

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**IN RE: Motions Seeking Collateral Relief on the Basis
of *Johnson v. United States*, 135 S. Ct. 2551 (2015)**

ADMINISTRATIVE ORDER

1) On June 26, 2015, the Supreme Court issued its opinion in *Johnson v. United States*, 135 S. Ct. 2551 (2015), holding that the “residual clause” in the definition of “violent felony” in the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague and therefore invalid.

2) On April 18, 2016, the Supreme Court issued its opinion in *Welch v. United States*, 136 S. Ct. 1257 (2016), holding that *Johnson* applies retroactively on collateral review.

3) On June 24, 2016, this Court issued an Administrative Order setting forth procedures and deadlines for the filing of *Johnson* motions under 28 U.S.C. § 2255 and the final memorandum of law. See IN RE: Motions Seeking Collateral Relief on the Basis of *Johnson v. United States*, 135 S. Ct. 2551 (2015) (June 24, 2016).

4) On June 27, 2016, the Supreme Court of the United States granted the petition for certiorari in *Beckles v. United States*, No. 15-8544, which will determine whether *Johnson* applies retroactively on collateral review to cases challenging the “residual clause” in USSG § 4B1.2(a)(2) of the United States Sentencing Guidelines. In *Lynch v. Dimaya*, No. 15-1498, the Supreme Court will determine whether the residual clause in 18 U.S.C. § 16(b), as incorporated into the Immigration and Nationality Act’s provisions governing an alien’s removal from the United States, is unconstitutionally vague. The United States Court of Appeals for the Third Circuit issued stays in *Johnson*-based § 2244 applications to file second or successive § 2255 motions challenging Guidelines enhancements.

5) On August 30, 2016, the Third Circuit issued an Order selecting and consolidating three lead cases that will determine whether petitioners are entitled to authorization to file second or successive motions under 28 U.S.C. § 2255 challenging their convictions under 18 U.S.C. § 924(c) on the ground that their predicate offenses no longer qualify as “crimes of violence” in light of *Johnson*. The Third Circuit stayed those cases pending the Supreme Court’s decision in *Beckles*, and the Third Circuit’s decision in *United States v. Galati*, C.A. No. 15-1609.

5) In light of the pending actions before the U.S. Supreme Court and the Third Circuit, it is hereby

ORDERED on this 28th day of November, 2016, that the Court’s June 24, 2016 Administrative Order shall be modified as to the deadline for the filing of a movant’s or petitioner’s final memorandum of law supporting relief, and the Government’s response to the motion and memorandum, for *Johnson*-based motions seeking:

to invalidate sentences imposed under the career offender provisions of the Sentencing Guidelines, USSG §§ 4B1.1, 4B1.2, and under other Guidelines provisions, such as § 2K2.1, that employ the term “crime of violence” based on the argument that *Johnson* invalidates the “residual clause” in the Guidelines definition of “crime of violence”;

to invalidate certain convictions under 18 U.S.C. § 924(c) based on the argument that *Johnson* invalidates the “residual clause” in the definition of “crime of violence” in that statute (*i.e.*, 18 U.S.C. § 924(c)(3)(B)); and

to invalidate certain convictions under any statute that incorporates the definition of “crime of violence” in 18 U.S.C. § 16, on the grounds that *Johnson* invalidates the “residual clause” in § 16(b).

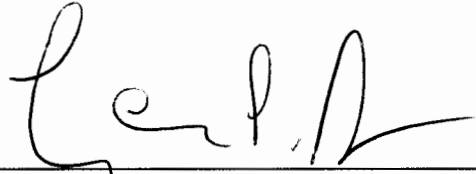
It is further **ORDERED** that all persons seeking collateral relief based on *Johnson* and asserting these challenges are afforded a period of up to 30 days from the date the Supreme Court or Third Circuit issue opinions in the cases pending before those Courts.

It is further **ORDERED** that the Government is afforded a period of up to 150 days after the filing of the movant's final memorandum of law to file its response to the motion and memorandum.

It is further **ORDERED** that the stay imposed in cases involving *Johnson* motions under 28 U.S.C. § 2255 seeking to invalidate sentences imposed under ACCA is **LIFTED**.

This Order does not modify any other provision of the Court's June 24, 2016 Administrative Order.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'L. Stark', written over a horizontal line.

Hon. Leonard P. Stark
Chief Judge, District of Delaware