

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:

**MOTIONS SEEKING COLLATERAL
RELIEF ON THE BASIS OF
Johnson v. United States,
135 S. Ct. 2551 (2015)**

STANDING ORDER 16-2

Misc. No. 16-11 (JBS)

Upon joint application of United States Attorney Paul J. Fishman and Federal Public Defender Richard Coughlin on June 20, 2016, see Misc. No. 16 11, the Court finds as follows:

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) Before the one year deadline on Monday, June 27, 2016, for filing under 28 U.S.C. § 2255 based on *Johnson*, the Federal Defender and others in this district may file more than 150 motions seeking relief on the basis of *Johnson*.

4) It appears that, based on motions filed thus far, these motions will seek, among other relief:

a) to invalidate certain sentences imposed under ACCA;

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”;

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 (i.e., 18 U.S.C. § 924(c)(3)(B)); and

d) 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* also invalidates the “residual clause” in § 16(b).

5) Many of the motions filed so far in this District appear to be “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.

6) 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 who would be eligible for

immediate release should their claims prove meritorious, and the parties are best positioned to identify those individuals and prioritize their motions.

7) 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 23rd day of **June, 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 motions or petitions raising claims based on *Johnson*, filed on or before June 27, 2016, may be in the form of “placeholders,” so long as the “placeholder” alleges that the movant’s or petitioner’s conviction or sentence is invalid under *Johnson*. Such “placeholders,” however, need not include full briefing.

It is further **ORDERED** that all persons seeking collateral relief based on *Johnson* are afforded a period of up to 150 days from June 27, 2016 to file a final memorandum of law supporting relief.

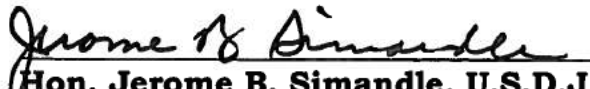
It is further **ORDERED** that the government is afforded a period of up to 150 days after the filing of the movant's final memorandum of law to file its response to the motion and memorandum.

It is further **ORDERED** that the 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 Standing 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.

Finally, nothing in this Order tolls or extends the limitations period that otherwise would apply under 28 U.S.C. § 2255(f) or exempts second or successive § 2255 motions raising *Johnson* claims from the certification requirements of 28 U.S.C. §§ 2244 and 2255(h) before such motions can be presented to the District Court under Rule 9 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

BY THE COURT:


Hon. Jerome B. Simandle, U.S.D.J.
Chief Judge, District of New Jersey