

No. 26-

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IN THE  
**Supreme Court of the United States**

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JOHN O. GREEN,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Whether, for purposes of the one-year limitation period imposed by 28 U.S.C. § 2255(f)(1), a direct appeal becomes final when all co-defendant's petitions for writ of certiorari, including the Petitioner's, have been decided.
2. Does the above *res nova* issue affecting Petitioner's due process rights present an issue upon which jurists of reason could differ so that a certificate of appealability should issue?

**LIST OF PARTIES**

Petitioner John O. Green was the defendant-appellant below, and Respondent United States of America was the plaintiff-appellee.

## RELATED CASES

- Joint Trial:
  - o *United States v. Selgas et al.*, No. 18-cr-00356 (N.D.T.X. Jun. 28, 2021).
- Consolidated Appeal:
  - o *United States v. Green*, No. 21-10651 and *United States v. Selgas*, No. 21-10672.
  - o Opinion and Judgment, *See United States v. Green*, 47 F.4th 279 (5th Cir. 2022).<sup>1</sup>
- Petitions for a writ of certiorari.
  - o *Green v. United States*, No. 22-508 (2022).
  - o *Selgas v. United States*, No. 22-729 (2023).
- Habeas Petition:
  - o *Green v. United States*, No. 24-CV-00726 (N.D.T.X. Nov. 13, 2025).
  - o *Green v. United States*, No. 25-11339 (5th Cir. Jul. 21, 2026).

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1. Co-defendant Selgas sought rehearing. *See* United States Supreme Court Rule 13(3).

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**IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

The Petitioner, John O. Green, respectfully prays that a writ of certiorari issue to review the final decision of the District Court for the Northern District of Texas, Dallas Division, and the United States Court of Appeals for the Fifth Circuit on his writ of habeas corpus under 28 U.S.C. § 2255.

**OPINIONS BELOW**

The order of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court for the Northern District of Texas appears at Appendix B to the petition and is unpublished.

**JURISDICTION**

Petitioner timely filed a notice of appeal from the District Court's decision denying his writ of habeas corpus and his motion for a certificate of appealability and has filed this writ of certiorari from the Fifth Circuit's denial of his certificate of appealability. A copy of the District Court's final decision can be found at Appendix B. A copy of the Fifth Circuit's decision can be found at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This Court has jurisdiction to review the denial of an application for a certificate of appealability. *See Hohn v. United States*, 524 U.S. 236, 253 (1998) ("We hold this Court has jurisdiction under § 1254(1) to review denials of applications for certificates of appealability by a circuit judge or a panel of a court of appeals.").

**CONSTITUTIONAL AND STATUTORY  
PROVIDSIONS INVOLVED**

1. 28 U.S.C. § 2255(f)(1):

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 judgment of conviction becomes final.

2. 28 U.S.C. § 2253(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 . . . (B) the final order in a proceeding under section 2255. . . .

3. Fifth Amendment to the United States Constitution:

No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .

**STATEMENT OF THE CASE**

**A. Joint Prosecution and Convictions.**

Petitioner John Green (“Green”), Thomas Selgas (“Selgas”), and Michelle Selgas were indicted for conspiracy to defraud the United States under 18 U.S.C. § 371. *United States v. Selgas et al.*, No. 18-cr-00356,

(N.D.T.X. 2018).<sup>2</sup> ROA. 25-11339.198–25-11339.201. Green and Selgas were convicted.<sup>3</sup> ROA. 25-11339.801. Green was sentenced to six months’ incarceration and three years’ supervised release.<sup>4</sup> ROA. 25-11339.2640–25-11339.2644.

Green and Selgas appealed. ROA. 25-11339.1060–25-11339.1061. The Fifth Circuit consolidated their appeals. ROA. 25-11339.1185–25-11339.1186. It then affirmed both convictions. *See United States v. Green*, 47 F.4th 279 (5th Cir. 2022). ROA. 25-11339.1189–25-11339.1211. Selgas asked for rehearing and was denied.

