No. 24-7114

ORIGINAL

In The

Supreme Court of the United States

DANIEL FLINT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the writ of error *coram nobis* is procedurally barred if a petitioner is "in custody," even though no other statutory remedy is available at that time.

2. Whether the writ of error *coram nobis* is procedurally barred if a petitioner could have–but did not–raise the same claim in a timely-filed 28 U.S.C. § 2255 motion.

PARTIES TO THE PROCEEDING

Petitioner Daniel Flint was the defendant-appellant below.

Respondent is the United States of America, plaintiff-appellee below.

LIST OF PROCEEDINGS

USA v. Flint, No. 17-cr-00697, U.S. District Court for the Central District of California. Judgment entered on Feb. 2, 2024.

USA v. Flint, No. 24-1807, U.S. Court of Appeals for the Ninth Circuit. Judgment entered on Jan. 28, 2025.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Daniel Flint respectfully requests a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's January 28, 2025, order below is unpublished but is reproduced at Appendix ("App.") A, 1a-2a.

The district court's February 16, 2024, order below and opinion is unpublished but is reproduced at App. B, 3a-16a.

The Ninth Circuit's May 20, 2021, memorandum and order below is unpublished but is reproduced at App. C, 17a-22a.

The district court's September 11, 2019, order below and opinion is unpublished but is reproduced at App. D, 23a-30a.

JURISDICTION

The Ninth Circuit entered judgment on January 28, 2025. No petition for a rehearing was filed, and this petition is timely under Supreme Court Rule 13.1. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Federal Rule of Criminal Procedure 33. New Trial

(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) *Newly Discovered Evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) *Other Grounds.* Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

Federal Rule of Criminal Procedure 29. Motion for a Judgment of Acquittal [...] (c) After Jury Verdict or Discharge. (1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later. [...]

Federal Rule of Criminal Procedure 34. Arresting Judgment [...] (b) Time to File. The defendant must move to arrest judgment within 14 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or nolo contendere.

The pertinent text of the following provisions, also involved in this case, is set out in the Appendix K, 54a:

- **28 U.S.C. § 2241**
- **28 U.S.C. § 2255**

INTRODUCTION

In *United States v. Morgan*, 346 U.S. 502, 512 (1954), this Court held that the writ of error *coram nobis* must issue to correct "errors of the most fundamental character" when "no other remedy [is] available" and the petitioner has "sound reasons" for not seeking earlier relief. The writ of error *coram nobis* serves as the ultimate safeguard against fundamental injustice in federal convictions when standard statutory remedies are unavailable. *Id.*

Yet, for petitioners like Daniel Flint ("Flint") in the Ninth Circuit, this essential writ has become an illusion, trapped within a procedural Catch-22 created by contradictory Ninth Circuit rules regarding the custody *and* the prior availability of § 2255 relief. In 2018, Flint was convicted of one count of willfully evading airport security protocols by presenting facially invalid diplomatic credentials. App. C, 18a. After the verdict, but before his sentencing, Flint uncovered compelling evidence of government misconduct – specifically, the manipulation of the key audio recording of his FBI interrogation. App. H; App. I; App. J, 50a.

As a result, Flint pursued *coram nobis* relief on two separate occasions, each at a time when no statutory remedy was available. His first petition – filed before sentencing – was dismissed as premature, the Ninth Circuit finding it procedurally barred under *Telink, Inc. v. United States*, 24 F.3d 42, 45 (9th Cir. 1994), which precludes *coram nobis* relief until the petitioner has "fully served a sentence" (i.e., custody has ended). App. D, 28a; App. C, 21a. As *Telink* explains, "the federal

habeas corpus statute" is the proper remedy for a "defendant in federal custody..." 24 F.3d at 45.

After serving his custodial sentence, Flint filed a renewed petition raising identical claims (with additional evidence). His second petition was again dismissed on procedural grounds, this time based on the determination that the Ninth Circuit's decision in *United States v. Riedl*, 496 F.3d 1003, 1006 (9th Cir. 2007), bars *coram nobis* relief if the petitioner could have–but did not–raise the issues in a timely motion under 28 U.S.C. § 2255. App. B, 11a. This presents the second question for review.

