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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GLOVER,	)	CV 18-05000-RSWL
	)	
Petitioner,	)	
	)	<b>ORDER re: Petitioner's</b>
v.	)	<b>Petition for Writ of</b>
	)	<b>Coram Nobis [1]</b>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	
	)	
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	)	

Currently before the Court is Petitioner Michael Glover's ("Petitioner") Petition for Writ of Coram Nobis ("Petition") [1]. Having reviewed all papers submitted pertaining to this Petition, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **DENIES** Petitioner's Petition.

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1 I. BACKGROUND

2 A. Factual Background

3 On October 2, 2001, Petitioner pleaded guilty to  
4 two counts of transporting a minor with intent to  
5 engage in criminal sexual activity. Resp. to Pet. for  
6 Writ of Coram Nobis ("Opp'n") 1:6-8, ECF No. 7. On  
7 February 4, 2002, the Court sentenced Petitioner to  
8 twenty-four months in prison and three years of  
9 supervised release. Id. at 1:11-12.

10 Petitioner claims that, before his plea hearing, he  
11 was not given two pieces of evidence. Id. at 3:16-18.  
12 The first piece of evidence allegedly withheld was an  
13 online chat conversation between the victim and  
14 Petitioner. Pet. for Writ of Coram Nobis ("Pet.")  
15 2:14-16, ECF No. 1. Petitioner claims that he asked  
16 the victim, "How ol[d] are you?" and she responded,  
17 "I'm 17 years of age, I will not be 18 yrs old until  
18 August 2000!" Id. at 2:16-19. After receiving this  
19 message, Petitioner claims that he told the victim that  
20 they could not meet until she turned eighteen. Id. at  
21 2:20. Petitioner claims that the online chat took  
22 place on his computer, which the FBI confiscated. Id.  
23 at 2:21-22. The second piece of evidence that was  
24 allegedly withheld was statements made by several of  
25 Petitioner's associates, who told an unnamed FBI agent  
26 "that [Petitioner] doesn't go after under-age females."  
27 Id. at 2:22-25.

28 Petitioner also claims that FBI agents wrote on his

1 Rap Sheet that he was arrested for traveling across  
2 state lines, kidnaping a child, and "fondling her."  
3 Id. at 3:11-15. Petitioner claims that he has never  
4 been arrested on this charge. Id. at 3:15-16.  
5 Further, Petitioner claims that the Government relied  
6 on these statements during Petitioner's plea hearing  
7 without taking into account evidence that the Rap Sheet  
8 contained falsified information. Id. at 7:21-23.

### 9 **B. Procedural Background**

10 On June 5, 2018, Petitioner filed the instant  
11 Petition [1]. The Government filed its Response [7] on  
12 July 6, 2018. Petitioner did not file a reply.

## 13 **II. DISCUSSION**

### 14 **A. Legal Standard**

15 Under the All Writs Act, a federal court may grant  
16 writs such as coram nobis. See 28 U.S.C. § 1651(a). A  
17 writ of coram nobis is an "extraordinary writ." Matus-  
18 Leva v. United States, 287 F.3d 758, 760 (9th Cir.  
19 2002). It provides a remedy when a petitioner has  
20 served his sentence. Estate of McKinney By & Through  
21 McKinney v. United States, 71 F.3d 779, 781 (9th Cir.  
22 1995). To show that a claim warrants coram nobis  
23 relief, a petitioner must establish that "(1) a more  
24 usual relief is not available; (2) valid reasons exist  
25 for not attacking the conviction earlier; (3) adverse  
26 consequences exist from the conviction sufficient to  
27 satisfy the case or controversy requirement under  
28 Article III; and (4) the error is of the most

1 fundamental character." Id. at 781-82 (quotation  
2 omitted). The petitioner has the burden to satisfy  
3 each requirement, and failure to meet any one of the  
4 four requirements is fatal to a petition. See  
5 Matus-Leva v. United States, 287 F.3d 758, 760 (9th  
6 Cir. 2002).