## **B. Separate Supreme Court Review.**

After the Fifth Circuit’s decision, Green and Selgas separately petitioned this Court for writs of certiorari. *Green v. United States*, No. 22-508 (2022) and *Selgas v. United States*, No. 22-729 (2023).

Both petitions were initially due on the same date. However, Selgas sought and obtained a sixty-day extension to file his petition. Importantly, an application to extend time for filing a petition is disfavored. *See United States*

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2. Unlike Green, Thomas and Michelle Selgas were each charged with an additional count of Evasion of Payment for Tax Years 1998 through 2002 and 2005. ROA. 25-11339.198–25-11339.201.

3. The District Court entered a judgment of acquittal as to Michelle Selgas. ROA. 25-11339.2411–25-11339.2416.

4. Green had discharged his sentence of incarceration but was on supervised released during the pendency of his writ of habeas corpus proceedings. He still suffers the negative consequences of his conviction today.

Supreme Court Rule 13(5). As such, this is not a common procedural posture for co-defendants. Selgas also advised this Court that his petition was related to Green's.

This Court denied Green's petition on January 23, 2023. *See Green v. United States*, 143 S. Ct. 747 (2023). It denied Selgas' petition on March 27, 2023. *See Selgas v. United States*, 143 S. Ct. 1058 (2023). Green received notice that his petition was denied. *See* Appendix C. Thereafter, Green received notice that Selgas' petition was denied. In the notice concerning Selgas' petition being denied, the Fifth Circuit advised the District Court that the denial concerned both Green and Selgas' case numbers in the trial court. *See* Appendix D.

The questions presented are whether, under these narrow circumstances: (1) Green's direct appeal had concluded for purposes of 28 U.S.C. § 2255(f)(1) when his writ of certiorari was denied or not until Selgas' was denied as well; and (2) when there is no rule or precedent guiding a court when an appeal is final under these narrow circumstances, does the question affecting Petitioner's due process rights present an issue upon which jurists of reason could differ.

Although this case presents a very narrow set of circumstances, the issues are serious, of great importance, and are question that this Court is in a unique position to answer. The issues are serious and of great importance because they decide whether an individual can get into court or whether he cannot.

## REASONS FOR GRANTING THE PETITION

### A. The Need to Provide Due Process

This petition presents a narrow factual question with significant implications for due process and access to courts.

The one-year limitation period for a § 2255 motion begins once the direct appeal has concluded. 28 U.S.C. § 2255(f)(1). *See Clay v. United States*, 537 U.S. 522, 527 (2003).

The circumstances are further narrowed here by the fact that joint defendants/appellants, Green and Selgas, each filed petitions for a writ of certiorari. Therefore, this question is not addressed in *Clay v. United States*, 537 U.S. 522 (2003). Clay sought to rely on the date that his co-defendant's petition for writ of certiorari was denied even though Clay did not file a petition for a writ of certiorari himself.

This Court held that “for federal criminal defendants who do not file a petition for certiorari with this Court on direct review, § 2255’s one-year limitation period starts to run when the time for seeking such review expires.” *Id.* at 532. “Finality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires.” *Id.* at 527.

Here, the District Court treated the denial of Green’s petition for writ of certiorari as the date his appeal had concluded. But the Fifth Circuit did not notify the District

Court that its single opinion for both Selgas' and Green's trial numbers was final until Selgas' petition for writ of certiorari was denied. *See* Appendix D. Green's question here asks whether his appeal concluded when Selgas' petition for writ of certiorari was denied making the Fifth Circuit's decision final.

In its opinion dismissing Green's § 2255 motion, the District Court acknowledged the absence of guiding precedent in these circumstances, stating that "it appears that no case law directly addresses Movant's argument in this factual context. . . ." ROA. 25-11339.139.

The District Court then cites unpublished cases in addition to the published *Clay* case where the individual bringing the § 2255 motion failed to file their own petition for a writ of certiorari. *See Cuciniello v. United States*, 8:10-CV-1209-T-17, 2010 WL 3835225, at \*2–3 (M.D. Fla. Sep. 30, 2010); *Savell v. United States*, No. MO-12-CV-001, 2013 WL 12348684, at \*1 n. 1 (W.D. Tex. July 19, 2013); *United States v. Westcott*, No. 08-CV-00117-CVE-SAJ, 2008 WL 4925768, at \*1 n. 1 (N.D. Okla. Nov. 14, 2008).