In coming to its conclusion, the Ninth Circuit relied exclusively on *Riedl*, which held that a petitioner necessarily lacks the requisite "sound reasons" for delaying a *coram nobis* claim if § 2255 relief was not pursued earlier – a failure *Riedl* held is "fatal" to the petition. App. A, 2a; *US v. Riedl*, 496 F.3d at 1006. This combination of the *Telink* custody bar and the *Riedl* "§ 2255-or-forfeit" rule nullifies *Morgan's* core promise that *coram nobis* remains available "when no other remedy [is] available." *Morgan*, 346 U.S. at 512. A pre-sentence petition is "too early" under *Telink* and a post-custody petition is "too late" unless that same relief was sought earlier in a § 2255 motion–even if no other remedy exists.

The fundamental conflict underlying Flint's situation–specifically, how a petitioner's custody status and their prior opportunity to seek § 2255 relief affect the availability and timing of *coram nobis*–is not unique to the Ninth Circuit. This

precise issue has generated profound disagreement across the nation. Indeed, the Circuits take very different views on this matter, and the federal system now breaks four ways:

- **Strict Custody Bar Circuits**: The First, Second, Sixth, Ninth, and Eleventh Circuits hold that *coram nobis* is categorically unavailable until *all* custody (including supervised release) has expired.
- **Future Sentence Circuits**: The Fifth and Tenth Circuits reject that bar where the conviction is final, but the defendant has not yet begun serving the sentence under attack, permitting *coram nobis* to challenge a future sentence.
- **Internally Divided Circuits**: The Third, Fourth, Seventh, and Eighth Circuits present irreconcilable panel precedents; some authorizing post-sentence / pre-service petitions, while others impose the strict custody bar, leaving district judges to choose which line to follow.
- **D.C. Circuit**: Alone among the circuits, it permits *coram nobis* at any stage, even pre-sentence, if no other relief is available – particularly relief under § 2255 is then unavailable–just as *Morgan* intended.

The result: The same claim is heard on the merits in Philadelphia, Richmond, New Orleans, Chicago, and Washington, D.C., but barred in Boston, New York, Cincinnati, San Francisco, and Atlanta. This petition asks the Court to resolve the conflicts stemming from both the custody requirement and the § 2255-or-forfeit rule

and vindicate *United States v. Morgan*, 346 U.S. 502, 512 (1954), which made *coram nobis* the residual safeguard "when no other remedy is available" to correct errors "of the most fundamental character."

STATEMENT OF THE CASE

A. Preliminary Background

On October 19, 2018, a jury convicted Flint of one count of willfully evading airport security protocols by presenting facially invalid diplomatic credentials. App. C, 18a. On September 16, 2019 – 332 days after his conviction – the district court sentenced him to 14 months' imprisonment followed by three years of supervised release.

As an initial matter, Flint was a licensed attorney in Michigan and North Carolina at the time of these events. App. B, 8a. Upon completing his custodial term on November 16, 2020, he became the respondent in disciplinary proceedings before both state bars. Id. During those proceedings, sworn testimony from the government's lead witness, FBI Special Agent Marriot, was obtained both by deposition and at the bar hearing. Id.

B. Discovery of Manipulated Evidence

1. Pre-Trial Notice

Before trial, Flint emailed his defense counsel, asserting he was "100 percent certain" that a critical portion of his FBI interview had been omitted – he

specifically stated the missing portion was "on *page 23 of the transcript.*" App. F, 33a. Flint's lawyers took no action. App. B, 15a.

2. *Forensic-Audio Report*

After trial, the government informed defense counsel that the original recording of Flint's FBI Interrogation had been "cleared" when the interviewing air-marshal's government-issued phone was wiped and discarded because it was "due for an upgrade." App. G, 36a. This confirmed Flint's suspicions, so he retained an independent audio-forensics examiner, who identified a "Spike Event occurring between utterances 'Before today?' and '[UI] and see if we can get this screened' ... on *page #23 of the Transcript*" – the *exact* location Flint had identified before trial. App. I, 45a.

The expert concluded that, because the Event could not be explained by equipment malfunction but could by editing, "to a reasonable degree of expert confidence, the reviewed recording is a manipulated representation of the facts as they occurred." Id; App. H, 40a.

