Attorney made an attempt to put in a good word on behalf of Petitioner, however she was denied a 212c waiver. On October 30th 1997 Joan Williams was deported to a Jamaica. A place that had changed and she was no longer familiar with.

The District Court Magistrate stated in her denial. *Padilla* was not retroactive and did not apply to the Petitioner, but she satisfies two elements for Coram Nobis. But must show Sound Reason, and Fundamental Error to justify correcting her conviction. The Supreme Court has held that such Fundamental Errors exist only in "Extraordinary" cases presenting circumstances compelling its use to achieve justice.

United States v. Kayode 777 F 3d 719 (5th Cir. 2014) Mr. Kayode was indicted on a forty four count indictment, in his plea deal he requested and agreed to downward departure for his acceptance of responsibility. Like Williams, he thought after signing the plea he had given up his rights, and only learned of the immigration consequence after the plea deal was signed. The Fifth Circuit concluded there was a question whether *Kayode's* Counsel assistance was deficient under *Padilla Id* at 723-724, but it held that *Kayode* could not establish *Strickland* prejudice because of overwhelming evidences against *Kayode Id*, at 725-726. The Fifth Circuit agreed he had substantial connections in the United States, which made it more reasonable for someone in *Kayode* circumstance to risk going to trial rather than face deportation *Id* at 727. Yet, almost with certainty he would have been convicted and deported.

5.

Judge Dennis dissented: "A mentally competent defendant, has the Constitutional right to insist on going to trial rather than pleading guilty even if the strength of the prosecution may make that insistence seem irrational" *Id.* at 737. (Dennis J dissenting) quoting, *Gonzalez v. United States*, 722 F 3d 118,722-23 (2nd Cir 2013) as a result, *Kayode* did not need to go so far as demonstrating he necessarily would have been acquitted based on his defense to the charges. The Fifth Circuit court granted *Kayode* relief.

The Ninth Circuit in *United States v. Kwan* 407 F 3d 1005 (9th Cir. 2005), holding that affirmatively misleading a client regarding the immigration consequences of a conviction could constitute the basis for Ineffective Assistance of Counsel, claimed *Kwan's* Counsel misrepresentation constitutes an error of the most fundamental character, *Kwan*, 407 F, 3d at 1011. (*Quoting estate of McKinney.ex rel. McKinney v. United States* 71 F,3d 779-789 82 (9th Cir. 1995) *Kwan's* petition for Writ of Coram Nobis was granted.

Williams would have not agreed to a plea deal when initially she was convinced being a productive member of society, having never been in trouble with the law and being a very low level defendant. Counsel's misleading advice to Williams resulted in her unknowingly and unintelligently signing the plea deal. Because Coram Nobis petition is a collateral attack on a criminal conviction, petitions are not subject to a specific statute of limitation.. While on supervised release, the Petitioner could nor was not aware that any relief could be petitioned. Upon her arrival in Jamaica, Williams attempted to seek help immediately in addressing her conviction. She first applied for a pardon and received a response stating the President could not pardon overseas applicants, but she could apply when she was back in the United States. The Petitioner contacted over fifteen Congress-Persons and Senators, advocates INS, District Attorney McBride (annually). Dallas Legal aid, Catholic Charities, BIA, USCIS, Boston Post conviction for deportees, AILA New York Legal Aid, ABA and some Attorneys all during the fifteen years the Petitioner and her family were instructed to wait to be repitioned, then she would be able to attack her conviction back in Texas. Petitioner has diligently pursued remedy for twenty-one years. In 2014, the visa was denied, a consequence from her guilty plea to {see at Appendix D} Williams only remaining remedy is the Writ of Coram Nobis.

In *Rodriquez-Vega* 797 F 3d 781 (9th Cir 2015) is another instance of counsel failing to adequately advise the defendant of deportation consequences a guilty plea.. The defendant, a Legal resident, was charged with attempted transportation of illegal aliens and was advised by her counsel that she could not be deported if the defendant plead guilty. *Rodriquez-Vega* filed a petition to vacate her sentence following a Notice to Appear, alleging that she was removable. The ninth circuit held that Ms Rodriquez-Vega satisfied *Strickland* performance prong under *Padilla*. The Ninth Circuit concluded *Rodriquez-Vega* could demonstrate prejudice for two reasons: negotiate a plea deal that would not result in her removal, (799 F 3d at 188-89), also it is often reasonable for a non-citizen facing nearly automatic removal to turn down a plea and go to trial risking a longer prison term than plea guilty to an offence rendering her removal virtually certain. Her sentence was vacated.

The Sixth Amendment guarantees a defendant the Effective Assistance of Counsel at critical stages of a criminal proceeding when he enters a guilty plea. (See *Lofler v. Cooper*, 566 US 156, 165 (2012))

Not only was Williams counsel performance deficient regarding immigration consequences, after signing the plea he failed in securing any of the deals that he made with the District Attorney neither did he question her first time offender Offence Level 23 he had advised her to plea guilty.