Green, by contrast, filed his own petition for a writ of certiorari. Selgas had also advised this Court that Green's petition was related to his. Green, therefore, took the position that his conviction did not become final until this Court denied Selgas' petition affirming the single Fifth Circuit opinion.

This Court's rules allow for two individuals with similar interests to file a joint petition for a writ of certiorari. *See* Supreme Court Rule 12(4). Although Green and Selgas both challenged their conspiracy convictions,

they filed separate petitions because their interests and positions were truly different.<sup>5</sup> See Stephen M. Shapiro et al., *Supreme Court Practice* 6-78 (11th ed. 2019).

Importantly, this Court's rules also recognize that one party's deadline may depend on another party's action when that action affects the first party's case. Supreme Court Rule 13 governs the deadline for seeking certiorari review of an appellate decision. Subsection three provides:

if a petition for rehearing is timely filed in the lower court by any party, . . . the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

Supreme Court Rule 13(3).

As to Green's question about when an appeal is final, it frequently arises and this Court is uniquely positioned to decide this. However, it has not yet arisen in the narrow circumstances of this case. Neither *Clay*, nor any case petitioner or the District Court could find addresses when an appeal becomes final and affects one's right to

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5. Green was one of Selgas' attorneys during part of the period in which the alleged tax related conspiracy occurred. ROA. 25-11339.2247. Because of this, Green filed a motion to sever, asserting that the joint proceeding created an unavoidable conflict between his obligations as Selgas' attorney and his own interests as a criminal defendant. ROA. 25-11339.355–25-11339.360. This motion was denied. ROA. 25-11339.439–25-11339.442.

get into court on a writ of habeas corpus in these narrow circumstances.

Further, Counsel of Record is aware that this Court has granted relief to a co-defendant on his separate writ of certiorari that had been denied, in light of the relief his co-defendant obtained after the grant of his separate petition for a writ of certiorari in the same case. *See Moreno-Gonzalez v. United States*, 553 U.S. 1091 (2008); *Regalado Cuellar v. United States*, 553 U.S. 550 (2008). It appears then that the outcome on one petitioner's writ of certiorari may affect another's.

Although this petition addresses a very narrow set of circumstances, it is serious and of great importance because it determines whether individuals in situations like Green's get access to the court or do not. Joint prosecutions frequently have multiple defendants, consolidated appellate proceedings, and on rare occasions separate petitions for writs of certiorari. The absence of guidance on these significant questions creates uncertainty where this Court is in the best position to provide that guidance.

The petition should therefore be granted.

**B. When a Certificate of Appealability Should Issue in the Absence of Clear Precedent.**

In federal habeas proceedings, a certificate of appealability should issue when the individual makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree

with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Further, this Court has held:

when, [like here], a district court denies a habeas petition on procedural grounds without reaching the [individual's] underlying constitutional claim, a COA should issue . . . if the [individual] shows, at least, that jurists of reason could find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

*Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

Here, Green has been denied access to the consideration of his constitutional claims in the District Court because that Court decided his appeal had concluded with the denial of just his writ of certiorari and it also denied him a certificate of appealability without precedent to guide that court concerning when the appeal was final. Here, the District Court stated that no case law addressed Green's situation. He was also denied due process when the Fifth Circuit declined to issue a certificate of appealability.

His circumstances implicate his right to due process by operation of when his appeal is final. ROA. 25-11339.139. Can he get into court to have his writ of habeas corpus decided? The District Court's acknowledgment that the

precise question lacked directly applicable precedent demonstrates why the certificate of appealability inquiry mattered. The Fifth Circuit denied him a certificate of appealability too, without explanation. *See* Appendix A.