7 A writ of coram nobis is rarely granted; the  
8 Supreme Court has stated that "it is difficult to  
9 conceive of a situation in a federal criminal case  
10 today where [a writ of *coram nobis*] would be necessary  
11 or appropriate." Carlisle v. United States, 517 U.S.  
12 416, 429 (1996) (alteration in original) (quoting  
13 United States v. Smith, 331 U.S. 469, 475 n.4 (1947)).

#### 14 **B. Discussion**

##### 15 1. More Usual Relief and Case or Controversy 16 Requirement

17 The Government does not dispute that Petitioner has  
18 satisfied the first and third requirements for coram  
19 nobis relief: (1) that a more usual relief is not  
20 available and (2) that adverse consequences exist from  
21 the conviction sufficient to satisfy the case or  
22 controversy requirement under Article III. Thus, the  
23 Court assumes that Petitioner has satisfied these  
24 requirements.

##### 25 2. Valid Reason for Delay

26 Petitioner argues that his delay in filing this  
27 Petition was justified because he could not have  
28 discovered the FBI's obstruction of justice at an

1 earlier date and because the FBI's misconduct was  
2 placed on his record in a complex and clever way. Pet.  
3 6:21-22.

4 "[T]he time for filing a petition [for writ of  
5 coram nobis] is not subject to a specific statute of  
6 limitations." Telink, Inc. v. United States, 24 F.3d  
7 42, 45 (9th Cir. 1994). Rather, courts require "coram  
8 nobis petitioners to provide valid or sound reasons  
9 explaining why they did not attack their sentences or  
10 convictions earlier." United States v. Kwan, 407 F.3d  
11 1005, 1012 (9th Cir. 2005). "[T]he burden of proof is  
12 on the petitioner to offer valid reasons for the  
13 delay." United States v. Riedl, 496 F.3d 1003, 1008  
14 (9th Cir. 2007). The Ninth Circuit has "considered  
15 delay to be reasonable . . . when new evidence was  
16 discovered that the petitioner could not reasonably  
17 have located earlier." Id. at 1007.

18 Petitioner provides newly-discovered evidence that  
19 the FBI allegedly: (1) withheld evidence that  
20 Petitioner told the victim that he could not see her  
21 until she was eighteen years old; (2) withheld  
22 statements made by Petitioner's associates stating that  
23 Petitioner does not pursue underage girls; and  
24 (3) stated that Petitioner was arrested for kidnaping  
25 and fondling the victim. See Pet. 2:25-3:10.

26 Here, Petitioner does not show that he exercised  
27 due diligence in bringing this new evidence. See  
28 Dhingra v. United States, No. C 16-03803 SBA, 2016 U.S.

1 Dist. LEXIS 132702, at \*9 (N.D. Cal. Sep. 27, 2016)  
2 (denying coram nobis because the defendant did "not  
3 show that he exercised due diligence in pursuing [his]  
4 claim"). Given that Petitioner himself made the  
5 statements in the online chat, the Court can assume  
6 that he was aware of the statements' existence prior to  
7 the plea hearing. Thus, Petitioner could have  
8 requested the statements from the FBI before his plea  
9 hearing or in the nearly seventeen years preceding this  
10 Petition, and, had the FBI refused, he could have  
11 brought the FBI's refusal to the attention of the  
12 Court. See Martinez v. United States, 90 F. Supp. 2d  
13 1072, 1076 (D. Haw. 2000) ("[D]elay is not justified if  
14 the petitioner was aware of a potential ground for  
15 relief earlier, but did not choose to pursue it.").  
16 Further, Petitioner does not explain how he learned of  
17 his associates' statements, nor does he explain why he  
18 could not have learned of these statements earlier.  
19 Without this information, Petitioner has not provided a  
20 valid excuse for his delay in bringing this allegation  
21 to the Court's attention. Lastly, Petitioner states  
22 that he did not look at his Rap Sheet until April 2018.  
23 Pet. 3:10-12. Given that Petitioner does not contend  
24 that he was previously denied the opportunity to see  
25 his Rap Sheet, the Court has no reason to believe that  
26 Petitioner could not have found the alleged statements  
27 on his Rap Sheet earlier in the seventeen years between  
28 his plea hearing and the filing of this Petition.