Crucially, the examiner's metadata analysis noted that "the reviewed recording's chain-of-custody, equipment information, and geo location data was not present." App. H, 40a. That omission was inevitable, because the Government had destroyed the original recording on air marshal's phone–eliminating the original file and its device metadata–leaving only the second-generation export, which could not contain those provenance markers. App. G, 36a. As a result, the examiner's

conclusion was necessarily limited to a "reasonable degree of expert confidence" rather than a higher standard.

3. *Bar-Hearing Testimony*

That expert conclusion was confirmed at the August 3, 2021, North Carolina bar hearing, where Agent Marriott, under oath, authenticated the verbatim transcript and read from page 23, lines 13–19:

A. "Line 13, 'When was the last time you tried to fly?' 'Today.' 'Before today.' 'Unknown male, and see if we can get this screened.'" App. J, 49a.

Flint then Asked:

Q. "So where is my answer? You testified under oath twice today that I answered your question. Why is it not in the transcript?"

A. "You did answer my question." App. J, 50a.

This under-oath concession – made while Marriott was literally holding the transcript – underscores the undeniable absence of Flint's answer from the official record.

4. *District-Court Finding*

The district court later reviewed the full interview and acknowledged precisely that same location:

> "SA Marriott asked Defendant 'when was the last time you tried to fly?' Defendant responded 'today?' and SA Marriott

> replied, before today.' The transcript does not indicate an answer to that question, it references something unintelligible (indicated by the term "UI") and then a request from an unidentified male to screen Defendant's bag. (Docket No. 196 at p. 13.) Defendant's expert report purports to show the 'event' after SA Marriott states 'before today' and before the unidentified male requests to screen Defendant's bag." App. B, 10a.

C. First Coram-Nobis Petition—Dismissed as "Too Early"

Before sentencing, Flint filed his first Rule 33/*coram nobis* request on August 23, 2019. App. D, 23a-24a. The district court denied the Rule 33 motion as untimely, finding the expert audio analysis didn't qualify as "newly discovered evidence" because "the audio itself" was available pre-trial. App. D, 29a. In doing so, the court faulted Flint for not obtaining the expert review sooner–ignoring the fact that he had, before trial, specifically informed his counsel about the suspected deletion. Id; App. F, 34a. The Ninth Circuit affirmed. App. C, 22a.

The district court then dismissed the *coram nobis* petition as "procedurally barred," holding that because he had not "fully served" a sentence, he remained "in custody" and was ineligible for *coram nobis* relief–citing *Chaidez v. United States*, 568 U.S. 342, 345 n.1 (2013), and *United States v. Nosal*, 743 F. App'x 816, 817 (9th Cir. 2018). App. D, 28a. The Ninth Circuit affirmed, holding that "because Flint had not yet been sentenced, *coram nobis* relief was not available to him. *Telink, Inc. v. United States*, 24 F.3d 42, 45 (9th Cir. 1994)." App. C, 21a.

D. Second Coram-Nobis Petition—Dismissed as "Too Late"

With roughly ninety days of supervised release remaining, Flint filed his second Rule 33 motion / *coram nobis* petition on August 17, 2023. App. B, 5a. The district court again denied relief under Rule 33, characterizing the crucial bar-hearing testimony, which confirmed the audio deletion, as merely "a new argument regarding evidence Defendant has had for years." App. B, 15a. The Ninth Circuit affirmed. App. A, 2a.

As for the *coram nobis* petition–previously dismissed as premature–the district court now dismissed because Flint "could have raised the issue in a § 2255 motion while he was still serving his sentence." App. B, 11a. Therefore, the district court held that Flint "provided no valid reason for not seeking relief earlier, and has thus failed to satisfy the requirement that his Petition for a Writ of Coram Nobis be filed in a timely manner." Id.

