

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

HEATHER JO COX — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
SIXTH CIRCUIT COURT OF APPEALS

SIXTH CIRCUIT APPELLATE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HEATHER COX
(Your Name)

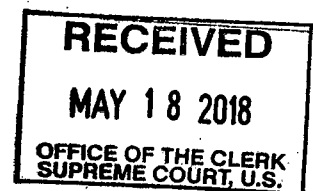
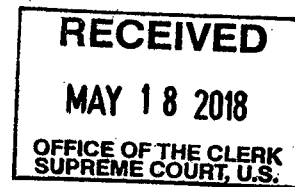
PO BOX 4000
(Address)

ALICEVILLE, AL 35442
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE LOWER COURT ERR IN ITS DECISION TO DENY RELIEF WHERE THIS COURT HAS RECOGNIZED THAT ROBBERY/BURGLARY FALL INTO THE CATEGORY, THAT FALLS UNDER THE JOHNSON RULING, AS IT RELATES TO VAGUENESS?
2. DID THE LOWER COURT ERR IN ITS DECISION TO DENY THE PETITIONER TO PROCEED WITH A SECOND/SUCCESSIVE FILING AS UNTIMLEY, WHERE JOHNSON V UNITED STATES DID APPLY, AS WAS WITHIN EQUITABLE TOLLING?



LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

§21 USC §841, 846

Fifth Amendment due process clause

§2244 §2255

§4B1.1

§4B1.2

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2/7/2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT

DUE PROCESS

CAREER OFFENDER PROVISION §4B1.1, 4B1.2

STATEMENT OF THE CASE

In March 2012, the petitioner pled guilty to six counts of committing drug offenses, in violation of 21 USC §841, 836. The Court held that Cox had two prior convictions for "crimes of violence", therefore sentencing her under the §4B1.1 provision. She did not appeal said decision. In July July, 2012, the court imposed a sentence of (151) months to be followed by four years of supervised release.

In June 2016, the petitioner filed a motion pursuant to §2255, raising a claim under Johnson v United States, 135 SCT 2551 (2015), challenging the legality of the designation of the §4B1.1 enhancement, as the 'burglary' conviction was no longer deemed a 'crime of violence', therefore, invalidating the career offender status.

~~Both district and Appellate courts held that her petition was untimely, and that, Johnson, did not apply. She now seeks certiorari, as numerous cases since her conviction, and the decisions handed down, have been vacated and remanded, as unconstitutional, as the wording in the statutes similar to that of the §924(c) void for vagueness clause, was struck down.~~

Cox challenges the designation of the usage of the 'burglary' conviction, as a "serious crime" to justify career offender status.

REASONS FOR GRANTING THE PETITION

Beckles, with its holding, upheld the career offender status of those persons, having been sentenced after Booker, as the guidelines at that point were advisory, and the Court, at that point could have imposed any sentence, it saw fit.

The petitioner in this offense challenges the legality of the 'burglary' charge, as a crime of violence. The Court, in its opinion, (page 2), focuses mainly on the time limitation, as of the date of her sentencing, not reviewing the actual claim under Johnson. The district court itself, in its opinion, (page 1) quoted that Cox had two prior convictions for 'crimes of violence', therefore, opening the door for a legal challenge. The court took both convictions, including the burglary, as a 'serious' offense to justify placing her under the career offender provision. This behavior implies arbitrary enforcement, exactly what this Court struck down in Johnson.

When we look at Complicity to Burglary in the 2nd Degree, we have to read the wording and the meaning. The government stated that the claim may fall under Mathis, but because it wasn't raised, no relief can be applied. many a court has granted relief on the same cases, having a similar 'void for vagueness' clause. Courts dictate that it will violate due process to refuse a defendant the benefit of a clarifying interpretation of the law, in effect at the time of a defendant's conviction, even if the judicial clarification did not occur until well after the defendant's conviction became final. And this is essentially what the lower court is doing here. Not focusing on the constitutional challenge, but merely raising untimeliness as means to dismiss.

If we look at Descamps v U.S., 133 SCT 2276, 11-9540H, 6/20/13, the court in that docketed case, tried to over-criminalize the defendant, which, this Court would not

allow, striking down the over-imposition of sentence. Cox is not saying that she is not guilty of her crimes. She is saying that the court used arbitrary enforcement to place her in a criminal category which automatically called for a higher/harsher sentencing frame.

It may be that the lower courts are not understanding what the argument actually is saying. Cox isnt challenging the fact that she is a career offender under Beckles or Johnson seeking relief of the provison; she is challenging the fact that because of Johnson, the offense used to career her out, does not qualify for neither a crime of violence, or serious offense.

As the district court deems the burglary offense as a crime of violence, as stated in its Order, let us look at the actual definition. §4B1.2 states: 'otherwise involves conduct that presents a serious potential risk of physical injury to another.' The complicity to burglary in the second degree doesnt fit in that category, so, the court placed her under §4b1.1, which also would not be suitable for such a generic conviction. It reads: 'two prior convictions of either a crime of violence or a controlled substance .' Cox's conviction can not be conformed or bent to fit into any of the above referenced provisions. Therefore, invalidating her status of career offender.

Under the government's preffered approach, there is no 'generic' definition at all for the complicity to burglary in the second degree, therefore, requiring reversal. See Taylor v United States, 495, US at 591, 110 SCT 2143, requiring a clear indication that Congress intended to abandon its general approach of using uniform categorical definitions to identify predicate offenses. at 592.

The lower court's decision is contradictory to that of this Court's ruling in Esquivel-Quintana v Sessions, 581 US 137 SCT No. 16-54, 5/30/17, where the Court held that: "We think that burglary in 924(e) must have some uniform definition independent of the labels employed by the various State's criminal codes. Cox's case wasnt even burglary persay, it was complicity to burglary in the second degree, therefore even harder to justify as a crime of violence. Reversal was granted in the aforementioned case, which was a progeny of Johnson.

As to the court raising the fact that her claim was already raised and therefore can not be reviewed, contradicts Molina v Rison, (1989) CA9 CAL 886 . The Court held that "ground is successive if basic thrust or gravament of legal claim is same, regardless of whether basic claim is supported by new and different argument, thus, whether particular 'new' issue is merely 'new' legal argument, rather than 'new legal claim' will depend on whether new issue is itself ground for relief, as opposed to being merely supporting argument or predicate step to larger, basic claim.

The new claim was where Cox would show that the offense used to designate her as a career offender, was no longer considered a crime of violence, or serious crime to justify career offender status. She is not challenging whether or not career offender provision is valid, she challenges the imposition of said provision to her person, using a crime no longer deemed violent, or serious enough to warrant an enhanced sentence.

In U.S. v Vann, 660, F.3d 771, 787, (4th 2011), the Court held that: "The provision remains a Judicial morass that defies systemic solution; a black hole of confusion and uncertainty, that frustrates any effort to impart 'some sense of order and

direction." If this Honorable Court could not express clarity, how can a litigant, especially pro se, without formal training, get a clear understanding, without this Honorable Court's intervention? Without this Court's interpretation, Cox, along with many others, will continue to be held on enhanced sentences, due to ambiguity across the Circuits, as it relates to crimes of violence, and what crimes can legally and constitutionally justify career offender enhancements for crimes such as 'complicity to burglary in the second degree.'

"Drawing meaning from silence is particularly inappropriate ' where as demonsrated in §1028(a), " Congress has shown that it knows how to direct sentencing practices in express terms. Kimbrough v U.S. 552 U.S. 85 103, 128 SCT 558

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Heather Cox

Date: 5/2/2018