

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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*, -- S. Ct. --, No. 15-6418, holding that *Johnson* applies retroactively on collateral review.

3) It is anticipated that, before the one-year deadline on Monday, June 27, 2016, for the filing of motions under 28 U.S.C. § 2255 based on *Johnson*, the Federal Defender and others in this district will file more than 700 motions seeking relief on the basis of *Johnson*. It appears that, based on motions filed thus far, that these motions will seek, among other relief:

 a) To invalidate certain sentences imposed under the Armed Career Criminal Act;

 b) To invalidate certain sentences imposed under the career offender provision of the Sentencing Guidelines, U.S.S.G. §§ 4B1.1, 4B1.2, and under other Guideline provisions, such as § 2K2.1, that employ the term “crime of violence,” based

on an argument that *Johnson* also invalidates the “residual clause” in the Guidelines definition of “crime of violence”; and

c) To invalidate certain convictions under 18 U.S.C. § 924(c), based on an argument that *Johnson* also invalidates the “residual clause” in the definition of “crime of violence” in that statute.

4) It appears that many of the motions filed to date in this Court are “placeholder” motions seeking to state a claim but without full briefing, pending the action of higher courts further explaining the contours of *Johnson* and its permitted application. Several issues related to the application of *Johnson* are pending before the Third Circuit and the U.S. Supreme Court.

5) All litigants require sufficient time to address claims based on *Johnson*, and to consider the impact of matters presently pending in higher courts. In addition, there are some movants eligible for immediate release should their claims prove meritorious, and the parties are best positioned to identify those individuals and prioritize their motions .

6) In order to orderly process and resolve this unusually large number of contemporaneously-filed motions for collateral relief, to provide justice to those movants whose meritorious claims would result in immediate release, and to permit sufficient time for the parties to litigate these issues, it is hereby

ORDERED on this 16th day of May, 2016, that all motions filed under 28 U.S.C. § 2255, or any other provision of law, seeking collateral relief based on *Johnson*, whether filed before or after the issuance of this Order, are **STAYED**. The parties shall promptly confer on prioritizing the motions according to the considerations addressed in

this Order, and shall move to lift this stay in individual matters as they are prioritized and ready to proceed. It is further **ORDERED** that all persons seeking collateral relief based on *Johnson* are afforded a period of up to 120 days from June 27, 2016 to file a final memorandum of law supporting relief. It is further **ORDERED** that the government is afforded a period of up to 120 days after the filing of the movant's final memorandum of law to file its response to the motion and memorandum. The parties may request from the Court in individual matters a date shorter than the above cited deadlines should the interest of justice demand it. This Order does not preclude any party from seeking further relief, either through a supplemental Administrative Order or action in any individual case, based on the pendency of possibly dispositive litigation in a higher court regarding a *Johnson* issue presented in a particular case or cases.

BY THE COURT:



HON. PETRESE B. TUCKER
Chief United States District Court Judge