On January 28, 2025, the Ninth Circuit summarily affirmed, concluding simply that "Flint is not entitled to coram nobis relief." App. A, 2a.[1] For this determination,

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[1] While the district court denied the second *coram nobis* petition primarily on procedural grounds, holding that Flint failed to provide valid reasons for not seeking relief earlier via a § 2255 motion (App. B, 11a), it also offered alternative findings on the merits. The district court concluded Flint had not identified a fundamental error because his related ineffective assistance of counsel claim under *Strickland* failed, and even if it hadn't failed, any error would have been harmless (App. B, 11a-16a). The Ninth Circuit's summary affirmance, however, addressed only the procedural timeliness, citing exclusively to *United States v. Riedl*, 496 F.3d 1003, 1006 (9th Cir. 2007), for the rule that *coram nobis* is not available if § 2255 relief could have been, but was not, pursued earlier. App. A, 2a. Accordingly, as the court of appeals did not address the district court's alternative merits findings, those issues were not "passed upon below" and are therefore not presented for this Court's review. *See United States v. Williams*, 504 U.S. 36, 41 (1992) (explaining the traditional rule that the Court does not review questions not "pressed or passed upon below").

the court relied exclusively on a single citation: page 1006 of *United States v. Riedl*, 496 F.3d 1003 (9th Cir. 2007). App. A, 2a. *Riedl* establishes a dispositive rule fatal to coram nobis petitions like Flint's: if a petitioner *could* have raised their claims in an earlier § 2255 motion but failed to do so, they cannot meet the essential requirement of showing "valid reasons" for the delay, thus barring relief under the writ. *See Riedl*, 496 F.3d at 1006. This application of *Riedl* directly raises the second question presented.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Irreconcilably Divided Over Whether Custody Categorically Bars Coram Nobis

A. Circuits that enforce an absolute custody bar (1st, 2nd, 6th, 9th, 11th).

These courts hold that the writ of error *coram nobis* is unavailable until every aspect of custody – including supervised release – has ended.

Williams v. United States, 858 F.3d 708, 714 (1st Cir. 2017) ("available only to a criminal defendant who is no longer in custody").

Fleming v. United States, 146 F.3d 88, 89-90 (2d Cir. 1998) (available "for petitioners who are no longer in custody pursuant to a criminal conviction").

United States v. Johnson, 237 F.3d 751, 755 (6th Cir. 2001) (*unavailable* to "a prisoner in custody").

Telink, Inc. v. United States, 24 F.3d 42, 45 (9th Cir. 1994) (available "when the petitioner already has fully served a sentence" – i.e. custody ends).

United States v. Peter, 310 F.3d 709, 712 (11th Cir. 2002) (available "when the petitioner has served his sentence and is no longer in custody").

B. Circuits that reject the custody bar for sentences not yet begun (5th, 10th).

Johnson v. United States, 344 F.2d 401, 410 (5th Cir. 1965) (available even though Johnson "has not yet begun to serve" the sentence) .

McDonald v. United States, 356 F.2d 980, 981 (10th Cir. 1966) ("available to test the validity of a sentence which the petitioner is not then serving")

C. Circuits that reject the custody bar outright, if no other relief is available (District of Columbia).

United States v. McCord, 509 F.2d 334, 342 (D.C. Cir. 1974) (available even if the petitioner "had not been sentenced at the time he filed the writ").

D. Circuits with irreconcilable internal precedents (3rd, 4th, 7th, 8th).

In these circuits, some panels have allowed *coram nobis* when the sentence has not yet begun, while others ban *coram nobis* outright until custody has ended:

In the Third Circuit, compare *United States v. Orocio*, 645 F.3d 630, 649 n.4 (3d Cir. 2011) (available "when the petitioner has served his sentence and is no longer 'in custody' for purposes of 28 U.S.C. § 2255") and *In re Nwanze*, 242 F.3d 521, 527 (3d Cir. 2001) (rejecting custody bar and reasoning that "a person who has not yet

served an illegal sentence is no less in need of relief from its imposition than someone who already has").

In the Fourth Circuit, compare *Mathis v. United States,* 369 F.2d 43, 49 (4th Cir. 1966) (finding that requiring the completion of a defendant's current term before allowing *coram nobis* to challenge "the validity of future sentences" would "drastically attenuate" the remedy) and *Ward v. United States*, 982 F.3d 906, 910 (4th Cir. 2020) (finding the writ only available when "the sentence has been served" – i.e. custody ends).

