

No.

In the
Supreme Court of the United States

MATTHEW SEPULVEDA, PETITIONER

v.

UNITED STATES OF AMERICA

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

PETITION FOR A WRIT OF CERTIORARI

JEREMY GORDON
Counsel of Record
Guest and Gray
315 S. Bois D'Arc
Forney, TX 75126
jeremy@guestandgray.com

(i)

QUESTION PRESENTED

The Fifth Circuit has indicated it is jurisdictional that a person must present their issues under § 2255 to the district court and receive a certificate of appealability from the district court before proceeding on appeal. The question presented is:

Does the Supreme Court's ruling that 28 U.S.C. § 2253(c)(3) is non-jurisdictional in nature overrule the Fifth Circuit's jurisprudence?

(ii)

PARTIES TO THE PROCEEDING

Petitioner Matthew Sepulveda was the appellant below, the petitioner in the 28 U.S.C. § 2255 proceedings and the defendant in the district court. The United States was the appellant in the court below, the respondent in the 28 U.S.C. § 2255 proceedings and the plaintiff in the district court.

RELATED PROCEEDINGS

United States District Court (S.D. TX):

Sepulveda vs. United States, 7:24-cv-00244
(January 2, 2025)

United States vs. Sepulveda, 7:19-cr-02120-1
(July 22, 2021)

United States Court of Appeals (5th Cir.):

Sepulveda vs. United States, No. 25-40116
(September 10, 2025)

United States vs. Sepulveda, No. 21-40574
(February 7, 2022)

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW.....	1
JURISDICTIONAL STATEMENT	1
FEDERAL STATUTE INVOLVED	2
STATEMENT OF THE CASE	4
I. Sepulveda is Found Guilty and Sentenced .	4
II. Sepulveda Files a Motion to Vacate.....	5
REASON FOR GRANTING THE WRIT	6
DISCUSSION.....	7
CONCLUSION.....	9
APPENDIX	
Appendix A Opinion in the United States Court of Appeals for the Fifth Circuit	1a
Appendix B Opinion Accepting Conclusions, Findings and Recommendation of the Magistrate Judge of the Southern District of Texas, Mcallen Division.....	4a
Appendix C Report and Recommendation of the Magistrate Judge of the Southern District of Texas, Mcallen Division.....	7a

TABLE OF AUTHORITIES

Cases

<i>Black v. Davis</i> , 902 F.3d 541 (5th Cir. 2018)	6, 7
<i>Cardenas v. Thaler</i> , 651 F.3d 442 (5th Cir. 2011)	8
<i>Gonzalez v. Thaler</i> , 565 U.S. 134, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012).....	6, 7
<i>Sepulveda v. United States</i> , 7:24-cv-00244 (S.D. TX January 2, 2025)	1, 5
<i>United States v. Sepulveda</i> , 64 F.4th 700 (5th Cir. 2023)	5
<i>United States v. Sepulveda</i> , No. 25-40116 (5th Cir. September 10, 2025)	1, 6

Statutes

18 U.S.C. § 242	4
28 U.S.C. § 1254	2
28 U.S.C. § 2253	3, 4, 7, 8
28 U.S.C. § 2255	2, 3, 4, 5, 6, 9

Rules

SUP. CT. R. 13	1
----------------------	---

In the Supreme Court of the United States

No.

MATTHEW SEPULVEDA, PETITIONER

v.

UNITED STATES OF AMERICA

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

PETITION FOR A WRIT OF CERTORARI

Petitioner Matthew Sepulveda respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit is Captioned as *United States v. Sepulveda*, No. 25-40116 (5th Cir. September 10, 2025) and is provided in the Appendix to the Petition. [Appx. A]. The magistrate judge's report and recommendation is captioned as *Sepulveda v. United States*, 7:24-cv-00244 (S.D. TX January 2, 2025) and is attached as an Appendix [Appx. B].

JURISDICTIONAL STATEMENT

The original deadline for this petition was

within 90 days of the judgment below, which was entered on September 10, 2025. See SUP. CT. R. 13.1. An extension was granted for the filing of this petition until December 18, 2025. This Court's jurisdiction to grant certiorari is invoked under 28 U.S.C. § 1254(1).

FEDERAL STATUTE INVOLVED

28 U.S.C. § 2255 provides the following:

- (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
- (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without

jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

...

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus. 28 U.S.C. §§ 2255(a)–(b) & (d).

28 U.S.C. § 2253 further provides:

In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

...

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) The final order in a habeas corpus proceeding in which the detention

complained of arises out of the process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. §§ 2253(a) & (c)(1)–(3).

STATEMENT OF THE CASE

I. Sepulveda is found guilty and sentenced

As indicated in the Magistrate's Report and Recommendations regarding the § 2255 motion:

On March 10, 2021, a jury found Sepulveda guilty of (1) 18 U.S.C. § 242- Deprivation of rights under color of law and (2) 18 U.S.C. § 242 - Deprivation of rights under color of law resulting in bodily injury, and included aggravated sexual abuse, attempted aggravated sexual abuse, and kidnapping.”