### CONCLUSION

This Court should grant certiorari to determine when an appeal is final under these circumstances so that courts will know when they should hear a person's case or when the person cannot be heard. In the alternative, this Court should remand the case to the Fifth Circuit with instructions to issue a certificate of appealability.

Respectfully submitted,

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## APPENDIX

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**APPENDIX A — ORDER OF THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT,  
FILED JULY 21, 2026**

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 25-11339

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

JOHN O. GREEN,

*Defendant-Appellant.*

Filed July 21, 2026

Application for Certificate of Appealability  
the United States District Court  
for the Northern District of Texas  
USDC No. 3:24-CV-726  
USDC No. 3:18-CR-356-3

ORDER:

John O. Green, former federal prisoner # 57543-177, moves for a certificate of appealability (COA) to appeal the dismissal as time barred of his 28 U.S.C. § 2255 motion challenging his conviction of conspiring to defraud the United States. He argues that his § 2255 motion was

*Appendix A*

timely filed under § 2255(f)(1), because his judgment did not become final until the United States Supreme Court denied the certiorari petition filed by his codefendant Thomas Selgas, and under § 2255(f)(2), because, due to rules of professional conduct related to his legal representation of Selgas, he was under a state-created impediment that prevented him from fully presenting claims in a § 2255 motion until the impediment was removed by his disbarment. Green also argues the merits of his constitutional claims.

To obtain a COA, Green must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When, as here, the district court denies relief on procedural grounds, a COA will be granted if the movant establishes, at least, that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Green has failed to make the requisite showing. *See id.* Accordingly, his motion for a COA is DENIED.

/s/ Edith H. Jones  
Edith H. Jones  
*United States Circuit Judge*

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**APPENDIX B — MEMORANDUM OPINION  
AND ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF TEXAS, DALLAS DIVISION,  
FILED NOVEMBER 13, 2025**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CIVIL ACTION NO. 3:24-CV-0726-S  
(CRIMINAL ACTION NO. 3:18-CR-0356-S-3)

JOHN O. GREEN

v.

UNITED STATES OF AMERICA

Filed November 13, 2025

**MEMORANDUM OPINION AND ORDER**

Before the Court is the Government’s Motion to Dismiss 28 U.S.C. § 2255 Motion as Time-Barred (“Motion to Dismiss”) [ECF No. 12]. The Court has reviewed the Motion to Dismiss, Movant John O. Green’s Reply to the Motion to Dismiss (“Response”) [ECF No. 15], Movant’s Motion Under 28 U.S.C. Section 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“Section 2255 Motion”) [ECF No. 1], Movant’s Brief in Support of the Section 2255 Motion (“Movant’s Brief”) [ECF No. 3], and the applicable law. For the following reasons, the Court GRANTS the Motion to Dismiss.

*Appendix B***I. BACKGROUND**

On January 15, 2020, a unanimous jury found John O. Green (“Movant”) and his co-defendant and former client, Thomas Selgas, guilty of Conspiracy to Defraud the United States. *See* CR ECF No. 184.<sup>1</sup> The jury also found Selgas guilty of Evasion of Payment for Tax Years 1998-2002 and 2005. *Id.* On June 22, 2021, the Court sentenced Movant to six months’ imprisonment to be followed by three years of supervised release. *See* CR ECF No. 304 at 1-3.

Movant and Selgas each appealed, and the United States Court of Appeals for the Fifth Circuit consolidated their appeals. *See United States v. Green* (“*Green I*”), 47 F.4th 279 (5th Cir. 2022). The Fifth Circuit affirmed Movant’s and Selgas’s convictions and sentences in August 2022. *Id.* at 296. Movant filed a petition for a writ of certiorari with the United States Supreme Court. The Supreme Court denied the petition on January 23, 2023. *See Green v. United States* (“*Green II*”), 143 S. Ct 747, 214 L. Ed. 2d 450 (2023), Selgas also filed a petition for a writ of certiorari, which the Supreme Court denied on March 27, 2023. *See Selgas v. United States*, 143 S. Ct. 1058, 215 L. Ed. 2d 281 (2023).