In the Seventh Circuit, compare *Rini v. Katzenbach*, 374 F.2d 836, 838 (7th Cir. 1967) (considered *coram nobis* petition, reasoning that "it is immaterial that Rini has not yet begun to serve his federal sentence") and *United States v. Craig*, 907 F.2d 653, 660 n.3 (7th Cir. 1990) ("Clearly, the completion of sentence does not render a coram nobis petition moot, for that is the only time that such a petition can be brought").

In the Eighth Circuit, compare *Zabel v. US Attorney*, 829 F. 2d 15, 17 (8th Cir. 1987) (available when the defendant "has not begun serving the federal sentence under attack") and *United States v. Freeman*, 625 F.3d 1049, 1053 n.2 (8th Cir. 2010) (denying petition filed before sentencing, reasoning that coram nobis is "only available after conviction or sentence to a defendant who is no longer in custody").

The resulting four-way conflict is acknowledged, entrenched, and outcome-determinative; only this Court can harmonize the law.

II. The Questions Presented Are Recurring and Exceptionally Important

A. They arise in thousands of federal cases every year.

In FY 2024, federal courts handled 61,758 pre-sentence reports.[2] Of those defendants whose sentencing occurred more than 45 days after conviction (86.3% of the total), the median wait between conviction and sentence was 129 days nationwide—and the Eastern District of New York led with a 368-day median delay.[3] Flint's own experience fits this pattern: convicted on October 19, 2018, he was not sentenced until September 16, 2019 – a 332-day gap (Fig. 2, App. E, 32a).

For the 1,756 defendants who went to trial in 2024, those who uncovered misconduct after conviction but before sentencing face a nearly impossible deadline.[4] Rule 33 allows a motion for a new trial based on newly discovered evidence if filed within three years of verdict, but any other ground must be raised within 14 days. Fed. R. Crim. P. 33. In Flint's case, the Ninth Circuit held that his expert's proof of audio manipulation did not qualify as "newly discovered evidence" because the underlying audio existed before trial. That ruling foreclosed Rule

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[2] U.S. Sentencing Comm'n, *2024 Annual Report & Sourcebook of Federal Sentencing Statistics* 13 (2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/2024-Annual-Report.pdf.

[3] Admin. Office of the U.S. Courts, *Table D-12—U.S. District Courts—Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-Month Period Ending September 30, 2024*, Judicial Business 2024, https://www.uscourts.gov/sites/default/files/2025-01/jb_d12_0930.2024.pdf.

[4] U.S. Sentencing Comm'n, 2024 Annual Report and Sourcebook of Federal Sentencing Statistics, tbl. 11 (2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/Table11.pdf.

33(b)(1)'s three-year window and left Flint only 14 days to retain an expert to uncover the manipulation that he had expressly told his defense counsel existed before the trial even began. App. F, 34a.

Similarly, Rules 29 and 34, which allow motions for acquittal or arrest of judgment, share that same 14-day cutoff. Fed. R. Crim. P. 29(c)(1); Fed. R. Crim. P. 34(b). And no habeas avenue opens before sentencing: § 2255 relief is "available only to attack a *sentence* under which the prisoner is in custody," while § 2241 can only be used "for challenges to detention" and not the underlying conviction itself. *Heflin v. United States*, 358 U.S. 415, 417-18 (1959); *Jones v. Hendrix*, 143 S. Ct. 1857, 1861 (2023); App. K, 55a.

Thus, most post-conviction remedies vanish just 14 days after verdict, yet the median wait from conviction to sentencing is 129 days. In Flint's case, that gap stretched to 318 days. App. E, 32a. During that interval, the writ of error *coram nobis* is the *only* conceivable vehicle for a trial defendant to reach the merits, and in strict-custody bar circuits (First, Second, Sixth, Ninth, and Eleventh) that vehicle is locked in the garage, while identical claims roll forward in the Fifth, Tenth, and D.C. Circuits solely because of where the courthouse sits.

B. The Ninth Circuit's dual procedural bars—the strict custody requirement and the § 2255-or-forfeit rule—endanger all 61,758 federal defendants—not just the 1,756 who went to trial.