Sepulveda vs. United States, 7:24-cv-00244 (S.D. TX January 2, 2025).

The district court sentenced Sepulveda to 12 months' imprisonment on the first count and 3 60 months' imprisonment on the second count, to run concurrently. In addition, the district court ordered Sepulveda to pay \$10,000 in restitution to [victim 1 ('VI')]."

Id, citing United States v. Sepulveda, 64 F.4th 700, 703, 705-706 (5th Cir. 2023) (setting out the facts and circumstances of the allegations and evidence presented at trial).

II. Sepulveda Files a Motion to Vacate

Sepulveda filed a motion to vacate, amend or correct his sentence under 28 U.S.C. § 2255. Sepulveda's counseled motion alleged several grounds related to ineffective assistance of counsel. The magistrate judge recommended denial of Sepulveda's motion without a hearing and that recommendation was granted by the district court.

Sepulveda filed a notice of appeal and sought appeal of the denial of his § 2255 motion. As required, Sepulveda sought a certificate appealability. His brief alleged several grounds, several of which were not included in his district court brief. The Fifth Circuit denied the certificate of appealability, indicating that the claims that were not brought before the district court could not be heard and indicating that the

certificate of appealability should not issue regarding his remaining claims. *See Sepulveda v. United States*, No. 25-40116 (5th Cir. September 10, 2025), referencing *Black v. Davis*, 902 F.3d 541, 545-46 (5th Cir. 2018). On this issue, the Fifth Circuit in *Black* stated that “...this court has no jurisdiction to issue a COA on an issue on which the district court did not deny a COA.” *Id.*

Notable in *Black* is the concurrence:

Our caselaw has not grappled with the impact of *Gonzalez v. Thaler*, 565 U.S. 134, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012), on our characterization of the district-court-first rule as jurisdictional. In my view, the Supreme Court's opinion in *Gonzalez* seriously calls that holding into question. Nonetheless, we are bound by the rulings of previous post-*Gonzalez* panels to continue to apply our existing caselaw.

This petition follows.

REASON FOR GRANTING THE WRIT

The Court should grant *certiorari* in order to resolve an important issue in the Fifth Circuit’s jurisprudence regarding whether the “District Court First” rule is jurisdictional after the Supreme Court’s decision in *Gonzalez v. Thaler*, 565 U.S. 134, 43-44 (2012) that “28 U.S.C. § 2253(c)(3), is non-jurisdictional in nature.”

DISCUSSION

In *Gonzalez v. Thaler*, 565 U.S. 134, 143 (2012), the Supreme Court indicated that 28 U.S.C. § 2253(c)(3) is non-jurisdictional in nature. This court indicated that § 2253(c)(3) “reflects a threshold condition for the issuance of a COA—the COA's indication of “which specific issue or issues satisfy the showing required by paragraph (2). While other portions clearly show congress's intent to have jurisdictional force, the contrast § 2253(c) shows that the failure to indicate an issue does not have that jurisdictional force.” *Gonzalez*, 565 U.S. at 143-44.

The Fifth Circuit indicated in *Black* that they have a “district court first” rule meaning that the District Court should make a determination on whether a certificate of appealability should issue before an appeals court should consider whether to grant or deny a COA. But key here is that the district court's determinization should be jurisdictional and the failure to do the same should be a jurisdictional bar. *Black*, 902 F.3d 543, quoting *Cardenas v. Thaler*, 651 F.3d 442, 445 (5th Cir.2011) (collecting cases) (“We have held that “the absence of a prior determination by the district court on whether a COA should issue pose[s] a jurisdictional bar to this court's consideration of whether to grant or deny a COA.”). The Fifth Circuits' jurisdictional nature of the “district court first” rule creates at least three situations where persons who are seeking a COA are without the ability to receive it:

1. Persons who did not receive a ruling on the grant of a COA in the district court and are now seeking it in the appellate court.
2. Persons who had to file their motion to vacate before the statute of limitations deadline and then were denied in the district court, but a relevant Supreme Court opinion regarding a constitutional issue was issued and deemed retroactive on collateral review by the Supreme Court;
3. Persons filing their own § 2255 motion *pro se* in the district court who were denied and hired an attorney on appeal that found additional issues that the District Court did not get a chance to rule on.

These three categories of people at least are hurt by the Fifth Circuit's interpretation of the "district court first" rule as constitutional.

Should the Supreme Court Grant *certiorari* in this issue, the Court could reverse the ruling of the Fifth Court of Appeals with directions to reconsider the issues that were not considered by the Fifth Court of Appeals because the District Court did not rule on the same.

CONCLUSION

For these reasons, Petitioner asks that this honorable court grant a writ of *certiorari*.

Respectfully submitted this 17th day of December 2025

JEREMY GORDON
Counsel of Record
Guest and Gray
315 S. Bois D'Arc
Forney, TX 75126
Tel: 972-564-4644
Fax: 866-209-9785
Email:jeremy@guestandgray.com