On March 25, 2024, Movant filed the Section 2255 Motion. He claims that: (1) he was denied his due process right to present a complete defense and his right to compulsory process because he was tried together with

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1. ECF filings from the related criminal case (3:18-CR-0356-S-3) will be referred to as “CR ECF.”

*Appendix B*

his client, Selgas, and was prevented from revealing “privilege and confidences that form[ed] his defense”; (2) the Government suppressed evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); (3) he is legally innocent because the indictment “failed to allege[] an offense for which [Movant] could be charged”; and (4) he was denied his “Sixth Amendment right to effective assistance of counsel.” Section 2255 Mot. 7-8.<sup>2</sup> On July 30, 2024, the Government filed the Motion to Dismiss, contending that Movant’s Section 2255 Motion is untimely. *See* Mot. to Dismiss. Movant then filed the Response. The Government did not file a reply, and the deadline to do so has passed.

## II. LEGAL STANDARD

“28 U.S.C. §2255 establishes a ‘1-year period of limitation’ within which a federal prisoner may file a motion to vacate, set aside, or correct his sentence. . . .” *Dodd v. United States*, 545 U.S. 353, 354, 125 S. Ct. 2478, 162 L. Ed. 2d 343 (2005). An individual is “‘in custody’ for purposes of § 2255” while serving a term of supervised release. *United States v. Scruggs*, 691 F.3d 660, 662 n.1 (5th Cir. 2012); *Maleng v. Cook*, 490 U.S. 488, 491, 109 S. Ct. 1923, 104 L. Ed. 2d 540 (1989) (“Our interpretation of the ‘in custody’ language has not required that a prisoner be physically confined in order to challenge his sentence on habeas corpus.”). 28 U.S.C. § 2255 states that:

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2. The Court does not address these arguments because the Court denies the Section 2255 Motion on timeliness grounds. *See infra* § III.

*Appendix B*

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

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to 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;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f).

A movant in a Section 2255 proceeding has the burden of proving that his filings are timely. *United States v. Duran*, 934 F.3d 407, 413 (5th Cir. 2019). In most cases, the one-year statute of limitations begins to run when the judgment becomes final under Section 2255(f)(1).

*Appendix B*

*Young v. United States*, No. 3:15-CR-0413-N, 2020 U.S. Dist. LEXIS 45139, 2020 WL 1237402 (N.D. Tex. Feb. 18, 2020), *report and recommendation adopted*, No. 3:15-CR-0413-N, 2020 U.S. Dist. LEXIS 43651, 2020 WL 1236571 (N.D. Tex. Mar. 13, 2020). Although the statute does not define when a conviction “becomes final” for purposes of habeas review of a federal conviction, the Supreme Court stated in *Clay v. United States* that “[f]inality attaches when [the Supreme] Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires.” 537 U.S. 522, 527, 123 S. Ct. 1072, 155 L. Ed. 2d 88 (2003) (citation omitted); *see also United States v. Thomas*, 203 F.3d 350, 356 (5th Cir. 2000) (holding that “the federal judgment of conviction becomes final for purposes of the one year limitation period set forth in § 2255(1) on the date that the Supreme Court denies [a] defendant’s petition for writ of certiorari.”).

### III. ANALYSIS

Movant asserts that the Section 2255 Motion is timely under Section 2255(f)(1) or, in the alternative, Section 2255(f)(2). Finding these contentions to be without merit, the Court holds that the Section 2255 Motion is untimely because Movant filed it outside of the one-year limitation period.

#### A. Timeliness Under Section 2255(f)(1)

The Court agrees with the Government that the Section 2255 Motion is untimely under Section 2255(f)(1).

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Movant's judgment of conviction became final pursuant to Section 2255(f)(1) on January 23, 2023, when the Supreme Court denied his writ petition. *See* Mot. to Dismiss 2. Thus, the Section 2255 Motion was untimely after January 23, 2024. *See Clay*, 537 U.S. at 527. It was untimely pursuant to 28 U.S.C. § 2255(f)(1) because Movant filed it on March 25, 2024. *Id.* But Movant maintains that he filed the Section 2255 Motion within the one-year limitation period under Section 2255(f)(1) because his judgment did not become final until the Supreme Court denied Selgas's writ petition on March 27, 2023. *See* Resp. 6-8. This argument is unavailing because Movant cannot rely on his former co-defendant's writ petition to extend the statute of limitations period for filing his own Section 2255 Motion.

