

No. 15-8629

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2015

ALFREDERICK JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

This Supplemental Brief is to advise the Court of two Orders issued by the Court of Appeals for the Fifth Circuit after this Court's decision in *Welch v. United States*, 136 S. Ct. 1257 (2016), granting authorization to file a second or successive motion to vacate under 28 U.S.C. § 2255 in a case involving a sentence imposed under the residual clause of the Sentencing Guidelines' career offender provision. See *In re Holston*, No. 16-50213 (5th Cir., May 17, 2016) (stating that "*Johnson* announced a new rule of constitutional law that has been made retroactive by the Supreme Court to cases on collateral review") (citing *Welch*, 136 S. Ct. at 1268); *In re Rodriguez*, No. 16-10393 (5th Cir., May 17, 2016) (same).¹

These orders are significant for two reasons. First, they demonstrate the Fifth Circuit's understanding that *Welch* held that the rule announced in *Johnson v. United States*, 135 S. Ct. 2551 (2015) is retroactive to all cases on collateral review. Before *Welch*, the court denied authorization to file successive motions in both Armed Career Criminal and Guidelines cases. See, e.g., *In re Williams*, 806 F.3d 322, 323-26 (5th Cir. 2015) (challenge to Armed Career Criminal sentence); *In re Blake*, No. 16-20115 (5th Cir., Mar. 17, 2015) (challenge to Career Offender sentence). After *Welch*, the court is authorizing second or successive motions in both. See, e.g., *Holston* (Career Offender); *In re Wilson*, No. 16-10630 (5th Cir., May 4, 2016) (Armed Career Criminal).

¹ Undersigned counsel was not of aware of these unpublished orders until after the Reply Brief for Petitioner was filed.

Second, the orders in *Holston* and *Rodriguez* deepen the post-*Welch* circuit conflict regarding whether *Johnson* is retroactive to guidelines cases on collateral review, and further demonstrate the need for this Court's immediate guidance. See Reply to Brief in Opposition at 9-10; compare *In re Cantillo*, No. 16-11468, slip op. at 9-11 (11th Cir., May 2, 2016), with *In re Encinias*, ___ F.3d ___, 2016 WL 1719323, at *2 (10th Cir., Apr. 29, 2016).

Respectfully submitted,



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Dated: May 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that under penalty of perjury that a true and correct copy of the foregoing Supplemental Brief for Petitioner was sent via email and first class mail this 26th day of May, 2016, to the following:

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