

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FILED

March 25, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: klw
DEPUTY

UNITED STATES OF AMERICA,

Plaintiff, : No. 1:23-cv-00853-DAE

v. :

:

GREG ABBOTT, in his capacity as GOVERNOR : REPLY

OF THE STATE OF TEXAS, and :

THE STATE OF TEXAS, : March 21, 2024

Defendants. :

**PETITIONER’S REPLY TO PLAINTIFF’S MOTION TO DISMISS THE
PETITION FOR A WRIT OF ERROR *CORAM NOBIS***

The Government in it’s Motion to Dismiss cites two cases. The first is *Simmons v. Twin City Towing*, 425 Fed. App’x 401, 403 n.2 (5th Cir. 2011), The Three Judge Panel in *Simmons* instructed that the decision not be printed and not be cited in future cases. As a result, when the Petitioner searched for the decision, the heading of the case appeared on line but the body of the decision was blanked out. Thus, the Petitioner is unable to respond to that authority.

The second case cited actually refutes the Government’s position. In *Correa-Negron v. United States*, 473 F.2d 684, 685 (5th Cir. 1973), the Court after noting

that Fed. R. Civ. P 60(b) abolishes the use of *Coram Nobis* in some situations such as re-opening criminal judgments entered years or decades before continues:

Despite the express abolition of coram nobis relief in federal civil actions, Fed. R. Civ. P. 60(b), it is still available with respect to criminal convictions under the All Writs Statute, 28 U.S.C.A. Sec. 1651(a). See *United States v. Morgan*, 1954, [346 U.S. 502](#), 74 S. Ct. 247, 98 L. Ed. 248. Nevertheless, the writ of error *coram nobis* is an extraordinary writ and the jurisdiction of the court to grant such relief is of limited scope. See, e. g., *United States v. Norman*, 6 Cir. 1968, 391 F.2d 212, cert. denied, 390 U.S. 1014, 88 S. Ct. 1265, 20 L. Ed. 2d 163. *Coram nobis* is only available to correct errors of the most fundamental character where the circumstances are compelling to achieve justice. *United States v. Morgan*, supra; *Cline v. United States*, 5 Cir. 1972, 453 F.2d 873.

The Petitioner does not dispute that under Rule 60 (b) Coram Nobis cannot be used to re-open criminal judgments entered years before. However, the Government cites no authority that Coram Nobis cannot be used in on going civil cases. The statement in *Correa Negron* that *Coram Nobis* has been abolished in civil litigation is pure *dicta* offered without any authority. To the contrary the Government concedes that *Coram Nobis* is preserved under the All Writs Statute. The All Writs Act grants the power to all courts established by Act of Congress to issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law. The Act draws no distinction between civil or criminal proceedings. Similarly, Appellate Rules such as Circuit Court of Appeals for the District of Columbia Rule 4 (a) specifically permits District Court decisions on

Petitions for a Writ of Error *Coram Nobis* to be appealed to the Circuit Court without regard if the decision below is in a civil or criminal proceeding.

CONCLUSION

The Motion to Dismiss must be denied.

Respectfully submitted,



Robert A. Heghmann

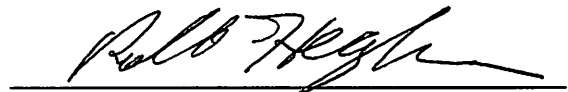
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CERTIFICATION

The Petitioner hereby certifies that a copy of this Petition was served upon the counsel for the United States and the State of Texas by U.S. Mail, Postage-Prepaid on March 21, 2024.





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