It is undisputed that the Supreme Court denied Movant's writ petition on January 23, 2023. *See Green II*, 143 S. Ct. 747. It is irrelevant that Selgas's petition was denied on March 27, 2023, because Selgas and Movant did not file a joint petition for a writ of certiorari. *See* Sup. Ct. R. 12 ¶ 4 (providing that "[p]arties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition"). Therefore, the statute of limitations began to run for Movant on January 23, 2023.

Further, while it appears that no case law directly addresses Movant's argument in this factual context (i.e., where each movant files a separate writ petition), federal courts have held that one co-defendant who fails to file a writ petition cannot rely on another co-defendant's writ petition to extend his time to file a Section 2255 motion.

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*See, e.g., Cuciniello v. United States*, 8:10-CV-1209-T-17, 2010 U.S. Dist. LEXIS 108659, 2010 WL 3835225, at \*2-3 (M.D. Fla. Sep. 30, 2010) (“[N]othing in the Supreme Court rules or the holding in *Clay* allows [the movant] to benefit from a co-defendant’s denial of certiorari to extend the finality of his own conviction[.]”); *Savell v. United States*, No. MO-12-CV-001, 2013 WL 12348684, at \*1 n. 1 (W.D. Tex. July 19, 2013) (holding that the movant could not rely on a co-defendant’s petition for writ of certiorari when the movant never filed his own petition); *United States v. Westcott*, No. 08-CV-00117-CVE-SAJ, 2008 U.S. Dist. LEXIS 93724, 2008 WL 4925768, at \*1 n.1 (N.D. Okla. Nov. 14, 2008) (same).

Movant relies on *Kemp v. United States*, 596 U.S. 528, 142 S. Ct. 1856, 213 L. Ed. 2d 90 (2022), to argue that the Court should not consider the Section 2255 Motion time-barred. Movant highlights factual similarities between his case and *Kemp*, primarily that the co-defendants in both cases were charged and found guilty as co-conspirators and had their appeals consolidated. Resp. 7.<sup>3</sup> However, this case is misapplied. The *Kemp* opinion addressed only whether the word “mistake” in Federal Rule of Civil Procedure 60(b)(1), which allows a party to seek relief from a final judgment, includes a judge’s legal error. 596 U.S. at 530-39. The purported legal error arose in

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3. Movant asserts that “[i]t follows necessarily” from *Kemp* that Movant “had to wait to see whether Selgas[s] writ of certiorari was decided and said decision was forwarded to the Fifth Circuit.” Resp. 7. The Court disagrees.

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the context of a Section 2255 timeliness analysis.<sup>4</sup> The Supreme Court in *Kemp* neither held nor suggested that a movant’s conviction becomes final under Section 2255 when the Supreme Court denies the separate writ petition of a movant’s co-defendant(s). In fact, the movant in *Kemp* did not petition the Court for certiorari. *Id.* at 531 (“For someone who, like [the movant], does not petition this Court for certiorari, a judgment becomes final when the time to seek certiorari expires.”). Nothing in *Kemp*, the Rules of the Supreme Court, or Section 2255 supports Movant’s argument. Instead, as the Supreme Court stated in *Clay*, “[f]inality attaches when [the Supreme] Court . . . denies a petition for a writ of certiorari.” 537 U.S. at 527.

