

No. \_\_\_\_\_

\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

ERIC L. JOHNSON — PETITIONER  
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Eric Lamant Johnson

(Your Name)

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(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

counsel forfeited my meritorious claim that would have guaranteed relief when he placed it in the Foot note and not in the body of the motion. He also declined to Amend and add the claim when I requested him to. . . Is this an unprofessional error that entitles me to have the forfeited claim considered by the court?

## 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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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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 June 5, 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: June 20, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ 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**

U.S. Constitution Amendment. 6.

U.S. Constitution Amendment, 5



### STATEMENT OF THE CASE

on October 21, 2004 petitioner pleaded guilty to possessing a firearm during or in relation to a drug trafficking crime in violation of 18 U.S.C. 924(C)(1)(A) (CR Doc. 144). Pursuant to a plea agreement respondent stipulated that petitioner should have been sentenced to 60 months the statutory minimum. (CR Doc 147 at 6). In December 2008, the Sentencing Court found that Petitioner's previous conviction for voluntary manslaughter and being a prisoner in possession of a weapon qualified as crimes of violence under U.S.S.G 4B1.1, (CR Doc 246 at 32-33). Specifically the sentencing court held that being a prisoner in possession of a weapon qualified as a ~~crime~~ crime of violence under the residual clause in 4B1.2(a)(2) (CR Doc 235 at 3). Based on the prior conviction's petitioner qualified as a career offender taking his offense base level from 60 month under 924(C)(1)(A) to 360 months to life under U.S.S.G (CR Doc. 246) CR Doc 246 at 7, 10, 29, 32-33).

on June 9, 2016 Petitioner filed a motion under 28 U.S.C. 2255 arguing that following the Supreme Court decision in Johnson 135 S.Ct his sentence under 4B1.2(a)(2) is unconstitutional and he is entitled to be resentenced without being considered a career offender (CV Doc 1 at 4-5, 12).

The court appointed Todd Coberly. Counsel through his pleadings illustrated that neither prior used to qualify Petitioner as a career offender could be used due to the priors used does not qualify as crimes of violence (CV Doc 5 at 8 and CV Doc 9 at 6 footnote). In the footnote Counsel argues Petitioner's prior California conviction of voluntary manslaughter does not fall within the elements clause of the definition of a crime of violence. Petitioner requested Counsel to amend the motion before the court to add the claim to the body of the motion for the court's consideration; Counsel declined. On November 14, 2016 the Magistrate recommended the sentence to be vacated. On 4-27-17 the District Court denied the motion. After which Petitioner filed a timely notice of appeal and was denied 6-5-18; he then requested a rehearing and was denied 6-20-18.

①

## REASONS FOR GRANTING THE PETITION

The court has held that a federal defendant has a right to counsel when ever one is appointed. (*Mickens v. Taylor*, 535 U.S. 162, 166, 122 S.Ct.). In this case Counsel's performance fell below professional norms of "*Strickland v. Washington*." Here even as Counsel placed the Claim with merit in the Foot note that would have guaranteed Petitioner relief Counsel declined to amend the pleadings to add the Claim when Petitioner requested it, although the rules allow it. (See FED. R. C. P. 51(e)(2) & Habeas corpus rule 12) Also in the same Foot note cv Doc 9at6 Counsel tells the court they did not have to reach the issue. This denied Petitioner Fair habeas review. ... Withn question is Petitioners Prior Conviction for voluntary manslaughter. Counsel illustrates in cv Doc 5at8 and in the Foot note in cv Doc 9at6 that the prior For voluntary Manslaughter could not be used as a crime of violence because it lacked the required elements. As well in the same Foot note Counsel tells the court it did not have to reach the issue. This Claim considered Petitioner would have been Free from prison. For this reason Petitioner pray the court remands for consideration of the forfeited claim that was done so due to Counsel's unprofessional error's *Strickland v. Washington* 466, U.S.

Petitioner career offender status is unconstitutional and violates his Right to Due process.

The court relied on a non violent crime in qualifying Petitioner as a career offender, specifically the court relied on in part Petitioners California Prior for Prisoner in possession of a weapon of which does not have the use threatened use or attempted use, necessary to qualify as a crime of violence. after *Johnson*, 135, S.Ct.

In this case the magistrate recommend the sentence be vacated due to the sentencing Court reliance on 481.2(a)(2)'s residual clause to impose an enhanced sentence wherefor with out the residual clause would have received a 60 month sentence under 924(c)(1)(A). The district Court decided that Beckles foreclosed on my claim with out considering the unconstitutionality of the sentence imposed. The decision in Beckles closed the door on hundreds of Petitioners who are being held against the law guaranteed by the constitution of the U.S.. Most are like my self who have been held for over 15 years. As of recent the 1st cir. and the 7th cir in *United States v. Cross*, 2018 BL 201713, NO. 17-2282 decided imposing a sentence based on 481.2(a)(2)'s residual clause to be unconstitutional.

Due process guarantee a defendant fair notice of conduct that is criminal. The court in this case deprived Petitioner of his right to Due process when it relied on 481.2(a)(2)'s residual clause to turn a non violent offense into a crime of violence for the purpose of enhancing my sentence.

Withnout the Court's aid and discretionary jurisdiction the lower court's will continue to hold defendant's against the laws that are protected by the U.S. Constitution.

Because Petitioners Sentence is unconstitutional under Johnson, 135 S.Ct., Townsend v. Burke 334, U.S. 741, 68, S.Ct. 1252, 92 L.Ed 1690 (1948) and the most recent Rosales-Mireles v. U.S 2018 BL 214344 U.S. NO.16-9493 Holding a defendant has a right to have his sentence corrected that was miscalculated under U.S.S.C and because the Circuit Courts are split on how to rule in matters such as the one before this Court hereandnow. For these reasons the Court should grant Certiorari.

as well, Petitioner Counsel representation fell below an objective standard of reasonableness.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric Johnson

Date: July 31, 2018