Several Court of Appeals have established that in some circumstances convictions are obtained by egregious misconduct in the creation and maintenance. (See *US v. Twigg* 588 F 2d 373 3rd Cir. 1978). The Fifth Circuit has acknowledge that a defence of government misconduct grounded on the concept of due process, and existing separately from traditional entrapment is available in some circumstances.

In *US v. Ganz* 806 F supp.1567 (SD. FL.1992), Mr. Ganz was indicted on numerous charges, his counsel was contacted by the United States District Attorney offering to negotiate a plea deal, and cooperation, after *Ganz* cooperation the District Attorney refused to file the defendant downward departure. Mr. Ganz eventually received his 5 K 1 downward departure from the Judge. Williams thought the downward departure was automatic, it was never indicated to her that the District Attorney had to file for the 5 K 1 although she had spoken to him on many occasions.

REASONS FOR GRANTING THE PETITION

Sometimes juries acquit criminal defendants with absence of violence, or a first time offender with a job. Williams strongly believes she can be acquitted. The District Court stated, "if Ineffective Assistance of Counsel is proven, it can be grounds for Coram Nobis relief.

Akinsade, a Nigerian native, worked in a bank as a teller.

He committed fraud by cashing checks for friends and depositing some funds to his own account. He was arrested and charged. *Akinsade* cooperated with the FBI. His counsel misadvised him that he could not be deported. He eventually received an Order to Show Cause, *Akinsade* then petitioned for Writ of Coram Nobis based on his counsel incorrect advise, and his sentence was vacated.

The Fifth Circuit affirmed the decision from the District Court, where they had agreed that (a) Williams is suffer/ing civil disabilities, (b) if Ineffective Assistance of Counsel is proven, and (c) Williams satisfies elements for Coram Nobis relief. Having met the the threshold of Coram Nobis relief, did the courts err in its decision not to vacate her sentence. The Ninth Circuit have held that sufficient civil disabilities causing present harm, also that reputational harm alone can suffice for Coram Nobis relief.

This court should grant the petition and reverse because Williams had no reasonable negotiations on her behalf by Counsel with the government that was held in good faith.

So far there are no judicial position known, (to the Petitioner). Where Foreign Nationals now residing outside the United States Constitutional right reduced in the Judicial system, so little thoughts are given to their petition to vacate a sentence and thus the petition is treated in a faint manner.

Williams with reasonable negotiations by her Counsel could have obtained a sentenced under a year, obtained time served, (ten months at sentencing) or have the case thrown out as other of her co-defendants paid counsel negotiated on their behalf. The Petitioner was one of maybe three of the defendants that resided in Dallas, but a hold was put on her bond and counsel made no attempt to to obtain a new bond hearing. The Petitioner had lived and worked in the United States continuously for nineteen years, without her ever committing a crime. Charged with 18 USC 371 and her accepting responsibility, ruined her entire life due to the Counsel's performance.

Outside the professional norms, as in *Jae Lee v. United States* 580 US-16, *Lee* like the Petitioner, was assured by counsel he would not be deported. And counsel failed to properly negotiate on his behalf. Mr. Lee's petition for a Writ of Certiorari was granted.

The questions presented is to resolve the the plights of of former Legal Permanent residents of the United States Constitutional Right in seeking post-conviction relief, and the threshold they must meet for relief.

To ignore, or delay resolving this conflict differing in circuits is harm to defendants, families, and the Justice system. The Petitioner have lost a home, and a family that includes her children, grandchildren and now great grandchildren, most importantly her Social Security earned during her working years. As an only child, alone in another country, Petitioner's relief would be justice overdue.

The Justice system is producing wildly divergent results for similarly situated defendants.

Williams going to trial would be rational. In the case of *DeBartolo*, a shorter sentence from a plea deal will quicker remove the defendant to deportation than being in prison in the same country with family members being able to visit which is important for prisoners. *Id at* 780. See. *United States v. DeBartolo*. 796 F, 3d 775 (7th Cir .2015)

When a guilty plea rest in any significant degree on a promise or agreement of a prosecutor so that it can be said to be part of inducement or consideration *1571 such promise must be fulfilled.

(Quoting, *Olmstead v United States*.277.US 438, 479 48, S. Ct. 564, 573, 721 ED 993 (1928),” The greatest dangers of liberty lurks in insidious encroachments by men clearly well meaning , but without understanding.

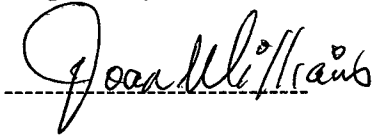
.....

Petitioner currently resides in Kingston, Jamaican, this petition was filed solely by Williams in the form of “another person” she has fought diligently to attack the conviction due to all the procedural irregularities during the handling of this case by her Attorney and the District Attorney, Having come to the realization than an individual by themselves will likely lose in the justice system, she continues to hope . Today Williams now visually impaired suffer civil disabilities due to her criminal conviction..

CONCLUSION

This petition for a Writ of Certiorari should be granted
in light of extraordinary circumstances.

Respectfully submitted,



Date January 18, 2018