Movant also relies on the fact that this Court’s docket sheet in his criminal case contains an entry from March 27, 2023, stating, “Received letter from USCA5: SUPREME COURT ORDER denying petition for writ of certiorari as to Thomas D. Selgas and John O. Green.” Section 2255 Mot. 3 (citing CR ECF No. 377); Resp. 7 (same). But the documents attached to that entry reflect a letter from the Supreme Court notifying the Fifth Circuit that it had

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4. The district court in *Kemp* overlooked Supreme Court Rule 13.3, which prescribes “that the 90-day clock to seek certiorari does not begin to run until *all* parties’ petitions for rehearing are denied.” 596 U.S. at 532. The movant argued that his Section 2255 motion was timely because the ninety-day period to seek certiorari from the Supreme Court began once all parties were eligible to petition for certiorari to the Supreme Court. *Id.* at 531-32. The Supreme Court held that the district court’s determination was the kind of legal error that could justify relief under Rule 60(b); therefore, the statute of limitations for Rule 60(b) applied and barred the movant’s motion. *Id.* at 539.

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denied *Selgas*'s writ petition on that date—not Movant's. CR ECF No. 377 at 2. The preceding document entry, CR ECF No. 376, entered on January 23, 2023, contains a letter from the Supreme Court to the Fifth Circuit dated that same day, stating that the Supreme Court had denied Movant's writ petition. CR ECF No. 376 at 2.

In summary, Movant's judgment became final on January 23, 2023, when the Supreme Court denied his petition for a writ of certiorari. Movant had one year from that date to file a Section 2255 motion, but he did not do so until March 25, 2024. It is therefore untimely under Section 2255(f)(1).

**B. Timeliness Under Section 2255(f)(2)**

The Section 2255 Motion also is untimely under Section 2255(f)(2), which provides an alternate accrual date for Section 2255 motions where governmental action impacts a movant's ability to file. This accrual date begins on "the date on which the impediment to 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." 28 U.S.C. § 2255(f)(2). Movant has the burden to establish an entitlement to equitable tolling under Section 2255(f)(2). *United States v. Petty*, 530 F.3d 361, 365 (5th Cir. 2008). To invoke this subsection, Movant must establish that: (1) government action prevented him filing a Section 2255 motion and (2) such action violated the United States Constitution or federal law. *See Egerton v. Cockrell*, 334 F.3d 433, 436 (5th Cir. 2003) (interpreting

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a similar provision applicable to federal habeas corpus petitions filed by state prisoners under 28 U.S.C. § 2254). The Court considers each requirement in turn.

As to the first requirement, Movant cannot establish that government action prevented him from filing a timely Section 2255 motion. Movant cites (1) the attorney-client privilege codified in Texas Rule of Evidence 503 and Federal Rule of Evidence 502 and (2) the rule of attorney confidentiality codified in Texas Disciplinary Rule of Professional Conduct 1.05 as government action that precluded him from disclosing information that would support a meritorious Section 2255 motion. Resp. 8-11; Movant's Br. 16, 18.

Movant claims that these rules are "government-imposed impediments" that prevented him from filing a Section 2255 motion until he was disbarred. Resp. 8-12. Movant contends that the one-year limitations period began to run under Section 2255(f)(2) on March 7, 2024, when he was officially disbarred in both Washington State and Texas and the state-imposed attorney-client privilege and confidentiality rules no longer applied. *Id.* at 9-12; Movant's Br. 15-16, 18. Movant claims that only then could he support a Section 2255 motion by explaining the requisite facts that would have allowed him to present a complete defense at trial. Resp. 12; Movant's Br. 15-16, 18.

Rule 1.05 provides that, with some exceptions, a lawyer shall not knowingly reveal "confidential information of a client" to "anyone else, other than the client, the client's representatives, or the members, associates, or

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employees of the lawyer’s law firm.” TEX. DISCIPLINARY R. PROF’L CONDUCT 1.05(b). But Rule 1.05(c) provides that a lawyer may reveal confidential information “[t]o establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer’s associates based upon conduct involving the client or the representation of the client.” *Id.* at 1.05(c)(6). Movant does not explain why that provision would have prevented him from revealing “confidential information” in a timely Section 2255 motion.<sup>5</sup> Consequently, Movant has not satisfied the first requirement of subsection (f)(2).

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5. The Washington State equivalent of this rule is substantially similar, providing that:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer to the extent the lawyer reasonably believes necessary:

...