The Ninth Circuit's rule is explicit: a petitioner necessarily lacks the requisite "sound reasons" for delaying a *coram nobis* claim if § 2255 relief could have been,

but was not, pursued earlier – a failure *Riedl* held is "fatal." *Riedl*, 496 F.3d at 1006. This "§ 2255-or-forfeit" rule contradicts *Morgan*, which preserved *coram nobis* "when no other remedy is available," a guarantee undermined by both the custody bar *and* the "§ 2255-or-forfeit" rule. *Morgan*, 346 U.S. at 512.

However, the practical nullification of *coram nobis* stems from more than just the Ninth Circuit's "§ 2255-or-forfeit" rule. The Ninth Circuit acknowledge that "neither issue nor claim preclusion is applicable to [a post-conviction] petition; like habeas corpus and coram nobis." *Walter v. US*, 969 F.2d 814, 816 (9th Cir. 1992).[5] However, this appropriate rejection of res judicata does not prevent courts from employing other doctrines to wrongfully preclude *coram nobis* relief.

Courts prevent claims previously presented and rejected in a § 2255 motion from being raised again by either deeming later attempts an "abuse of the writ" or by using their own circuit's established *coram nobis* doctrine as the basis to deny the petition. *Id.* For example, in the Tenth circuit "a writ of coram nobis may not be used to litigate issues that were or could have been raised on direct appeal or through collateral litigation." *United States v. Miles*, 923 F.3d 841, 846, 848-49 (10th Cir. 2019). In the Seventh Circuit, *coram nobis* relief will be denied if the claim was previously raised and rejected in a § 2255 motion. See *United States v. Hassebrock,*

[5] (quotations and citations omitted)

19 F.4th 956, 960 (7th Cir. 2021) (The petitioner's primary argument in his *coram nobis* petition "was raised and rejected in his § 2255 motion and may not be relitigated here."). (quotations and citations omitted).

The cumulative effect of the strict custody bar, the § 2255 availability requirement, and collateral preclusion doctrines means that the writ of *coram nobis* itself is placed in an inescapable bind. Regardless of a petitioner's prior procedural history, *coram nobis* is effectively foreclosed: failure to utilize available § 2255 forfeits *coram nobis;* successful § 2255 motions render the writ unnecessary; and unsuccessful § 2255 motions are barred from relitigation by doctrines that achieve preclusion, such as abuse of the writ or circuit-specific case law, despite the formal inapplicability of res judicata.

Therefore, by the time a petitioner stands without any alternative post-conviction avenue, any claim potentially cognizable in *coram nobis* has already been extinguished through forfeiture or preclusion. *Morgan*'s language, which the writ stand where no other remedy exists, is thus stripped of its practical effect by rules that ensure the writ is foreclosed precisely when it is needed most.

III. This Case Is the Ideal Vehicle to Resolve the Conflict

The petition poses two clear legal questions, uncluttered by factual disputes. The Ninth Circuit never examined the manipulated-evidence claim, the ineffective-assistance claim, or whether any fundamental error occurred; instead, it decided both coram-nobis petitions solely on procedural timing rules related to custody

status (*Telink*) and the prior availability of § 2255 relief (*Riedl*). Flint's first petition was denied as "to early" under *Telink,* which holds *coram nobis* unavailable until custody ends. App. C, 21a. His second, denied as "too late" under *Riedl* because he had not sought earlier relief under § 2255. App. A, 2a; App. E, Fig. 1, 31a (Catch-22 Timeline).

That contradiction is stark enough, but the Ninth Circuit compounded it by misreading its own precedent. *Riedl* withholds *coram nobis* relief only when the petitioner slept on a claim that could have been raised "in the direct appeal to the Ninth Circuit *or* under 28 U.S.C. § 2255." *Riedl* 496 F.3d at 1006. In this case, Flint *did* raise the manipulated-evidence issue on direct appeal–exactly the safeguard *Riedl* demands–yet the panel still relied on *Riedl* to foreclose his second petition. App. C, 21a; App. A, 2a. This misapplication underscores how the Ninth Circuit's categorical custody bar and rigid "§ 2255-or-forfeit" framework have distorted even its own *coram nobis* doctrine, confirming the need for national guidance.

