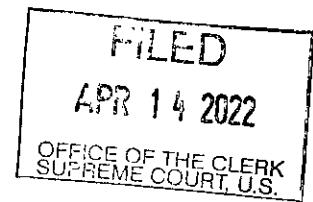


No. 22-5049

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

PERCY LOVE III — PETITIONER  
(Your Name)

VS.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PERCY LOVE III

(Your Name)

PO BOX 24550

(Address)

Tucson, AZ 85734

(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

Whether  an extension to file a 2255 petition is "properly filed" under Artuz v. Bennet?

Where petitioner was pursuing his rights diligently, is the Covid-19 pandemic the sort of extraordinary circumstance the warrants equitable tolling under Irwin v. Dep't of Veterans Affairs?

## **LIST OF PARTIES**

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

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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 2022 U.S. App. LEXIS 1180 ; 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[ ] is unpublished.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 2021 U.S. Dist. LEXIS 209913 ; 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[ ] is unpublished.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[ ] is unpublished.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 January 14, 2022.

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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Court for a redress of grievance.

28 USC Section 2255(f)(2):

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of-----

the date on which the impediment to a making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action.

## STATEMENT OF THE CASE

Several years ago, this Court held in Artuz v. Bennet that an application is "properly filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. 531 US 8 (2000). This court also acknowledged that there are exceptions to properly filing a motion where, in Irwin v. Dep't of Veterans Affairs this Court stated that the "equitable tolling doctrine" is invoked when a petitioner excercises due diligence in pursing his legal rights. 498 US 96 (1990).

This case presents the question(s) of whether the "properly filed" standard of the Artuz rule is applicable when a petitioner files an extension to file out-of-time 2255 petition under 28 USC Section 2255(f)(2), and whether the Covid-19 pandemic is the sort of extraordinary circumstance that can invoke the equitable tolling doctrine under Irwin standard where, petitioner was diligently pursuing his legal rights before-the-fact.

## REASONS FOR GRANTING THE PETITION

A. To avoid erroneous deprivations of the right to access the court, this Court should grant the writ.

In Pace v. DiGuglielmo, 544 US 418 (2005), this Court adopted a set of prophylactic measures to protect a petitioner's First Amendment right to access the court or grant of equitable tolling to do so. Id. at 418-19. For purposes of equitable tolling, a petitioner must satisfy two elements: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." id.

Here, the Court of Appeals accepted the trial court findings without an opinion, in that petitioner "had not yet filed a viable Section 2255 motion and the motion for extension of time did not contain sufficient factual allegations to be construed as a Section 2255 motion." U.S. v. Love, 2021 U.S. Dist. LEXIS 209913 (October 28, 2021).

The decision of the Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of Artuz and the express purpose of the rule. The rationale of Artuz is that an application, or motion for extension to file out-of-time 2255 motion, is "properly filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. 531 US 8 (2000). Consequently, the Court overlooked the laws or rules governing proper filings where; the holding in Pace is that

"time limits, no matter their form, are filing conditions." 544 US 417 (2005). Otherwise stated, petitioner's motion for extension met those conditions, which is what the Court overlooked where, the Covid-19 pandemic and subsequent prison lockdown prohibited him from accessing the court, thus, an extraordinary circumstance. *id.*

The present case is a textbook example of when the law or rule is ignored or misapprehended because the Court of Appeals disregarded the fact that the lower court never reached the question of whether Covid-19 was an extraordinary circumstance.

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PERCY LOVE III

Date: \_\_\_\_\_