1        Thus, Petitioner has not validly explained his  
2 delay in bringing this Petition.

3        3. Error of a Fundamental Character<sup>1</sup>

4        Petitioner claims that the FBI's alleged refusal to  
5 turn over online chat statements and disclose  
6 conversations with Petitioner's associates, combined  
7 with its alleged tampering with Petitioner's record,  
8 creates an error of the most fundamental character.  
9 Courts reserve the writ of coram nobis for errors that  
10 are of "the most fundamental character, such that the  
11 proceeding itself is rendered invalid." McKinney, 71  
12 F.3d at 781 (internal quotation marks and citations  
13 omitted). To show error of the most fundamental  
14 character, a petitioner's allegations must  
15 "specifically delineate the factual basis of his  
16 claim." United States v. Taylor, 648 F.2d 565, 573  
17 (9th Cir. 1981).

18        Here, Petitioner does not specifically delineate  
19 the factual basis for his claims. Instead, Petitioner  
20 simply speculates that the FBI withheld evidence and  
21 lied on his record, which is insufficient to  
22 demonstrate an error of a fundamental character. See  
23 Dhingra, 2016 U.S. Dist. LEXIS 132702, at \*4

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25        <sup>1</sup> Petitioner must satisfy all four requirements to be  
26 granted a writ of coram nobis. Therefore, the Court **DENIES**  
27 Petitioner's Petition because he has not provided a valid  
28 explanation for his delay in filing the Petition. However, for  
the sake of completeness, the Court will analyze the "fundamental  
error" requirement as well.

1 (dismissing a coram nobis petition which speculated  
2 that an underage victim was actually an adult FBI  
3 informant because the "petition [was] devoid of any  
4 facts supporting [the Petitioner's] assertion that the  
5 minor victim of his criminal offense was actually an  
6 ADULT FBI Agent/Informer" (internal quotations  
7 omitted)).

8 Further, even if Petitioner had provided a factual  
9 basis for his claims, Petitioner has not shown a  
10 fundamental error that warrants reversing his  
11 conviction. Petitioner pleaded guilty, under 18 U.S.C.  
12 § 2423(a), to two counts of transporting a minor with  
13 intent to engage in criminal sexual activity. Under  
14 § 2423(a), a Petitioner cannot claim ignorance of a  
15 victim's age as a defense. See United States v.  
16 Taylor, 239 F.3d 994, 997 (9th Cir. 2001) ("Ignorance  
17 of the victim's age provides no safe harbor from the  
18 penalties in 18 U.S.C. § 2423(a). If someone knowingly  
19 transports a person for the purposes of prostitution or  
20 another sex offense, the transporter assumes the risk  
21 that the victim is a minor, regardless of what the  
22 victim says or how the victim appears."). Thus, for  
23 the purposes of Petitioner's conviction, it is  
24 irrelevant that Petitioner thought that the victim was  
25 eighteen. Further, Petitioner's associates' purported  
26 testimony would not render Petitioner's plea hearing  
27 invalid, as it does not provide any new details about  
28 the offense that might show that Petitioner's



1 conviction was a fundamental error.

2 Thus, Petitioner has not shown that these  
3 allegations present a fundamental error in his criminal  
4 proceeding sufficient to grant a writ of coram nobis.

5 **III. CONCLUSION**

6 For the foregoing reasons, the Court **DENIES**  
7 Petitioner's Petition.

8 **IT IS SO ORDERED.**

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10 DATED: August 14, 2018

s/ RONALD S.W. LEW

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**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge

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