Every operative fact is fixed and undisputed: the conviction on October 19, 2018; the non-availabity of remedies during the 332-day gap before sentencing; the first petition on August 23, 2019; the sentence imposed on September 16, 2019; the second petition on August 5, 2023; the end of supervised release on November 16, 2023. App. E, 32a. Those dates, frame the question with mathematical and procedural clarity. No jurisdictional or prudential obstacle clouds review. Jurisdiction is secure under 28 U.S.C. § 1254(1); the petition is timely under Rule 13.1; and Flint's continued disbarment from both Michigan and

North Carolina, and the ongoing professional and reputational disabilities that result, satisfy Article III standing (App. B, 8a).

Because the merits have never been reached and the record is frozen, the Court can decide–without wading into any factual thicket–whether a petitioner's custody status, or their failure to previously file a § 2255 motion, may categorically bar *coram nobis* relief. The entrenched splits and confusion surrounding both questions demand resolution, and this case provides the Court the straightest path to it.

IV. The Ninth Circuit's Absolute Custody Bar Cannot Be Reconciled with *Morgan*

The Ninth Circuit's rigid rules—barring *coram nobis* relief until custody expires (*Telink*) *and* barring it if § 2255 could have been filed (*Riedl*)—cannot be reconciled with this Court's precedent or the writ's historical purpose. In *United States v. Morgan*, this Court preserved the ancient writ as the ultimate safeguard against fundamental injustice precisely when "no other remedy [is] available." 346 U.S. 502, 512 (1954). By categorically barring *coram nobis* before sentencing (under *Telink*) *and* barring it later if § 2255 wasn't filed (under *Riedl*), the Ninth Circuit creates scenarios where *no* remedy exists, nullifying *Morgan*'s guarantee of a residual forum for fundamental claims. Other circuits, like the Tenth and Seventh, which apply the same rigid interpretation of this Court's *coram nobis* doctrine, have likewise extinguished the remedy in practice, making this Court's intervention urgently necessary.

This deviation does not stem from Morgan—which never articulated custody or the filing of a § 2255 motion as prerequisites—but appears to have arisen from misinterpretations of a single footnote in *Chaidez v. United States*, 568 U.S. 342,

345 n.1 (2013). There, the Court merely described *coram nobis* as a remedy for persons "no longer 'in custody' and therefore unable to seek habeas relief," while explicitly cautioning that the Court "assume[d] without deciding" that the distinction between *coram nobis* and habeas was immaterial to that case's holding. Properly read, *Chaidez* confirms that the critical inquiry is whether any other relief (in that case habeas) was available—not whether the petitioner remained in technical custody. Here, during the 318-day period between the expiration of Flint's Rule 33 deadline and his sentencing, it is indisputably clear that no other relief was available. By elevating "custody" into an absolute jurisdictional bar—and imposing a rigid "§ 2255-or-forfeit" rule—the Ninth Circuit and others have departed from both *Morgan* and *Chaidez*, closing the very gap the common-law writ was meant to fill and fueling the widening circuit split over *coram nobis* availability.

Furthermore, the Ninth Circuit's approach turns the goal of finality on its head. Rather than promoting efficient resolution, it forces piecemeal litigation and risks inconsistent rulings, as vividly demonstrated by Flint's case. His first petition was dismissed as too early because he had not yet been sentenced; his second, identical petition was dismissed later as too late because he hadn't filed a § 2255.

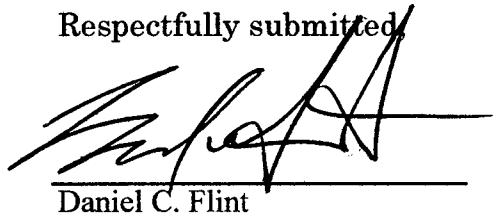
This is precisely the type of inefficiency and procedural trap that frustrates, rather than serves, judicial finality. Flint's experience during the 318-day gap between the expiration of his 14-day Rule 33 deadline and the attachment of § 2255 jurisdiction underscores the problem: he identified evidence of a fundamental error but was left entirely without a remedy.

Forcing petitioners into such gaps—or requiring them to wait until § 2255 becomes available post-sentencing—means individuals may begin serving, and continue serving, portions of sentences tainted by fundamental error, undermining the very justice *coram nobis* was designed to protect. The persistent circuit conflicts and the erosion of *coram nobis* as a meaningful remedy warrant this Court's intervention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Daniel C. Flint
Date: April 28, 2025