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client[.]

WASH. R. PROF’L CONDUCT 1.6.

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Movant makes no effort to establish the second requirement; he does not argue that the privilege and confidentiality rules are unconstitutional or violate federal law. Thus, Movant's position ignores the plain language of Section 2255(f)(2), which references "governmental action *in violation of the Constitution or laws of the United States.*" 28 U.S.C. § 2255(f)(2) (emphasis added). The ethics rules have not been found unlawful. Thus, Movant has not satisfied the second requirement of subsection (f)(2).

In conclusion, the Court holds that Movant has not established that the Section 2255 Motion is timely under either 28 U.S.C. § 2255(f)(1) or (f)(2).

#### IV. CONCLUSION

For the foregoing reasons, the Government's Motion to Dismiss 28 U.S.C. § 2255 Motion as Time-Barred [ECF No. 12] is **GRANTED**. Accordingly, Movant John O. Green's Motion Under 28 U.S.C. Section 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [ECF No. 1] is **DENIED**. By separate judgment, this case will be **DISMISSED WITH PREJUDICE**.

Further, pursuant to 28 U.S.C. § 2253(c), for the reasons discussed herein, a certificate of appealability is **DENIED**.

**SO ORDERED.**

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SIGNED November 13, 2025.

/s/ Karen Gren Scholer  
**KAREN GREN SCHOLER**  
**UNITED STATES DISTRICT JUDGE**

16a

**APPENDIX C — DENIAL OF CERTIORARI OF THE  
UNITED STATES SUPREME COURT IN *GREEN V.*  
*UNITED STATES*, FILED JANUARY 23, 2023**

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

January 23, 2023

Clerk  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130

Re: John O. Green  
v. United States  
No. 22-508  
(Your No. 21-10651)

Dear Clerk:

The Court today entered the following order in the  
above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ Scott S. Harris  
Scott S. Harris, Clerk

17a

*Appendix C*

***United States Court of Appeals***  
**FIFTH CIRCUIT**  
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**  
**CLERK**

**TEL. 504-310-7700**  
**600 S. MAESTRI PLACE,**  
**Suite 115**  
**NEW ORLEANS, LA 70130**

January 23, 2023

Ms. Karen S. Mitchell  
Northern District of Texas, Dallas  
United States District Court  
1100 Commerce Street  
Earle Cabell Federal Building  
Room 1452  
Dallas, TX 75242

No. 21-10651    USA v. Green  
USDC No. 3:18-CR-356-3

Dear Ms. Mitchell,

Enclosed is a copy of the Supreme Court order denying certiorari.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Stacy Carpenter Vial  
Stacy Carpenter Vial, Deputy Clerk

18a

**APPENDIX D — DENIAL OF CERTIORARI OF THE  
UNITED STATES SUPREME COURT IN *SELGAS V.*  
*UNITED STATES*, FILED MARCH 27, 2023**

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

March 27, 2023

Clerk  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130

Re: Thomas D. Selgas  
v. United States  
No. 22-729  
(Your No. 21-10672)

Dear Clerk:

The Court today entered the following order in the  
above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ Scott S. Harris  
Scott S. Harris, Clerk

19a

*Appendix D*

***United States Court of Appeals***  
**FIFTH CIRCUIT**  
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**  
**CLERK**

**TEL. 504-310-7700**  
**600 S. MAESTRI PLACE,**  
**Suite 115**  
**NEW ORLEANS, LA 70130**

March 27, 2023

Ms. Karen S. Mitchell  
Northern District of Texas, Dallas  
United States District Court  
1100 Commerce Street  
Earle Cabell Federal Building  
Room 1452  
Dallas, TX 75242

No. 21-10651    Consolidated with No. 21-10672  
USA v. Selgas  
USDC No. 3:18-CR-356-1  
USDC No. 3:18-CR-356-3

Dear Ms. Mitchell,

We have received the Supreme Court order denying certiorari. We previously sent you the judgment issued as mandate.

20a

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Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Mary Frances Yeager

Mary Frances Yeager, Deputy Clerk

504-310-7686